



Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

REQUEST FOR BID

WP11420

PROFESSIONAL SERVICE PROVIDER TO CONDUCT A DUE DILIGENCE STUDY (UPDATING THE 2012 STUDY), DEVELOP A BUSINESS CASE AND PROVIDE IMPLEMENTATION SUPPORT ON RECONFIGURATION OF WATER BOARDS

ISSUE DATE

14 DECEMBER 2022

CLOSING DATE AND TIME

7 FEBRUARY 2023 at 11H00

SUBMIT TENDER DOCUMENT

POSTAL ADDRESS:

DIRECTOR-GENERAL: WATER AND
SANITATION
PRIVATE BAG X 313 PRETORIA, 0001

OR

TO BE DEPOSITED IN:

THE TENDER BOX AT THE
ENTRANCE OF ZWAMADAKA
BUILDING 157 FRANCIS BAARD STREET
(FORMERLY SCHOEMAN STREET)
PRETORIA

TENDERER: (Company address and stamp)



DIRECTIVE TO BIDDERS ON COMPLETION OF SBD FORMS AND PACKAGING OF BID PROPOSAL

The purpose of this document is to guide bidders on the completion of SBD forms and packaging of a Bid Proposals with each document being placed under the correct Annexure.

The last column of the table below (this column must be ticked as an indication that each document and its requirements have been complied with by the bidder

The dates on this all SBD forms must be a date which is within the bid advert period

TABLE OF CONTENTS FOR BID PROPSALS

DOCUMENT	ANNEXURE	DIRECTIVE	COMPLIED/NOT COMPLIED
SDB 1	A	Bidders are required to complete this document in full and be signed off. The date on this form must be a date which is within the bid advert period	
SBD 3.1/3.3	B	Bidders are required to complete the applicable form in full and ensure that the amounts in the document are properly calculated. The total amount (inclusive of VAT) as reflected herein will be regarded as the Total Bid Price. Bidders who are not VAT Vendors are not allowed to charge VAT Bidders are required to constantly verify their TAX Status on CSD to ensure that their task matters are in order	
SBD 4	C	This document must be completed in full. Bidders attention is drawn particularly to paragraph 2.3 which requires the bidder to disclose if the company or any of its directors have interest in other companies whether they have bided or not. Bidders are required to provide all information. Should a bidder have more companies to declare, such information can be provided on a separate sheet in the format prescribed in the form and be attached to the SBD 4. Information captured must be inline with what is captured in the CSD report	
SBD 6.1	D	This document must be completed in full. Bidders are advised to ensure that information captured in this this form is aligned to information contained in the CSD Reports. E.g. Under subcontracting (par 7.1.1) information on whether a company is QSE or EME must be inline with information in the CSD	
BBBEE Certificate/Sworn affidavit	E	Bidders are required to submit a valid BBBEE Certificate or sworn affidavit.	
CSD Report	F	Bidders are requested to provide copies of reg CSD Report.	
Bid Proposal	G	A detailed bid proposal inline with the Specifications must be attached	

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	WP11420	CLOSING DATE:	7 FEBRUARY 2023	CLOSING TIME:	11H00
DESCRIPTION	PROFESSIONAL SERVICE PROVIDER TO CONDUCT A DUE DILIGENCE STUDY (UPDATING THE 2012 STUDY), DEVELOP A BUSINESS CASE AND PROVIDE IMPLEMENTATION SUPPORT ON RECONFIGURATION OF WATER BOARDS				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
TENDER BOX SITUATED AT ZWAMADAKA BUILDING, 157 FRANCIS BAARD STREET, PRETORIA, 0002					
CONTACT PERSON	ZELDA PHIRI	CONTACT PERSON	Sinky Letsholo		
TELEPHONE NUMBER	(012) 336 7954	TELEPHONE NUMBER	(012) 336 8737		
CELL PHONE		CELL PHONE			
E-MAIL ADDRESS	phiriz@dws.gov.za	E-MAIL ADDRESS	letsholos@dws.gov.za		
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER’S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA .
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE.”

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:
(Proof of authority must be submitted e.g. company resolution)

DATE:

PRICING SCHEDULE

(Professional Services)

PROFESSIONAL SERVICE PROVIDER TO CONDUCT A DUE DILIGENCE STUDY (UPDATING THE 2012 STUDY), DEVELOP A BUSINESS CASE AND PROVIDE IMPLEMENTATION SUPPORT ON RECONFIGURATION OF WATER BOARDSNAME OF BIDDER:PROJECT NO: **WP11420**CLOSING TIME: **11:00 AM**CLOSING DATE: **7 FEBRUARY 2023**OFFER TO BE VALID FOR **120 DAYS** FROM THE CLOSING DATE OF BID.

