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**TENDER : TGPWCCO ALL-CE2 (A)**

**FOR THE APPOINTMENT OF A PROFESSIONAL PRINCIPAL AGENT**

**WITH SUPPORTING ENGINEERING SERVICES.**

**DATE ISSUE: 1 October 2021**

**DATE CLOSE: 22 October 2021**

**CLOSING TIME: 11H00**

**VALIDITY PERIOD: 120 DAYS**

**NB: No site briefing to be held**

**TENDER TGPWCCO ALL-CE2 (A)**

|  |  |  |
| --- | --- | --- |
| **TENDER DOCUMENT**  *(Document to be printed, completed in black ink, initialled and signed)* | | |
| **NO** | **CONTENT** | **PAGE(s)** |
| 1 | Standard Bid Conditions and Information | 3-7 |
| 2 | Evaluation Criteria for Goods and Services | 8-12 |
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| 7 | Special Conditions of Contract | 31-52 |
| 8 | SBD (Standard Bid Documents) **mandatory** available on Westcol website ([www.westcol.co.za](http://www.westcol.co.za)) |  |
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|  |
| --- |
| **ANNEXURE’S (Compulsory documents to be returned)**  *(Documents to be printed, completed in black ink, signed and returnable)* |
| SBD 3.3 - Pricing Schedule (available on Westcol Website: Downloads & Links – Tender related) |
| SBD 4 - Declaration of Interest (available on Westcol Website: Downloads & Links – Tender related) |
| SBD 6.1 - BBBEE points (available on Westcol Website: Tenders) |
| SBD 8- Declaration of Bidder’s Past Supply Chain Management Practices (available on Westcol Website: Downloads & Links – Tender related) |
| SBD 9 -Certificate of Independent Bid Determination (available on Westcol Website: Downloads & Links – Tender related) |
| **ATTACHMENTS** |
| |  | | --- | | None | |

**1. STANDARD BID CONDITIONS AND INFORMATION**

**1.1 Notices, Invitation to Tender and Conditions**

The words “tender” and “bid” in this document or any documents referred to in this

document are interchangeable and are deemed to have the same meaning, similarly the

words “tenderer” and “tendering Service Provider” are interchangeable and are deemed to

have the same meaning. Unless inconsistent with the context, the masculine gender

includes the feminine and neuter genders and vice versa, and the singular includes the

plural and vice versa.

**Western TVET College invites quotations for the Provision of a Professional Principal Agent and supporting Engineering Services as projected by WESTCOL TVET for various projects (Estimated 960 hours-6 months but no longer than 1 year).**

**Agreement**

The successful bidder will be expected to sign the SLA (Service Level Agreement) /Contract Form of this bid document within 30 days of the date of notification by Westcol TVET that his/her bid has been accepted. No contract shall exist between the College and any bidder until such a time as Westcol has notified the successful bidder that its bid has been accepted and the Contract Form is signed by Westcol.

**Completion of Bid Documents**

(a) The original bid document must be completed fully in black ink and signed by the authorized signatory to validate the proposal. Pages must be initialled by the authorised signatory, in specific to pricing. Failure to do so may result in the invalidation of the bid.

(b) Bid documents may not be retyped or altered in any way.

(c) All Bid documents are returnable.

**Alteration or Qualification of Bid**

No unauthorised alteration of this set of bid documents will be allowed. Any unauthorised alteration will disqualify the proposal automatically. Any ambiguity has to be cleared with contact person for the bid before the closure date.

**Authorised Signatory**

(a) A copy of the recorded Resolution taken by the Board of Directors, members, partners or trustees authorising the representative to submit this bid on the bidder’s behalf must be attached to the Bid Document on submission of same.

(b) A bid shall be eligible for consideration only if it bears the signature of the bidder or of some person duly and lawfully authorised to sign it for and on behalf of the bidder.

**Collection and Submission of Bid**

(a) The bid must be put in a sealed envelope, or envelopes when the two-envelope system is specified, clearly marked with the bid number, title as well as closing date and time and placed in the Tender Box at the Corporate Office of Westcol TVET, 42 Johnstone Road, Hectoron, Randfontein by not later than 11h00 on 22 October 2021.

(b) Faxed, e-mailed and late bids will not be accepted. Bids may be delivered by hand, by courier, or posted at the bidder’s risk and must be received by the deadline specified above, irrespective of how they are sent or delivered.

Tender documents may be collected on working days between 07:30 and 12:30 (Monday-

Friday) and between 13:30 and 16:00 (Monday – Thursday) and 13:30 – 14:00 (Friday):

**Opening, Recording and Publications of Bids Received.**

Bids will be opened immediately after the bid closure date when possible, or at such time as specified in the bid documents. As far as possible, names of the bidders, and if practical the total amount of each bid and of any alternative bids will be published on the College website. Bids received on time recorded and entered in a register.

**Tax Clearance Certificate**

a). A valid original Tax Clearance Certificate must accompany the bid documents.

The onus is on the bidder to ensure that Westcol TVET has an original Tax Clearance Certificate on record and obtain confirmation from the Supply Chain Management Unit of

Westcol TVET.

b). Bids not supported by a valid original Tax Clearance Certificate, as an attachment to the bid documents will be invalidated.

c). In bids where consortia/joint ventures/sub-contractors are involved, each party must submit a separate valid original Tax Clearance Certificate.

**Evaluation of Bids**

Bids will be evaluated in terms of their responsiveness to the bid specifications and requirements as well as such additional criteria as set out in the bid documents. For this specific bid, the 80/20 principle will be utilized.

**Acceptance or Rejection of a Bids**

Westcol TVET reserves the right to withdraw any invitation to submit a bid and/or to re-advertise or to reject any bid or to accept a part of it. Westcol TVET does not bind itself to accepting the lowest bid.

**Registration on Accredited Supplier Database**

It is expected of all prospective service providers who are not yet registered on the Central Supplier Database to register online (www.csd.gov.za) and verify their company information at Westcol TVET SCM Database Department. The College reserves the right not to award proposals to prospective suppliers and service providers who are not registered on the CSD (Central Supplier Database).

**Site / Briefing Information Meetings**

None

**Clarification/s**

Clarity on any aspect can be mailed to the relevant contact person’s and responded to as such. Alternative, Westcol will publish on its website the questions and responses by 15th October 2021.

**Stamp and Other Duties**

The successful bidder will be liable for all duties and costs on legal documents resulting in the establishment of a contract and for the surety and retentions.

**Language of Contract**

The contract documents will be compiled in English and the English versions of all referred documents will be taken as applicable.

**Procurement Policy**

Bids will be awarded in accordance with the Preferential Procurement Regulations, 2017 pertaining to the Preferential Procurement Policy Framework Act, No 5 of 2000.

**Expenses Incurred in Preparation of Bid**

Westcol TVET shall not be liable for any expenses incurred in the preparation and submission of the bid. All costs incurred in the preparation, presentation and demonstration of bids shall be for the account of the bidder.

**Wrong Information Furnished**

Where a contract has been awarded on the strength of the information furnished by the bidder which, after the conclusion of the relevant agreement, is proved to have been incorrect, Westcol TVET may, in addition to any other legal remedy it may have, recover from the contractor all costs, losses or damages incurred or sustained by the College as a result of the award of the contract.

**Validity Period**

Bids shall remain valid for 120 days after the bid closure date.

**General and Special Conditions of Contract**

The General Conditions of Contract as well as any Special Conditions of Contract that should form part of this set of bid documents will be applicable to this bid in addition to the Bid conditions and Information.

**CIDB General and Special Conditions of Contract (if applicable)**

The conditions of tender are the Standard Conditions of Tender (July 2015) as contained in Annex F of the Construction Industry Development Board (CIDB) Standard for Uniformity in Construction Procurement. Tenderers can also obtain it on the CIDB's Website at:<http://www.cidb.org.za/procurement/procurement_toolbox/cidb_pub/default.aspx>

**Contact with the College after Bid Closure Date**

Bidders shall not contact the College on any matter relating to their bid from the time of the opening of the bid to the time the contract is awarded. If a bidder wishes to bring additional information to the notice of the College, it should do so in writing to Westcol TVET, 42 Johnstone Road, Randfontein. Any effort by the firm to influence the College in the bid evaluation, bid comparison or contract award decisions may result in the rejection of the bid.

**Payment of Bid documents**

A non-refundable deposit of R100 that is payable by EFT (Electronic Fund) or Bank deposit and proof of such

must be provided when collecting hard copies of bid documents only. Only printed copies collected from WESTCOL

TVET will be charged for.

**Electronically issued bid documents are free of charge and printing is for the prospective bidders own account**.

Banking Details:

Bank: ABSA

ABSA Branch Code: 632005

Account no: 405 560 3421

Reference No: TGPWCCO ALL –CE2 (A)

**Enquiries to this bid document**

**Technical Related:**

Mrs. Thobile Nhlangothi

Tel no: 011 692 4004 ext. 1052

Email: [tnhlangothi@westcol.co.za](mailto:tnhlangothi@westcol.co.za)

**Tender document (administrative) related**:

Mr. D. Martin

Tel: (011) 692 4004 ext. 1013

Email: [dauglas@westcol.co.za](mailto:dauglas@westcol.co.za)

**1.2 General Bid Information**

Westcol shall not take cognisance of any other terms and conditions, contract or other contractual documents which a bidder wishes to govern any contractual relationship which may result from this document. Bidders' attention is drawn to the conditions of contract that will govern such contractual relationship, which are contained in the Special and General Conditions of Contract.

