



**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**QUOTATION TO APPOINT A SERVICE PROVIDER TO CONDUCT A BULK DENSITY SURVEY (DYNAMIC CONE PENETROMETER TESTING) AND A VOLUMETRIC SURVEY AT POWER STATIONS.**

**QUOTATION NO: Q11-2022-23**

**NAME OF BIDDER:** .....

**CSD NUMBER:** .....

**VENDOR NUMBER** .....  
**(Compulsory)**

Prepared by:  
City of Tshwane  
Metropolitan Municipality  
Tshwane House  
320 Madiba Street  
PRETORIA  
0001  
Tel: (012) 358 9999

**CLOSING DATE**

**18 AUGUST 2022**

**Only bidders registered on the central supplier database and with CSD Number will be considered for this tender as it is a requirement from National Treasury.**



CITY OF TSHWANE  
METROPOLITAN MUNICIPALITY  
DEPARTMENT: ENERGY AND ELECTRICITY

**BIDS ARE HEREBY INVITED FROM SUPPLIERS FOR THE FOLLOWING BID:**

Bid No	Description	Dept.	Contact Officials	Compulsory Briefing Session	Closing date
Q11-2022-23	<b>QUOTATION TO APPOINT A SERVICE PROVIDER TO CONDUCT A BULK DENSITY SURVEY (DYNAMIC CONE PENETROMETER TESTING) AND A VOLUMETRIC SURVEY AT POWER STATIONS.</b>	EE	<p>Josia Masenya (012) 358 0658 <a href="mailto:josiasma@tshwane.gov.za">josiasma@tshwane.gov.za</a></p> <p>Phillip Maswanganye (012) 358 2807 <a href="mailto:phillipmas@tshwane.gov.za">phillipmas@tshwane.gov.za</a></p>	<p><b>Date:</b> 11 August 2022 <b>Time:</b> 10:00 <b>Venue:</b> Rooiwal Power Station(Main Security Gate)</p> <p>Rooiwal Power Station is situated approximately 23 km North of Church Square of Pretoria CBD, on the old Warmbaths road (R101 road) towards Hammanskraal. Coordinates: <b>25°33'18.28°14'15., M39, R101, Pretoria, 0121</b></p> <p>NB: The briefing session is compulsory, contractors are reminded to bring their own safety boots, safety helmets and ear protection to the meeting.</p>	18 August 2022 at 10:00

**THE DOCUMENT IS DOWNLOADABLE ON E-TENDER**

**Each Quotation shall be enclosed in a sealed envelope, bearing the correct identification details and shall be placed in the tender box located at:**

**PROCUREMENT ADVICE CENTRE  
TSHWANE HOUSE  
320 MADIBA STREET  
PRETORIA  
0001**

Documents must be deposited in the bid box not later than **10:00 on 18 August 2022** where bids will be opened in public.

**Technical enquiries: Phillip Maswanganye at (012) 358 2807 or [phillipmas@tshwane.gov.za](mailto:phillipmas@tshwane.gov.za)**

**Supply Chain enquiries: Josia Masenya at (012) 358 0658 or [josiasma@tshwane.gov.za](mailto:josiasma@tshwane.gov.za)**

**Bids will remain valid for a period of 90 days after the closing date**

- Received after the closing date and time will not be considered. CoT does not bind itself to accept the lowest or any other bid in whole or in part
- **Bid documents must be completed using a black pen (not re-typed or scanned)**
- Mistakes made on the price schedule must be crossed out in ink and each price alteration must be initialled.
- Price corrections may not be made with correction fluid, such as Tippex or a similar product.
- If correction fluid was used on any specific item price, such an item will not be considered. No correction fluid may be used on a bill of quantities where prices are calculated to arrive at a total amount. If correction fluid was used, the quotation as a whole will be repudiated.
- The Municipality will reject the quotation if corrections are not made in accordance with the above.

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## UTILITY SERVICES DEPARTMENT

### **QUOTATION TO APPOINT A SERVICE PROVIDER TO CONDUCT A BULK DENSITY SURVEY (DYNAMIC CONE PENETROMETER TESTING) AND A VOLUMETRIC SURVEY AT POWER STATIONS.**

#### **BID NUMBER**

(Q11-2022-23)

#### **1. INTRODUCTION AND PURPOSE**

The City of Tshwane wants to invite bidders to quote for conducting the bulk density survey (dynamic cone penetrometer testing), and volumetric survey at Power Stations

#### **2. BACKGROUND**

Rooiwal power station is owned and operated by the City of Tshwane. Rooiwal power station is made up of five (5) turbo-generator units, each rated at 60 MW. A generating unit is made up of a pulverized fuel fired water tube boiler, turbine, generator, generator transformer and all related auxiliaries.

The coal used to fire the boilers is stored in a coal stockpile. It is necessary to ensure that the construction of the coal stockpile, along with the methodology used, meets proper safety parameters with regard to construction, compaction, and compaction and also to ensure that safe internal conditions prevail in order to prevent spontaneous combustion of the coal.

Regular monitoring of stockpiles is essential, as the purpose of regular monitoring results in a safe product and ensuring the safe storage of the coal. Safety tests are of paramount importance throughout the year, as ambient temperatures can increase within the stockpile which can only be detected by temperature and gas tests.

Penetrometer tests allow for the measurement of the degree of compaction or natural compaction. The gas tests includes the detection of Carbon Dioxide, Carbon Monoxide and Oxygen are used to determine whether self-heating is taking place, and to ascertain to what extent the below surface atmosphere is inert. The temperature tests

indicate the presence of possible hot-spots, or self-heating which cannot always be visibly detected and can only be determined by monitoring and testing.

There are two coal stock piles for Rooiwal Power Station, one at Rooiwal Power Station and the other at Pretoria West Power Station. A volumetric survey is done for accounting and audit purposes, measuring the volume of coal stockpiles at the end of each financial year.

### **3. PROJECT SCOPE**

#### **3.1. SCOPE**

This specification makes provision appointment of a service provider to conduct a bulk density survey (dynamic cone penetrometer testing) and volumetric survey at Power Stations

#### **3.2. NORMATIVE REFERENCES AND DEFINITIONS**

The latest revision of the following standards shall apply:

3.2.1. Occupational Health and Safety Act, Act 85 of 1993;

And any other standards or legislations that are related to the execution of the work as determined by relevant authorities.

#### **3.3. REQUIREMENTS**

3.3.1. The coal used to fire the boilers is stored in a coal stockpile. It is necessary to ensure that the construction of the coal stockpile, along with the methodology used, meets proper safety parameters with regard to construction, compaction, and compaction and also to ensure that safe internal conditions prevail in order to prevent spontaneous combustion of the coal.

3.3.2. Regular monitoring of stockpiles is essential, as the purpose of regular monitoring results in a safe product and ensuring the safe storage of the coal. Safety tests are of paramount importance throughout the year, as ambient temperatures can increase within the stockpile which can only be detected by temperature and gas tests.

3.3.3. Penetrometer tests allow for the measurement of the degree of compaction or natural compaction. The gas tests includes the detection of Carbon Dioxide, Carbon Monoxide and Oxygen are used to determine whether self-heating is taking place, and to ascertain to what extent the below surface atmosphere is inert. The temperature tests indicate the presence of possible hot-spots, or self-heating which cannot always be visibly detected and can only be determined by monitoring and testing.

3.3.4. Volumetric survey (comprehensive monitoring exercise) includes the following:

- The volumetric survey, by way of G.P.S.
- Dynamic cone penetrometer testing
- Gas tests
- Temperature tests
- Bulk density determinations

3.3.5. The city of Tshwane intends to appoint only one service provider. The service provider will be required to work under the supervision of Power Stations maintenance teams.

### **3.3.1 Workmanship**

#### **3.6.1 Tools/ equipment/ consumables**

3.6.1.1 The bidder shall supply all necessary equipment, tools and consumables.

3.6.1.2 All protective clothing such as shoes, gloves, visors, and any other personal protective equipment required by the Occupational health and safety act and regulations applicable to the work described in the specification, shall also be included in the price.

3.6.1.3 The contractor shall supply the necessary lighting, extension cables, and electrical safety boxes for the execution of the works.

#### **3.6.2 Electric power supply**

3.6.2.1 Electrical power for use during the contract works will be supplied free of charge to the contractor and no connection fee will be levied.

3.6.2.2 The municipality does not guarantee continuity of supply and no claims can be made against the City of Tshwane for loss of electricity supply.

## **4. DOCUMENTATION REQUIRED WITH TENDER**

It is a requirement of the contract that the service provider maintains an effective documented system for the control of product quality. Tenderers shall comply with a recognized ISO 9001; quality assurance standard.

## **5. EVALUATION CRITERIA**

**THE TENDER WILL BE EVALUATED AS FOLLOWS:**

**STAGE 1: ADMINISTRATIVE COMPLIANCE:**

All the proposals will be evaluated against the Administrative requirements as set out in the list of returnable documents

## **STAGE 2: Pre-Qualification**

**NB: ONLY BIDDERS WHO QUALIFY FOR THE FOLLOWING MAY RESPOND TO THIS QUOTATION**

- **A bidder having a stipulated minimum BBB-EE status level of contributor: (Level 1)**
- **An EME or QSE**

## **STAGE 3: MANDATORY**

The bidders must with the tender document submit the following requirements, failure of which will result in the bid being disqualified;

- (a) Annexure A – Returnable schedules A and B which must be completed in full with ink, bidders must not refer to brochures or any attached document. Failure to comply will result in the bidder being disqualified.
- (b) Annexure B – List of references from previous employers for completing the work as set out in the specification. Bidders are required to attach proof of appointment with submission of the tender document.

## ANNEXURE A – RETURNABLE SCHEDULES

### SCHEDULE OF PARTICULARS

Completion of the following schedule is mandatory. The following schedules are to be completed and signed by the tenderer. Failure to do so will invalidate the tender.

NO.	DESCRIPTION	MINIMUM RECOMMENDED	PARTICULARS OF OFFER
5.1 – 5.5	Volumetric survey	The volumetric survey, by way of G.P.S.	
		Dynamic cone penetrometer testing	
		Gas tests	
		Temperature tests	
		Bulk density determinations	

SIGNATURE OF TENDERER: .....

### ANNEXURE B

#### LIST OF REFERENCES

A list of at least two (2) references where work of a similar nature was successfully undertaken by the contractor must be submitted in the table below. This table is to be completed and signed by the tenderer. Tenderers shall not leave this table blank. In the event that no references exist, the tenderer shall indicate this by inserting the text "NONE" in the table. Leaving this table blank will invalidate the tender.



In terms of Regulation 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>	<b>NUMBER OF POINTS (80/20 SYSTEM)</b>
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

#### 6. PRICING SCHEDULE

<b>ITEM</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>PRICE IN RANDS (VAT EXCL.)</b>	<b>TOTAL (VAT EXCL.)</b>
1	The volumetric survey, by way of G.P.S.	Per Stock pile		
2	Dynamic cone penetrometer testing	Per Stock pile		
3	Gas tests	Per Stock pile		
4	Temperature tests	Per Stock pile		
5	Bulk density determinations	Per Stock pile		
	<b>SUB-TOTAL</b>			
	<b>VAT @ 15%</b>			
	<b>GRAND TOTAL</b>			

SIGNATURE OF TENDERER: .....

## **7. VALIDITY PERIOD**

The validity period for the tender after closure is 90 days.

## **8. OCCUPATIONAL HEALTH AND SAFETY**

### **General Notification**

This document forms an integral part of the Contract Specification and, in particular, shall constitute the Client's (City of Tshwane.) Occupational Health & Safety Specification, as required by the Construction Regulations, 2014, as promulgated under the Occupational Health and Safety Act (Act no. 85 of 1993).

This 'Health and Safety Specifications' document is governed by the "Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), hereinafter referred to as 'The Act'.

Notwithstanding this, cognizance should be taken of the fact that no single Act or its set of Regulations can be read in isolation. Furthermore, although the definition of Health and Safety Specifications stipulates 'a documented specification of all health and safety requirements pertaining to associated works on a construction site, so as to ensure the health and safety of persons', it is required that the entire scope of the Labour legislation, including the Basic Conditions of Employment Act be considered as part of the legal compliance system. With reference to this specification document this requirement is limited to all health and safety issues pertaining to the site of the project as referred to here-in. Due to the wide scope and definition of construction work, every project activity and site will be different, and circumstances and conditions may change even on a daily basis. Therefore, due caution is to be taken by the Principal Contractor when drafting the Health and Safety Plan based on these Health and Safety Specifications. Prior to drafting the Health and Safety Plan, and in consideration of the information contained here-in, the contractor shall set up a Risk Assessment Program to identify and determine the scope and details of any risk associated with any hazard at the site, in order to identify the steps needed to be taken to remove, reduce or control such hazard. This Risk Assessment and the steps identified will be the basis or point of departure for the Health and Safety Plan. The Health and Safety Plan shall include documented 'Methods of Statement' (see definitions under Construction Regulations) detailing the key activities to be performed in order to reduce as far as practicable, the hazards identified in the Risk Assessment.

## **10.1. Overview on OHS specification framework and contractor management process**

### **10.1.1. Definition of Terms**

- I. Client-Means any person for whom construction work is performed and or undertaken (City of Tshwane for the purposes of this project)
- II. Construction site means a workplace where a construction work is being performed
- III. Construction supervisor means a competent person responsible for supervising construction activities on a construction site.
- IV. Competent person means a person who –
  - a) Has in respect of the work or task to be performed the required knowledge, training and experience and where applicable, qualifications, specific to that work or task:  
Provided that where appropriate qualifications and training are registered in terms of the provision of the National Qualification Framework Act 2000 (Act 67 of 2000), those qualifications and that training must be regarded as the required qualification and training and
  - b) Is familiar with the Act.
- V. Principal Contractor-Means an employer, as defined by Section 1 of the OHSACT who performs construction work and is appointed by the client to be in overall control and management of the construction site and works
- VI. Agent-Means a competent person who acts as a representative for a client in this case MIH Projects.
- VII. Occupational Health and Safety Specification- Means a documented specification of all Health and Safety requirements pertaining to the associated works on a construction site so as to ensure the health and safety of persons working ,visiting, passing, staying and working close to the construction site and or other applicable areas such as the site camp
- VIII. Risk-means the probability that injury or damage may occur
- IX. Hazard-means a source of or exposure to danger

### **10.1.2. Introduction**

In terms of the Construction Regulation 5 (1) of the OHS ACT, the client is required to compile an Occupational Health and Safety Specification for an intended project. This specification has an objective to ensure that the principal contractor entering into a contract with the client achieves and maintain an acceptable level of Occupational Health and Safety performance and compliance.