ITEM DESCRIPTION BID PRICE IN RSA CURRENCY (ALL APPLICABLE TAXES INCLUDED)

1. The accompanying information must be used for the formulation of proposals.
2. Bidders are required to indicate a ceiling price based on the total
Estimated time for completion of all phases and including all
Expenses inclusive of all applicable taxes for the project.

R.....

3. PHASE ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT

..... R..... Days

..... R..... Days

..... R..... Days

- 3.1. Travel expense (specify, for example rate/km and total km, class Of air travel, etc.). Only actual costs are recoverable. Proof of the Expenses incurred must accompany certified invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED
AMOUNT

RATE

QUANTITY

.....

R.....

R.....

.....

R.....

R.....

.....

R.....

R.....

TOTAL: R.....

"all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

- 3.2. Other expenses, for examples accommodation (specify, e.g. Three Star hotel, bed and breakfast, telephone cost, reproduction cost, etc.).
On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF EXPENSE TO BE INCURED	RATE	QUANTITY
.....	R.....
.....	R.....
.....	R.....

TOTAL: R.....

4. Period required for commencement with project after
Acceptance of bid

.....

5. Estimated man-days for completion of project

.....

6. Are the rates quoted firm for the full period of contract?
*YES/NO

7. If not firm price period, provide details of the basis on which
Adjustments will be applied for, for example consumer price index.

.....

.....

.....

.....

Any enquiries regarding bidding procedures may be directed to:

Contact Person: Ms Zelda Phiri

Tel: 012 336 7954

E-mail address: phiriz@dws.gov.za

Any enquiries regarding technical information may be directed to:

Contact Person: Mr Sinky Letsholo

Tel: 012 336 8737

E-mail address: letsholos@dws.gov.za

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....

¹ the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

- 2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?
YES/NO

- 2.3.1 If so, furnish particulars:

.....
.....

3 DECLARATION

I, _____ the _____ undersigned,
(name)..... in submitting
the accompanying bid, do hereby make the following statements that I certify to be
true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any

² Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature	Date

.....
Position	Name of bidder

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

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

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

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included)
- a) The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable.

1.2 Points for this bid shall be awarded for:

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

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

1.4

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section

- 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
 - (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
 - (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
 - (f) **“Functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
 - (g) **“prices”** includes all applicable taxes less all unconditional discounts;
 - (h) **“proof of B-BBEE status level of contributor”** means:
 - 1) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act;
 - (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
 - (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

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

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

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) & \text{or} & P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)
 \end{array}$$

Where

- P_s = Points scored for price of bid under consideration
- P_t = Price of bid under consideration
- P_{\min} = Price of lowest acceptable bid

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 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

5. BID DECLARATION

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

6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

6.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)
(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

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

(***Tick applicable box***)

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

7.1.1 If yes, indicate:

- What percentage of the contract will be subcontracted.....%
- The name of the sub-contractor.....
- The B-BBEE status level of the sub-contractor.....
- Whether the sub-contractor is an EME or QSE

(***Tick applicable box***)

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

- Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of
company/firm:.....

8.2 VAT registration
number:.....

8.3 Company registration
number:.....

8.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
 - ☐ One person business/sole propriety
 - ☐ Close corporation
 - ☐ Company
 - ☐ (Pty) Limited
- [TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

8.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
 - ☐ Supplier
 - ☐ Professional service provider
 - ☐ Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]

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

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audialterampartem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution.

WITNESSES

1.

2.

.....
SIGNATURE(S) OF BIDDERS(S)

DATE:

ADDRESS

.....

.....