Should a bidder be of the view that the document or any specific requirement is unclear or contains inconsistencies, this must be brought to the attention of Westcol, by e-mail to its representative whose name and e-mail address appears in the Bid Information, before the closing date of the tender.

Should a bidder have reasons to believe that the Specifications/scope of work are not open and/or are written for a particular brand or product, the bidder shall notify Westcol, by e-mail to its representative whose name and e-mail address appears in the Bid Information, within ten (10) days after publication of this document.

Westcol reserves the right to consider any bid that does not strictly comply with the requirements of this bidding document.

Westcol reserves the right to make a selection solely on the information received in the bids or to negotiate further with one or more bidder/s.

Westcol reserves the right: to cancel this document at any time; not to accept any bids;

to accept one or more bid for further negotiation and; to contact any bidder during the evaluation period, to clarify information only, without informing any other bidder.

This document is the intellectual property of Westcol and shall be treated as confidential. Should Westcol consider it necessary, any bidder may be requested to consent that Westcol inspects the bidder's resources, premises and works. Such consent will not be unreasonably withheld.

All details, dimensions and instructions shown on any drawings, diagrams and specifications quoted or referenced, shall be considered to form part of this document.

In the event that modifications, clarifications or additions to the bidding document become necessary, all bidders will be notified, in writing, and if necessary an addenda to this document will be issued to all bidders.

All supporting documentation and manuals submitted with the document will become the property of Westcol unless otherwise stated by the bidder at the time of submission of its bid.

Any material submitted by a bidder which is considered to be confidential in nature, must be clearly marked as such.

By submitting a bid in response to this document, the bidder acknowledges that its bid shall remain binding upon it and open for acceptance by Westcol during the Bid validity period.

By submitting a bid in response to this document, the bidder accepts that Westcol is under no obligation to award a contract to any bidder, and that Westcol is free to withdraw this document without awarding a contract to any bidder.

Westcol reserves the right to extend the Bid Validity Period specified in the Bid Information at any time at its sole discretion, provided that Bidders shall be allowed the opportunity to submit a revised pricing schedule, or withdraw its bid.

|  |
| --- |
| THE FOLLOWING PARTICULARS MUST BE FURNISHED(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED) |

NAME OF BIDDER .................………………………………………………………………………………………………

POSTAL ADDRESS ...............................……..………….....………………………………………………………….

STREET ADDRESS .……………………………........………………..………..................................................

TELEPHONE NUMBER ……………………………………. CODE …………

CELL PHONE NUMBER ……………….. …………………………………........………………………………………….

FACSIMILE NUMBER …………………………………………. CODE ……....…

VAT REGISTRATION NUMBER…………………………...………………………………………………………….

HAS A TAX CLEARANCE CERTIFICATE BEEN SUBMITTED (SBD 2)? YES/NO

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS/SERVICES OFFERED BY YOU? YES/NO (IF YES ENCLOSE PROOF)

SIGNATURE OF BIDDER ……………………………………………………………………………………………………

DATE …………………………..………………………………………………………………

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

**2. EVALUATION CRITERIA FOR SERVICES**

**2.1 FUNCTIONALITY PRE-QUALIFICATION**

Assessment on Functionality (separate from price): **100 points**

**2.2 ADJUDICATION ON PRICE & B-BBEE GRADING**

Assessment on price: **80 points**

B-BBEE grading: **20 points**

**2.3 PRE-QUALIFICATION REQUIREMENTS/FUNCTIONALITY CRITERIA**

**STAGE 1A**

Submission of Proposal structured as per evaluation criteria, proposal to be clearly marked with dividers using evaluation criteria as headings. Company profile will not be accepted as a proposal.

Bid Commitment , preference points claimed and declaration of interest form should be signed by bidder (SBD 3, SBD 4, SBD 6.1, SBD8, SBD 9) Forms available on the Westcol website [www.westcol.co.za](http://www.westcol.co.za)

Submission of price (The bidder to submit a quote (As per pricing structure),VAT inclusive). Total pricing to be reflected on the pricing structure of this document

Submission of a Tax Compliance Status certificate

Submission of a Valid Tax Clearance certificate

Submission of a BBBEE certificate / EME affidavit

Proof of registration on Centralised Supplier Database (CSD).

Financial statements for the last 3 years

Technical documentation for the equipment as proposed confirming minimum specifications.

**SERVICE PROVIDERS THAT DO NOT COMPLY WITH THE ABOVE REQUIREMENTS (STAGE 1A) SHALL BE ELIMINATED AND SHALL BE REGARDED AS NON-RESPONSIVE.**

**STAGE 1B**

Technical evaluation as per Functional Evaluation Criteria

Minimum threshold = 70 points

**STAGE 2**

Preference points and price only

Price =80 points

Preference = 20 points.

**Responsive bids will be evaluated against the following criteria:**

Compliance to the Specification / Scope of Work (Mandatory where applicable and Technical / Functional Criteria); and Price & B-BBEE.

Only bids that satisfy the technical/functional requirements, i.e. which comply with the Specification, shall be evaluated in respect of B-BBEE and price. The requirements in respect of compliance to the Specification are mandatory requirements – if these criteria are not satisfied bids will not be evaluated, Responsive bids will be evaluated against the following criteria:

**2.3.1 Evaluation Criteria 1: Compliance with the Specification /Scope of Work**

Bidders must meet the following technical mandatory criteria. Bidders who do not meet all the functional/technical mandatory criteria shall be disqualified:

Bidders need to demonstrate that they are capable of fulfilling the below technical functional criteria. Bidders who achieve a score of 70% and above out of 100% in respect of technical functional criteria will be further evaluated in terms of price and B-BBEE

**2.3.2 Evaluation Criteria 2: Price & B-BBEE**

The evaluation for Price and B-BBEE shall be based on the 80/20 PPPFA principle and the points for evaluation criteria are as follows:

|  |  |  |
| --- | --- | --- |
|  | **Evaluation Criteria** | **Points** |
|  | Price | **80** |
|  | Black Economic Empowerment (BBBEE) | **20** |
| **Total** | | **100** |

**2.4 POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR**

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

|  |  |  |
| --- | --- | --- |
| **B-BBEE Status Level of**  **Contributor** | **Number of points**  **(90/10 system)** | **Number of points**  **(80/20 system)** |
| 1 | 10 | 20 |
| 2 | 9 | 18 |
| 3 | 6 | 14 |
| 4 | 5 | 12 |
| 5 | 4 | 8 |
| 6 | 3 | 6 |
| 7 | 2 | 4 |
| 8 | 1 | 2 |
| Non-compliant contributor | 0 | 0 |

**2.4.1 AWARDED FOR PRICE**: A maximum of 80 points is allocated for price on the following basis:

Where:

Ps = Points scored for comparative price of bid under consideration

Pt = Comparative price of bid under consideration

Pmin = Comparative price of lowest acceptable bid

**2.4.2 AWARDED FOR B-BBEE: A maximum of 20 points is allocated for the B-BBEE status level:**

|  |  |
| --- | --- |
| **B-BBEE: Status Level of Contributor** | **Points** |
| 1 | 20 |
| 2 | 18 |
| 3 | 14 |
| 4 | 12 |
| 5 | 8 |
| 6 | 6 |

**2.5 FUNCTIONAL CRITERIA**

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |

|  |  |
| --- | --- |
|  | Calculate total tender evaluation points:  The point calculated for financial offer will be added to the point scored for preference for each individual tender offer according to the formula:  Total tender evaluation points = WC + sum of Np for (a), (b) and (c) above.  Quality (functionality) will be scored on those tenders regarded as being responsive. The CRITERIA to be applied in evaluating the proposal is set out in the table below: |
|  | **0 = non -submission of information, 1 = poor, 2= average, 3 = good, 4=very good, 5=excellent**   |  |  |  | | --- | --- | --- | | **Item No.** | **TOTAL POINTS FOR EVALUATION CRITERIA** | **Weighting** | |  | Application |  | | **1.** | **Experience, Skills and Ability of Service Provider to infrastructure building or engineering requirements, experience in work of this nature (Principal Agent)**  The service provider must have at least 3 years’ experience in Built, construction and Engineering environment.   * Must have knowledge of the public sector or private sector environment. * Must have been involved in similar projects as per scope of work in a corporate environment within the last 2 years | **35 Points** | | **2.** | **Work plan**   * The bidder will be required to provide a proposal plan to achieve the objectives of the appointment for listed projects plan that includes activities and timelines. | **30 Points** | | **4.** | **Professional Architect registered with SACAP (post registration years’ experience)** | **20 Points** | |  | 0 - no Information submitted | 0 | |  | 1 - 3 year | 2 | |  | 3 - 5 years | 5 | |  | 5 – 7 or more years | 10 | | **5.** | **Reference checks and referees:**   * Submit minimum of three (3) relevant and contactable clients where similar services as bid scope of work was rendered in the past 3 years consistent with the criteria description within the Built environment, Construction, or engineering industry | **15 Points** | |  | **TOTAL** | **100** |   The proposal will be evaluated individually on score sheets, by a representative evaluation panel according to the evaluation criteria indicated above. All service providers who scored less than 70 out of 100 points for functionality will not be considered further.  **NB: Points scored 70 and above out of 100 for Quality (functionality) will not have an influence on the total tender evaluation points. Method 2 (i.e., financial offer and preferences) will be used to calculate the total tender evaluation points.** |
|  | The number of paper copies of the signed contract to be provided by the employer is **one**. |

**3. SCOPE OF WORK**

1) Support employer with any technical expertise services related to infrastructure.