This document forms an integral part of the contract between the client and the principal contractor.

The Principal Contractor and its Contractors shall furthermore implement any reasonable practicable means to ensure compliance to this Occupational Health and Safety Specification and any other applicable legislation on their organization and/or activities performed by or for them. Compliance with this document does not absolve the principal contractor from complying with any other minimum legal requirement and the principal contractor remains responsible for the health and safety of his employees, those of his mandatories as well as any person coming on site or on adjacent properties as far as it relates to the protect activities.

### **10.1.3. City of Tshwane's commitment to Occupational Health and Safety Management**

City of Tshwane is committed to responsible occupational health, safety management. This commitment is essential to protect the environment, employees, mandatories, visitors and provide a work environment conducive to health and safety. Principal Contractors and their Contractors shall demonstrate their commitment and concern by:

- Ensuring that decisions and practices affecting occupational health and safety performance are consistent with the issued specification;
- Ensuring adequate resources are made available for the effective implementation of occupational health and safety control and mitigation measures;
- Participating in hazard identification and risk assessments and design safety reviews;
- Communicating occupational health and safety management processes, strategies and control measures with all levels of employees, contractor and/or visitors;
- Ensuring visible leadership at all sites;
- Promoting and enforcing the use of correct types of Personal Protective Equipment (PPE);
- Reporting and investigation of incidents and accidents and ensuring actions are identified and implemented to prevent similar types of incidents reoccurring;
- Participating in Client audits and meetings and ensuring required actions are implemented within reasonable time frames on the site/project;
- Recognizing and commending safe work practices and coaching employees who require guidance;
- Applying and enforcing consequence management from deviations and transgressions of/from compliance to this OHS Specification noted and/or observed, where applicable;

- Carrying out safety observations, implement corrective and preventative actions and giving immediate feedback;
- Encouraging employee participation in the formulation of work instructions and safety rules.

#### **10.1.4. Scope**

This is a project specific Occupational Health and Safety Specification that addresses the reasonable and foreseeable, risks, exposures and aspects of Occupational Health and Safety as affected by the bulk density survey (Dynamic cone penetrometer testing), and volumetric survey at Rooiwal Power and Pretoria West Power Stations.

The specification will provide the requirements that the principal contractor and other contractors will have to comply with in order to reduce the risk associated with the above mentioned project and that may lead to incidents causing injury and/or ill health to a level as low as reasonable practicable and possible.

#### **10.1.5. Omissions from OHS Specification**

Where any omission from the OHS Specification is identified, applicable legal requirements will constitute the minimum standard for compliance to the relevant omission. The responsibility will be on the Principal Contractor to provide assurance to City of Tshwane on compliance to the applicable legal requirements related to the activity / task / process.

#### **10.1.6. Change or Review of Specifications**

Any changes identified or need of review of this OHS specification either by the Client or the Specification, approved changes and revisions will be done after communication between the two parties. A cost analysis on the implementation of the proposed changes / revisions will be calculated through a collaborative processes between City of Tshwane and the Principal Contractor – where the approved changes and/or revisions has no cost implication for the Principal Contractor the Principal Contractor will be required to accept the approved changes / revisions and ensure implementation within the OHS Plan .

### **10.1.7. Preparation and Submission of safety file**

The Principal Contractor will prepare a safety file containing the processes / procedures and templates to be applied during the project period for the scope of work. The Principal Contractor will be evaluated during the contract period against the submitted safety file.

At a minimum the safety file shall contain the following documentation:

1. Scope of work to be performed;
2. Public Liability
3. Personnel list (Principal Contractor employees);
4. OH&S Policy and other procedures;
5. Updated copy of the Occupational Health and Safety Act (Act no. 85 of 1993) and its Regulations.
6. Updated copy of the Compensation for Occupational Injuries and Diseases Act (Act no. 130 of 1993) and its Regulations;
7. Proof of valid registration and good standing with the Compensation Commissioner or another licensed Insurer;
8. OHS Plan agreed with City of Tshwane.
9. Agreement with Mandatory in terms of Section 37(1) & 2 of the OHS Act.
10. Approved risk assessments, review and monitoring plans and safe work procedures (method statements);
11. A list of contractors (sub-contractors) including copies of the agreements between the parties and the type of work being done by each contractor;
12. Designs and/or drawings;
13. All written designations and appointments for project scope of work (CV and competency copies);
14. Management structure (inclusive of OH&S responsibility & meeting structure);
15. Induction training and site OHS rules;
16. Occupational health and safety training matrix / plan;
17. Arrangements with contractors and/or mandatories;
18. The following registers (as applicable to contract scope of work):
  - Accident and/or incident notifications, investigation & control register;
  - Occupational health and safety representatives inspection register;

- Construction vehicles and mobile plan inspections;
- Daily inspections templates of vehicles, plant and other equipment by the operator, driver and/or user;
- Daily inspections templates of excavations by competent person;
- Toolbox talks pro-forma;
- Designer's inspections and structures record template;
- Inspection template of electrical installations (including inspection of portable electrical tools, electrical equipment and other electrical appliances);
- First-aid box content template;
- Record of first-aid treatment template;
- Fire equipment inspection and maintenance template;
- Record of hazardous chemical substances template kept and used on site;
- Machine safety inspections template (including machine guards, lock-outs etcetera);
- Inspection templates for lifting machines and –tackle (including daily inspections by drivers/operators);
- Inspections templates of structures;
- Templates of issuing of Personal Protective Equipment;
- Monthly reporting and recording of statistics templates;
- Keeping of any other record in terms of applicable legislation falling within the scope of OHS Legislation applicable to the project and the Principal Contractor / Contractor's activities and organization.
- Emergency preparedness and response programmes;

#### **10.1.8. Evaluation of Safety file**

City of Tshwane will conduct an initial inspection and evaluation of the Principal Contractor's OHS file for approval purposes to commence work. The Principal Contractor is required to submit the OHS file within 5 days after receiving the induction training from City of Tshwane. City of Tshwane will allocate 3 days to evaluate the file and to give feedback on the evaluation report of the file to the contractor. If the file has not been approved, the contractor shall ensure that the outstanding documents are submitted in the file for re-evaluation within 3 working days.

If the OHS file cannot be approved, a report will be submitted to the evaluation committee for re-evaluation. The approval letter from City of Tshwane must be kept in the OHS file and any letter issued concerning the evaluation of the file.

Principal Contractors are required to achieve at least 80% (Eighty Per cent) compliance on the entire safety file documentation to obtain approval by City of Tshwane

#### **10.1.9. Principal Contractor engagement phase**

The Principal Contractor shall commence with the construction work after approval of the safety file. The following processes will be applied to the Principal Contractors on a monthly basis for the duration of the contractual period:

- Monthly Compliance Assessments;
- Site Inspections;
- Progress meetings;
- Contractor forum meetings held at City of Tshwane
- Incident Investigations (where applicable).

#### **18.1.10. Project close-out and submission of consolidated Health & Safety File**

On completion of each project the Principal Contractor shall submit all documentation required for the consolidated safety file to City of Tshwane in an auditable format within 5 days of project completion. It is the responsibility of the Principal Contractor to deliver the consolidated safety file to the relevant City of Tshwane offices. At a minimum, the safety file will contain the following records:

1. Approval letter by City of Tshwane on contents of Health and Safety file including Health and Safety Management plan;
2. Scope of work performed;
3. OH&S Policy and other procedures;
4. Copy of the Occupational Health and Safety Act (Act no. 85 of 1993) and its Regulations;
5. Proof of registration and good standing with the Compensation Commissioner or another licensed Insurer;

6. OHS plan agreed with City of Tshwane including the underpinning risk assessment(s) and method statements;
7. A list of contractors (sub-contractors) including copies of the agreements between the parties and the type of work done by each contractor;( if applicable)
8. Notifications of new projects /extension of scope received;
9. Designs and/or drawings;
10. Occupational health and safety committee meeting agenda and minutes;
11. Copies of written designations and appointments (CV and competency copies);
12. Management structure (inclusive of OH&S responsibility & meeting structure);
13. Induction training conducted and site OH&S rules;
14. Occupational health and safety training provided;
15. Arrangements with contractors and/or mandatories;
16. Description of security measures;
17. Occupational health and safety rules and procedures applied during contract period;
18. The following registers:
  - Accident and/or incident register;
  - Occupational health and safety representatives inspections;
  - Construction vehicles and mobile plan inspections;
  - Daily inspections of vehicles, plant and other equipment by the operator, driver and/or user;
  - Daily inspections of excavations by competent person;
  - Toolbox talks conducted;
  - Designer's inspections and structures records;
  - Inspections of electrical installations (including inspection of portable electrical tools, electrical equipment and other electrical appliances);
  - First-aid box content inspections;
  - Record of first-aid treatment;
  - Fire equipment inspection and maintenance records;
  - Record of hazardous chemical substances kept and used on site;
  - Ladder inspections;
  - Machine safety inspections (including machine guards, lock-outs etcetera);

- Inspections for lifting machines and –tackle (including daily inspections by drivers/operators);
- Issue registers for Personal Protective Equipment;
- Monthly reporting and recording of statistics reports;
- Keeping of any other record in terms of applicable legislation falling within the scope of OHS Legislation applicable to the project and the Principal Contractor / Contractor’s activities and organization.
- All other applicable records;
- Emergency preparedness and response programmes;
- Investigation and reporting of incidents and/or accidents (internal to Client and Department of Labour / Compensation Commissioner).

## **10.2. OHS Specification Requirements**

### **10.2.1. General Requirements of Health and Safety Plan**

#### **10.2.1.1. General**

Construction Regulation 7 (1) stipulates that the principal contractor must provide and demonstrate to the client a suitable sufficiently documented and coherent site specific health and Safety Plan, based on the client’s documented Health and Safety Specification contemplated in Regulation 5(1) (b), which plan must be applied from the date of commencement of and for the duration of the construction and which must be reviewed and updated by the principal contractor as work proceeds.

It will be expected from the Contractor to include in his safety plan method statements on how to accomplish the requirements relating to the Construction Regulations, 2014 and related incorporated standards and regulations.

Contractors should describe how their safety management systems will work and what control procedures they plan on using to ensure safety on the construction site

The following generic aspects should be covered in the Safety plan:

- What administrative procedures the Contractor envisages to use in the implementation and maintenance of the safety plan with reference to the construction site

- How continuous assessment of the safety plan will be assessed and implemented with respect to construction site
- What control systems the Contractor envisages to implement on site to support his safety program
- How the Contractor will ensure that he adheres to the construction regulations in respect of competent persons for appointments
- What external resources the Contractor envisages on using to ensure successful implementation and sustainability of the safety plan
- What training to employees the Contractor envisages and how he would go about to execute it
- The Contractor should indicate which competent persons he plans on employing

The Principal Contractor shall supply a detailed Health and Safety Plan for review by the Client, prior to site mobilization, to ensure compliance with the Construction Regulations, 2014. Mobilization shall be dependent upon the acceptance and approval of the Contractor's Health and Safety Management Plan by the Client.

### **10.2.2. Outline of Health and Safety Plan**

The Contractor's Health and Safety Plan prepared in accordance with this specification shall consist of at least the following sections and sub-sections:

1. Purpose and Scope of Plan,
2. Risk Assessment,
  - a. Forms of Risk Assessment,
  - b. Methodology of Risk Assessment,
  - c. Elements of Risk Assessment,
    - i. Scope of assessment,
    - ii. Risks Identified,
    - iii. Risk Analysis,
    - iv. Risk Evaluation,
    - v. Risk Treatment(safe working procedures)
    - vi. Monitoring and reviewing,
3. Resources,

- a. Health and Safety Staffing Organogram,
  - b. Supervisors, Inspectors and Issuers,
  - c. Employees,
  - d. Subcontractors inclusive of their scope of work and their core resources,
  - e. Training,
  - f. Plant,
  - g. Vehicles,
  - h. Equipment
4. Materials,
    - a. Temporary Materials
    - b. Permanent Materials
  5. Categories of Work
  6. Implementation of Health and Safety Plan,
    - a. Administrative systems,
    - b. Training,
    - c. Reporting,
    - d. Monitoring,
    - e. Inspections,
  7. Auditing,
    - a. Internal audits,
    - b. Follow-up audits,
  8. Financial Aspects,
  9. Emergency procedures and response

### **10.2.3. Risk Assessment**

#### **10.2.3.1. General**

This section of the specification provides guidelines for the Contractor in preparation of risk assessments in order to ensure compliance with Regulation 9 of the Construction Regulations, 2014. According to SANS 31000:2009, Risk is the overall process of risk identification, risk analysis, and risk evaluation.

This section highlights the principles related to the preparation of suitable and sufficient risk assessments. Contractor Staff intending to prepare risk assessments should be trained and suitably experienced in the application envisaged.

A suitable and sufficient risk assessment is an assessment which:

- Accounts for risks that are likely to arise during the construction of the Works,
- Enables the development and implementation of systems to manage the risks,
- Remains valid for a reasonable period of time,
- Provides a basis for training of employees, and
- Improves working procedures and introduce long term controls.

The requirements of the Construction Regulations will not be satisfied by a single risk assessment exercise that holds good for all time. The risk assessment process on the Works is an ongoing process.

The objectives of risk assessments are to:

- Identify the risks that are mostly in need of reduction,
- Identify the various options for achieving such reduction,
- Identify the risks that require careful ongoing management, and
- Identify the nature of the required ongoing attention.

#### **10.2.3.2. Forms of Risk Assessment**

In order to ensure compliance with the Construction Regulations, the Contractor will be required to carry out the following three forms of risk assessment:

#### **10.2.3.3. Risk assessments**

The Contractor will be required to carry out a risk assessment before the commencement of construction activities on the Works. This “baseline” or “datum” risk assessment will form part of the Contractor’s Health and Safety Plan. The risks and hazards to which persons, plant, vehicles and facilities may be exposed during the construction of the Works should be identified and evaluated. Measures to reduce or control these risks or hazards should be defined during this assessment. The effectiveness of the measures defined and the baseline risk assessment prepared shall be monitored and reviewed from time to time to ensure that it remains relevant and accurate.

#### **10.2.3.4. Issue based risk assessments**

The Contractor will be required to carry out separate risk assessments during construction of the Works when methods and procedures are varied, for example when:

- Designs are amended,
- New machines are introduced,
- Plant is periodically cleaned and maintained,
- Plant is started-up or shut-down,
- Systems of work change or operations alter,
- Incidents or near-misses occur, or
- Technological developments invalidate prior risk assessments.

