

PURPOSE OF THE CLARIFICATION NOTE:

The purpose of this Clarification Note is to issue an addendum and/or respond to queries received from the Bidders, through correspondence in respect of the above-mentioned tender notice issued by the eThekweni Municipality for contract no. WS 7795.

S/N	Doc & Section	Question and/or Suggestions	Clarification from Municipality
1.	RFP Phase 1 Vol. 1 - 1.1 - Glossary Terms, Page 18.	<u>Closing time</u> - As per the definition of the Proposal Submission Date, Bidders are required to submit their Proposals on 9 August 2024. At the same time on the Cover Page of the RFP, the Closing Time is specified as 8 November 2024. Please clarify which date to refer to.	The Bid submission deadline is 8 November 2024. The date referenced on Volume 1 page 18 will be amended in the revised Phase 2 document.
2.	RFP Phase 1 Vol. 1 1.1 - Glossary Terms, Page 13.	<u>Definition</u> - Debt Provider definition means any bank or lending financial institution in South Africa, registered in terms of the Banks Act, 94 of 1990 and/or regulated by the Financial Sector Conduct Authority, or any development finance institution in South Africa. Does this mean we are not able to engage with DFI's who are able to provide local currency but not registered in South Africa?	Bidders are allowed to engage with international and local lenders/DFI's for funding of the PPP project. The definition of debt providers will be broadened to include international funding providers (including international DFI's) in the revised Vol. 1 for Phase 2.
3.	RFP Phase 1 Vol. 1 1.1 - Glossary Terms, Page 18.	<u>Reserved Bidder</u> - What is the function of the Reserved Bidder and how does it apply to the selection process?	The Reserve Bidder refers to a Bidder who will be selected to be on standby in case the Preferred Bidder (winning bidder) is unable to fulfill the terms of the contract. The definition of the Reserve Bidder will be included in the revised Volume 1 for Phase 2.
4.	RFP Phase 1 Vol. 1 Clause 6.3.	<u>Procurement Program</u> - Why the Response Submission Date (4) and Submission of Respondent comments and mark-up to RFP Phase 1 Volume 2 and Respondent Information Form (5) are two different line items which are happening in different months if they bear the same meaning as per the definition of the Responses Submission Date?	The Response Submission Date is scheduled is the deadline for interested parties to submit the Respondent Information Form (Appendix 1) and the marked-up contracts. The bidders comment is noted and will be clarified in the documents for the Phase 2.

5.	RFP Phase 1 Vol. 2 Definitions – Page 4.	<u>Billing Period</u> - As per the definition of the Billing Period it is unclear, will the periods start 1 month from the day of COD or end of the month for the first billing period and further end of every other subsequent month. Please clarify.	Bidders are invited to submit their suggested drafting as a mark-up to the tender documents as part of the RFP Phase 1 optimization process.
6.	RFP Phase 1 Vol. 2 Definitions – Page 27.	<u>Reuse Water Supply Pipeline</u> - The definition of the Reuse Water Offtaker includes "... (b) any other party designated as such by the Municipality and the Concessionaire", considering that the Concessionaire will be obliged to lay the pipeline to transport the Reuse Water to the Reuse Water Offtakers, it will require to know the exact number of Reuse Water Offtakers and their locations prior to the Proposal Submission Date to provide sufficient time for the evaluation. On the other hand, please clarify how the Concessionaire can propose or designate a party to be the Reuse Water Offtaker.	There is currently one off-taker (SAPPI), for the 11 MLD of industrial reuse water from the new Umkomaas plant, with the Concessionaire to develop and utilize the Reuse Water Supply Pipeline (RWSP) to discharge at the reuse water delivery point. For the new Umdloti plant, the Concessionaire may negotiate and enter its own terms for offtake options with third parties.
7.	RFP Phase 1 Vol. 2 Definitions – Page 32.	<u>Unforeseeable Artificial Underground Object</u> - The definition of the Unforeseeable Artificial Underground Object means <i>any underground services or foundations or other artificial objects or constructions located under the Sites (other than Heritage Resources), the presence of which could not have reasonably been discovered through the investigations conducted by or on behalf of the Concessionaire or [the / each] EPC Contractor using Good Industry Practices prior to the Signing Date to establish the geotechnical and hydrological conditions at the Sites and the consequent design requirements of the Facilities.</i> Given that the Signing Date as per the Programme (clause 6.3 of the RFP Phase 1 Volume 1) should occur 1 month after the Announcement of the Preferred Bidder and the fact that the Concessionaire will not be able to engage the EPC Contractor and	Bidders are required to employ all reasonable effort and Good Industry Practice to acquaint themselves as best as possible with the site conditions, to underpin submission of an informed Bid. No changes are suggested for this clause and the Signing Date will be retained. This is because the Bidder would not be entitled to an adjustment in price and time if changed to the Effective Date. Bidders are invited to submit suggested drafting as a mark-up to the tender documents as part of the RFP Phase 1 optimization process.