2) Advise the Employer on matters relating to the projects for five western TVET sites.

3) Site investigation and measuring requires information for technical documentation per project

4) Keep proper records of all information relating to projects advertise including Bills of Quantities etc.

5) Conducting site briefing and responds to the technical queries

6) Compiling contractual agreement documents e.g. (JBCC)

**NB: Principal Agent must support to any requirements needed related to infrastructure that may occur during that appointed time periods without any additional amount*.***

* 1. **Construction and implementing projects until the final stage ( Stage No. 1-6)**

The project’s scope will be aligned to six stages of construction as detailed below:

Stage 1: Inception

Stage 2: Concept and viability

Stage 3: Design and development

Stage 4: Documentation and procurement

Stage 5: Construction, Contract Administration and Inspection

Stage 6: Close-out

* + 1. **Stage 1 (Inception)**

The principal agent to take control of the project site and assume full responsibility after conducting site inspection, necessary survey, analysis, tests, and site investigation in accordance with SANS 10400.

#### Stage 2 (Concept and Viability)

#### The scope and duties of the Project Manager/Principal Agent would be to perform the following:

* Provide Architectural Services by reviewing the existing drawings, design concept; assess suitability and confirm conformity to building standards and regulations; make recommendation and implement changes.
* Act as principal agent for the project and assume responsibility of the project and take control of the project after conducting site inspection, necessary survey, analysis, tests, and site investigation in accordance with SANS 10400.
* Refine and assess the current working design to ensure conformance with all regulatory authorities’ requirements and consents.
* Define and compile the scope of works required for the professional service team and the contractor.
* Provide a multi-disciplinary professional practice or practices, that also provide the professional services listed, of which each professional division/section in the practice or practices is under the fulltime supervision of a registered professional in that specific profession, and which is owned and controlled by registered professionals, by at least a percentage determined by the relevant Council in its Code of Professional Conduct, in terms of number, shareholding and voting power, registered in terms of the following:
  + **Project Manager/Principal Agent** – South African Council for Project and Construction Management Professions/Project Management Institute: Project and Construction Management Act, 2000 (Act No. 48 of 2000).
  + **Architect** – South African Council for the Architectural Profession: Architectural Professions Act No. 44 of 2000
  + **Civil and Structural Engineer** – Engineering Council of South Africa: Engineering Profession Act, 2000 (Act No. 46 of 2000) (Civil & Structural).
  + **Mechanical and Electrical Engineer** – Engineering Council of South Africa: Engineering Profession Act, 2000 (Act No. 46 of 2000) (Mechanical & Electrical).
  + **Quantity Surveyor** – South African Council for the Quantity Surveying Profession: Quantity Surveying Profession Act, 2000 (Act No. 49 of 2000).
  + **Health and Safety** – Project and Construction Management Act, 2000 (Act No. 48 of 2000)
    1. **Stage 3 – Design and Development (also termed Detail Design).** This will include:
* Prepare working drawings for the project.
* Prepare all related documentation for approval by relevant authorities and Rand west local Municipality.
* Liaise with Town Planner in ensuring that an application for Rezoning is aligned to the building plans and approved.
* Detailed estimates of construction costs.
* Approval of the bill of quantities and project cost estimate.
* Establish what access, utilities, services and connections are required for the design.
  + 1. **Stage 4 – Documentation and Procurement:**
* Compile specifications for the project.
* Confirm scope of work and appointment of a contractor.
* Services co-ordination.
* Develop the working drawings.
* Budget the construction costs.
* Compile Bid documentation.
* Present bid/Bid specification to the Bid Adjudication Committee.
* Advertise Bid in accordance with Supply Chain Management prescripts.
* Assist in the evaluation of bids/Bids received from potential bidders/Bidders.
* Review special conditions terms and conditions of contract.
  + 1. **Stage 5 – Construction, Contract Administration and Inspection:**
* Prepare schedules of predicted cash flow.
* Prepare construction documentation.
* Prepare drawings register.
* Arrange and perform a site handover to the contractor.
* Review, approve and monitor the preparation of the construction programme by the contractor.
* Manage the contractor on behalf of SCC.
* Conduct and record regular site meetings.
* Regularly monitor performance of the contractor against the construction programme.
* Receive, co-ordinate and monitor approval of all contract documentation provided by contractor (s).
* Monitor preparation and auditing of the contractor's health and safety plan and approval thereof by the health and safety consultant.
* Establish procedures for monitoring scope and cost variations.
* Manage and monitor professional service team and construction work.
* Review the contractor's quality control programme and advise and agree on quality assurance plan.
* Inspect the works for quality and conformity to contract documentation once every (two) 2 weeks during the course of the works.
* Investigate where such information will be required for construction works including the availability and location of infrastructure and services.
* Prepares estimates for proposed variations.
* Manage contract instructions.
* Assists with financial control and progress reports.
* Prepare payment certificates.
* Prepare progress report and draft final account.
* Practical completion and defects list.
  + 1. **Stage 6 – Close- Out**:
* Valuations for payment certificates.
* Works and final completion lists.
* Operations and maintenance manuals, guarantees and warranties.
* As-built drawings and documentation.
* Final account.

**4. PRICING STRUCTURE**

4.1 Professional Principal Agent Fee-

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Nr.** | **Item** | **Estimated hours** | **Rate per hour** | **Total price as per item** |
| 1 | Principal Agent | 960 |  |  |
| 2 | Engineering Supporting Services | 200 |  |  |
|  | **Sub-Total** |  |  |  |
|  | **VAT** |  |  |  |
|  | **TOTAL VAT INCLUSIVE** |  |  |  |

**Estimated Project time frame and cost of works:**

The projected time frame is at 960 hours (6 months but no longer than 1 year)

The Total estimated financial commitment is at R 12 million for various projects, ranging from as per the scope of works.

Please note: Pricing is fixed for the duration of this contract.

**5. TENDER CHECKLIST**

|  |  |  |  |
| --- | --- | --- | --- |
| **CHECKLIST: TENDER DOCUMENTS** | | | |
| **No** | **Description** | **Checked by Bidder** | **Checked by**  **WESTCOL College** |
| 1 | Tender document (completed in black ink, initialled and signed) 1 submission only, no additional copies |  |  |
| 2 | SBD 3.3. Pricing Schedule (available on the Westcol website) |  |  |
| 3 | SBD 4 Declaration of Interest (available on the Westcol website) |  |  |
| 4 | SBD 6.1 BBBEE Points (available on the Westcol website) |  |  |
| 5 | SBD 8 Declaration of Bidder’s Past Supply Chain Management Practices (available on the Westcol website) |  |  |
| 6 | SBD 9 Certificate of Independent Bid Determination (available on the Westcol website) |  |  |
| 7 | **The following mandatory documents must be also be submitted** |  |  |
| 8 | Company registration documents and ID(s) of owners/directors (certified copies) |  |  |
| 9 | Valid Original Tax Clearance Certificate – SARS (or letter of arrangement from SARS) |  |  |
| 10 | Tax Compliance status certificate |  |  |
| 11 | CSD Registration summary report |  |  |
| 12 | Functionality Evaluation – Relevant documentation including proposal & brochures (see page 8) |  |  |
| 13 | Broad-Based Black Economic Empowerment (B-BBEE) Certificates For Evaluation / EME Affidavit |  |  |
| 14 | The detailed pricing structure |  |  |
|  |  |  |  |

BIDDER: FULL NAME & SURNAME CAPACITY

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**5. GENERAL CONDITIONS OF CONTRACT (GCC)**

**1. Definitions**

The following terms shall be interpreted as indicated:

* 1. “Closing time” means the date and hour specified in the bidding documents for the

receipt of bids.

1.2. “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract from signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.3. “Contract price” means the price payable to the supplier under the contract for the full and proper performance of this contractual obligation.

1.4. “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

1.5. “Countervailing duties” are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.

1.6. “Country of origin” means the place where goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basis characteristics or in purpose or utility from its components.

1.7. “Day” means calendar day.

1.8. “Delivery” means delivery in compliance of the conditions of the contract or order.

1.9. “Delivery ex stock” means immediate delivery directly from stock actually on hand.

1.10. “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

1.11. “Dumping” occurs when a private enterprise abroad market its good on own initiative in the RSA at lower prices than that of the country or origin and which have the potential to harm the local industries in the RSA.

1.12. “Force majeure” means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or resolutions, fires floods, epidemics, quarantine restrictions and freight embargoes.

1.13. “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

1.14. “GCC” mean the General Conditions of Contract.

1.15. “Good” means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

1.16. “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.

1.17. “Local content” means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.

1.18. “Manufacture” means the production of products in a factory using labour, materials components and machinery and includes other related value-adding activities.

1.19. “Order” means an official written order issued for the supply of goods or works or the procuring of a service.

1.20. “Project site” where applicable, means the place indicated in bidding documents.

1.21. “Purchaser” means the organization purchasing the goods.

1.22. “Republic” means the Republic of South Africa.

1.23. “SCC” means the Special Conditions of Contract.

1.24. “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

1.25. “Written” or “in writing” means handwritten in ink or any form of electronic or

mechanical writing.