#### **10.2.3.5. Continuous risk assessments**

The Occupational Health and Safety Act specifically requires that employers shall provide and maintain working environments that are safe and without risk to health. The general awareness of hazards needs to be raised as work ethic to maintain a safe and risk free environment on an ongoing basis. This is achieved by continuous risk assessments, the most important form of risk assessment that takes place as an integral part of day-to-day management. Examples of continuous risk assessments include:

- Regular audits,
- Maintaining general hazard awareness,
- Pre-work risk assessment

#### **10.2.3.6. Methodology for the Preparation of Risk Assessments**

The Contractor shall in the preparation of risk assessments, follow the following general principles:

- Employ a team of suitably qualified individuals with appropriately varied and relevant experience in risk assessment,
- The appointed risk assessor shall lead the risk assessment,
- Provide the team with background data, scope of work, potential hazards and underlying causes, and

- Where necessary employ experts for complex risk assessments and aspects of risk assessments that require experiential judgment,
- Institute an ongoing system of identifying aspects of the work that require risk assessment, and
- Conduct risk assessments in workshops of the team or by individual members of the team under guidance of the leader as appropriate to the situation.

### **10.2.3.7.Elements of a Risk Assessment**

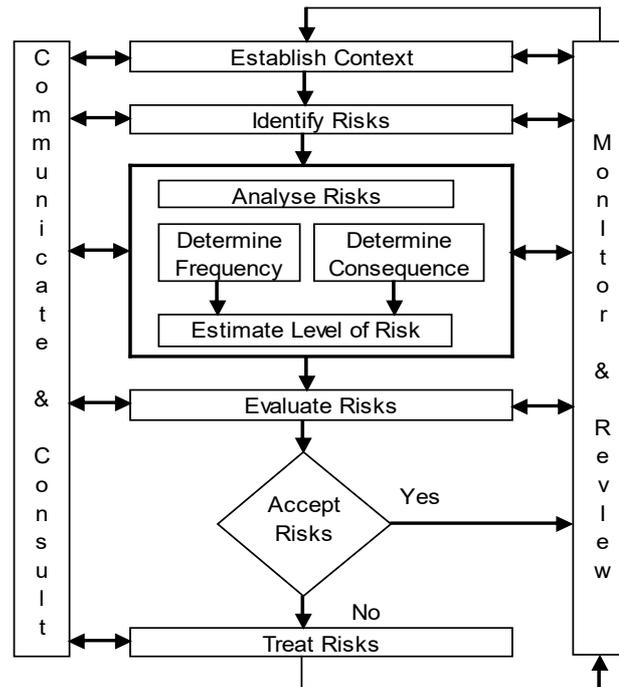
#### General

The process of carrying out a risk assessment consists of a number of well-defined steps. These steps improve decision-making by providing a greater understanding of the risks and their impacts.

The main steps or elements of the risk assessment process are as follows:

- 1) Consider scope and nature of risks involved, determine purpose and physical and legal bounds of assessment and define risk evaluating criteria,
- 2) Systematically identify risks,
- 3) Analyze risks with regard to causes, likelihood of occurrence and possible consequences against the background of existing controls and its effectiveness,
- 4) Evaluate risks in terms of pre-established criteria to determine need and priority for attention,
- 5) Treat risks through a process of risk elimination, substitution, controlling risk at source, risk mitigation such as training and as far as risk remains, provide personal protective equipment (PPE),
- 6) Monitor and review progress and performance in terms of management system, and
- 7) Communicate and consult.

The following items form the continuing process of the risk assessment as indicated in Figure 1, below.



**Figure 1: Risk Management Process**

The Contractor shall ensure that the risk assessment compiled as part of his Health and Safety Plan contains at least these items. Refer to Baseline Risk Assessment for more clarity.

#### **10.2.3.8.Risk Identification**

The Contractor should regard this step of the risk assessment as the most important. Subsequent analysis and evaluation of risks and the development of risk control measures are wasted if the risks or hazards on the Works are not carefully identified.

The Contractor should bear the following principles in mind when identifying the risks:

- i) Systematically address all risks or hazards on the Works,
- ii) Review all aspects of the work, but consider only those that have a potential to cause harm,
- iii) Rank the risks identified in order of importance and then use appropriately advanced techniques to deal with major risks,
- iv) Deal mainly with major risks and don't obscure these with unimportant information, especially minor risks,

- v) Address what actually happens in the workplace during the work activity
- vi) Consider all persons that may be affected,
- vii) Highlight those groups and individuals who may particularly be at risk, and
- viii) Review the adequacy and effectiveness of existing safety controls and measures

### 10.2.3.9. Risk Analysis

In this step, the Contractor will be required to analyze the risks identified by determining each risks frequency and magnitude or severity of the consequence of the risk or hazard.

The frequency of occurrence of a hazard may be expressed as the number of times that it may occur in year, decade, lifetime, century, or longer period, according to comparative human experience. The magnitude of the likely consequence of a hazard may be expressed in terms of the degree of incapacitation, number of people or costs involved. The frequency of occurrence of a hazard and the magnitude of its consequence may be compounded as the risk that it poses as shown in the “risk matrix” in Figure 2 below.

Frequency of Occurrence of Hazard	Severity of Consequences of Potential Hazard					
	1 Medically treatable injury	1 Compensable injury	10 Compensable injuries	1 Permanently disabling injury	1 Fatality	10 Fatalities
Frequent; 1 or more occurrences per year	Medium	High	Very high	Severe	Severe	Severe
Several times during a career; 0.1 occurrences per year	Medium-low	Medium	High	Very high	Severe	Severe
Unlikely, but possible during a career; 0.01 occurrences per year	Low	Medium-low	Medium	High	Very high	Severe
Very unlikely during a career; 0.001 occurrences per year	Low	Low	Medium-low	Medium	High	Very high
Barely credible; 0.0001 occurrences per year	Low	Low	Low	Medium-low	Medium	High

**Figure 2: Compounded Risk Matrix**

The columns in the table represent the likely consequence of the hazard and the rows, the frequency of occurrence. The scales for both quantities represent consistent progressions, able they qualitative. The risks evidently range from low to severe. Note that diagonals in the matrix represent the risks of the identified hazards, taking the effectiveness of controls into consideration.

The table represents a typical risk matrix that need not necessarily be adopted by the Contractor. The Contractor may use an alternative risk matrix provided that it is approved as part of his Health and Safety Plan.

#### **10.2.3.10. Risk Evaluation**

In this step the Contractor will be required to compare the risks found during the analysis process with similar risks previously experienced for the purpose of deciding how to treat the risk. A useful systematic approach for this purpose is as follows:

- If the assessed risk exceeds similar risks that have occurred in the past and that are considered to be unacceptable, the assessed risk would require treatment depending upon its magnitude as discussed in Section 4.4.5, or
- If the assessed risk exceeds similar historical risks that are acceptable, treatment of the assessed risk will depend on the extent by which it exceeds the historical risks, or
- If the assessed risk is less than historical risks that are unacceptable, treatment of the assessed risk will depend on the extent by which it is less than the historical risks, or
- If the assessed risk is less than historical risks that are acceptable, the assessed risk would also be acceptable and would not require any treatment.

#### **10.2.3.11. Risk Treatment**

The contractor must select one or more options of modifying risks, and implementing those options. The option(s) selected must be covered in the safety plan and be followed as prescribed. Reference can be made to SANS31000:2009 for different risk treatment options. SANS 31000:2009, clause 5.5.3 may be consulted in preparing and implementing risk treatment plans.

#### **10.2.3.12. Reporting and Recording**

The Contractor shall ensure that the risk assessment process is recorded in the form of a report and included in his Health and Safety Plan. The report should be easily accessible to the Contractor's employees, their representatives, to inspectors, the Employer or his Safety Agent and the Engineer. The essential contents of the report should be as follows:

- Objectives and expected outcomes,
- Description of the Works under assessment,
- Summary of context of study

- Composition of risk assessment team, (including qualifications and relevant experience),
- Approach used to systematically identify risks,
- Identified risks (ranked in order of priority),
- Method adopted for assessing frequencies and consequences of risks,
- Consequences (ranked in order of magnitude),
- Identification of individuals and groups who may be affected by major hazards and risk and who may especially be at risk,
- Basis for defining safety standards to be achieved,
- Contractor's resources devoted to risk assessment,
- Actions proposed to reduce unacceptably high risks,
- Review effectiveness of existing safety measures to control risks, and
- Implementation of programme of selected treatments (including controls to manage unacceptably high risks).

#### **10.2.3.13. Monitoring and Review**

The contractor must indicate in the safety plan the monitoring and review plan to be used during the project

#### **10.2.3.14. Communication and Consultation**

The Contractor will be required to communicate and consult with internal and external stakeholders during each step of the risk assessment process. Stakeholders will include the Employer and his Safety Agent, the Engineer and the Contractor's employees and consultants.

#### **10.2.4. Resources**

##### **18.2.4.1.General**

In this section of his Health and Safety Plan, the Contractor will be required to state how he intends to comply with the requirements of the Occupational Health and Safety Act, 85 of 1993 and all its Regulations and related incorporated standards with regards to the resources and facilities intended for use on the project

The Contractor shall provide in his Health and Safety Plan his intended Staffing Organogram for the construction work. The organogram should include those inspectors, supervisors and issuers as envisaged in the Construction Regulations, 2014 required for the construction work and any additional supervisory staff members as the Contractor (having taken the scope into account) considers necessary.

Copies of the supervisory staffs' curriculum vitae or portfolio of evidence and their appointment letters should be appended to the Contractor's Health and Safety Plan.

The Contractor's Health and Safety Plan should in addition cover at least the following aspects:

- The number of unskilled, semi-skilled and skilled (including Foreman, Charge hands, Artisans, Operators, Drivers, Clerks, Store man and Team Leaders) employees he intends employing on the Works,
- The health and safety training to be provided to the Contractor's employees,
- The programme of the health and safety training,
- Systems for the review of the effectiveness of the training provided, and
- Systems to determine further training requirements throughout the construction period.

Pro-forma letters of appointment for the various inspectors, supervisors and issuers as contemplated in the Construction Regulations, 2014 are included in Annexure 1 to this specification for use by the Contractor. The Contractor shall ensure that he includes in his Health and Safety Plan the appointment letters for all his inspectors, supervisors and issuers appointed for the Works.

The Contractor may make other additional legal appointments that are applicable to the project.

#### **10.2.5. Subcontractors**

The Contractor shall with reference to the use of subcontractors on the Works and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- The steps intended to ensure that his Subcontractors prepare, implement and maintain Health and Safety Plans,
- How health and safety information will be made available to his Subcontractors when changes are brought about to the design,

- How he intends determining that his Subcontractors are registered and in good standing with the compensation fund or with a licensed compensation insurer prior to the commencement of the Works,
- How he intends determining if his Subcontractors have made provision in their tenders for the cost of health and safety measures during the construction of the Works,
- How he intends satisfying himself on the competencies and resources of Subcontractors he intends appointing, and
- How he intends ensuring that his Subcontractors perform risk assessments prior to commencing their respective portions of the Works.

#### **10.2.6. Competencies**

The Contractor shall establish if a person is competent to perform a certain duty or be appointed in a certain capacity by requesting all candidates to supply the required certificates of competency. Where certificates of competencies cannot be delivered, the Contractor shall request a portfolio of evidence from the respective candidates.

Contractors should do enquiries at the South African Qualifications Authority (SAQA) relating to the qualifications required for appointment of competent persons.

#### **10.2.7. Physical and Psychological Fitness**

Where required by the Occupational Health & Safety Act and its regulations the contractor shall ensure that his employees are in possession of a valid medical certificate of fitness to work in such an environment.

In terms of the Construction Regulations 2014, Regulation 7(8) stipulates that the Contractor shall ensure that all his or her employees have valid medical certificate of fitness specific to the work to be performed and issued by an occupational health practitioner in the form of Annexure 3.

#### **10.2.8. Plant, Vehicles and Equipment**

##### **10.2.8.1.Cranes**

This section of the specification shall be read in conjunction with the provisions of the Driven Machinery Regulations, 1988.

The Contractor shall with reference to Regulation 22: Cranes, of the Construction Regulations, 2003 and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- How will environmental factors be taken into account in respect to the use of cranes,
- What systems he intends using to ensure the safety of all cranes in use,
- How he intends maintaining cranes in use,
- What tests will be performed to establish the safety of all cranes in use,
- What safety procedures and precautions are envisaged to ensure the safe operation of all cranes in use,
- How he will document the design, testing, maintenance and inspections of all cranes in use, and
- The contractor shall proof compliance of the Driven Machinery Regulation, 1988, with reference to the lifting machinery and tackle being used.

#### **10.2.8.2. Construction vehicles and mobile plant**

The Contractor shall with reference to Regulation 23: Construction vehicles and mobile plant of the Construction Regulations, 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- How he intends ensuring that construction vehicles and mobile plant are:
  - Of acceptable design and construction,
  - Maintained and in good working order,
  - Used according to design specifications, and
  - Are protected from falling into excavations, water or areas lower than the working surfaces,
- How he intends ensuring that workers are trained, authorised and physically fit to operate construction vehicles and mobile plant,
- What traffic arrangements and safety precautions will be implemented to ensure safe operation of construction vehicles and mobile plant on the Works, and

- How he intends safeguarding employees against construction vehicles and mobile plant moving on the site.

#### **10.2.9. Electrical Installation and Machinery on project sites**

This section of the specification shall be read in conjunction with the provisions contained in the Electrical Installation Regulations, 1992.

The Contractor shall with reference to Regulation 24: Electrical Installation and machinery on construction sites of the Construction Regulations, 2014, and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- How he intends safeguarding employees against electrical cables or apparatus under, over or on site, and
- How he will ensure that electrical installations are of adequate strength to withstand working conditions on a construction site.

#### **10.2.10. Ladders**

The Contractor shall with reference to Regulation 13A of the General Safety Regulations and without limiting his obligations, cover at least the following matters in his Health and Safety Plan:

- How he intends ensuring that ladders used are safe and constructed of materials approved for its intended use, and
- What precaution will be made to ensure the stability of ladders in use?
- How he intends to ensure that the Ladders are maintained

#### **10.2.11. Materials**

In this section of his Health and Safety Plan, the Contractor will be required to state how he intends to comply with the requirements of the Occupational Health and Safety Act, 1993 and all its regulations and related incorporated standards with regards to the design, supply, storage and erection of materials used for the temporary and permanent Works.