		<p>conduct necessary studies in this time, we would propose to change the definition in the following way:</p> <p><i>Unforeseeable Artificial Underground Object means any underground services or foundations or other artificial objects or constructions located under the Sites (other than Heritage Resources), the presence of which could not have reasonably been discovered through the investigations conducted by or on behalf of the Concessionaire or [the / each] EPC Contractor using Good Industry Practices prior to the Effective Date to establish the geotechnical and hydrological conditions at the Sites and the consequent design requirements of the Facilities.</i></p>	
8.	RFP Phase 1 Vol. 2 Clause – 6.7 (a).	<p><u>Hazardous Substances and contamination</u> - The clause 6.7 (a) says "If the Concessionaire encounters any Hazardous Substances or unexploded ordinance on any Site or Adjoining Property, the presence of which is not attributable to the Concessionaire or any Concessionaire Related Party and which could not reasonably have been discovered through the investigations conducted by or on behalf of the Concessionaire using Good Industry Practices prior to the Signing Date, the Concessionaire shall promptly give the Municipality notice in writing describing such Hazardous Substances or unexploded ordinance in reasonable detail".</p> <p>Given that the Signing Date as per the Programme (clause 6.3 of the RFP Phase 1 Volume 1) should occur 1 month after the Announcement of the Preferred Bidder and the fact that the Concessionaire will not be able to engage the EPC Contractor and conduct necessary studies in this time, we would propose to change it in the following way:</p> <p><i>If the Concessionaire encounters any Hazardous Substances or unexploded ordinance on any Site or</i></p>	Refer to the response to Question 7.

		<i>Adjoining Property, the presence of which is not attributable to the Concessionaire or any Concessionaire Related Party and which could not reasonably have been discovered through the investigations conducted by or on behalf of the Concessionaire using Good Industry Practices prior to the Effective Date, the Concessionaire shall promptly give the Municipality notice in writing describing such Hazardous Substances or unexploded ordinance in reasonable detail". Given that the Signing Date as per the Programme (clause 6.3 of the RFP).</i>	
9.	RFP Phase 1 Vol. 2 Clause – 3.5 (c).	<p><u>Termination Payment</u> – As per the clause 3.5 (c), the Concessionaire will be entitled to payment of the reasonable and direct development costs incurred by the Concessionaire up to the date of termination, but subject to the maximum amount equal to the sum of the value of the Bid Bond Amount.</p> <p>Based on the previous projects in the developing markets, the developments costs incurred until the Effective Date is usually higher than the Bid Bond Amount and hence, we would appreciate if the EWS can consider a cap of USD 4 mln equivalent of ZAR.</p>	The RFP Volume 1 – clause 7.5.1. states that each respondent / bidder shall bear all costs associated with the preparation and submission of its proposals. We are unable to consider this request and the original amount indicated in the RFP Volume 1 shall be retained.
10.	RFP Phase 1 Vol. 2 Clause – 3.2.	<p><u>Reimbursable Grant</u> – As per the clause 3.2, the Concessionaire shall pay to IFC Advisory the Reimbursable Grant (USD 1.45 mln) on the Signing Date.</p> <p>This is not a market practice, and we would propose to split the payment term into two equal installments on the Signing Date and Effective Date.</p>	We are unable to accept this request, due to a combination of factors, which include the potential risk of perceived conflict of interest. The original amount and terms of payment of the Reimbursable Grant shall be retained. No amendments will be introduced, and the Reimbursable Grant shall remain due upon signing.
11.	Concession Agreement clause 4.1 (b)	<u>Performance Bond</u> - Performance Bond terms and amount are missing from the Concession Agreement.	The terms of the Performance Bond will be defined and included in the Phase 2 tender documents.
12.	RFP Phase 1 Vol. 2 Clause – 7A.9 (c).	<u>Transfer of RSCS</u> - As per the clause 7A.9 (c), "...the first instalment payable by the Municipality to the Concessionaire upon signing by the Parties and Transco of the relevant protocol of transfer specified in	i. We have taken note of the incorrect reference to Transco and will address this in the Phase 2 documents.