GOVERNMENT PROCUREMENT GENERAL CONDITIONS OF CONTRACT

NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and**
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.**

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- ☐ **The General Conditions of Contract will form part of all bid documents and may not be amended.**
- ☐ **Special Conditions of Contract (SCC) relevant to a specific bid, should be compile separately for every bid (if (applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.**

TABLE OF CLAUSES

- 1. Definitions**
- 2. Application**
- 3. General**
- 4. Standards**
- 5. Use of contract documents and information; inspection**
- 6. Patent rights**
- 7. Performance security**
- 8. Inspections, tests and analysis**
- 9. Packing**
- 10. Delivery and documents**
- 11. Insurance**
- 12. Transportation**
- 13. Incidental services**
- 14. Spare parts**
- 15. Warranty**
- 16. Payment**
- 17. Prices**
- 18. Contract amendments**
- 19. Assignment**
- 20. Subcontracts**
- 21. Delays in the supplier's performance**
- 22. Penalties**
- 23. Termination for default**
- 24. Dumping and countervailing duties**
- 25. Force Majeure**
- 26. Termination for insolvency**
- 27. Settlement of disputes**
- 28. Limitation of liability**
- 29. Governing language**
- 30. Applicable law**
- 31. Notices**
- 32. Taxes and duties**
- 33. National Industrial Participation Programme (NIPP)**
- 34. Prohibition of restrictive practices**

General Conditions of Contract

1. Definitions 1. The following terms shall be interpreted as indicated:

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

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

2. Application.

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

3. General

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government

4. Standards

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

5. Use of contract documents and information; inspection.

- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights.

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

7. Performance security

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) A bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) A cashier's or certified cheque

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

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or organization acting on behalf of the Department.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or 8 analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract .Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and

open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

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

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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

- (a) Performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) Furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) Performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) Training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

14. Spare parts

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

- (a) Such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and

- (b) In the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) Following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

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

16. Payment

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

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

18. Contract amendments

- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

19. Assignment

- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

20. Subcontracts

- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this 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.

21. Delays in the supplier's performance

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price,

as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) If the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
 - (b) If the Supplier fails to perform any other obligation(s) under the contract; or
 - (c) If the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms 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:
- (i) The name and address of the supplier and / or person restricted by the purchaser;
 - (ii) The date of commencement of the restriction
 - (iii) The period of restriction; and
 - (iv) The reasons for the restriction.

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

- 23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited

from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

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

25. Force Majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

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

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

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

(b) The purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

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

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

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

29. Governing language

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that 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.

33. National Industrial Participation (NIP) Programme

- 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation

34. Prohibition of Restrictive practices

- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

Js GCC (revised July 2010)



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

TERMS OF REFERENCE FOR THE APPOINTMENT OF A PROFESSIONAL SERVICE PROVIDER TO CONDUCT A DUE DILIGENCE STUDY (UPDATING THE 2012 STUDY), DEVELOP A BUSINESS CASE AND PROVIDE IMPLEMENTATION SUPPORT ON RECONFIGURATION OF WATER BOARDS

1. Background

Water Boards are established in terms of the provisions of Chapter 6 of the water Services Act as a body corporate with the powers of a natural person of full capacity. They are subject to the provisions of the Public Finance Management Act (PFMA) and are classified as a schedule 3B entity (National Government Business Enterprise), which requires them to be self-funding. Their primary activity is to provide water services (bulk water and sanitation) to other water services institutions within their approved service area in terms of Section 32(b) of the Act. WB's are required to give priority to their primary functions which must be performed through written contracts with their customers.

In 2007, the then Minister initiated the process of reviewing the institutional framework in the water sector. This Institutional Realignment and Reform project (IRR) was intended to move the water sector forward to achieve the envisaged benefits as reflected in in the 2003 Strategic Framework for Water Services.

The guiding principles for the IRR where:

- “Wall to wall” coverage of the country by Water Sector Institutions (a similar approach to what was envisaged in 1994);
- Reduction of the number of Institutions to ensure economies of scale and improved regulation;
- Ensure clear accountability by addressing the span of control and relationships;
- Strengthen Institutional Capacity in the water value chain;
- Maximise service delivery;
- Impact of water pricing for socio economic growth; and
- Improved revenue collection.

The IRR project recommended the creation of regional water utilities with an expanded set of functions and within an appropriate regulatory and financial framework. It was further recommended that:

- an approach of differentiated establishment of regional water utilities be followed as it is not considered necessary to establish regional water utilities in all areas (wall-to-wall), but it is rather appropriate to establish them on a case-by-case basis as and where necessary based on a needs analysis specific to the regions concerned;
- “Regional” water and sanitation infrastructure be classified in such a way that this will be a direct responsibility of the Minister and will not be under local government control; and
- Regional water infrastructure to include regional water resource and water services infrastructure (including both potable and non-potable water systems).