#### **10.2.12. Personnel Safety Equipment and Facilities**

The Contractor shall comply with Section 2 of the General Safety Regulations, and shall in particular provide all necessary personnel protective equipment for his personnel for the duration of the project period. To this end the Contractor shall without limiting his obligations indicate in his Health and Safety Plan:

- Identify training requirements in the Contractors Training plan in the use and maintenance of personal protective equipment,
- The type of personnel safety equipment he will provide,
- How he intends issuing it to his employees, and
- How he will maintain the personnel safety equipment issued.

#### **10.2.13. First Aid, Emergency Equipment and Procedures**

The Contractor shall comply with Section 3 of the General Safety Regulations regarding first aid, emergency equipment and procedures.

#### **10.2.14. Operational Control of the Project Site**

In this section of his Health and Safety Plan, the Contractor will be required to state how he intends to comply with the requirements of the Occupational Health and Safety Act, 1993 and all its regulations and related incorporated standards with regards to the execution of the following categories of work.

##### **10.2.14.1. General**

The Contractor shall, without limiting his obligations, cover at least the following matters in his Health and Safety Plan under this category of work:

#### **10.2.15. Construction employees' facilities**

Contractors will be required to adhere to Regulation 30: Construction welfare facilities of the Construction Regulations, 2014.

This regulation must be read in conjunction with the provisions of the Facilities Regulations, 1990 (as amended) and SANS 10400.

The Contractor must discuss the following in detail in his safety plan:

- How will the Contractor establish the amount of facilities required for employees to shower, change, eat and attend to sanitary needs
- What measures will the employer take to house employees on site who lives far from their residences or for the provision of transport

#### **10.2.16. Environmental Conditions**

The Contractor shall comply with the Environmental Regulations for Workplaces, 1987, and shall address the following aspects as described in the regulations in his Health and Safety plan:

- Thermal requirements,
- Lighting,
- Windows,
- Ventilation,
- Housekeeping,
- Noise and hearing conservation,
- Precautions against flooding, and
- Fire precautions and means of egress.

#### **10.2.17. Housekeeping on construction sites**

Contractors will be required to adhere to Construction Regulation 27: Housekeeping on construction sites, of the Construction Regulations, 2014.

This regulation must be read in conjunction with the provisions of the Environmental Regulations for Workplaces, 1987 (as amended).

The Contractor must discuss the following in detail in his safety plan:

- How will contractors ensure the neatness of project sites
- What measures does the Contractor envisage to
  - Remove debris from site,
  - Prevent unauthorized entrance to the site
  - Protect employees or passers-by from falling objects

#### **10.2.18. Fire precaution on construction sites**

Contractors will be required to adhere to Construction Regulation 29: Fire precautions on construction sites, of the Construction Regulations, 2014.

This regulation must be read in conjunction with the provisions of the Environmental Regulations for Workplaces, 1987 (as amended).

The Contractor must discuss the following in detail in his safety plan:

- How the Contractor will minimize the risk of fire on the site
- How the Contractor will identify potential fire hazards
- What prohibitions the Contractor will implement to manage risk areas
- How many employees the Contractor will train in fire fighting

The contractor will have to comply and adhere to the precautions and procedures to evacuate employees of the building they are working in during emergency

#### **10.2.19. Hazardous Chemical Substances**

The Contractor will be required to adhere to the Regulations for Hazardous Chemical Substances 1995 as amended in the handling and storage cement of and other hazardous chemical substances.

The Contractor must discuss the following in detail in his safety plan in respect of each hazardous chemical substance that will be used in the works:

- Storage of substance
- Handling of substance
- Protective clothing and other devices to be used while handling the substance
- Medical surveillance.

#### **10.2.20. Earthworks**

The Contractor shall, without limiting his obligations, cover at least the following matters in his Health and Safety Plan under this category of work:

### **10.2.21. Excavation work**

Contractors will be required to adhere to Construction Regulation 13: Excavation work, of the Construction Regulations, 2014.

The Contractor must discuss the following in detail in his safety plan:

- How will the Contractor establish the stability of ground prior to excavations,
- What steps will the Contractor follow to ensure that bolstering, shoring and bracing is sufficient to ensure the safety of the excavation, and
- What steps will the Contractor follow to ensure the equipment used to safeguard an excavation is sufficient and safe?
- What steps will he implement in case of emergency( e.g. to prevent people from being buried under the trench if it falls)

### **10.2.22. Implementation of Contractors' Health and Safety Plan**

The Contractor shall describe in his Health and Safety Plan how he intends implementing his plan.

The Contractor shall indicate the methods he intends using to ensure accurate record keeping of all critical elements identified in his risk assessment and covered in his Health and Safety Plan.

The Contractor shall indicate how inspections will be carried out, how shortcomings will be addressed, how he intends to review the safety plans, how he would train staff and how he would implement the findings and recommendations of audits or inputs of employees.

### **10.2.23. Administrative Systems**

The Contractor shall comply with Section 9 of the General Administrative Regulations, 1996. The Contractor's administrative system shall without limiting his obligations, cover the following:

- Up keep of a safety file on site,
- Maintenance of his Health and Safety plan,
- Procedures to follow for the appointment of competent persons,
- Procedures to follow for notifications,
- Injury on duty [IOD] administration,

- Recording of minutes of safety meetings,
- Recording of checklists,
- Safe keeping of checklists, and
- Inspections.

The Contractor shall in particular ensure that at least one copy of the Occupational Health and Safety Act, 1993 and its Regulations as amended is available on site for every 20 employees employed.

#### **10.2.24. Incident Management**

The Contractor shall develop an incident management procedure that will address how he intends to manage the incident/accidents on site. The procedure must explain how will the reporting, recording and investigation will be done and provide templates of forms and documentation to be used. The procedure must be in compliance with General Administrative Regulations, of Occupational Health and Safety Act.

#### **10.2.25. Reporting Systems**

All incidents must be reported to the Client/Safety agent and to the Labor Inspector. The Contractor shall comply with Section 8 of the General Administrative Regulations of the OHS Act

#### **10.2.26. Recording and investigation**

All incidents must be recorded in the form of annexure 1 and be kept for a period of at least three years. All incidents must be investigated and investigated within 7 days from the date of the incident.

The Contractor shall comply with Section 9 of the General Administrative Regulations of the OHS Act

### **10.2.27. Training**

The Contractor shall train all his employees in accordance with the requirements of section 13 of the Occupational Health and Safety Act, 1993. The Contractor shall ensure that every employee is informed of the following:

- The hazards of any work he has to perform or plant machinery or equipment he is permitted to use, and
- The precautionary measures which should be taken regarding the above.

The Contractor shall, without limiting his obligations, indicate in his Health and Safety Plan how he intends:

- Identifying the training needs of the personnel he intends employing, and
- Implementing the training identified
- What proof of induction training will be carried by his employees (e.g. laminated type identification card).

### **10.2.28. General induction Training**

All members of the contractor's management as well as all the people appointed as responsible for Occupational Health and Safety in terms of the OHS Act, Construction Regulations and other Regulations are required to attend a general safety Induction.

All employees of the principal contractor and other contractors must be in possession of proof of Induction Training.

All subsequent and newly appointed employees must also be subjected to the Induction Training as soon as possible after the appointment but prior to start work on site.

### **10.2.29. Site Specific Induction Training**

The principal contractor will be required to prepare the Task based Induction training based on the risk assessment for the contract work and train all employees who will be involved in the selected task. All employees must have a proof of such training and copies in the Safety File

### **10.2.30. Other Training**

1. All operators, drivers and users of construction vehicles and mobile plants must be in possession of a valid proof of training and where applicable licenses and proof of competency
2. All employees in jobs requiring training in terms of the OHS Act and Regulations must be in possession of valid proof of training.
3. Awareness must be done in a form of Toolbox Talks for all employees in order to promote safety culture

### **10.2.31. Notices and Signs**

The following notices and signs are, where applicable, compulsory on the construction site as well as the contraction yards.

<b>Area/Activity where construction sign is needed</b>	<b>Notice or sign required in</b>
Display of notices and signs	General Safety Regulation 2b
Entry	General Safety Regulation 2 (c)
First Aid	General Safety Regulation 3 (6)
Toilets and Change rooms	Facilities Regulation 2(5).4 (2) (f)
Hazardous and Chemical Storage area	General Safety Regulation 4 (8) (i) and (ii)
Machinery	General Machinery Regulation 9
Prohibition of smoking and eating or drinking at workplaces where high risk substances are stored or handled	Facilities Regulation 7

### **10.2.32. Safety Meetings**

The Contractor shall conduct at least one formal safety meeting in 3 month with his employees to ensure safety awareness and shall maintain appropriate records of attendance and meeting content. Such records shall be included in the safety file. Such meetings shall address at least the following:

- Accident / safety incidents
- Hazardous conditions
- Hazardous materials / substances
- Job or work projections
- Work procedures
- Protective clothing / equipment

- Housekeeping
- General safety topics

### **10.2.33. Inspections and Monitoring**

The Contractor shall be required to inspect each workplace prior to works commencing to ensure that all protective equipment is in place and that by entering the workplace no person will be exposed to any hazard which could affect his health or safety. The Contractor shall without limiting his obligations, indicate the following in his Health and Safety Plan:

- The inspection and monitoring procedures he intends employing to determine the safety of workplaces, and
- Who will be responsible for the checking of each workplace at the commencement of each shift.

The Contractor shall include in his Health and safety Plan all the checklists he intends using during the inspection and monitoring of the implementation of his Health and Safety Plan.

The Contractor can expect inspections of the works by any of the following parties:

- The Client or his Safety Agent,
- Department of Labor Inspector

In addition to site inspections performed by the Client or his safety agent they shall also do audits and assess the safety situation at the works and investigate incidents. Follow-up inspections will be performed to ensure compliance to recommendations done.

The Client, Safety Agent or his representative may stop the work at any time under the following conditions:

- If the Contractor is not compliant with his Health and Safety Plan
- Imminent threat to the health and safety of any person on site
- Continuous non-conformance to corrective action requests.

Inspections by the Labor Inspector or his representative will be random and the purpose would be to investigate complaints received by the Inspector or to investigate serious incidents.

Labor Inspector may issue prohibition notices to stop the activities at the works until the situation investigated has been resolved or he may issue an improvement notice whereby the Contractor will have a period to rectify any hazard identified by the inspector.

#### **10.2.34. Auditing**

##### **Audits by Client or Safety agent**

The audits contemplated in regulation 5 of the Construction Regulations, 2014 will be carried out by the client or its representative

The Contractor will ensure that the same arrangement detailed above be implemented with his Sub Contractors to ensure his compliance with the Construction Regulations.

The audits described above only constitutes part compliance by the Employer or the Safety Agent with regulation 5.(1)(o) of the Construction Regulations, 2014.

The Client or Safety Agent will be entitled to carry out audits or follow-up audits, as the case may be, at any time during the project period provided that:

- i) The audit or follow-up audit are carried out during ordinary working hours, and
- ii) The Employer or Safety Agent gives the Contractor at least 24 hours' notice of his intention to carry out such audits.

The Contractor's employees indicated in Section 9.1 will be present during any audit carried out by the Client or his Safety Agent.

**ANNEXURE 1 LEGAL  
APPOINTMENTS TEMPLATES**

Attention: *(Assistant Construction Manager's Name)*

**APPOINTMENT OF THE ASSISTANT CONSTRUCTION MANAGER IN TERMS OF CONSTRUCTION REGULATION 8(2)**

I, *(contractor's name)* hereby appoint you *(assistant construction manager's name)* as the assistant manager responsible for *(site address)* to carry out the construction work of *(description of construction work and area of responsibility)*.

In terms of this appointment you are required to ensure that all construction work performed under your supervision is carried out as follows:

1. By persons suitably trained and competent to do such work;
2. That all persons are aware and understand the hazards attached to the work being carried out;
3. That the required risk assessments are carried out;
4. That precautionary measures are identified and implemented;
5. That discipline is enforced at the construction site at all times;
6. That all identified statutory requirements are met; and
7. That any other interest in terms of health and safety with respect to the responsible area is met.
8. You will accept the duties of the Construction manager in his absence.

You are required to report any deviations of the above-mentioned instruction to *(construction manager's name)* and in his absence to the contractor's representative.

This appointment is valid from *(date)* to the completion of the stipulated construction work.

You shall submit a written weekly report or any non-compliance with the Construction Regulations, 2014.

\_\_\_\_\_  
Contractor's Representative full name      Signature      Date  
.....  
.....

Kindly confirm your acceptance of this appointment by completing the following:

I, *(assistant construction manager)* understand the implications of the appointment as detailed above and confirm my acceptance.

\_\_\_\_\_  
Assistant construction Manager      Signature      Date





Attention: *(Sub-Contractor's Name)*

**APPOINTMENT OF SUB-CONTRACTOR IN TERMS OF THE CONSTRUCTION REGULATION 7(c)**

I, *(contractor's name)* hereby appoint *(sub-contractor's name)* as the sub-contractor responsible for *(site address)* to carry out the construction work of *(description of construction work)*.

You shall ensure that you meet all the requirements in terms of the Act and in particular in terms of the section 37(2) agreement and the Construction Regulations, 2014. You shall also ensure that all contractors appointed by yourself and reporting to you comply with the requirements as stipulated in the Construction Regulations, 2003.

You shall also ensure that all the information and specifications to ensure that the construction work is carried out in a safe manner are carried over to all contractors appointed and reporting to you.

You shall further ensure that all records, registers and required lists are maintained and that all persons appointed to carry out tasks as stipulated by these regulations are competent and have the necessary resources to complete their tasks effectively in such a manner that health and safety is not in any manner compromised.

This appointment is valid from *(date)* to the completion of the stipulated construction work.

You shall submit a written weekly report on all shortfalls that have not been met in terms of these regulations.

\_\_\_\_\_  
Contractor's Representative full name      Signature      Date

Kindly confirm your acceptance of this appointment by completing the following:

I, *(sub-contractor's name)* understand the implications of the appointment as detailed above and confirm my acceptance.

\_\_\_\_\_  
Sub-Contractor's Representative full name      Signature      Date

Attention: *(Construction Manger's Name)*

**APPOINTMENT OF THE CONSTRUCTION MANAGER IN TERMS OF CONSTRUCTION REGULATION 8(1)**

I, *(contractor's name)* hereby appoint *(construction manager's name)* as the Manager responsible for *(site address)* to carry out the construction work of *(description of construction work and area of responsibility)*.