		<p><i>Clause 7.13(d) (Extension of Time) below and the following three (3) instalments payable on each of the next three (3) anniversaries thereof."</i></p> <p>i. Kindly clarify who is Transco in this agreement.</p> <p>ii. Additionally, presumably reference to clause 7.13 (d) should be fixed and refer to clause 7A.9 (d) as the current reference does not specify any transfer protocol. Please clarify.</p>	<p>ii. We have taken note of the incorrect reference and will amended this to 7A.9 (d) in the revised phase 2 documents.</p>
13.	RFP Phase 1 Vol. 2 Clause – 8.1 (a).	<p><u>Independent Certifier</u> - Given the scope of the Independent Certifier provided in Schedule 19 (Schedule 1), we would propose to postpone the appointment of the advisor to post Effective Date.</p>	<p>The current timeframe for appointment of the Independent Certifier (IC) within 60 Business Days of the Signing Date and appointment of the IC is a CP to the Effective Date.</p> <p>The requirement for the IC to be appointed before the Effective Date will be retained, with the form of Independent Certifier Agreement (ICA) provided in Schedule 19 to specify that the IC's obligations under the ICA commence on the Effective Date of the Concession Agreement. Schedule 19 will be amended for clarity.</p>
14.	RFP Phase 1 Vol. 2 Clause – 25.3 (a).	<p><u>Typo</u> - Presumably there is a typo in clause 25.3 (a) "<i>With effect from the Effective Date, the Concessionaire shall not enter into, amend, vary of supplement (or grant a waiver in respect of) any Financing Documents without the consent of the Municipality, if such amendment, variation, supplement or waiver would result in an increase of the Senior Debt (a "Refinancing"). The Concessionaire shall not, in any circumstances, unreasonably withhold or delay such consent to such Refinancing.</i></p> <p>The Concessionaire should not be the approving party for the Refinancing.</p>	<p>We have taken note of the incorrect reference and will amend this to read the Contracting Authority (also eThekweni Municipality).</p>

15.	RFP Phase 1 Vol. 2 Clause – 25.4 (b) (iv).	<p><u>Minimum Interest</u> - The Concession Agreement restricts the Anchor Sponsors to transfer any part of their Interest in the Concessionaire.</p> <p>Please clarify if minority transfers of interest can be permitted, in case the Anchor Sponsors continue to jointly hold majority interest?</p>	To clarify, prior to the 5-year anniversary, prior consent is required from the Municipality for the anchor sponsor and/or the technical partner to transfer part of their interests in the Concessionaire, including for minority transfers.
16.	RFP Phase 1 Vol. 2 Clause – 25.4 (b)(iv).	<p><u>Transfer of Interest</u> - This is not a market practice to limit the transfer of any interest from Anchor Sponsor or Technical Partner for five years after the PCOD and we would propose to change this number to two years after PCOD to give flexibility to the Sponsors.</p>	The Anchor Sponsor and Technical Partner will be allowed to transfer their interests in the Concessionaire during this period but only with prior consent from the Municipality. Please also refer to the response to Question 15.
17.	RFP Phase 1 Vol. 1 – 1.3.6 & Vol. 2 – Schedule 2, Clause 13.	<p><u>Term of the Project</u> - As per the clause 1.3.6 of the RFP, the Term of the Project shall be 32 years when as per the Schedule 2 of the Concession Agreement, the Term is 30 years after Effective Date. Please clarify.</p>	<p>To clarify: Volume 1, Clause 1.3.6 of the RFP indicates that the Project Term includes a maximum of 32 years, which encompasses the design and construction phase in addition to the operational period for delivering the project.</p> <p>Volume 2, Schedule 2 (Line 13) specifies that the Expiry Date is set at "Thirty-Two (32) years plus any extension to the Term granted in accordance with Clauses 27.2, 27.4 or 27.5 after the Effective Date."</p> <p>Volume 2, Clause 3.9 further clarifies that the Term begins on the Effective Date and ends on the Expiry Date, which is 30 years following the Project Commercial Operation Date. This means that the 32-year period mentioned includes up to 2 years for the design and construction phase, with the subsequent 30 years dedicated to operations.</p> <p>It is important for bidders to distinguish between the "Project Term," which is the total maximum duration of the project including design</p>