The proposed primary activities of regional water utilities were to manage regional infrastructure including financing, project development and ongoing operations and maintenance. It was also envisaged that the utilities could also engage in secondary and tertiary activities. The secondary activities being defined as the development and management of local infrastructure which would, under normal circumstances, be the responsibility of WSA's, in the case of potable water, and water user associations (WUA's), in the case of non-potable water. The tertiary activities would include interventions to build capacity in low capacity municipalities, ad hoc interventions in support of WSAs, services to CMAs to assist them with sampling, testing, meter reading, billing etc and Services to DWS.

The outcomes of the IRR project recommended the consolidation of the twelve (12) existing water boards to nine (9). This consolidation included the disestablishment of Botshelo, Pelladrift and Bushbuckridge Water Boards. While the IRR recommended that ultimately the number of Water Boards should be consolidated to four (3) water boards, operating as Regional Water Utilities, the decision in this regard was held in abeyance.

Currently, as the legislation stands, it is not possible to establish an entity called Regional Water Utility (RWUs). Establishing the RWUs would require an amendment to the Water Services Act. However, legislative amendment is unnecessary since there are currently Water Boards in place that can perform the functions envisaged of RWUs.

The financial sustainability of some water boards is in dire stress due to liquidity and debt issues threatening their financial position. This has huge implications on credit ratings and borrowing capability of these entities. As at 30 November 2021, municipalities owed water boards over R14.5 billion of which R9.6 billion was over 120 days and R2.4 billion current. This has exacerbated the operating deficit in the sector which needs to be addressed. Water boards operating in area with low economic activity and with a high proportion of poor people may not be financially viable due to the financial challenges of client municipalities.

In November 2021, the Minister approved process for the reconfiguration of water boards. The purpose of reconfiguration of water boards is to:

- improve institutional in-efficiencies and rationalise the number of institutions in the water sector to ensure economies of scale thereby reducing transactional costs of institutional arrangements with the entire water value chain.
- Maintain financial viability and enhance ability to raise capital from the market for infrastructure projects.
- Maximizing service delivery and improving wall-to-wall coverage of areas unserved with bulk water supply.
- Provide an opportunity for transformation and improved governance, and
- Enable water boards to better support Water Services Authorities (WSAs)

The reconfiguration of water boards will not address the underlying problem of the poor billing and revenue collection and high-water losses of the municipalities in the area. This is a national problem and will be a priority focus area for the Branch: Water Services in future, as part of its development of a more effective intervention strategy.

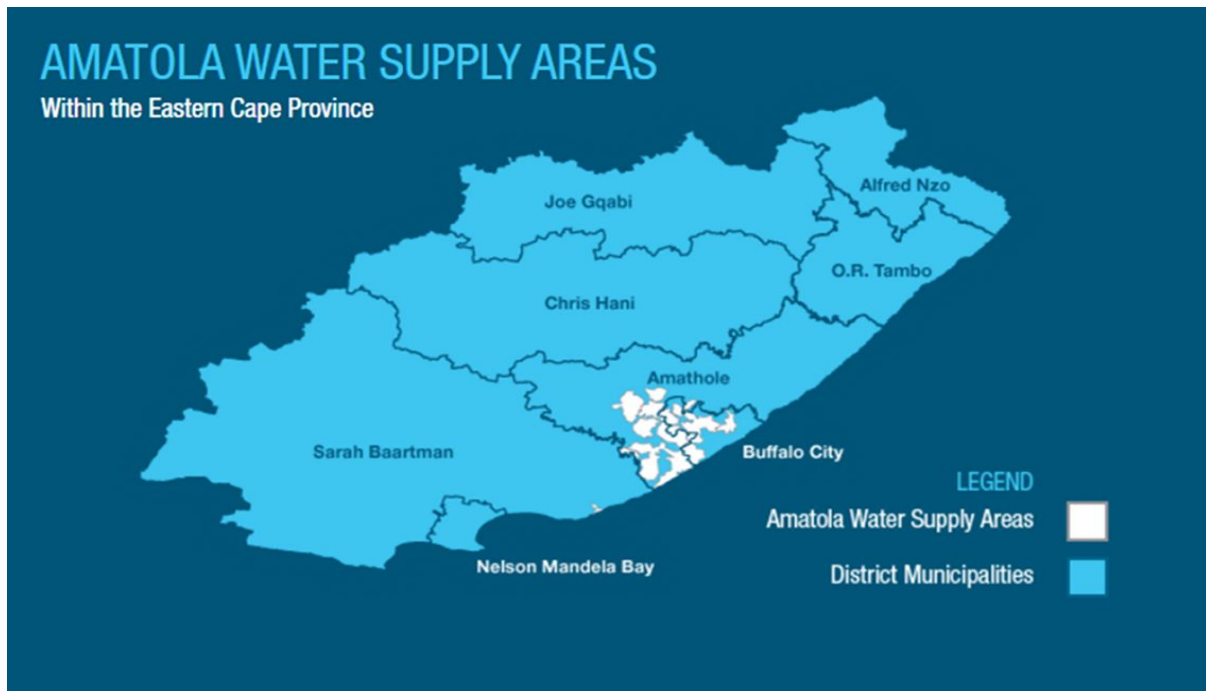
The terms of reference seek to conduct the due diligence report (update the 2012 study) and develop the business case to address current capability and challenges of existing WBs to raise their own capital and revenue and recommendations to address financial viability.