In terms of this appointment you are required to ensure that all construction work performed under your supervision is carried out as follows:

1. By persons suitably trained and competent to do such work;
2. That all statutory appointments have been completed;
3. That, where required, health and safety committees are established and that meetings are accordingly held;
4. That all persons are aware and understand the hazards attached to the work being carried out;
5. That the required risk assessments are carried out;
6. That precautionary measures are identified and implemented;
7. That discipline is enforced at the construction site at all times;
8. That all identified statutory requirements are met; and
9. That any other interests in terms of health and safety with respect to the responsible area is met.
10. You will in writing delegate your duties to the Assistant Construction Supervisor while absent from site.

You are required to report any deviations of the above-mentioned instructions to *(contractor's name)*. This appointment is valid from *(date)* to the completion of the stipulated construction work. You shall submit a written weekly report on all shortfalls that have not been met in terms of these regulations.

\_\_\_\_\_  
Contractor's Representative full name      Signature      Date

Kindly confirm your acceptance of this appointment by completing the following:

I, *(construction manager)* understand the implications of the appointment as detailed above and confirm my acceptance.

\_\_\_\_\_  
Construction Manager's full name      Signature      Date

Attention: (*Excavation Work Supervisor's Name*)

**APPOINTMENT OF THE EXCAVATION WORK SUPERVISOR IN TERMS OF CONSTRUCTION REGULATION 13 (1)(a)**

I, (*contractor's name*) hereby appoint (*excavation work supervisor's name*) as the excavation work supervisor responsible for (*site address*) to supervise and carry out all the necessary inspections in terms of all excavation work as per the provided checklist.

You shall ensure that when becoming aware of any health and safety hazards in respect to excavation work that that these hazards are reported in writing to the Construction Health and Safety Officer and Construction supervisor and the necessary precautionary measures are taken and enforced.

You shall further ensure that the requirements of the Construction Regulations are at all times met.

This appointment is valid from (*date*) to the completion of the stipulated construction work.

\_\_\_\_\_  
Contractor's representative full name      Signature      Date

Kindly confirm your acceptance of this appointment by completing the following:

I, (*excavation work supervisor's full name*) understand the implications of the appointment as detailed above and confirm my acceptance.

\_\_\_\_\_  
Excavation Work Supervisor full name      Signature      Date

Attention: *(Ladder Inspector's Name)*

**APPOINTMENT OF THE LADDER INSPECTOR IN TERMS OF THE GENERAL SAFETY REGULATION 13(A)**

I, *(contractor's name)* hereby appoint *(ladder inspector's name)* as the ladder inspector responsible for *(site address)* to manage ladders on site. You should inspect the ladders as per the checklist at least once a week.

You shall ensure that when becoming aware of any health and safety hazards in respect to ladders that these hazards are reported in writing to the Construction Health and Safety Officer and Construction supervisor and the necessary precautionary measures are taken and enforced.

You shall further ensure that the requirements of the Construction Regulations, 2003 are at all times met.

This appointment is valid from *(date)* to the completion of the stipulated construction work.

\_\_\_\_\_  
Contractor's representative full name      Signature

\_\_\_\_\_  
Date

Kindly confirm your acceptance of this appointment by completing the following:

I, *(ladder inspector's full name)* understand the implications of the appointment as detailed above and confirm my acceptance.

\_\_\_\_\_  
Ladder inspector's full name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Attention: *(Risk Assessor's Name)*

**APPOINTMENT OF THE CONSTRUCTION SITE RISK ASSESSOR IN TERMS OF CONSTRUCTION REGULATION 9(1)**

I, *(contractor's name)* hereby appoint *(risk assessor's name)* as the construction site risk assessor responsible for *(site address)* to carry out risk assessments prior to the commencement of construction work and any other risk assessment that may be required for the duration of the construction work.

You shall ensure that all risks are identified and analyzed and that safe working procedures are drafted and implemented to reduce, mitigate or controls the hazards that were identified.

You will at least use the risk evaluation program with the provided checklists.

This appointment is valid from *(date)* to the completion of the stipulated construction work.

\_\_\_\_\_  
Contractor's representative full name      Signature      Date

Kindly confirm your acceptance of this appointment by completing the following:

I, *(construction site risk assessor's name)* understand the implications of the appointment as detailed above and confirm my acceptance.

\_\_\_\_\_  
Construction site Risk Assessor      Signature      Date

Attention: *(Stacking and Storage Supervisor's Name)*

**APPOINTMENT OF THE STACKING AND STORAGE SUPERVISOR IN TERMS OF CONSTRUCTION REGULATION 28 (a)**

I, *(contractor's name)* hereby appoint *(stacking and storage supervisor's name)* as the stacking and storage supervisor responsible for *(site address)* to manage all stacking and storage on site.

You shall inspect all new stacking and thereafter as often as needed according to the checklist.

You shall ensure that when becoming aware of any health and safety hazards in respect to stacking and storage that these hazards are reported in writing to the Construction Health and Safety Officer and Construction supervisor and the necessary precautionary measures are taken and enforced.

You shall further ensure that the requirements of the Construction Regulations are at all times met. On identifying any shortfalls or hazards convey such information in writing to the construction supervisor.

This appointment is valid from *(date)* to the completion of the stipulated construction work.

\_\_\_\_\_  
Contractor's Representative full name      Supervisor      Date

Kindly confirm your acceptance of this appointment by completing the following:

I, *(stacking and storage supervisor's full name)* understand the implications of the appointment as detailed above and confirm my acceptance.

\_\_\_\_\_  
Stacking and Storage Supervisor's      Signature      Date

**Attention: First Aider**

**OCCUPATIONAL HEALTH AND SAFETY ACT (ACT 85 OF 1993), GENERAL SAFETY REGULATIONS 3(4) – FIRST AIDER**

I, \_\_\_\_\_, having been appointed as contemplated in Section 16(2) of the Occupational Health and Safety Act (85 of 1993), hereby appoint you, \_\_\_\_\_, as First Aider for the \_\_\_\_\_.

---

**RESPONSIBILITIES**

1. Ensure you inspect the contents of the first aid box at least once per month.
2. Ensure all dressing undertaken is recorded on the treatment register.
3. Ensure deviations noted are reported to your supervisor.
4. Ensure the necessary signage is placed to define first aid box placement and responsible first aider's name.

Kindly confirm your acceptance of this appointment and understanding of the duties involved by signing this legal appointment.

Yours faithfully

---

**SECTION 16 (2) APPOINTEE**

I accept the appointment as set out above and confirm my understanding of the duties involved.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**Attention: Safety Representative**  
**OCCUPATIONAL HEALTH AND SAFETY ACT (ACT 85 OF 1993)**

**SECTION 17 – HEALTH AND SAFETY REPRESENTATIVE**

I, \_\_\_\_\_, having been appointed as contemplated in Section 16(2) of the Occupational Health and Safety Act (85 of 1993), hereby appoint you, \_\_\_\_\_, as Health and Safety Representative, as contemplated in Section 17 of the Occupational Health and Safety Act (85 of 1993).

You are hereby appointed from \_\_\_\_\_ until \_\_\_\_\_ as a Health and Safety Representative for the following project:  
\_\_\_\_\_

**RESPONSIBILITIES**

1. Review the effectiveness of the Health and Safety measures within your area of responsibility;
2. Assess the potential hazards to the Health and Safety of the employees at the workplace;
3. Investigate the causes of incidents and all complaints from the employees relating to their Health and Safety;
4. Inspect the workplace and report on such inspection, and the aspects mentioned in (1), (2) and (3) above, to the employer;
5. Participate in the investigations into incidents, in your designated area as contemplated in Section 18 of the Occupational Health and Safety Act (85 of 1993).

Kindly confirm your acceptance of this appointment and understanding of the duties involved by signing this legal appointment.

Yours faithfully

\_\_\_\_\_

**SECTION 16 (2) APPOINTEE**

I accept the appointment as set out above and confirm my understanding of the duties involved.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

# ANNEXURE 2 IDENTIFIED HEALTH AND SAFETY HAZARDS

## Identified Hazards

In terms of Regulation 9 (1) (a) of the Construction Regulations 2003 the following hazards anticipated with the scope of work have been identified.

**NOTE:** The list of potential hazards is by no means intended to be all inclusive and is not limited to this list, and it remains the responsibility of the Contractor to identify all possible hazards with regards to his scope of work and to put measures in place to mitigate, reduce or control these hazards.

## Potential Hazards

1. Commissioning of new installations
2. Confined space entry
3. Demolition/breaking into existing structures
4. Excavation shoring / brazing
5. Excavations been flooded during rainy season
6. Explosives
7. Hazardous material handling / storage / management
8. Heat stress
9. Loading and off-loading vehicles
10. Manual handling of materials
11. Plant and equipment integrity
12. Public and traffic safety
13. Requirements for plant isolations
14. Safe usage and storage of Oxygen, Acetylene and LPG cylinders
15. Scaffolding
16. Stacking and storage of equipment / materials
17. Tie-ins into existing equipment
18. Usage of compressed air and equipment
19. Working in operational areas

20. Working on live electrical installations / sub-stations / MCC rooms
21. Working on moving equipment.

**ANNEXURE 3**  
**ACKNOWLEDGEMENT OF**  
**RECEIPT OHS SPECIFICATION**

**Acknowledgement of receipt of OHS Specification:**

-----  
Name of Designer/Contractor

I, the undersigned, hereby acknowledge that I have obtained copies of OHS Specification and confirm full compliance to the conclusion of project or construction work.

Signed at .....on this ..... Day of.....20.....

-----  
Signature of Designer /Contractor Manager

-----  
Date

-----  
Signature of Contractor Supervisor

-----  
Date

Witness 1 ..... Witness 2 .....



**City of Tshwane Energy and Electricity Division**



**Baseline Risk Assessment document**

**PROJECT INFORMATION:**

<b>CONTRACT NR:</b>	<b>LOCATION:</b> City of Tshwane Power Stations	<b>SCOPE OF WORK:</b> Quotation tender to appoint a service provider to conduct bulk density survey (dynamic cone penetrometer testing) and volumetric survey at power stations.
---------------------	---	--

**RISK RATING AND ABBREVIATIONS:**

<b>Risk Rating</b>	<b>Abbreviations</b>
15-25 <b>EXTREME</b>	O= OCCUPATIONAL
8 - 14 <b>HIGH</b>	H = HEALTH
4 - 7 <b>MEDIUM</b>	S=SAFETY
1 - 3 <b>LOW</b>	

**RISKS CONSEQUENCES AND PROBABILITY:**

RISKS		CONSEQUENCES	PROBABILITY				
			Almost Certain	Likely	Possible	Unlikely	Almost Impossible
			5	4	3	2	1
<b>OHS</b>	<p>Multiple fatalities, or significant irreversible effects to &gt;50 persons</p> <p>Serious, long term environmental impairment of ecosystem function</p> <p>Very serious impact on quality of product/service. Definite loss of customer or discontinuation of contract with service provider</p>	5	25	20	15	10	5
<b>OHS</b>	<p>Single fatality and/or severe irreversible disability to one or more persons</p> <p>Serious medium term environmental effects</p> <p>Serious impact on quality of product / Probable loss of customer or discontinuation of contract with service provider</p>	4	20	16	12	8	4
<b>OHS</b>	<p>Moderate irreversible disability or impairment (&lt;30%) to one or more persons.</p> <p>Moderate, short-term effects but not affecting ecosystem function</p> <p>Moderate impact on quality of product / Possible loss of customer or discontinuation of contract with service provider</p>	3	15	12	9	6	3

RISKS		CONSEQUENCES	PROBABILITY				
			Almost Certain	Likely	Possible	Unlikely	Almost Impossible
			5	4	3	2	1
<b>OHS</b>	Objective but reversible disability requiring hospitalization  Minor effects on biological or physical environment  Minor impact on quality of product / Minor impact on relationship with customer or service provider	2	10	8	6	4	2
<b>OHS</b>	No medical treatment required.  Limited damage to minimal area of low significance  Limited impact on quality of product / Minimal impact on relationship with customer or service provider	1	5	4	3	2	1

**PROJECT BASELINE RISK ASSESSMENT:**

No:	Task	Step in Process	Tool and Equipment use:	Hazards in Carrying out this Step:	Risk (Harm):	Risk Analyses:				Risk Reducing Control Measures:
						OHS	Con sequence	Prob ability	Risk Rati ng:	
1	Conducting tests on site	Climbing a coal pile Working in a dusty area	Testing equipment Hand tools	Exposure noise of the driven machinery, working at elevated places working in a limited space	Ear irritation from the noise. Personnel falling from elevated places Suffocation and reaction from inhalation of dust	OHS	5	4	20	Proper personal protective clothing must be worn by all personnel. Personnel must be trained to work with elevated structures. Road traffic must be controlled A qualified crane operator must be appointed to raise the structure First aid kit must be available on site



CITY OF  
**TSHWANE**  
IGNITING EXCELLENCE



**9. SERVICE LEVEL AGREEMENTS**

**SERVICE LEVEL AGREEMENT**

entered into between

**THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

(Hereafter referred to as the “**City**”)

Herein Represented by:

In his capacity as: **The City Manager**

(Duly authorised hereto)

**AND**

.....  
(Hereafter referred to as the “**SERVICE PROVIDER**”)

Herein Represented by: .....

In his capacity as:.....

(Duly authorised hereto)

**SERVICE LEVEL AGREEMENT**

entered into between

**THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

a municipality as described in section 2 of the Local Government: Municipal Systems Act, 2000 and as contemplated in section 155 of the Constitution of the Republic of South Africa, 1996 as a category A municipality, or the Assignee, if applicable, herein represented by ..... in his capacity as City Manager duly authorised thereto under and by virtue of a resolution passed on ....., and who by his signature hereto warrants that he/she is properly authorised to sign this Agreement.