			and construction, and the "Contract Year," which refers to each annual period within the operational phase of the Term.
18.	RFP Phase 1 Vol. 2 Schedule 10, Clause 9.4.	<p><u>Penalty for Delay</u> - As per the clause 9.4 of the Schedule 10 of the Concession Agreement, the Concessionaire will be penalized for each day of delay in submitting the Economic Development report by R50,000.</p> <p>We understand that the intention of the penalty is to incentivize the Concessionaire to submit it on time, however the clause does not exempt the Concessionaire in cases of the risk events.</p> <p>We would propose to:</p> <ul style="list-style-type: none"> - Have a cap on the maximum penalty; - Reduce the daily rate to R20,000 (same as the LDs for the delay in decommissioning of the existing plants); - Include the exemption conditions or extension of the reporting period. 	<p>The original amount and terms of payment of the Penalties for delays in submitting the Economic Development Report shall be retained, with no new amendments introduced.</p> <p>Bidders are invited to submit suggested drafting as a mark-up to the tender documents as part of the RFP Phase 1 optimization process.</p>
19.	(General).	<p><u>Refinancing Gain</u> - The refinancing gain calculation takes into account average of principal, interest, fees and expenses.</p> <p>Please clarify if this is the simple average of the aforementioned costs over the remaining tenure of the debt?</p>	The Bidders statement is correct.

20.	RFP Phase 1 Vol. 2 Clause – 6.5(f).	<u>Heritage Resources</u> - The discovery of Heritage Resources can only occur during the excavation works on site, and it would trigger the Relief Event only in case the Heritage Resource could not be reasonably discovered during the site due diligence considered in clause 6.2. Please clarify what is the expected timeline to conclude on this due diligence (i.e. Signing Date or Effective Date)?	This Bidder's site due-diligence should conclude by the signing date. See also responses to Question 7 & 8.
21.	RFP Phase 1 Vol. 2 Clause – 1.1.	<u>Planning and design experience</u> - Given the similarities in technical specifications and challenges between raw water and raw sewage transmission, we believe that our experience in raw water transmission is highly relevant, we request amending the required experience to include raw water transmission as being included in the construction experience 2.1	No changes to the qualifications criteria shall be introduced mid-way through the tender process. The evaluation criteria shall remain as originally stated.
22.	RFP Phase 1 Vol. 2 Chapter D Evaluation 9.2.	<u>Stage 1: Evaluation of Completeness and Compliance</u> - Since the tender is open to international bidders, we kindly request the waiver of the registration requirements with local authorities at the bidding stage. It is our understanding that it is standard practice to provide local registration documentation and meet the related requirements at the Special Purpose Company (SPC) level, which will be established as a local entity. International bidders will provide equivalent evidence and documentation to demonstrate their qualifications.	This clause will be amended to clarify that the members of each Bidding JV/Consortium will be required to submit their respective certificates of incorporation. The earlier requirement for the CIPC Company Registration Certificate for the SPV shall instead become one of the Conditions Precedent (CPs).
23.	(Commercial).	<u>Tariffs</u> - Please provide electrical tariff / Kw applicable for STPs operation in the region.	The Municipality's 2024/25 tariff booklet has been uploaded to the VDR. Bidders are expected to confirm the application costs for the