1. **Application**

2.1. These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2. Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3. Where such special conditions of contract are in conflict with these general conditions, the special shall apply.

1. **General**

3.1. Unless otherwise indicated in the bidding documents, the purchase shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2. With certain exceptions, invitations for bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za).

1. **Standards**

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

1. **Use of contracts documents and information**

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

performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.

5.2. The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3. Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.

5.4. The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

1. **Patent rights**

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

1. **Performance Security**

7.1. Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

7.2. The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier’s failure to complete his obligations under the contracts.

7.3. The performance security shall be denominated in the currency of the contract, or in freely convertible currency acceptable to the purchaser and shall be in one of the following:

1. a bank guarantee or an irrevocable letter or credit issued by a reputable bank located in the purchaser’s country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
2. a cashier’s or certified cheque

7.4. The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier’s performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

**8. Inspections, tests and analyses**

8.1. All pre-bidding testing will be for the account of the bidder.

8.2. If it is a bid condition that supplies to be produced or services to be procured should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

8.3. If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payments arrangements with the testing authority concerned.

8.4. If the inspection, test and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

8.5. Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

8.6. Supplies and services, which are, referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

8.7. Any contract supplies may, on or after delivery, be inspected; tested or analyzed and may be rejected if found no to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchase may without giving the supplier further opportunity to substitute the rejected supplies purchase such supplies as may be necessary at the expense of the supplier.

8.8. The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

1. **Packing**

9.1. The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitations during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods’ final destination and the absence of heavy handling facilities at all points in transit.

9.2. The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

1. **Delivery and documents**

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

10.2. Documents to be submitted by the supplier are specified in SCC.

1. **Insurance**

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

1. **Transportation**

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

1. **Incidental services**

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

1. performance or supervision of on-site assembly and/or commissioning of the supplied goods;
2. furnishing of tools required for assembly and/or maintenance of the supplied goods;
3. furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
4. performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
5. training of the purchaser’s personnel, at the supplier’s plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

**14. Spare parts**

14.1. As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

1. such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract ; and
2. in the event of termination of production of the spare parts:
3. Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
4. Following such termination, furnishing at no cost to the purchaser, the blueprints, drawings and specifications of the spare parts, if requested.

**15. Warranty**

15.1. The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser’s specifications) or from any act or mission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2. This warranty shall remain valid twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3. The purchaser shall promptly notify the supplier in writing of any claims arising under

this warranty.

15.4. Upon receipt of such notice, the supplier shall, with the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to be purchaser.

15.5. If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier’s risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

1. **Payment**

16.1. The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2. The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

16.3. Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4. Payment will be made in Rand unless otherwise stipulated in SCC.

1. **Prices**

17.1. Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser’s request for bid validity extension, as the case may be.

1. **Contract Amendments**
   1. No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
2. **Assignment**
   1. The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser’s prior written consent.
3. **Subcontracts**
   1. The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
4. **Delays in the supplier’s performance**

21.1. Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2. If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier’s notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier’s time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3. No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or local authority.

21.4. The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier’s point of supply is not situated at or near the place where the supplies are required, or the supplier’s services are not readily available.

21.5. Except as provided under GCC clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC clause 22, unless an extension of time is agreed upon pursuant to GCC clause 21.2 without the application of penalties.

21.6. Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods no supplied in conformity with the contract and to return any goods delivered later at the supplier’s expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

1. **Penalties**
   1. Subject to GCC clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC clause 23.
2. **Termination for default**

23.1. The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

1. if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
2. if the Supplier fails to perform any other obligation(s) under the contract; or
3. if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2. In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3. Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4. If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5. Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of

the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6. If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

1. the name and address of the supplier and / or person restricted by the purchaser;
2. the date of commencement of the restriction;
3. the period of restriction; and
4. the reasons for the restriction.

These details will be loaded in the National Treasury’s central database of suppliers or persons prohibited from doing business with the public sector.

23.7. If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person’s name be endorsed on the Register for Tender Defaulters. When a person’s name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

1. **Anti-dumping and countervailing duties and rights**
   1. When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required of imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favorable difference shall on demand be paid forthwith by the contractor to the State who may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or procured, or is to deliver or procure in terms of the contract or any other contract or any other amount which may be due to him.
2. **Force Majeure**

25.1. Notwithstanding the provisions of GCC clauses 22 and 23, the supplier shall not be liable for forfeiture or its performance security, damages or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2. If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

1. **Termination for insolvency**
   1. The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the purchaser.
2. **Settlement of Disputes**

27.1. If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2. If, after thirty (30) days, the parties have failed to resolve their dispute or difference by much mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3. Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4. Mediation proceedings shall be conducted in accordance with the rules or procedure specified in the SCC.

27.5. Notwithstanding any reference to mediation and/or court proceedings herein,

1. the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
2. the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of liability**

28.1. Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to clause 6;

1. the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss or use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
2. the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

**29. Governing language**

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

**30. Applicable law**

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

**31. Notices**

31.1. Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.

31.2. The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

**32. Taxes and duties**

32.1. A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser’s country.

32.2. A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3. No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

1. **National Industrial Participation (NIP) Programme**
   1. The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
2. **Prohibition of Restrictive practices**

34.1. In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).

34.2. If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

34.3. If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

**6. SPECIAL CONDITIONS OF CONTRACT (SCC)**

**1. Interpretations and definitions**

1.1. In this SCC and the GCC, unless clearly inconsistent with or otherwise indicated by the context, the following words, terms or phrases have the following meanings:

1.1.1. “This Agreement” means the documents specified as per SLA;

1.1.2. "Business Day" means any day other than a Saturday, Sunday or official public holiday in South Africa;

1.1.3. "Confidential Information" means the terms of this Agreement, any information concerning either party or its stakeholders and customers including its operations, business and financial affairs and all other matters which relate to the business of either party and in respect of which information is not readily available in the ordinary course of the business to a competitor of such party or to any third party, proprietary information or secret information;

1.1.4. "Created Intellectual Property" means all copyright works, inventions, improvements to inventions and novel designs whether or not registrable as designs or patents including any development or improvement to equipment, technology, methods, processes or techniques made by or on behalf of the Supplier during, in connection with or arising out of the provision of the Goods;

1.1.5. "Effective Date" means the date of signature of this Agreement by the authorised representative of WESTCOL;

1.1.6. “WESTCOL” means the Western College for TVET, a juristic person established in terms of Section 2(1) of the Road Accident Fund Act No. 56 of 1996 (as amended), as well as its successor in title and any other juristic person to whom WESTCOL’s rights and obligations may be assigned and devolve upon;

1.1.7. “Goods” means the goods and / or services specified in the Scope of work /Specification, read with the Bidder’s Proposal;

1.1.8. "Intellectual Property Rights" means all rights in and to the intellectual property including, without limitation, any know-how, patent, copyright, registered design, trademark or other industrial or intellectual property, whether registered or not and whether or not capable of being registered and any application for any of the aforementioned;

1.1.9. “Implementation Date” means the date on which the provision of the Goods

or services commences;

1.1.10. "Performance Undertakings" means the Performance Undertakings as set out

in the Specification.

1.1.11. "Service Level Breach" means a failure by the Supplier to maintain a target specified in respect of one or more of the Performance Undertakings;

1.1.12. “The Specification” means the Specification as mentioned under the Scope of work to the tender document;

1.1.13. “Supplier” means the party described as such in the Contract Form or SLA, or in lieu of a Contract Form the party described as the Supplier in the Purchase Order issued by WESTCOL (whichever is applicable);

1.2. Any reference to the singular includes the plural and vice versa.

1.3. Any reference to natural persons includes legal persons and vice versa.

1.4. Any reference to a gender includes the other gender/s.

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

1.6. Where any number of days is prescribed in this Agreement same shall be considered to be calendar days and reckoned exclusive of the first and inclusive of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.

1.7. The use of the word "including" or "includes" followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or such specific example.

1.8. The rule of construction that an agreement shall be interpreted against the party responsible for the constructing or preparation of this Agreement, shall not apply.

1.9. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.

1.10. Recordals shall be binding on the parties and are not for information purposes only.

1.11. Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

1.12. To the extent that there is a conflict between the provisions of the documents that form part of this Agreement, such conflict shall be decided with reference to the preference of documents as contained in the Contract Form.

1.13. Terms other than those defined within this Agreement will be given their plain English meaning, and those terms, acronyms, abbreviations and phrases known in the relevant industry to which this Agreement applies shall be interpreted in accordance with their generally known meanings in such industry.

1.14. Any reference to any statute or statutory regulation shall include a reference to any amendments thereto and to the successor/s in title to such statutes and statutory regulations.

1.15. Any reference to any organisation, institution, office, body, department, organ or person vested with certain powers and authority shall include a reference to its successor/s in title.

1.16. The expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide for this.

1.17. If any provision in a recordal, preamble or definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of this Agreement.

1.18. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

1.19. Wherever the GCC refer to the SCC, such reference shall be read to include reference to the Specification.

1. **Recordal**

2.1. The SCC is WESTCOL’S standard terms and conditions of contract and constitutes part of this Agreement between WESTCOL and the Supplier, or in lieu of a Contract Form, constitutes part of the Purchase Order issued by WESTCOL to the Supplier (whichever is applicable).

2.2. The details and requirements of the Goods to be provided to WESTCOL are contained in the Specification and any additions or amendments thereto furnished to the Supplier during the procurement process. It is recorded that the Supplier has accepted these provisions.