(Herein referred to as the “**CITY**”)

**AND**

**Service Provider**.....

**Registration Number** .....

Herein represented by ....., in his capacity as ..... duly authorised thereto under and by virtue of a resolution of the Board passed on .....(DATE), a copy of which is annexed as Annexure “**B**”, and who by his signature hereto warrants that he is properly authorised to sign this Agreement

(Herein referred to as the “**SERVICE PROVIDER**”)

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**RECORDAL:**

**WHEREAS** the City of Tshwane requires to appoint service providers for the supply, delivery and off-loading, of electricity energy meters to the City of Tshwane as and when required over a three (3) year period

**AND WHEREAS** the City wishes to appoint ..... as a service provider;

**AND WHEREAS** the service provider wishes to provide such services;

**AND WHEREAS** the service provider has indicated that it has the necessary expertise, skills and capabilities to provide the service;

**NOW THEREFORE** the Parties have agreed to enter into this Agreement, in terms of which .....(**SP**) shall provide the Services in the Service Areas and/or Delivery Area and provide maintenance and support thereof, to the City in accordance with the terms and subject to the conditions of this Agreement:

## 1 DEFINITIONS

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Agreement, including this introduction, bear the meanings ascribed to them:

- 1.1 “**Agreement**” means this Service Level Agreement and shall include any annexures and/or schedules and/or attachments and/or appendices and/or any addenda hereto or incorporated herein by reference, as amended from time to time;
- 1.2 “**Business Day**” means any day from Monday to Friday excluding Public Holidays as defined in the Public Holidays Act 36 of 1994 (“Public Holidays Act”) as amended from time to time;
- 1.3 “**Business Week**” means five consecutive Business Days, excluding Public Holidays as defined in the Public Holidays Act;
- 1.4 “**City**” means the City of Tshwane Metropolitan Municipality, a metropolitan municipality established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998;
- 1.5 “**Contact Persons**” means persons identified by the Parties as persons who are responsible for the execution of the Agreement and whose names are set out in clause 34 below and who can be substituted in writing from time to time;
- 1.6 “**Contract Price**” shall mean the amount reflected as the contract price in clause 9 below;
- 1.7 “**Contract Period**” means the contract period as reflected on Annexure “**A**”;
- 1.8 “**Effective Date**” means notwithstanding the Signature Date, .....
- 1.9 “**GCC**” shall mean the General Conditions of Contracts as stated in the Government Procurement: General Conditions of Contract July 2010;
- 1.10 “**Goods**” shall mean the Services related goods to be procured by the City from time to time as stated in clause 8 below and the Appointment Letter attached herewith as Annexure “**A**”;

- 1.11 **“Intellectual Property”** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world, introduced and required by either Party to give effect to their obligations under this Agreement, owned in whole or in part by, or licensed to either Party prior to the Commencement Date or developed after the Commencement Date, and includes all further additions and improvements to the Intellectual Property, otherwise pursuant to this Agreement;
- 1.12 **“Month”** means a calendar month;
- 1.13 **“Parties”** means the City and Service Provider and “Party” means either of them as the context requires;
- 1.14 **“Order”** means an official written order issued for the supply of Goods and or Services under this Agreement;
- 1.15 **“Services”** means services to be provided by the Service Provider to the City as detailed in clause 7 below;
- 1.16 **“Service Provider”** means a contract appointed by the City of Tshwane in accordance with the company laws of the Republic of South Africa with a company registration number;
- 1.17 **“Signature Date”** means the date of signature of this Agreement by the Party signing last;
- 1.18 **“Subcontract”** means any contract or agreement or proposed contract between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;
- 1.19 **“Subcontractor”** means the third party with whom the Service Provider enters into a Subcontract;
- 1.20 **“Tax Invoice”** means the document as required by section 20 of the Value Added Tax Act 89 of 1991, as amended from time to time; and

1.21 “**VAT**” means Value Added Tax as defined in terms of the Value Added Tax Act of 1991.

## **2 INTERPRETATION**

2.1 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.

2.2 Unless the context clearly indicates a contrary intention, any word connoting:

2.2.1 any singular shall be deemed to include a reference to the plural and vice versa;

2.2.2 any one gender shall be deemed to include a reference to the other two genders; and

2.2.3 a natural person shall be deemed to include a reference to a legal or juristic person.

2.3 The expiry or termination of this Agreement shall not affect provisions of this Agreement which expressly provide that they will operate after any such expiry or termination of this Agreement. Provisions of necessity shall continue to have been effective after such expiry or termination of this Agreement, notwithstanding that the clauses themselves do not expressly provide for this.

2.4 The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that Agreement shall not apply.

2.5 The provision of this Agreement shall be read in conjunction with the provisions of the Government Procurement General Conditions of Contracts (“GCC”) 2010 as if they are incorporated herein.

2.6 Where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail.

2.7 Any reference to any legislation is a reference to such legislation as at the Signature Date and as amended or re-enacted, from time to time.

2.8 If any provision in a definition is a substantive provision conferring any rights or imposing any obligations on any party, then notwithstanding that, it is only in this interpretation clause, effect shall be given to it as if it were a substantive provision in this Agreement.

### **3 APPOINTMENT**

The City hereby appoints the Service Provider, who accepts such appointment, as per the Appointment letter dated ..... attached herewith as Annexure “**A**” to provide the Services in accordance with the terms and subject to the conditions of this Agreement.

### **4 PURPOSE OF THE AGREEMENT**

4.1 The Purpose of this Agreement is to:

4.1.1 formalise and regulate the working relationship between the Parties;

4.1.2 set out the roles and responsibilities of the Parties; and

4.1.3 define process and procedures to be followed by the Parties.

### **5 RELATIONSHIP**

Nothing in this Agreement shall constitute, or be deemed to constitute a partnership or joint venture between the Parties. Furthermore the Service Provider acknowledges and agrees that its status under this Agreement is that of an independent service provider and its status shall in no way be deemed to be that of an agent or employee of the City, for any purpose whatsoever, and the Service Provider shall have no authority or power to bind the City or to contract in the name of the City, or create a liability against the City in any way or for any purpose.

### **6 DURATION**

This Agreement shall commence on the Effective Date and shall subsist for a period of 3 (three) years, unless terminated earlier pursuant to clause 27 below.

### **7 CONTACT PERSON**

7.1 The work to be performed by the Service Provider hereunder will be supervised by City's Contact Person.

7.2 The Parties shall notify each other, in writing from time to time, of the details of their nominated Contact Person.

- 7.3 The Contact Persons shall liaise and update each other on the progress of the Services rendered and shall endeavour to resolve and remedy any problems or disputes that may arise in relation to the Services.
- 7.4 Either Party may substitute a Contact Person at its discretion provided that each Party shall give the other Party reasonable notice of such substitution and will provide replacement employees of equivalent ability.
- 7.5 Without derogating from the foregoing, should either Party replace a Contact Person for any reason whatsoever, it shall ensure, to the greatest extent possible in the circumstances, that the suitable period of hand-over and overlap takes place, at its cost, between the new and the encumbered Contact Person.

## **8 SCOPE OF GENERAL SERVICES**

- 8.1 The Service Provider shall, for the duration of this Agreement, provide the Services in terms of the Appointment Letter and as outlined fully in the Scope of Work including but not limited to:

- 8.1.1 Conduct the Bulk density survey (Dynamic cone penetrometer testing), and volumetric survey at Rooiwal Power and Pretoria West Power Stations.

## **9 PRICE AND PAYMENT**

- 9.1 The City shall pay to the Service Provider as stated in the Appointment Letter attached and or in terms of the Scope of Work attached herein as **Annexure "C"**.
- 9.2 All payments under this Agreement shall be made by electronic fund transfer or other forms of payment as the Parties may agree from time to time, upon receipt of valid and undisputed Tax Invoices and month-end statements together with the supporting documentation from the Service Provider, once the undisputed Tax Invoices or such portion of the Tax Invoices which are undisputed become due and payable.

9.3 All amounts and other sums payable in terms of this Agreement and Schedules hereto will be stipulated exclusive of VAT, unless expressly stated otherwise.

9.4 Unless otherwise provided in the Schedules, valid Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by The City within 30 (thirty) days after the date of receipt by The City of the Service Provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation, but in any event not later than 90 (ninety) days of receipt of such statement.

9.5 There shall be no interest levied on a Tax Invoice that is in dispute between the Parties.

9.6 The City shall pay the amount reflected on a Tax Invoice once the City's Contact Person has verified that the Services set out in a schedule have been rendered and the Tax Invoice amount has been approved by the City.

9.7 All Tax Invoices shall be addressed to the City' Contact Person.

9.8 All payments shall be transferred, by the City to the Service Provider electronically into the Service Provider's bank account, the details of which are set out below:

**Bank:** .....  
**Account type:** .....  
**Account No:** .....  
**Branch No:** .....

9.9 Failure to comply with the clauses above may result in late payment of the total amount of an invoice by the Service Provider to the City. The City shall not be liable for any costs or damages suffered by the Service Provider as a result of such late payment.

9.10 If the City fails to make payment in accordance with the Agreement or fails to comply with any provisions of any Order issued under this Agreement, the Service Provider reserves the right to cancel any undelivered portion of the Goods and/or to suspend the Services, and the City shall remain responsible

for the completed and partly completed work up to the date of such cancellation.

## **10 PRICE RESTRUCTURING**

- 10.1 The Service Provider shall be subject to a price review every year.
- 10.2 The City shall embark on a benchmarking exercise every 12 (twelve) months where the City shall benchmark the Service Provider's Contract Price against the prevailing market rates.
- 10.3 In the event it emerges that the Service Provider's charges in respect of the Contract Price and other charges under this Agreement are materially higher than the reasonable benchmark ascertained by the City or that the City can acquire similar Services of a like quality from another supplier at a total delivered cost that is lower than the total delivered cost of the Services acquired hereunder from the Service Provider, the City shall have the right to notify the Service Provider of such total delivered cost and the Service Provider shall have an opportunity to adjust the Contract Price and any other charges hereunder, on such a basis as to result in the same total delivered cost to the City, within 30 (thirty) calendar days of such notice.
- 10.4 If the Service Provider fails to do so or cannot legally do so, The City may:
  - 10.4.1 acquire the Services from such other supplier in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of the City and the Service Provider hereunder shall be reduced accordingly;
  - 10.4.2 terminate this Agreement without any penalty, liability or further obligation; or
  - 10.4.3 continue under this Agreement.
- 10.5 Within 30 (thirty) calendar days of a notice by the City or at any time the City so requests, the Service Provider shall certify in writing to the City that it is in

compliance with this clause and shall provide all information that the City reasonably requests in order to verify such compliance.

## **11 SERVICE LEVELS**

11.1 The Service Provider recognises that the City has entered into this Agreement relying specifically on the Service Provider's representations regarding service levels including, *inter alia*:

11.1.1 capacity allocations in accordance with the Service to be provided;

11.1.2 all work to be performed and Services rendered under this Agreement shall comply with industry norms and best practice acceptable within the Services industry and shall be executed by the Service Provider to the total satisfaction of the City.

11.2 The Service Provider shall provide suitably qualified and trained employees to provide the Services to the City in terms of this Agreement, and shall allocate, in its discretion employee resources in accordance with the technical skill and knowledge required, provided that any exercise of such discretion by the Service Provider shall not negatively impact on the provision of the Services by the Service Provider to the City, and shall allocate employees with the technical skill and knowledge onsite at the City at all times during normal working hours, if the City so requires.

11.3 Amongst others, the Service Provider shall comply with and provide the Services as set out in clause 7 above.

## **12 WITHHOLDING OF PERFORMANCE**

The Service Provider may not under any circumstances, including, without limitation, non-payment by the City, withhold any Services from the City during the currency of this Agreement, unless it validly terminates this Agreement in terms of clause 26 below.

## **13 PENALTY**

13.1 Should the Service Provider fails to comply with its obligations in terms of this Agreement, the City may impose a penalty on the Service Provider in terms of clause 13.3 below.

13.2 The City shall provide the Service Provider with a written notice requiring the Service Provider to remedy the default within 7 (seven) days from the date of delivery of the notice.

13.3 Should the Service Provider fail to remedy the default within 7 (seven) days after receiving the notice, then the City shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the City and without further notice, impose 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 not exceeding 10% of the total Contract Price. The City may also consider termination of the Agreement as stated in clause 31 of this Agreement once the maximum penalty amount related to delays has been reached. .

13.4

13.5 Should there be a dispute as to whether the failure to deliver was caused by the City or was the Service Provider's fault such dispute shall be dealt with in accordance to clause 27 below.

## **14 ACCESS**

14.1 The City shall allow the Service Provider reasonable access to its premises, provided that:

- 14.1.1 access is related to the Services to be provided by the Service Provider; and
- 14.1.2 the Service Provider adheres to all rules, regulations and instructions applicable at City's premises.
- 14.2 The Service Provider is required to notify City monthly of employees who are to provide Services at the Service Areas and/or Delivery Areas.
- 14.3 The City shall grant the Service Provider and/or its employees, referred in clause 14.2 above, access to its premises to perform its obligations in terms of this Agreement.
- 14.4 The Service Provider and its employees shall at all time when entering the premises and/or Service Areas and/or Delivery Areas of the City comply with all rules, laws, regulations and policies of the City.

## **15 DELIVERY OF GOODS**

- 15.1 The Service Provider shall deliver the Goods on the Delivery Date.
- 15.2 Should the Service Provider be unable to deliver the Goods on the Delivery Date, the Service Provider shall inform the City of its inability to deliver the Goods, the reason thereof, and shall provide the City with a reasonable alternative Delivery Date which in any event shall not be more than 14 (fourteen) days from the original Delivery Date.
- 15.3 In the event that the Service Provider is unable to deliver the Goods on the Delivery Date 3 (three) times in a period of 6 (six) months, then the City shall be entitled to terminate this Agreement by giving the Service Provider 1 (one) month's written notice to terminate.
- 15.4 Upon delivery of the Goods by the Service Provider, the City's contact person shall sign the delivery document provided by the Service Provider as acknowledgement of receipt of the Goods. Such acknowledgement of receipt shall not constitute an acceptance:
  - 15.4.1 that the Goods were received in good condition;

15.4.2 that the Goods were free of any defects;

15.4.3 that the Goods were fit for the purpose for which they were purchased; and/or

15.4.4 of any terms and conditions of the delivery document.

15.5 In the event that the City notifies the Service Provider, within five (5) Business Days, that the Goods delivered are not in accordance with the order, the City shall be entitled to return the Goods to the Service Provider at the Service Provider's cost and the Service Provider shall deliver the replacement Goods ordered within five (5) Business Days of taking delivery of the defective Goods.

15.6 The Service Provider shall bear all risk of loss or damage to the Goods until they are delivered to the City's named place of destination, and transfer of ownership of the Goods shall pass from the Service Provider to the City only when all payments have been made in full.

## **16 AMENDMENT OR CANCELLATION OF PURCHASE ORDER**

The City is entitled to cancel an order, reschedule delivery of the Goods or change the Delivery Area and Delivery Date on fourteen (14) days written notice to the Service Provider.

## **17 INSPECTION**

17.1 The City may at any time inspect the Goods and/or Services levels of the Service Provider in terms of this Agreement.

17.2 If the City is, at any time, dissatisfied with the service levels then the Service Provider shall, within 7 (seven) days, notify the Service Provider in writing of the failure or default.

17.3 The Service Provider shall immediately upon receipt of written demand by the City, remedy such failure or default, within 7 (seven) Business Days from the date of receipt of the notice, free of charge.