2. Summary of three Water Boards

The three water boards are diverse in relation to both their origins and to their areas of operation and service delivery.

2.1 Amatola Water

Amatola area of operation covers a tract of the central Eastern Cape Province, encompassing most of the Amathole and Chris Hani District Municipalities together with lesser portions of the Joe Gqabi and Sarah Baartman Districts.



2.2 Overberg Water

Overberg Water distributes water to the surrounding and rural areas of Cape Agulhas, Theewaterskloof and Swellendam. It has three (3) water treatment schemes with twenty-two (22) reservoirs which are located across the Overberg region.

3. PROJECT OBJECTIVES

The primary objective of this project is to **update** a Due Diligence Study (**updating the 2012 study**) and **update** a Business Case for the reconfiguration of Water Boards. The PSP will provide detailed analysis, strategic direction, comprehensive advice (technical, operational, financial, institutional, and legal) and support to inform and direct the complex process of the reconfiguration of the Water Boards. This would also include Project Management of all the relevant phases of the project and implementation support.

4. PROJECT SCOPE

4.1 Phase 0: Preparation Phase

During this phase, the Consultant team will prepare an Inception Report confirming their understanding of the scope of work, methodology, timelines, and budget. This report should be submitted within a month after signing the contract.

4.2 Phase 1 (Duration of 2 months from the start date of the project)

Due diligence: Status Quo Study: The PSP will be required to conduct a comprehensive due diligence assessment of **Lepelle, Amatola, and Overberg Water Boards** to determine and consult all relevant stakeholders of the current situation in order to develop the detailed “AS IS” assessments in the water boards.

The detailed due diligence will include the following:

- **Operational and technical (Water and sanitation)**
 - Water resource availability, existing licensed abstractions, over abstractions and projected shortfalls).
 - The current service area and customers.
 - Ministerial Directive
 - Secondary functions
 - Projected demands to meet service delivery needs (short, medium, and long term).
 - All plants and schemes (Water resource, bulk water, and sanitation).
 - Installed capacities vs utilised capacities (*system capabilities and how much is used*).
 - Condition of key infrastructure including status and age infrastructure, and status of Operations and Maintenance (high-level assessment).
 - Extensions to all plants and schemes (committed and planned).
- **Socio-Economic analysis of area service**
- **Financial**
 - Financial Systems
 - Assets and asset values.
 - Current financial viability and sustainability (based on key financial ratios and projections and assessed financial risks).
 - Committed and planned CAPEX.
 - All loans and borrowings (including the latest borrowing limits granted).
 - Debtors/creditors profile.
 - Other contracted financial obligations.
 - Contingent assets and liabilities.
 - Tariff structures.
 - Financial Policies

- **Human Resources**
 - Change management
 - Conditions of service.
 - Organisational organograms (filled and vacant posts).
 - Staffing levels and competency/skills profiles.
 - Skills mix and skills gaps.
 - Pay levels (based on Total Cost to Company) using the Hay Grading methodology or a comparative methodology).
 - Incentive schemes.
 - Staff benefits (Retirement funding, medical aid, leave entitlements etc.).
 - Recognition of Trade Unions/levels of representation and agreements.
- **Business Processes and Systems**
 - The IT platforms and systems used for primary business processes. (financial, operational, maintenance, metering and billing, human resource, payroll, procurement, laboratory analyses, etc.).
 - Telemetry, SCADA, GIS, and asset management systems.
 - Performance management.
 - Risk management.
 - Policies, procedures, and processes.
- **Legal**
 - All key business contractual commitments/obligations including financial (short, medium, and long term).
 - Servitudes and immovable asset ownership (properties etc.).
 - All legal liabilities and outstanding legal matters.
 - The legal positions of (or between) the Water Boards, the Department of Water and Sanitation and the Municipalities.
- Conduct a high-level Assessment of Operational Capability (*“the availability of and effective interface between technical (plant and associated delivery infrastructure), business systems, processes and the human capacity and skills of the Water Board to execute its Strategic Intent and mandate”*).