			connection at the greenfield sites. 3-months of historical electricity usage/bills for the existing plants have been uploaded to the VDR.
24.	RFP Phase 1 Vol. 2 Clause – 7.15.	<u>Bid Bond</u> - The bid bond amount stipulated in the RFP Phase 1 Volume 1 differs from the amount specified in the Concession Agreement (R30 mln and R3 mln respectively). Please clarify the correct amount.	The bid bond amount is confirmed to be R 30,000,000 (R 30 million). The tender documents will be amended accordingly for the Phase 2.
25.	RFP Phase 1 Vol. 2 Clause – 7.15. (Commercial).	<u>Bid Bond</u> - In case of a consortium, whether a single consolidated Bid Bond is needed or 2 separate Bid Bonds can be issue by the 2 sponsors?	Members of bidding JVs / Consortiums are requested to submit a single bid bond.
26.	RFP Phase 1 Vol. 2 Clause – 10.3 (b). (Commercial).	<u>Reuse Water</u> - As per the clause 10.3 (b), the Concessionaire shall sell Reuse Water to Reuse Water Offtakers. Other than for SAPPI, is the Concessionaire responsible for the billing and collection to the Reuse Water Offtakers? Please clarify.	The Concessionaire is allowed to enter and negotiate offtake agreements with third parties for the Umdloti plant. See response for Question 6.
27.	RFP Phase 1 Vol. 2 Clause – 27.1 (g). (Commercial)	<u>Reduction of Tariff</u> - Clause 27.1 (g) states " <i>During the continuance of any event of Force Majeure which occurs on or after any Commercial Operation Date, the Tariff payable in respect of such period shall be reduced during such period after taking account of the effects of such event of Force Majeure.</i> " Given that Concessionaire will still be required to make the senior debt and O&M payments during the FM event, please explain the rationale behind the clause	Under a Force Majeure event, both parties will be required to agree on the extent of the compensation required. In principle, compensation would include compensation for the Capacity and Fixed Operating Charges.

		and specify which tariff components are expected to be reduced.	
28.	RFP Phase 1 Vol. 2 Clause – 28.3 (a). (Commercial)	<p><u>Savings</u> - Clause 28.2 (a) states "<i>If, as a result of a Change in Law, the Concessionaire realizes any Savings, the Municipality shall be entitled to receive the benefit of all Savings from the Concessionaire so as to put the Municipality in a neutral financial position which reflects in it deriving neither gain nor loss as a consequence of the relevant events of circumstances giving rise to the Savings. The allocation of the Savings shall be by way of a reduction in the applicable monthly instalments of the Contract Price or as the Parties may otherwise agree</i>".</p> <p>Please clarify if the intention of this clause is to keep Municipality neutral in terms of its financial position in case the Change in Law affects it. In case it will not, the Concessionaire will be entitled to receive all Savings from such Change in Law.</p>	Correct, the intent of this provision is for the Municipality to be placed in a neutral financial position.
29.	RFP Phase 1 Vol. 2 Clause – 28.4 (a). (Commercial)	<u>Increased Cost Threshold</u> - The Increased Cost Threshold stipulated in Schedule 2 (ZAR 20,000,000) of the CA is higher than what have been observed in other concessions. In this regard, we would propose to change it to USD 50,000 per year.	Bidders are invited to submit their suggestions as a mark-up to the tender documents as part of the RFP Phase 1 optimization process.
30.	RFP Phase 1 Vol. 2 Schedule 7, Clause 2. (Commercial)	<u>Tariff Indexation</u> - The tariff indexation formula restricts the CPI inflation using a constant of 70%, provided that all payments will be made in ZAR, we would expect the inflation risk to fully passthrough. Please clarify.	The concessionaire will be compensated in full for the inflation hence the 70% will be deleted (or replaced with a 100%) in the revised agreement for the phase 2.

31.	RFP Phase 1 Vol. 2. (Commercial).	<p><u>Availability Penalty Deductions</u> - The Capacity Charge deductions for non-availability are subject to Price index (Plx). Provided that the Capacity Charges are not indexed in the tariff formulae, we would expect similar approach in penalty deductions as well.</p> <p>Please also clarify the rationale behind the 0.25 constant included in the formulae.</p>	Bidders are invited to submit their suggestions as a mark-up to the tender documents as part of the RFP Phase 1 optimization process.
32.	RFP Phase 1 Vol. 2 Schedule 8, Clause 5.1. (Commercial).	<p><u>Penalty Deductions for failure to meet the Discharge Standards</u> - The same concept is applied for the Capacity Charge deductions for not meeting the Discharge Standards (i.e. application of the Price Index and constant of 0.25/0.125). Kindly clarify the rationale behind it.</p>	These inconsistencies have been noted and will be clarified in the revised agreement for the phase 2.
33.	RFP Phase 1 Vol. 2 Schedule 9, Clause 5. (Commercial).	<p><u>Debt Prepayment Premium</u> – As per the clause 5.1 of Schedule 9 of the Concession Agreement, the Municipality shall cover the interest swap and/or hedging breakage costs and include it as part of the Termination Payment for Concessionaire EoD. Similarly, based on the market practice, it is expected that any prepayment premiums or penalties shall be paid to the lenders.</p> <p>Furthermore, the interest swap and/or hedging breakage costs shall not be deducted from the Termination Payment A, as this can potentially lead to partial cover of the Senior Debt.</p>	<p>Prepayment penalties are included as part of the Schedule 9 - Termination Costs (d).</p> <p>Bidders are invited to submit their suggested drafting as a mark-up to the tender documents as part of the RFP Phase 1 optimization process.</p>