17.4 Should the Service Provider fail to remedy the failure or default referred to above then the City shall have the right to impose penalties as provided for in clause 12 above or invoke the provisions of clauses and/or clause 26 below.

17.4.1 To enable the City to determine whether the Goods and/or Services rendered in terms of this Agreement are being complied with the Service Provider shall:

17.4.1.1 *provide the City with such information as it may reasonably require;*

17.4.1.2 *allow the City to inspect and take copies of any records of the Service Provider relating to the Goods and/or Services, including all hardware, software, data, information, visuals, procedures, event logs, transaction logs, audit trails, books, records, contracts and correspondence;*

17.4.1.3 *allow the City or its authorised representatives to conduct interviews with any of the Service Provider's employees, subject to reasonable notice being given to the Service Provider.*

#### **17.5 Service Provider to Provide Reasonable Assistance**

17.5.1 Where any information is required for inspection in terms of this clause and the information is kept in a computer, the Service Provider shall give the City reasonable assistance required to facilitate inspection and obtain copies of the information in a visible and legible form or to inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the keeping of the information.

17.5.2 Any information required to be provided to the City pursuant to this clause 18 shall be provided by the Service Provider, as the case may be in such form (including a form otherwise than in writing) as the City may reasonably specify.

17.5.3 The cost of any inspection contemplated in terms of this clause 18 shall be for the account of the City unless any material irregularity or

failure on the part of the Service Provider is determined by City in the course of such inspection.

17.6 The inspection contemplated in this Agreement will be conducted:

17.6.1 during normal business hours;

17.6.2 save where the circumstances justify it, on reasonable notice to the Service Provider; with the minimum interference in the provision of the Goods and/or Services and the Service Provider's other operations.

## **18 SERVICE PROVIDER'S WARRANTIES AND INDEMNITIES AND LIABILITIES**

### **18.1 Service Warranties**

18.1.1 The Service Provider warrants that in relation to each Service provided in terms of this Agreement:

*18.1.1.1 it has full capacity and authority to enter into and perform this Agreement, and that this Agreement is executed by duly authorised representatives of the Service Provider;*

*18.1.1.2 it possesses or has access to the requisite knowledge, skill and experience to provide the Services in an expert manner;*

*18.1.1.3 it will discharge its obligations under this Agreement and any annexure, appendix or Schedule hereto with all due skill, care and diligence;*

*18.1.1.4 all work performed and Services rendered under this Agreement shall comply with prevailing practice, standards and specifications within the industry;*

*18.1.1.5 it will be solely responsible for the payment of remuneration and associated benefits, if any, of its*

*Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;*

*18.1.1.6 the use or possession by the City of any Materials will not subject the City to any claim for infringement of any Intellectual Property Rights of any third party;*

*18.1.1.7 with promptness and diligence and in a skilful manner and in accordance with the practices and professional standards of operations while performing Services and/or delivering Goods and/or similar to the Services and/or Goods;*

*18.1.1.8 which Services and/or Goods will in all aspects comply with industry norms and best practice to the satisfaction of the City with regard to materials and workmanship; ;*

*18.1.1.9 using and adopting any standards, processes and procedures required under this Agreement;*

*18.1.1.10 warranting that it shall employ suitably qualified and trained employees to provide the Services and/or Goods to the City and it shall allocate employees in accordance with the technical skill and knowledge required;*

*18.1.1.11 free from any defects in material and workmanship;*

*18.1.1.12 maintaining and causing to be maintained the highest standard of workmanship and care in undertaking the Services and/or processing the Goods;*

*18.1.1.13 maintaining and caused to be maintained the highest standard of care and diligence in providing the Services, maintenance and support;*

18.1.1.14 *ensuring that all applicable laws are observed;*

18.1.1.15 *without derogating from the generality of the foregoing, strictly adhering to any or all laws, regulations and accepted procedures with regard to health, hygiene and the maintaining of the environment in the manufacture, packaging, labelling, identification, storage and transportation of the Goods.*

18.1.1.16 *guaranteeing that the Goods shall be in good working condition for the warranty and/ or maintenance period of the Goods, and that the Service Provider shall be responsible for the costs of repair of the Goods should the Goods require to be repaired to their normal use.*

21.1.2 Defective workmanship or failure of the Goods and/or Services shall cease upon expiry of the period of maintenance, being the earlier of twelve (12) months after completion of the Services or eighteen (18) months from delivery of the Goods to the site. Such liability shall be in lieu of any liability implied by law and shall be limited to the repair or replacement, at the election of the Service Provider, of the defective portion of the Goods and/or Services, where after the Service Provider shall have no further liability of whatsoever nature towards the City.

## **18.2 Indemnity**

18.2.1 The Service Provider hereby indemnifies the City against any claim which may be brought against the City by the Service Provider's personnel or a third party arising from the execution of this Agreement alternatively which arises against the City as a result of the Service Provider's breach of any of the provisions of this Agreement, provided that the City shall notify the Service Provider in writing within a reasonable time, and in any event not less than 14 (fourteen) Business days of the City becoming aware of any such claim to enable the Service Provider to take steps to contest it and shall provide the Service Provider with such reasonable assistance as may be necessary to enable the Service Provider to defend the claim to the extent only that it is in a position to render such

assistance. The Service Provider may, within 5 (five) Business Days of receipt of written notice from the City aforesaid, elect in writing to contest such a claim in the name of the City and shall be entitled to control the proceedings in regard thereto, provided that the Service Provider indemnifies the City against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the City as a consequence of the defence of the claim.

### **18.3 Limitation of Liability**

21.3.1 Neither Party shall be liable to the other party for loss of use of any works, loss of profit, loss of contract or for any indirect or consequential loss or damages which may be suffered by the other party in connection with this Agreement.

21.3.2 Notwithstanding anything to the contrary contained or implied in the applicable conditions of contract, and in no event, whether as a result of breach of contract, indemnity, warranty, delict (including negligence), strict liability, or any other cause arising, shall the Service Provider's total liability to the City, or its insurers, for any loss or damage arising out of, or resulting from an Order issued under this Agreement or from the performance or breach thereof, or from the Goods and/or Services furnished hereunder, exceed 100% of the specific Order value.

## **19 SERVICE PROVIDER'S PERSONNEL**

### **19.1 Liability for Criminal Acts of Employees**

The Service Provider shall be liable to the City for any loss that the City or any third party may suffer as a result of any theft, fraud or other criminal act of any employee of the Service Provider which arises within the course and scope of such employees' employment with the Service Provider.

### **19.2 Character of Employees**

19.2.1 Due to the confidential nature of certain aspects of the Services and the position of trust which the Service Provider's employees will fulfil, the Service Provider hereby undertakes to use its best commercial endeavours to ensure that it only assigns to the City employees who are fit and proper persons and who display the highest standards of

personal integrity and honesty and who have not, to their knowledge, being convicted of any crime.

19.2.2 The Service Provider shall, at its own cost, conduct all reasonable background checks into members of its employees prior to utilizing same to provide the Services in terms of this Agreement.

19.3 The City shall conduct all reasonable background checks into the Service Provider's employees from time to time, where it deems it necessary to do so.

## **20 STATUTORY AND EMPLOYMENT ISSUES**

### **20.1 The Service Provider shall comply with all employment legislation**

20.1.1 The Service Provider warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its personnel and its relationship with the City. This includes, but is not limited to, the Labour Relations Act, the Basic Conditions of Employment Act, 1977, the Employment Equity Act, 1998 and any other applicable employment legislation currently in force.

20.1.2 The Service Provider warrants further that it is not and will not in future be in contravention of any of the provisions of any such legislation and in the event of such contravention, the Service Provider shall immediately take all steps to remedy such contravention. If the City advises the Service Provider of any contravention of such legislation in writing, the Service Provider shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep the City informed regarding the steps taken and the implementation and the result thereof.

### **20.2 No employment**

The Service Provider warrants that none of its personnel shall be regarded as employees of the City. The Service Provider shall assist to defend and bear all costs in the event that the City is required to defend a claim, whether civil or employment related, instituted against it by the Service Provider's personnel should the City defend the matter, the Service Provider hereby indemnifies the City against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the City as a consequence of the defence of the claim.

### **20.3 Occupational Health and Safety Act, 1993**

The Service Provider shall be responsible for ensuring compliance with all the provisions of the Occupational Health and Safety Act, 1993 and it indemnifies the City against any claim which may arise in respect of such Act by its personnel against the City.

## **21 SUB-CONTRACTING**

21.1 The Service Provider may not Subcontract the whole of or any portion of the Services in terms of this Agreement to any third party without the prior written consent of the City.

21.2 In the event the Service Provider wishes to Subcontract the whole of or any portion of the Services in terms of this Agreement, it shall apply to the City in writing for consent to do so.

21.3 In its application, the Service Provider shall give the name of the Subcontractor, the Subcontractor's obligations, the proposed date of commencement of the Subcontract which shall include the fees payable to the Subcontractor, and a report of the background security check on the Subcontractor's suitability, financial and otherwise.

21.4 The City may, in its sole and absolute discretion refuse consent to Subcontract. In the event the City approves the Subcontracting of the whole of or any portion of the Services in terms of this Agreement, then:

21.4.1 the Service Provider shall ensure that the Subcontractor's B-BBEE level is equal or better than that of the Service Provider, their price is competitive and they have the capacity to provide the Service;

21.4.2 such Subcontracting shall not absolve the Service Provider from responsibility for achieving the Service Levels or complying with its

obligations in terms of this Agreement and the Service Provider hereby indemnifies and holds the City harmless against any loss, harm or damage which the City may suffer as a result of such Subcontracting;

21.4.3 the Service Provider shall at all times remain the sole point of contact for the City in respect of the acquisition of Services by the City; and

21.4.4 no such Subcontracting shall have any effect on the Contract Price and charges payable by the City to the Service Provider in terms of this Agreement.

## 22 CONFIDENTIALITY

22.1 The Service Provider acknowledge that all information relating to the City confidential business and technical information, data, documents or other information necessary or useful for the carrying on by the City of its business which shall include, but shall not be limited to operating procedures, quality control procedures, approximate operation personnel requirements, descriptions and trade names and trademarks, know how, techniques, technology, information relating to clients, customers, suppliers, relevant authorities, copyright, trade secrets and all goodwill relating to the business and any other intellectual property rights, technical data and documents in whole or in part, used by the City in respect of its business; ("**Confidential Information**"), shall remain confidential and shall not be made known unless the City has given written consent to do so.

22.2 The information provided by the City in the context of this Agreement is Confidential Information and the Service Provider shall take all reasonable measures to keep the information confidential and will only use the information for the purpose for which it was provided.

22.3 The Service Provider undertakes to not disclose any such Confidential Information. However, there will be no obligation of confidentiality or restriction on use where:

- 22.3.1 the information is publicly available, or becomes publicly available otherwise than by action of the receiving Party; or
- 22.3.2 the information was already known to the receiving Party (as evidenced by its written records) prior to its receipt under this or any previous agreement between the Parties or their affiliates; or
- 22.3.3 The information was received from a third Party not in breach of an obligation of confidentiality.

## **23 FORCE MAJEURE**

- 23.1 For the purposes hereof, Force Majeure shall mean civil strife, riots, insurrection, sabotage, national emergency, acts of war of public enemy, rationing of supplies, flood, storm, fire or any other like forces of nature beyond the reasonable control of the party claiming Force Majeure and comprehended in the terms thereof.
- 23.2 If Force Majeure causes delays in or failure or partial failure of performance by a Party of all or any of its obligations hereunder, this Agreement shall be suspended for the period agreed in writing between the Parties.
- 23.3 In the event of circumstances arising which the other Party believes that it constitutes a Force Majeure (“the Affected Party”) then such Affected Party shall send, within 5 (five) days from the interrupting circumstances, a written notice of the interrupting circumstances specifying the nature and date of commencement of the interrupting event to the other Party. The Parties shall agree, in writing, to suspend the implementation of this Agreement for a specific period (“Agreed Period”).
- 23.4 In the event that both Parties reasonably believe that the Affected Party shall be unable to continue to perform its obligations after the Agreed Period, then either Party shall be entitled to terminate this Agreement without further notice to the other Party.
- 23.5 The Party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such party shall gave notice to

that effect with a written notice of the interrupting circumstances as provided above, to extend the period of this Agreement by a period equal to the time that its performance is so prevented.

## **24 CESSION**

The Service Provider shall not be entitled to cede or assign or transfer in any other way and/or alienate its rights and obligations in terms of this Agreement without the prior written consent of the City.

## **25 CHANGE OF CONTROL / CIRCUMSTANCE**

25.1 The Service Provider shall notify the City, in writing, of any change in the Service Provider's shareholding or membership or any change in the Service Provider's subsidiary companies or holding or its affiliates.

25.2 The Parties agree that should there be a change as envisaged in clause 25.1 above, the City shall have the opportunity to renegotiate the terms of this Agreement with the 3<sup>rd</sup> party.

25.3 The Service Provider shall further notify the City of any material changes or circumstance which might have led the City to appoint the Service Provider to Provide the Goods and/or Services. In the event that any material change or circumstance occurs and the Service Provider fails to inform the City of such a change or circumstance, the Service Provider shall be deemed to have breached a material term of this Agreement and the City shall be entitled to cancel the Agreement on 1 (one) month's prior notice.

## **26 BREACH**

26.1 Subject to clause 25.3 above, should either Party commit a breach of any term of this Agreement ("the Defaulting Party") then the affected party ("Aggrieved Party") shall be entitled to inform the Defaulting Party in writing to remedy such failure or default within 5 (five) Business Days and should the Defaulting Party fail to remedy the breach within 5 (five) Business Days after receipt of the notice the so Aggrieved Party shall be entitled, without prejudice to any of its rights under this Agreement or law to:

- 26.1.1 immediately terminate this Agreement without giving written notice and claim damages (which shall include legal costs on an attorney/client scale); or
- 26.1.2 request specific performance and claim damages (which shall include legal costs on an attorney/client scale); or
- 26.1.3 impose penalties as provided for in clause 12 above.

## **27 EARLY TERMINATION**

The City shall have the right to terminate this Agreement by giving 30 (thirty) days' notice in writing to the Service Provider of its intention to terminate the Agreement.