4.3 Phase 2 Development of Business Case and transitional plan (Duration of 2 months).

Business Case and Transitional plan: The third phase of the project will be directed at the development of the business case for reconfiguration of Water Boards The following should be outlined in detail as Annexures:

- Opportunities for leveraging economies of scale.
- Asset condition ownership and future requirements (this is critical in instances where it is envisaged water board may take over DWS regional schemes/assets).
- Diversity of services provided or required (Water resource, bulk water, bulk industrial wastewater, bulk domestic wastewater).
- Regional demographics, urban/rural mix, social and economic conditions, cross subsidisation etc.
- Financial arrangements (Pricing Strategy, financial projections, financial results, asset transfer).
- Institutional viability and including the financial viability/sustainability of the options, the capacity to raise debt.

- The viability of the retail water services provision functions at municipal level as this will impact on water board viability.
- Human resources management (Transformation imperatives, human resource, and transformation imperatives). Capacity and skills availability etc. in the sector/entities. Transfer of staff and labour related complexities.
- Transition and Transfer Considerations -Under this section, due consideration should be taken of the existence of the water boards that must be consolidated to progressively evolve into regional water utilities. The proposed transitional arrangements should not destabilise service delivery.
- Options for the Institutional Model with recommendations for the preferred option.
- Identification of and stakeholders that will be impacted upon if the option is implemented and the nature of the impacts.
- Functional and organisational design issues (organograms, redefinition, and alignment of job descriptions). Current human capacity versus future capacity requirements must be mapped out clearly
- Human resource management systems in particular proper management of performance, personnel records (leave, implications on pension and how this will be managed, existing skills development plans and performance management).
- Legal processes and implications relating to the disestablishment of water boards and establishment new entities.
- Risk analysis and indicators (Risk analysis)
- Operational and service delivery indicators
- Implementation considerations
- All assets and ownership.

4.4 Draft report, host a workshop with affected Water Boards to discuss and inputs and update with comments received from key stakeholders (Duration of 1 month)

4.5 Phase 3: Approval processes duration: 1 month

Provision of reports and information in detailed and summary form, including presentation documents. This phase allows for preparation of documents to NT DPSA, Cabinet, and the Portfolio Committee.

5. REQUIRED SKILLS

This assignment requires a Multi-disciplinary team consisting of specialists with the following competencies:

- Sound understanding of the Water Sector in the context of Legislation, Policy, Institutional arrangements, and performance of state-owned entities.

- An understanding of the current government (National, Provincial and Local) structures legislation, policy, and objectives).
- Sound financial business acumen and ability to analyse financial performance, viability, sustainability and understanding of financial markets, credit rating and borrowings for state entities.
- Strong technical experience and engineering of infrastructure service delivery industries and water services.
- Stakeholder Management skills and experience.
- Experience in establishing and dis-establishing state owned entities. Ability to conduct comprehensive due diligence, roadmap for the establishment of the new business and manage the transition.
- Change management and communication skills.
- Extensive experience in human capital including the development of organisational designs, job profiles, grading and matching and placing.
- Risk and Legal specialists to ensure compliance with all legislation and governance principles.
- Exceptional project management skills.

The deployment of the above skills should be coupled with the ability to plan, lead, and facilitate a change management plan to ensure a smooth transition within the Water Boards. This pool of skills should be supported by expertise in project management to enhance the success in the running of the project. Above all, understanding of water supply operations and maintenance, legal and contractual management, and ability to conduct due diligence is of primary importance.

6. METHODOLOGY

The PSP will be required to develop a clear and detailed methodology on how they will undertake each Phase of this project. The methodology must reflect the PSP's understanding of the complexities of the water sector, the entire water value chain (Water resource and services), and Water Board's and Water Services Authority functions and mandate as well as relevant statutory requirements and processes to disestablish water boards. The methodology must be based on a collaborative and participatory approach incorporating all relevant stakeholders.