1. **Duration**

3.1. This Agreement shall come into effect on the Effective Date and, unless terminated in accordance with the provisions of this Agreement, shall endure for the term of this Agreement specified in the Specification, calculated from the Implementation Date.

3.2. The Supplier acknowledges and agrees that any and all work performed prior to the Effective Date and all work performed after the expiry of the term of this Agreement, shall be at the Supplier’s sole risk and the Supplier shall be without recourse against WESTCOL.

4. **Warranty**

4.1. The Supplier warrants that:

4.1.1. it has the capacity to execute, deliver and undertake its obligations in terms of this Agreement and all the necessary corporate and other action has been taken to authorise the aforementioned execution, delivery and undertaking;

4.1.2. it is fully experienced and properly organised, financed, equipped, manned, qualified, licensed and able to fulfil its obligations under this Agreement;

4.1.3. the provision of the Goods or Services will be undertaken by appropriately experienced and suitably qualified employees in a proper and professional manner, in accordance with all applicable laws including the Occupational Health and Safety Act, 1993, good industry practice and its own as well as WESTCOL’s established internal procedures;

4.1.4. it shall provide the Goods or parts thereof as the case may be, by the relevant

dates;

4.1.5. the Goods shall:

4.1.5.1. be free from defects due to materials and/or workmanship;

4.1.5.2. comply with the Specification;

4.1.5.3. be fit for the purpose for which it is being acquired by WESTCOL;

4.1.5.4. not infringe any rights of any third party including intellectual property rights;

4.1.5.5. comply with all lawful and reasonable standards, rules and requirements set by any authority and shall not contravene any law or any regulation of any nature whatsoever.

4.2. The Supplier acknowledges that WESTCOL has entered into this Agreement relying on the warranties contained in this paragraph and elsewhere in this Agreement.

4.3. The Supplier undertakes to make good by repair or replacement defects in the Goods, or any part thereof as the case may be, arising from any cause whatsoever, after being notified of the defect by WESTCOL and within the time period specified by WESTCOL in the aforementioned defects notice.

4.3.1. All costs connected to repairs and/or replacement in terms of this paragraph, including costs in respect of the transport and handling of goods incidental to the Goods, between the Supplier’s premises and WESTCOL’s premises, shall be the responsibility of the Supplier.

4.3.2. If the Supplier repairs or replaces any equipment, materials or workmanship this provision will also then apply to the repaired or replaced equipment, materials and workmanship for an additional period equal to the warranty period contained in the GCC but commencing from the date the repairs or replacement was accepted in writing by WESTCOL and the aforesaid warranty period will be extended accordingly.

4.3.3. It is recorded for the sake of clarity that should the Supplier fail to make good by repair or replacement of any defect as contemplated above within the time period stipulated by WESTCOL in the defects notice, WESTCOL shall be entitled to enforce and call upon the performance security.

4.4. The Supplier acknowledges that the provision of the Goods includes all activities and responsibilities specifically referred to in this Agreement as well as activities and responsibilities not mentioned herein which are necessary for proper provision thereof.

**5. Supplier’s Responsibilities and Obligations**

5.1. The Supplier must:

5.1.1. manufacture and supply the Goods and or deliver Services in compliance with the terms and conditions of this Agreement;

5.1.2. attend to the delivery of the Goods / Services on working days during working hours unless the Purchaser agrees otherwise in writing. If the Supplier wishes to attend to the delivery of the Goods /Services outside of working hours or on Days that are not working days, the Supplier must obtain the prior written approval of the Purchaser. The grant of such approval is in the Purchaser’s discretion;

5.1.3. inform itself fully of the requirements of the Purchaser in respect of the manufacture and supply of the Goods/Services;

5.1.4. comply with all reasonable directions of the Purchaser relating to the manufacture and supply of the Goods /Services;

5.1.5. ensure that the manufacture and supply of the Goods /Services reach the required status by the relevant dates, as required by this Agreement;

5.1.6. ensure that the Goods /Services are supplied at the stipulated address to the Purchaser’s satisfaction by the relevant dates. The Supplier acknowledges that time is of the essence for the supply of the Goods/Services;

5.1.7. Provide the Purchaser’s employees with training in the operation and maintenance of the Goods / Services, if applicable;

5.1.8. Provide the Purchaser with comprehensive details regarding the

Goods/ Services including replacement and overhaul frequency, as well as recommended spare parts (if applicable);

5.1.9. provide the Purchaser in writing with details of any deviation in the supply of

Goods/Services

from the approved design;

5.1.10. provide all equipment, apparatus, appliances and/or materials necessary for the manufacture and supply of the Goods/Services subject to the following:

5.1.10.1. all such equipment, apparatus and/or appliances must be in good working order and suited for the purpose for which they are used; and

5.1.10.2. on request and at the Supplier’s own expense provide the Purchaser with samples of all materials to be used. If testing shows that the material/s do not comply with the required Specification then the costs of the testing shall be paid by the Supplier and the Supplier shall replace the material with material that complies with the required specifications;

5.1.11. provide appropriately qualified, competent, skilled and experienced employees for undertaking the manufacture and supply of the Goods /Services and deliver to the Purchaser information regarding the Supplier’s employees on the Purchaser’s request;

5.1.12. ensure that its employees are fully acquainted with all the obligations and responsibilities of the Supplier contained in this Agreement;

5.1.13. provide the Purchaser with a list of the names of the permanent employees employed for the performance of the manufacture and supply of the Goods/Services, when requested to do so by the Purchaser;

5.1.14. comply with all reasonable directions of the Purchaser relating to the manufacture and supply of the Goods/Services including acceleration of the manufacture and supply or any activities relating thereto, suspension of the manufacture and supply or any activities relating thereto, resuming of performance of the manufacture and supply or such activities and/or rescheduling and/or reprogramming of the manufacture and supply;

5.1.15. provide information to the Purchaser on request, concerning the manner and timing of the manufacture and supply of the Goods/Services;

5.1.16. on becoming aware of any matter which may delay the manufacture and supply of the Goods/Services, promptly, but in any event no later than 3 (three) Days after becoming aware of the potential delay, give written notice to the Purchaser with detailed particulars of the cause of the delay, extent of the delay and steps taken to minimise the effect of the delay. In addition and at its own cost, comply with all measures specified by the Purchaser to reduce the effects of the delay including increasing resources employed;

5.1.17. consult with the Purchaser throughout the manufacture and supply of the Goods /Services and supply any documentation reasonably requested and/or required by the Purchaser to use and/or operate the Goods/Services including any licences including software licences (if applicable);

5.1.18. provide the Purchaser with copies of all relevant documents and/or licences issued by the authorities that relate to or are connected to the manufacture and supply of the Goods/Services;

5.1.19. undertake the manufacture and supply of the Goods/Services with the professional skill, care and diligence expected of a service provider experienced in the particular activities that are the subject of this Agreement;

5.1.20. maintain records, for a period of 5 (five) years from the end of the warranty period, and control systems that conform to the norms and standards generally accepted as good practice in the industry applicable to the Supplier;

5.1.21. if requested, provide a schedule to the Purchaser demonstrating the Supplier’s resources available for the manufacture and supply of the Goods/Services and to meet the dates and performance requirements listed in the Specification, including information regarding how the Supplier intends to use those resources;

5.1.22. arrange its activities in order to ensure that there is no danger and the least possible inconvenience caused to the public as well as the prevention of unnecessary noise or pollution or interference with public services or access to use and occupation of public roads or facilities; and

5.1.23. at all times act in the best interest of the Purchaser and avoid all conflict of interest that may arise.

1. **Risk and Ownership**
   1. Without derogating from the Supplier’s obligations in terms of this Agreement, including in respect of remedying of defects, risk and ownership in respect of the Goods shall pass to the Purchaser once the supply and delivery of the Goods, as per the requirements of this Agreement, has been completed to the Purchaser’s satisfaction, provided that in the event that the Goods /Services are defective in whatever way and/or the Supplier fails to comply with the packaging and/or other requirements set out in the Specification, it shall be deemed that the risk in respect of such Goods has not so passed and the Supplier shall bear the risk in respect of such Goods.
2. **Sub-contracting**

7.1. The Supplier shall not subcontract to any third party ("Subcontractor") any portion of the Goods/Services that must be provided under this Agreement without WESTCOL’s prior written consent.

7.2. WESTCOL shall not be under any obligation to consent to a request by the Supplier to subcontract to a Subcontractor any portion of the Goods/Services that must be provided under this Agreement.

7.3. WESTCOL shall, when giving consideration to a request contemplated in this clause 7, take into consideration the following aspects pertaining to the Subcontractor:

7.3.1. An original B-BBEE Status Level Verification Certificate in respect of the Subcontractor, issued by an accredited verification agency, alternatively a certificate issued by the accounting officer (in respect of a close corporation) or auditor (in respect of a company) that the Subcontractor is an EME, furnished to WESTCOL by the Supplier;

7.3.2. An original Declaration of Interest completed and signed by the Subcontractor and furnished to WESTCOL by the Supplier; and

7.3.3. An original Tax Clearance Certificate in respect of the Subcontractor and furnished to WESTCOL by the Supplier.

7.4. WESTCOL may, if WESTCOL elects to approve a request contemplated in clause 7.1 above make such consent subject to such terms and conditions as WESTCOL in its sole discretion considers reasonable.