## **28 DISPUTES**

28.1 Save for clause 30 above or any other clause in this Agreement which provides for its own remedy, should any dispute arise between the Parties in respect of or pursuant to this Agreement, including, without limiting the generality of the foregoing, any dispute relating to:

- 28.1.1 the interpretation of the Agreement;
- 28.1.2 the performance of any of the terms of the Agreement;
- 28.1.3 any of the parties' rights and obligations;
- 28.1.4 any procedure to be followed;
- 28.1.5 the termination or cancellation or breach of this Agreement; or
- 28.1.6 the rectification or repudiation of this Agreement; then any Party may give the other Party written notice of such dispute, in which event the provisions below shall apply.

28.2 Within 7 (seven) days of the declaration of such dispute, the Parties representatives or their nominated persons shall meet in the spirit of goodwill and endeavour to resolve the dispute, failing which (and without prejudice to any other alternative dispute resolution to which the Parties may agree, either

prior to or concurrently with arbitration) the provisions of this clause 27 above shall apply.

28.3 If the Parties are unable to resolve the dispute within 14 (fourteen) days of the notice of the dispute (or such longer period as they may have agreed to in writing), then either Party may, on written notice to the other Party, require that the dispute be submitted to and decided by arbitration, in terms of the Arbitration Act, 42 of 1965 of South Africa (“the Arbitration Act”).

28.4 The arbitration shall be held under the provisions of the Arbitration Act provided that the arbitration shall be:

28.4.1 at any place which the Parties agree, in writing, to be mutually convenient.

28.4.2 in accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery or respect rules of evidence.

28.5 If the arbitration is:

28.5.1 a legal matter, then the arbitrator shall be a practicing advocate or a practicing attorney of not less than 10 (ten) years' standing;

28.5.2 an accounting matter, then the arbitrator shall be a practicing chartered accountant of not less than 10 (ten) years' standing;

28.5.3 any other matter, then the arbitrator shall be any independent person agreed upon between the parties.

28.6 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the Parties, by the president for the time being of the Law Society of the Northern Provinces.

28.7 Should the Parties fail to agree whether the dispute is of a legal, accounting or other nature within 7 (seven) days after the arbitration has been demanded, then it shall be deemed to be a dispute of a legal nature.

28.8 The arbitrator may:

28.8.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose, shall have the widest powers of investigating all documents and records of any party having a bearing on the dispute;

28.8.2 interview and question under oath the parties of any of their representatives;

28.8.3 decide the dispute according to what he considers just and equitable in the circumstances; and

28.8.4 make such award, including an award for specific performance, damages or otherwise, as he in his discretion may deem fit and appropriate. The arbitration shall be held as quickly as possible after it is requested, with a view to it being completed within 30 (thirty) days after it has been so requested.

28.9 The arbitrator's decision and award shall be in writing with reasons and shall be final and binding upon the Parties.

28.10 The arbitrator's award may, on application by either Party to a court of competent jurisdiction and after due notice is given to the other Party, be made an order of court.

28.11 Notwithstanding the provisions of clauses 28.1, 28.2, 28.3, 28.4, 28.5, 28.6, 28.7 above, in the event of either Party having a claim against the other Party for a liquidated amount or an amount which arises from a liquid document, or for an interdict or other urgent relief, then the other Party having such a claim shall be entitled to institute action therefore in a court of law rather than in

terms of the above clauses, notwithstanding the fact that the other Party may dispute the claim.

28.12 The provisions of this clause 32 are severable from the rest of this Agreement and shall remain in effect even where this Agreement is terminated or cancelled for any reason.

## **29 LAWS AND JURISDICTION**

29.1 This Agreement shall be governed by and interpreted according to the Law of the Republic.

29.2 Each Party submits to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with this Agreement including its termination. Each Party further consents to the jurisdiction of the High Court of South Africa (North Gauteng High Court (Pretoria)).

## **30 NOTICES AND COMMUNICATIONS**

30.1 The Parties choose as their respective *domicilium citandi et executandi* (hereinafter referred to as the “*domicilium*”) and for the delivery of any notices arising out of this Agreement or its termination or cancellation, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the address set out below:

### **30.1.1 THE CITY:**

Office of the City Manager  
Tshwane House  
2nd Floor, Block D  
320 Madiba Street  
Pretoria, 0001  
P O Box 440  
Pretoria, 0001  
Fax: 086 214 9544  
Attention:  
Telephone:  
Email:

**30.1.2 THE SERVICE PROVIDER:**

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

Attention:  
Telephone:  
Fax:  
Email:

30.2 Each Party shall be entitled from time to time, by written notice to the other Party, to vary its *domicilium* to any other address which is not a Post Office Box or a Poste Restante.

30.3 Any notice given and any payment made by any Party to another Party (hereinafter referred to as “the addressee”) which:

30.3.1 is delivered by hand during normal business hours of the addressee at the addressee’s *domicilium*, shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

30.3.2 is posted by prepaid registered post to the addressee at the addressee’s *domicilium* shall be deemed, until the contrary is proved by the addressee, to have been received on the 7<sup>th</sup> (seventh) day after the date of posting.

30.3.3 is sent by email or facsimile machine shall be deemed, until the contrary is proven by the addressee, to have been received within 1 (one) hour of transmission where it is transmitted during business hours of the receiving instrument and at noon on the following business day (excluding Saturdays) where it is transmitted outside such business hours.

30.4 Any notice or communication required or permitted in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by facsimile.

30.5 Notwithstanding anything to the contrary in this Agreement a notice or communication actually received by one Party shall be an adequate notice or communication notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi*.

## **31 GENERAL AND MISCELLANEOUS**

### **31.1 SOLE RECORD OF AGREEMENT**

This Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

### **31.2 NO AMENDMENT EXCEPT IN WRITING**

No addition to, variation of, or agreed cancellation of, this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties. Any alleged waiver of this requirement must itself be reduced to writing and signed by the relevant Party to be of any effect.

### **31.3 WAIVERS**

No relaxation or indulgence which any party may grant to any other shall constitute a waiver of the rights of that party and shall not preclude that party from exercising any rights which may have arisen in the past or which might arise in future.

### **31.4 SURVIVAL OF OBLIGATIONS**

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

### **31.5 APPROVALS AND CONSENTS**

An approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other party from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement. Any alleged waiver of the requirement that the approval or consent must be in writing must itself be reduced to writing and signed by the relevant Party to be of any effect.

**32 EXECUTION**

32.1 This Agreement may be executed in several counterparts, which shall each be deemed an original, but all of which shall constitute one and the same instrument. A facsimile shall constitute a valid counterpart for all purposes hereunder.

32.2 The signatories to this Agreement by their signature warrant their authority to enter into this Agreement and the capacity of their principal, if signing in a representative capacity, to enter into this Agreement.

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20

\_\_\_\_\_  
For and on behalf of **THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**  
**Duly represented by .....**  
**City Manager**

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20

\_\_\_\_\_  
.....  
**Duly represented by .....**  
.....

**MBD1  
COMPULSORY  
PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF MUNICIPALITY/ MUNICIPAL ENTITY)</b>					
QUOTATION NUMBER:	Q11-2022-23	CLOSING DATE:	18 August 2022	CLOSING TIME:	10:00
DESCRIPTION	<b>QUOTATION TO APPOINT A SERVICE PROVIDER TO CONDUCT A BULK DENSITY SURVEY (DYNAMIC CONE PENETROMETER TESTING) AND A VOLUMETRIC SURVEY AT POWER STATIONS.</b>				
<b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).</b>					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
<b>Procurement Advice Centre at the entrance of C de Wet Centre</b>					
<b>Supply Chain Management</b>					
<b>175 Es'kia Mphahlele Drive,</b>					
<b>Pretoria West</b>					
<b>GPS coordinates: 25.750151°S, 28.173666°E</b>					
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]	
SIGNATURE OF BIDDER	.....		DATE		
CAPACITY UNDER WHICH THIS BID IS SIGNED					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>			<b>TECHNICAL INFORMATION MAY BE DIRECTED TO:</b>		
DEPARTMENT	Supply Chain Management		CONTACT PERSON	Phillip Maswanganye	
CONTACT PERSON	Josia Masenya				
TELEPHONE NUMBER	(012) 358 0658		TELEPHONE NUMBER	(012) 358 2807	
			E-MAIL ADDRESS		
E-MAIL ADDRESS	<a href="mailto:josiasma@tshwane.gov.za">josiasma@tshwane.gov.za</a>			<a href="mailto:phillipmas@tshwane.gov.za">phillipmas@tshwane.gov.za</a>	

**MBD1  
COMPULSORY  
PART B  
TERMS AND CONDITIONS FOR BIDDING**

<b>1. BID SUBMISSION:</b>	
1.1.	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2.	<b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR ONLINE</b>
1.3.	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
<b>2. TAX COMPLIANCE REQUIREMENTS</b>	
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 THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE 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	FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
2.5	BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.6	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.7	WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
<b>3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>	
3.1.	IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span>
3.2.	DOES THE ENTITY HAVE A BRANCH IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span>
3.3.	DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span>
3.4.	DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span>
3.5.	IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span>
<b>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.</b>	

**NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.  
NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE.**

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....

DATE: .....

**MBD 4  
COMPULSORY**

**DECLARATION OF INTEREST**

1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
- 3 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

3.1 Full Name of bidder or his or her representative:.....

3.2 Identity Number: .....

3.3 Position occupied in the Company (director, trustee, hareholder<sup>2</sup>):.....

3.4 Company Registration Number: .....

3.5 Tax Reference Number:.....

3.6 VAT Registration Number: .....

3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

3.8 Are you presently in the service of the state? **YES / NO**

3.8.1 If yes, furnish particulars. ....

.....

<sup>1</sup>MSCM Regulations: "in the service of the state" means to be –

- (a) a member of –
  - (i) any municipal council;
  - (ii) any provincial legislature; or
  - (iii) the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

<sup>2</sup> Shareholder" means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 Have you been in the service of the state for the past twelve months? ..... **YES / NO**

3.9.1 If yes, furnish particulars.....

.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? ..... **YES / NO**

3.10.1 If yes, furnish particulars.

.....  
.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.11.1 If yes, furnish particulars

.....  
.....

3.12 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.12.1 If yes, furnish particulars.

.....  
.....

3.13 Are any spouse, child or parent of the company's directors trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars.

.....  
.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. **YES / NO**

3.14.1 If yes, furnish particulars:

.....  
.....

4. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	State Employee Number

.....  
**Signature**

.....  
**Date**

.....  
**Capacity**

.....  
**Name of Bidder**

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

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

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.**

**1. GENERAL CONDITIONS**

- 1.1 The following preference point systems are applicable to all bids:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- 1.2 The value of this bid is estimated **not to exceed** R50 000 000 (all applicable taxes included) and therefore the **80/20** preference point 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.
- 1.4 The maximum points for this bid are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	80
<b>B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	20
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

- 1.5 Failure on the part of a bidder to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS), or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or a sworn affidavit confirming annual turnover and level of black ownership in case of an EME and QSE together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

**2. DEFINITIONS**

- (a) **“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) as amended by Act No 46 of 2013;
- (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 issued in terms of 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 issued in terms of 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 PREFERENCE POINT SYSTEMS

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

**80/20**

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

Where

P<sub>s</sub> = Points scored for comparative price of bid under consideration

P<sub>t</sub> = Comparative price of bid under consideration

P<sub>min</sub> = Comparative price of lowest acceptable bid

### 5. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

- 5.1 In terms of Regulation 5 (2) and 6 (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 (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- 5.2 A bidder who qualifies as an EME in terms of the B-BBEE Act must submit a sworn affidavit confirming Annual Total Revenue and Level of Black Ownership.
- 5.3 A Bidder other than EME or QSE must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating

issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 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 1.4 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 a Registered Auditor approved by IRBA or a sworn affidavit.

<b>Designated Group: An EME or QSE which is at last 51% owned by:</b>	<b>EME</b> √	<b>QSE</b> √
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		
<b>OR</b>		
Any EME		
Any QSE		

**8. SUB-CONTRACTING**

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

**(Tick applicable box)**

YES		NO	
-----	--	----	--

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.

**(Tick applicable box)**

YES		NO	
-----	--	----	--

**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

[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 MUNICIPAL INFORMATION**

**Municipality where business is situated:** .....

**Registered Account Number:** .....

**Stand Number:**.....

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

9.9 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, 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 BIDDERS(S)
DATE: .....
ADDRESS .....
.....
.....

**CONTRACT FORM - RENDERING OF SERVICES**

**THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SERVICE PROVIDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SERVICE PROVIDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.**

**PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)**

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
  
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, viz
    - Invitation to bid;
    - Tax clearance certificate;
    - Pricing schedule(s);
    - Filled in task directive/proposal;
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
    - Declaration of interest;
    - Declaration of Bidder's past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract; and
  - (iii) Other (specify)
  
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
  
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfilment of this contract.
  
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
  
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

<b>WITNESSES</b>	
1	.....
2	.....
DATE:	.....

**CONTRACT FORM - RENDERING OF SERVICES**

**PART 2 (TO BE FILLED IN BY THE PURCHASER)**

1. I..... in my capacity as..... accept your bid under reference number .....dated.....for the rendering of services indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating service delivery instructions is forthcoming.
3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

4. I confirm that I am duly authorised to sign this contract.

SIGNED AT ..... ON .....

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

WITNESSES

1 .....

2 .....

DATE: .....

**COMPULSORY  
DECLARATION OF BIDDER'S PAST SUPPLY CHAIN  
MANAGEMENT PRACTICES**

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be rejected if that bidder, or any of its directors have:
  - a. abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
  - b. been convicted for fraud or corruption during the past five years;
  - c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p><b>The Database of Restricted Suppliers now resides on the National Treasury's website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</b></p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p><b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b></p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	<p>Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

4.3.1	If so, furnish particulars:		
<b>Item</b>	<b>Question</b>	<b>Yes</b>	<b>No</b>
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

**CERTIFICATION**

**I, THE UNDERSIGNED (FULL NAME) .....  
CERTIFY THAT THE INFORMATION FURNISHED ON THIS  
DECLARATION FORM TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT,  
ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION  
PROVE TO BE FALSE.**

.....  
**Signature**

.....  
**Date**

.....  
**Position**

.....  
**Name of Bidder**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Municipal Bidding Document (MBD) must form part of all bids<sup>1</sup> invited.
  
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
  
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
  - a. take all reasonable steps to prevent such abuse;
  - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
  - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
  
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
  
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.

<sup>2</sup> Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

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(Bid Number and Description)

in response to the invitation for the bid made by:

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(Name of Municipality / Municipal Entity)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: \_\_\_\_\_ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

6. 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 consortium<sup>3</sup> will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. 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.

<sup>3</sup> 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.

10. 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.

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Signature

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Date

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Position

.....  
Name of Bidder

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