7. PROJECT GOVERNANCE

The project will be managed by the Director: Water Service Institutions Management together with his/her team on behalf of the client (DWS). The PSP will indicate the Project leader for this project.

8. TIME FRAMES

The duration of this project is **6 months** from the date of the signing of the contract with the PSP.

9. EVALUATION CRITERIA

Department of Water and Sanitation will evaluate all proposals received in terms of the Preferential Procurement Policy Framework Act, Act No 5 of 2000. A copy of the act can be downloaded from www.treasury.gov.za. In accordance with the act, submissions will be adjudicated on a 80/20 points system and the evaluation criteria. A four-phase evaluation criteria will be considered in evaluating the bid.

Phase 1: Prequalification Criteria

Phase 2: Administrative Compliance

Phase 3: Functional / Technical Evaluation

Phase 4: Points Awarded for Price and Preference for Broad Based Black Economic Empowerment (BBBEE)

Phase 1: Prequalification Criteria

The following prequalification criteria will be applicable:

Only bidders with a BBBEE Status Level of Contributor Level 1 or 2 will be considered for this bid:

NB: Bidders who do not qualify with the prequalification criteria will be disqualified and not considered for phase 2.

Phase 2: Administrative Compliance

Bidders are required to comply with the following listed below

No	Criteria
1	Companies must be registered with National Treasury's Central Supplier Database. Provide proof of print out from CSD
2.	Tax compliance with SARS (to be verified through CSD and SARS)
3.	Complete, sign and submit SBD 1, SBD 3.3, SBD 4, SBD 6.1
4.	General Conditions of Contract (GCC)

Phase 3: Functional /Technical Evaluation

The bidder is expected to achieve a minimum required score of **70%** for functionality to qualify for further evaluation. Bids that do not meet the minimum required score will be disqualified. The Functional/Technical criteria are:

Criteria	Sub-Criteria	Points Value	Weight
Team capability	The team should have a minimum of five years' experience in undertaking similar projects relating to: <ul style="list-style-type: none"> analysing financial performance, viability, sustainability and understanding of financial markets, credit rating and borrowings for state entities conducting due diligence, roadmap for the establishment of the new business Experience in managing compliance with all legislation and governance principles Experience in consulting with multiple stakeholders <p>It is required that the PSP attaches CVs of the team members, which illustrates their experience, with at least two contactable references, as proof)</p>		25%
	All team members with five years' experience or more in the above-mentioned areas of expertise	5	
	80% team members with five years' experience in the above-mentioned areas of expertise	4	
	60% team members with five years' experience in the above-mentioned areas of expertise	3	
	40% team members with five years' experience in the above-mentioned areas of expertise	2	
	20% team members with five years' experience or less in the above-mentioned areas of expertise	1	
Track Record	<p>Bidder to refer to the successful completion of previous relevant projects in the following areas completed in the last ten years:</p> <ol style="list-style-type: none"> 1. Development of due diligence and business case, 2. Development of organizational designs, 3. Risk and legal, 4. Reconfiguration of government entities, and 5. Assets Management and Accounting. <p>Attach a minimum of three (3) testimonials of companies where similar projects have been completed in the last</p>		25%

	10 years.		
	All 5 items above and three testimonials included.	5	
	Item 1, 2, 3 and 4, and three testimonials included.	4	
	Item 1, 2, and 3 and three testimonials included.	3	
	Item 1 and 2, and less than three testimonials included	2	
	Any 1 item above included, and less than three testimonials included	1	
Qualifications of a Team Leader	<p>Team Leader should have qualifications as outlined below (Attach certified copies of qualifications and Professional Registration as proof)</p> <ul style="list-style-type: none"> • Master of Engineering (M.Eng.)/ MTech in Engineering • BSc degree in Engineering/ B Tech degree in Engineering • National Diploma in Engineering • Registration with Engineering Council of South Africa (ECSA) as Professional Engineer 		15%
	Team leader with a Master of Engineering (M.Eng.)/ MTech in Engineering and registered with Engineering Council of South Africa (ECSA) as Professional Engineer	5	
	Team leader with a BSc degree in Engineering/ B Tech degree in Engineering and registered with Engineering Council of South Africa (ECSA) as Professional Engineer	4	
	Team leader with a National Diploma in Engineering and registered with Engineering Council of South Africa (ECSA) as Professional Engineer	3	
	Team leader with above mentioned qualifications and registered with Engineering Council of South Africa (ECSA) as candidate Engineer	2	
	Team leader with no mentioned qualifications and not registered with Engineering Council of South Africa (ECSA)	1	
Qualification of Other Team Members	<p>Other Team Members should have qualifications and certification as per below (Attach certified copies of qualifications and certification as proof):</p> <ul style="list-style-type: none"> • Master of Engineering (M.Eng.)/ MTech in Engineering and registered with Engineering Council of South Africa (ECSA) as Professional Engineer • BSc degree in Engineering/ B Tech degree in Engineering 		10%