7.5. Notwithstanding that WESTCOL may elect to consent to a request contemplated in clause 7.1 above, such consent by WESTCOL shall not relieve the Supplier of any of the Supplier’s obligation under this Agreement and the Supplier shall remain responsible for the actions and omission of the Subcontractor.

1. **Non-performance of the Supplier**

8.1. In the event of the Supplier not meeting the performance standards set by the Purchaser, the Purchaser shall be entitled to call upon the Supplier by written notice to remedy the situation.

8.2. Should the Supplier fail to remedy the defective performance within 14 (fourteen) Days of the Purchaser dispatching the aforesaid notice, the Purchaser shall be entitled to cancel this Agreement forthwith and without further notice to the Supplier.

8.3. Following cancellation, the Purchaser shall be entitled to employ the services of an alternative supplier for the portion of the Goods/Services that the Supplier has failed to supply, or which do not meet the Purchaser’s performance standards. Any additional costs related to the employment of an additional supplier shall be for the Supplier’s account. The Purchaser shall be entitled to call upon the Supplier’s performance security in order to cover such additional costs.

8.4. Should the Supplier fail to meet the set performance standards, the Purchaser shall be entitled to cancel any outstanding payment due to the Supplier in terms of this Agreement.

1. **Payment**

9.1. An original and detailed tax invoice must be submitted after WESTCOL has acknowledged receipt of the Goods / Services provided in writing.

9.2. The amount invoiced must be:

9.2.1. inclusive of VAT;

9.2.2. inclusive of all other taxes and duties which are levied or charges by any

revenue authority;

9.2.3. inclusive of all cots and disbursements; and

9.2.4. fixed.

9.3. A correct and original tax invoice must be submitted to WESTCOL by the 25st calendar day of each month.

9.4. All supporting documentation, including but not limited to monthly statements (where applicable) and a verification of bank details, must be received before payment can be effected.

* 1. The Supplier shall be required to verify its bank account details by furnishing

WESTCOL with a letter from its bank with a bank stamp, alternatively it shall furnish WESTCOL with a cancelled cheque.

9.5.1. The following bank details must be verified:

Account Holder and any Trading Names

Bank Name

Branch Name

Branch Code

Account Number

Type of Account

9.6. Payment will be made by WESTCOL within 30 (thirty) days of receipt of the invoice from the Supplier, on condition that the invoice is correct and contains all the information required by WESTCOL.

9.7. WESTCOL may deduct and set off against any Payment due to the Supplier in terms of this Agreement any amount due or which may become due to it by the Supplier under this Agreement or otherwise as well as any Penalties not reflected in the invoice. This shall not prevent WESTCOL from separately recovering from the Supplier any debt owed by the Supplier to WESTCOL under this Agreement.

9.8. If an invoice and supporting documentation is submitted to WESTCOL after the 1st (first) calendar day of the month it shall only be paid by the end of the following month.

9.9. Should the documentation be incomplete, incorrect or late, payment shall only be effected once the correct and complete documents are received and only when WESTCOL is able to confirm the correctness of the amounts being invoiced. Payment shall then be made in terms of the provisions of this clause. No penalty interest shall be permitted to be charged by the Supplier in this event.

9.10. The Supplier acknowledges that the pricing specified in this Agreement is intended to compensate the Supplier fully for all Services provided pursuant to this Agreement. Accordingly, WESTCOL will not be obliged to pay the Supplier any amounts in addition to those specifically described in this Agreement.

9.11. Payment shall be effected by electronic bank transfer or any other method of payment decided to be used by WESTCOL from time to time and at WESTCOL’s sole discretion.

9.12. Value Added Tax (VAT) shall be charged on all invoices, which must include the Supplier’s VAT registration number, in terms of the Value Added Tax legislation applicable in the Republic of South Africa.

1. **Penalties**

10.1. The Supplier acknowledges that WESTCOL will be prejudiced should the Supplier fail to strictly comply with the terms of this Agreement and the Specification/Scope of work.

10.2. In the event that the Supplier fails to strictly comply with the terms of this Agreement and the Specification/scope of work, WESTCOL shall be entitled to levy the penalties stipulated in the Specification.

10.3. Notwithstanding anything to the contrary, WESTCOL may in its sole discretion elect to waive a penalty and pursue a claim for damages instead.

10.4. The Supplier shall credit WESTCOL with the penalties due to WESTCOL for a particular month in the invoice issued for payment in respect of that month. If all outstanding invoices have already been paid by WESTCOL, WESTCOL shall be entitled to payment of the penalties due within 30 days of demand on the Supplier by WESTCOL.

10.5. WESTCOL shall be entitled to call on the performance security in order to recover penalties from the Supplier.

1. **Confidential Information**

11.1. The parties shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any parties, including any of their employees, agents, consultants and sub-contractors directly, unless the parties are involved with the execution of this Agreement and then only on a need to know basis.

11.2. The parties shall prevent disclosure of the Confidential Information, except as may be required by law.

11.3. The parties agree that they shall protect each other’s Confidential Information using the same standard of care that each party applies to safeguard its own Confidential Information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.

11.4. Within thirty (30) days after the termination of this Agreement, for whatever reason, the receiving party of Confidential Information shall return same or at the discretion of the disclosing party of such Confidential Information, destroy such Confidential Information, and shall not retain copies, samples or excerpts thereof.

11.5. The disclosing party of Confidential Information may at any time request the receiving party of such Confidential Information to return any material containing, pertaining to or relating to Confidential Information disclosed pursuant to the terms of this Agreement, and may in addition request the receiving party to furnish a written statement to the effect, that upon such return, the receiving party has not retained in its possession or under its control either directly or indirectly any such material.

11.6. As an alternative to the return of the material contemplated in 11.5 above, the receiving party shall at the instance of the disclosing party, destroy such material and furnish the disclosing party with a written statement to the effect that all such material has been destroyed.

11.7. The receiving party shall comply with the request in terms of clauses 11.5 and 11.6, within fourteen (14) days of receipt of same.

11.8. It is recorded that the following information shall, for the purpose of this Agreement, not be considered to be Confidential Information:

11.8.1. Information known to the receiving party prior to the date that it was disclosed to it by the other party; or

11.8.2. Information known to the public or generally available to the public prior to the date that it was disclosed by either of the parties to the other; or

11.8.3. Information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the parties to the other, through no act or failure to act on the part of the recipient of such Information; or

11.8.4. Information which either of the parties, in writing, authorises the other to

disclose.

11.9. For the avoidance of any doubt, no provision of this Agreement should be construed in such a way that the disclosing party is deemed to have granted its consent to the receiving party to disclose the whole or any part of the Confidential Information in the event that the receiving party receives the request for the whole or any part of the Confidential Information in terms of the provisions of the Promotion to Access to Information Act No. 2 of 2000.

11.10. Breach of these obligations shall, without prejudice to any other rights that the parties have in law and or in terms of this Agreement entitle WESTCOL to recover damages from the Supplier.

1. **Warranties**

12.1. The Supplier warrants that the Goods supplied by it in terms of this Agreement shall be new, unused and fit for their intended purpose.

12.2. Where the Supplier’s Goods supplied to WESTCOL in terms of this Agreement include or come with certain warranties or guarantees, these shall be incorporated into this Agreement as if specifically mentioned and WESTCOL shall receive the full benefits thereof.

12.3. All representations made by the Supplier in this regard whether in writing or verbally shall be deemed to be incorporated into this Agreement as if specifically stated.

12.4. Where a dispute arises regarding the terms and conditions of such warranties or guarantees and the representations made by Supplier, then the standard practice of the Supplier in giving such warranties in the normal course of its business shall be deemed to apply as the minimum warranty or guarantee benefits due to WESTCOL.

1. **Cession and Assignment**

The Supplier shall not cede, assign, abandon or transfer any of its rights and/or obligations in terms of this Agreement (whether in part or in whole) or delegate any of its obligations in terms of this Agreement, without the prior written consent of WESTCOL.

1. **Non-Exclusive Agreement**

WESTCOL is not obliged to make exclusive use of the Supplier. Nothing in this Agreement shall be interpreted as precluding WESTCOL from procuring similar or equivalent products or service from other suppliers.

1. **Contractual Relationship- Communications with News Media and Consensual**

**Efforts at Resolution**

15.1. The Supplier may not make a statement or furnish any information or cause any information to be furnished to any news media, on or regarding any matter relating to the contractual relationship between the parties, except with the prior written permission of the Chief Executive Officer of WESTCOL.

15.2. The parties agree that they shall inform each other as soon as possible about any problem relating to the contractual relationship between them that either of them may experience, and further that they shall make all reasonable effort to resolve any such problem consensually.

1. **Relationship**

This Agreement does not constitute either of the Parties an agent or representative of the other for any purpose whatsoever and neither of the parties shall be entitled to act on behalf of, or to represent, the other unless duly authorised thereto in writing.

1. **Limitation of Liability and Indemnification** 
   1. WESTCOL shall not be liable for any damages arising out of death or injuries sustained by the Supplier’s employees, consultants, agents, representatives or sub-contractors whilst such persons are on any premises or in any vehicle owned by WESTCOL or used by the Supplier or arising out of any damage or loss of any property belonging to the Supplier or any such persons on or in such premises or property, whether such injury or damage or loss is caused by the negligence by WESTCOL or any of its employees, consultants, agents, representatives or sub-contractors or by any other cause whatsoever.