	<ul style="list-style-type: none"> • Bachelor's Degree in financial management and registered with South African Institute of Chartered Accountants (SAICA) • Legal & Compliance: LLB • Business Performance Management and corporate governance: Master of Business Administration (MBA/MBL) 		
	Team Members with a Master of Engineering (M.Eng.)/ MTech in Engineering and registered with Engineering Council of South Africa (ECSA) as Professional Engineer	5	
	Team Members with BSc degree in Engineering/ B Tech degree in Engineering, Bachelor's Degree in financial management and registered with South African Institute of Chartered Accountants (SAICA), LLB and Master of Business Administration (MBA/MBL)	4	
	Team Members with National Diploma in Engineering and registered with Engineering Council of South Africa (ECSA) as Professional Engineer	3	
	Team with above mentioned qualifications and not registered with Engineering Council of South Africa (ECSA) as candidate Engineer and not registered with the South African Institute of Chartered Accountants (SAICA)	2	
	Team with no above-mentioned qualifications	1	
Methodology	<p>The bidder must demonstrate an understanding of the ToR, clarity, and conceptualization of methodology.</p> <p>Project plan and broad methodologies in line with the task descriptions outlined under project scope/ task description, with clear milestones and timeframes for each task to be completed.</p> <p>The following items must be clearly indicated in detail:</p> <ol style="list-style-type: none"> 1 Project Control Plan 2 Project Execution Plan 3 Broad methodologies in line with the task descriptions outlined under project scope/ task description. 4 Clear milestones, and timeframes for each task to be completed. 5 Evaluation and supervision of work 		20%
	All 5 items above included.	5	
	Item 1, 2,3 and 4, included.	4	
	Item 1, 2, and 3 included.	3	
	Item 1, and 2 included.	2	
	None of the items above are be included	1	

Capacity Building	The Department requires the potential PSP to attach:		5%
	1. Capacity building Plan for officials (DWS and Water Boards) on the technical aspects to be undertaken as part of this project.		
	2. Guidelines for water boards on how to undertake due diligence		
	3. Workshops with the affected water boards to discuss draft due diligence report		
	All items above are included in the capacity building plan	5	
	Capacity building Plan for officials (DWS and Water Boards) on the technical aspects to be undertaken as part of this project not included	4	
	Guidelines for water boards on how to undertake due diligence not included	3	
	Workshops with the affected water boards to discuss draft due diligence report not included	2	
	One item above are included in the capacity building plan	1	
TOTAL			100%

Phase 4: Points Awarded for Price and Preference Point System for BBBEE

During this phase, bidders will be further evaluated based on 80 points for price and 20 points for attaining the B-BBEE Status Level of Contributor in accordance with the table indicated under SBD 6.1.

Evaluation element	Weighting (Points)
B-BBEE	20
PRICE	80
Total	100

The 80/20-point system will be used in evaluating all proposals.

Price

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

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

Where:

P_s = Points scored for comparative price of bid under consideration
P_t = Comparative price of bid under consideration
P_{min} = Comparative price of lowest acceptable bid

Preference Point System (B-BBEE Status Level of Contribution)

In terms of Regulation 5(2) and 6(2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of Points (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-Compliant contributor	0

10. CONDITIONS

- Bidders are requested to provide a clear agreement regarding joint ventures/consortia. The percentage involvement of each company in the joint venture agreement should be indicated on the agreement.
- Bidders are requested to provide separate financial and technical proposals.
- The DWS will become the owner of all documentation and the deliverables produced within the context of this tender. All information should be treated with confidentiality and may not be published, either during the currency of the agreement or thereafter without the prior consent of the department.

11. FURTHER INFORMATION

For further Technical information please contact
Mr Sinky Letsholo
Director: Water Service Institution Management
(012) 336 8737
Letsholos@dws.gov.za

For Supply Chain Management please contact
Ms Zelda Phiri
(012) 336 7954
phiriz@dws.gov.za

Detailed documents on Water Boards and the 2012 study will be made available.