17.2. The Supplier indemnifies WESTCOL against any claims that may arise from the performance of its functions and actions in terms of this Agreement and that of their employees, consultants, agents, representatives or sub-contractors.

17.3. Each party hereby indemnifies the other party against all damages, losses or liabilities caused due to an event which is at its risk or due to its negligence, either contractually or delictually. The liability of each party to indemnify the other party shall be reduced proportionally if the event at the other party’s risk or negligence contributed to the damage, loss or liability.

17.4. The Supplier shall ensure that it and its employees, consultants, agents, representatives and sub­contractors concerned do not in any way infringe or allow any infringement of any other party's Intellectual Property Rights in the performance of this contract, and the Supplier hereby indemnifies and holds WESTCOL harmless from and against any claims arising against WESTCOL as a result of any such infringements by the Supplier of such Intellectual Property Rights.

17.5. Neither party shall be liable towards the other for any indirect or consequential loss of any nature and howsoever incurred.

1. **Insurance**

18.1. Without limiting WESTCOL liabilities or responsibilities in terms of this Agreement, the Supplier shall provide insurance to cover its liabilities and responsibilities in terms of this Agreement.

18.2. Notwithstanding anything elsewhere contained in this Agreement,

WESTCOL shall provide at least:

18.2.1. Insurance in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993. The Supplier shall upon request from WESTCOL submit proof to the satisfaction of WESTCOL that the Supplier is insured under the Compensation for Occupational Injuries and Diseases Act by providing WESTCOL with adequate proof stating that it has paid all assessments due;

18.2.2. Insurance covering legal liability in respect of claims for death of/or injury to persons or loss of/or damage to third party property;

18.2.3. Motor vehicle liability insurance in respect of all motor vehicles brought onto the premises of WESTCOL.

18.3. WESTCOL shall have the right to examine the policies maintained by the Supplier at any time during the term of this Agreement.

1. **Occupational Health and Safety Act , 1993 (“OHS Act”)**

19.1. Without derogating from the generality of the obligations set out in this Agreement, the Supplier undertakes and warrants that it shall in respect of all activities conducted in respect of this Agreement:

19.1.1. at all times comply with the provisions of the OHS Act;

19.1.2. acquaint all its employees with the provisions and requirements of the OHS

Act;

19.1.3. not endanger the health and safety of any of its or WESTCOL’s employees in any way whilst provided the Goods and/or are present at WESTCOL’s premises;

19.1.4. accepts responsibility for compliance with the duties, obligations and prohibitions imposed by the OHS Act and expressly absolves WESTCOL from being obliged to comply with any of the aforesaid duties, obligations and prohibitions relating to the provision of the Goods; and

19.1.5. shall assume the responsibility of an employer in terms of the OHS Act and, if the Supplier assigns any duty as provided for in the OHS Act, shall immediately provide WESTCOL with a copy of such written assignment.

19.2. WESTCOL shall be entitled to request the Supplier to remove any employee, agent, consultant or Subcontractor from its team if WESTCOL is of the opinion that such a person is a security or safety risk or that the conduct of such a person is detrimental to the relationship between the parties. Such a person must be removed by the Supplier within the time period stipulated by WESTCOL. The Supplier indemnifies WESTCOL against any claims that might arise due to such removal.

1. **Canvassing, Gifts, Inducements and Rewards**

20.1. The Supplier shall not under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, benefit or other advantage to any of WESTCOL’s employees, consultants or sub­contractors.

20.2. Such an act shall constitute a material breach of this Agreement and WESTCOL shall be entitled to terminate this Agreement forthwith, without prejudice to any of its rights in terms of this Agreement or in law.

1. **Meetings**

21.1. If the nature of the Goods provided to WESTCOL dictate it, authorised representatives of the parties must attend periodic meetings at such intervals as such representatives may agree from time to time but in any event not less than once every two weeks. The meetings shall take place at the location and at such times as the representatives may agree.

21.2. Each party’s representatives shall be entitled to place such items which they intend discussing at a meeting on the agenda for the meeting and shall give the representatives of the other party notice of all such items by no later than 16h00 two (2) days preceding the day on which the meeting is to be held.

* 1. The Supplier shall not be entitled to payment from WESTCOL for time spent attending the aforementioned meetings.

1. **Change Over**

22.1. In this Agreement “Change Order” means a document which is used for the specific purpose of recording the details of any amendments, deletions, insertions or additions to this Agreement and which shall be signed by the authorised representatives of both parties before becoming effective and binding on the parties.

22.2. Should the parties wish to make any amendment, deletion, insertion or addition to this Agreement the parties shall prepare a Change Order.

22.3. No Change Order shall be of any force or effect until it is executed by the duly authorised signatories of each of the parties.

22.4. Each executed Change Order shall be subject to the terms and conditions contained in this Agreement, except as otherwise expressly provided for in such Change Order by the parties by specifically stating the parties’ intention to amend such terms and conditions of this Agreement and identifying the specific terms and conditions being amended.

22.5. A unique, sequential, number shall be allocated to each Change Order.

22.6. The authorised representative of WESTCOL, for purposes of executing a Change Order, is WESTCOL’s Chief Executive Officer.

22.7. No terms and conditions contained in, without limitation, any purchase order, quote, invoice, statement or similar document, other than a Change Order executed in pursuance to this clause 22, shall have the effect of changing any term or condition contained in this Supplier Agreement.

1. **Compliance with Laws and Tax Obligations**

23.1. The Supplier warrants that it complies with all laws and regulations applicable to it, with its legal obligations pertaining to its business in general and with its obligations contained in this Agreement as well as with all applicable requirements of any government department (whether national, provincial or local), other public authorities and regulating bodies (whether statutory or voluntary), and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained.

23.2. The Supplier warrants that any of its undertakings in terms of this Agreement do not constitute a contravention in terms of any statute, statutory regulation, other law or regulating body’s rules that it is bound by, and undertakes to continue to take all reasonable and necessary steps to ensure that this remains so.

23.3. The Supplier furthermore specifically warrants that it complies with all of its obligations in terms of all tax laws and regulations applicable to it, including but not limited to all of its obligations pertaining to the payment of income tax, capital gains tax, employees tax (PAYE and SITE), value added tax, skills development levies, unemployment insurance Fund levies, workmen’s compensation Fund levies, regional Services council levies and all other taxes and levies payable both now or in the future and whether it is liable in the Republic of South Africa or other jurisdictions, and undertakes to continue to take all reasonable and necessary steps to ensure that this remains so.

23.4. The Supplier specifically warrants that it is well acquainted with its obligations as a taxpayer, provisional taxpayer, employer, employee, labour broker, personal service company, personal service trust and the like (as the case may be) and its income tax, employees taxes and levies (SITE, PAYE, UIF, SDL, others) and other tax implications and obligations in terms of the Income Tax Act as a whole and specifically the Fourth Schedule thereto, and their successor/s in title.

23.5. Without limiting in any manner whatsoever the generality of the Supplier’s above obligations, the Supplier shall, for the full and uninterrupted duration of this Agreement, ensure that WESTCOL is: 23.5.1. Placed in possession of an original, valid, unexpired Tax Clearance Certificate, issued by the South African Revenue Services; and/or

23.5.2. Furnished with a new, original, valid, unexpired Tax Clearance Certificate issued by the South African Revenue Services, not less that 30 (thirty) days prior to the expiry of the Tax Clearance Certificate contemplated in clause 23.5.1 above, in the event of any such Tax Clearance Certificate expiring during the duration of this Agreement.

23.5.3. Notwithstanding anything seemingly to the contrary in this Agreement, until the Supplier complies fully with its obligation under this clause 23, WESTCOL has the right to withhold payment of any unpaid amounts due in terms of this Agreement:

23.5.4. Without prejudice to any other rights which WESTCOL may have in terms of this Agreement or in law; and

23.5.5. Without interest accruing on the amount withheld.

23.6. A breach by the Supplier of its obligations under this clause 23 is a material beach which will entitle WESTCOL, at its sole election, to cancel this Agreement forthwith, without prejudice to any other rights which WESTCOL may have in terms of this Agreement or in law.

1. **Intellectual Property Rights**

24.1. The Supplier agrees to assign to WESTCOL absolutely, for the full duration thereof and throughout the world, all of the Supplier’s right, title and interest in the Supplier’s Created Intellectual Property on its creation. The Supplier undertakes, on request, to do all things and sign all documents necessary to assign the aforementioned rights, title and interest to WESTCOL in the Created Intellectual Property and necessary to record such assignment at any Office responsible for the registration of Intellectual Property Rights.

24.2. If the right, title and interest of any of the Created Intellectual Property is not capable of being assigned to WESTCOL, the Supplier undertakes, on request, to do all things and sign all documents necessary to ensure that WESTCOL is granted an irrevocable, fully paid up, royalty free licence to use the Created Intellectual Property for the full duration of the right and throughout the world.

24.3. In the event of assignment, WESTCOL grants the Supplier a licence to use the Created Intellectual Property for the performance of the Goods in terms of this Agreement.

1. **Breach**

25.1. In the event of either one of the parties (“the Defaulting Party”) committing a breach of any of the provisions of this Agreement and failing to remedy such breach within a period of fourteen (14) days after receipt of a written notice from the other party (“the Aggrieved Party”) calling upon the Defaulting Party to remedy the breach complained of, then the Aggrieved Party shall be entitled at its sole discretion and without prejudice to any of their other rights in law and/or in terms of this Agreement, either to:

25.1.1. Claim specific performance in the terms of this Agreement; or

25.1.2. Cancel this Agreement forthwith and without further notice and recover damages from the Defaulting Party.

25.2. In the event of the Defaulting Party being in breach of any provision of this Agreement and the Aggrieved Party having to take legal action / dispute resolution action against the Defaulting Party as a result thereof, the Defaulting Party shall be liable to pay the Aggrieved Party’s legal costs as well as all expenses which have reasonably been incurred in having to take such legal action, which expenses will include but not be limited to private investigator's fees, tracing agents fees, forensic auditor's fees, valuation fees and such similar professional fees in terms of any court order, arbitration

award or settlement agreement (whether legal action was instituted by way of arbitration, in a court of law or other forum, or was resolved prior to any such action having to be taken).

1. **Termination**

26.1. WESTCOL may terminate this Agreement, or suspend its operation, in whole or in part, at any time and at WESTCOL’s sole discretion, by giving not less than 1 (one) month’s written notice to the Supplier.

26.2. WESTCOL when giving notice under clause 26.1 shall, in the written notice, specify the extent of the termination or suspension, and the Effective Date of such termination or suspension.

26.3. The Supplier, upon receipt of a notice contemplated under clause 26.1 shall discontinue the provision of all of the Service under this Agreement, to the extent specified, and on the date specified in the notice.

26.4. In the event of the termination or suspension, in whole or in part, of this Agreement by WESTCOL under this clause 26, WESTCOL shall pay the Supplier for Services already provided by the Supplier under this Agreement, up to and including the date of termination or suspension specified in the notice.

26.5. WESTCOL shall not be liable for any consequential loss resulting from the termination or suspension of this Agreement by WESTCOL under this clause 26, including, without limitation, any loss of profits or any costs associated with the termination or suspension of any sub-contracts entered into by the Supplier.

26.6. Termination or suspension of this Agreement under this clause 26 shall be without prejudice to any rights that may have accrued to either of the parties, in respect of Services provided before the date of termination or suspension, specified in the notice. It is specifically agreed that, upon termination or suspension of this Agreement under clause 26, no rights shall accrue to either party in respect of Services not yet provided under this Agreement.

26.7. WESTCOL shall have the right to immediately cancel this Agreement, without prejudice to any rights which it may have in law, in the event that the Supplier is liquidated, sequestrated or placed under judicial management, business rescue or any other form of management for the benefit of its creditors, whether provisional or final.

1. **Dispute Resolution**

27.1. All disputes concerning or arising out of this Agreement exists once a party notifies the other in writing of the nature of the dispute and requires the dispute to be resolved under this clause. All disputes arising out of or in connection with this Agreement shall be resolved by:

27.1.1. Negotiation, in terms of clause 27.4; failing which

27.1.2. Mediation, in terms of clause 27.5; failing which

27.1.3. Arbitration, in terms of clause 28.

27.2. This clause shall not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of the dispute resolution process contemplated in this clause, for which purpose the parties irrevocably submit to the jurisdiction of the High Court of the Republic of South Africa.

27.3. This clause constitutes irrevocable consent of the parties to the dispute resolution process in terms hereof and neither of the parties shall be entitled to withdraw therefrom or to claim at any negotiation, mediation or arbitration proceedings that they are not bound by the dispute resolution provisions of this Agreement.

27.4. Within ten (10) days of notification by either party that a dispute exists, the parties must seek an amicable resolution to the dispute by referring the dispute to designated and authorized representatives of each of the parties to negotiate and resolve the dispute. If an amicable resolution to the dispute is found the authorized representatives of the parties must sign, within the ten (10) day period, an agreement confirming that the dispute has been resolved.

27.5. If negotiation in terms of clause 27.4 fails, either party may, within fifteen (15) days of the negotiations failing, refer the dispute for resolution by mediation under the rules of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).

27.6. The periods for negotiation (specified in clause 27.4) or for referral of the dispute for mediation (specified in clause 27.5), may be shortened or lengthened by written agreement between the parties.

28. **Arbitration of Disputes**

28.1. In the event of the mediation contemplated in clause 27.5 failing either party may refer the dispute, within fifteen (15) days of the mediation failing, for resolution by expedited arbitration under the then current rules of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).

28.2. A single arbitrator shall be appointed by agreement between the parties within ten (10) days of the dispute being referred for arbitration, failing which the arbitrator shall be appointed by the Secretariat of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).

28.3. At all times, every reasonable effort shall be made to ensure that such arbitrator has the necessary technical skills to enable him to adjudicate the dispute in a satisfactory manner.

28.4. The arbitration shall be held at Randfontein, South Africa, in English.

28.5. The laws of the Republic of South Africa shall apply.

28.6. The parties shall be entitled to legal representation.

28.7. The award of the arbitrator shall be final and binding on the parties, who hereby agree to give effect to the award. Either party shall be entitled to have the arbitrator’s award made an order of court at the cost of the party requesting same.

28.8. This clause 28 read with clause 27 above is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if this Agreement terminates, is nullified, or cancelled for any reason or cause.

1. **Domicilium and Notice of Address**

The parties each choose their domicilium citandi et executandi as the address where they will receive service of all legal process and notices at the respective physical addresses given in this Agreement or the Purchase Order (whichever is applicable).

1. **Notice**

30.1. All notices, correspondence and any other communication between the parties shall be made in writing and shall be sent by hand delivery, by registered post, by facsimile transmission or by e-mail with a ‘read receipt’.

30.2. If notice is given by way of e-mail it must be with a ‘read receipt’, such notice shall be deemed to be received 1 (one) day after sending.

30.3. If notice is given by way of facsimile transmission, such notice shall be deemed to be received 1 (one) day after sending.

30.4. If notice is given by registered post, such notice shall be deemed to be received 7 (seven) days after sending.

30.5. If notice is given by hand delivery, such notice shall be deemed to be received on the day of delivery.

30.6. Any legal process shall be served at the parties’ chosen domicilium citandi et executandi addresses.

30.7. Any changes to the parties’ notice addresses and domicilium addresses as furnished in this Agreement or Purchase Order shall be given in writing and shall be deemed to apply upon the date of receipt of such notice.

**31. General**

31.1. This Agreement constitutes the sole and entire agreement between the parties. This Agreement replaces all previous agreements between the Supplier and WESTCOL relating to the subject matter of this Agreement. No prior or parallel agreements relating to the subject matter of this Agreement are binding on the parties. All the representations, undertakings, warranties or guarantees (“the representations”) made by the parties relating to the subject matter of this Agreement, are contained in this Agreement. Any representations not contained in this Agreement shall not be binding on the parties and shall be without any force or effect.

31.2. No amendment or variation of this Agreement (including this clause), whether by addition, deletion, waiver, novation or consensual cancellation shall be binding on the parties and shall be without any force or effect unless reduced to writing and signed by the parties to this Agreement.

31.2.1. No latitude, extension of time or other indulgence which may be given or allowed by any party to the other party in respect of the performance of any obligation in this Agreement or any enforcement of any rights arising from this Agreement and no single or partial exercise of any right by any party, shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this Agreement or estop such a party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision of this Agreement.

31.2.2. If any term, condition or performance, or any part thereof, in this Agreement (“the provision”) is determined to be invalid, illegal, unlawful or unenforceable to any extent, then that provision shall be removed from the remaining provisions of this Agreement, or amended to make it

valid, legal, lawful or enforceable (as the case may be), in such a manner as to leave the amended agreement substantially the same in essence, and this Agreement so amended shall remain in force and effect.

31.2.3. If any provision of this Agreement is determined to be invalid, illegal, unlawful or unenforceable, such a provision shall be deemed to be severable from the rest of the provisions of this Agreement, and shall not in any way affect the validity and enforceability of the rest of the provisions of this Agreement and this Agreement as a whole.

31.2.4. WESTCOL and the Supplier warrant to each other that their respective signatories and representatives have the power, authority and legal right to conclude and sign this Agreement and perform in terms of this Agreement, and that this Agreement has been duly authorised by all necessary actions of their respective governing organs and management, as the case may be, and constitutes valid and binding obligations on them in accordance with the provisions of this Agreement.

31.2.5. Each party shall pay their own legal and other consulting and advisory fees and related expenses incurred in regard to the negotiation, drafting, preparation and finalisation of this Agreement and the entire transaction.

**32. Steering Comittee**

32.1. The steering committee will be constituted by the representatives of the client and the Service Provider identified in the relevant Annexure who will manage the relationship between the parties and the services.

32.2. The steering committee will meet at least one a month for the duration of this agreement and whenever else deemed reasonably necessary by the Client in order to discuss:

32.2.1. the progress of the services and the steps to be taken to remedy any delays in the achievement of the deadlines / deliverables.

32.2.3. Any failures, defects, errors or deficiencies in the services

32.2.4. Additional recommendations by either Party

32.2.5.Any personnel related issues and

32.2.6.Any other matters of relevance to the performance of the services

32.3. Minutes of steering committee meetings will be kept and distributed to its members by the Client within 7 (seven) days of each meeting or such longer period as the Client deems reasonable. At least 7 (seven) days’ notice of steering committee meetings must be given to its members unless all members unanimously agree to wave such notice in respect of a particular meeting.

32.4. Where the steering committee has reason to believe that the service provider has not met a service level in terms of this agreement or has not met the Repair Resolution Time, the steering committee will first give the service provider the opportunity to make representations to it before making any final decision in terms of clause 25 of this agreement.