34.	RFP Phase 1 Vol. 1 Clause – 5.2.6. (Finance).	<u>Debt Reduction</u> - Clause 5.2.6 stipulates that " <i>Bidders shall note the implication of debt reduction on account of the proposed Transfer of Transmission Pipeline</i> ". As the pipeline can be financed using a short-term debt instrument having different terms than the STPs, would the debt reduction be proportional? or bidders would have flexibility to choose the leverage	Bidders retain the flexibility to choose their respective leverage levels and funding structures. Municipality payments for the RSCS will be across four equal payments from commissioning and are not to be double counted within the project tariffs for the operations phase. Bidders are requested to refer to Schedule 7: Determination of Payments of the agreement
35.	RFP Phase 1 Vol. 1 Clause – 5.2.5.	<u>Foreign Currency</u> - Clause 5.2.5. (a) says: There is no restriction on the choice of currency in which finance might be raised by a Bidder and any associated investment. In the event that any currency other than the South African Rand is utilized, clear statements must be made about the exchange rates used and the basis of those exchange rates and any hedging structures that will be introduced. Considering that clause 3.6.2 requires that financial commitments need to be denominated in Rands while clause 5.2.5 provides flexibility to have foreign currency, can you please clarify if the intention is to secure financing only in local currency or are Bidders allowed to secure financing in foreign currency (USD/EUR) as well.	Bidders are allowed to secure financing in foreign currency including USD and EUR. However, all payments from the Municipality to the Concessionaire will be calculated and denominated in South Africa Rands as per the Schedule 7: Determination of Payments of the agreement.
36.	RFP Phase 1 Vol. 1 Clause – 3.6.3.	<u>Government Guarantee</u> - Clause 3.6.3 says that No government guarantee will be furnished by the provincial government of Kwa-Zulu Natal, or the Government to the Successful Bidder, or any of its shareholders, or Debt Provider(s). Provided there is no government guarantee, will a letter of comfort be	Having considered the Local Government Municipal Finance Management Act No. 56 of 2003 ("MFMA") and the Public Finance Management Act No. 1 of 1999. ("PFMA"), and – in particular - section 66(1) of the PFMA, it has been confirmed that "it is not

		provided instead since it is a common requirement among lenders?	<p>permissible for the national or provincial sphere of government to guarantee the contractual obligations of a local government”.</p> <p>Alternative options to ensure the bankability of the transaction are currently being considered and will be communicated to bidders, once confirmed.</p>
37.	RFP Phase 1 Vol. 2 Clause – 18.12 (c).	<u>Chairperson of the PMSC</u> - Given that as per the clause 18.10. the Chairperson in case of the deadlock shall add his/her additional vote, the Chairperson shall be mutually selected and shall not be Municipality Representative	Bidders are advised that the Chairman of the PMSC will remain as a Municipality Representative, in line with internal guidance. No changes are suggested for this clause.
38.	RFP Phase 1 Vol. 2 Clause – 18.9.	<u>Quorum of PMSC meeting</u> - We would propose to make a minimum quorum for each meeting to consist of one Representative from each party to avoid any unilateral decisions.	The Municipality agrees to the proposal, and the tender documents will be amended to include representation from both counterparties to avoid unilateral decisions.
39.	RFP Phase 1 Vol. 2 Clause – 33.1 (b).	<u>Governing Law</u> - Considering the potential involvement of the international sponsors/investors and lenders, it is a market practice to maintain the English law.	Bidders are advised that the contract is subject to the laws of South Africa. This follows international best practice where governing law is the local law of a concession agreement.
40.	RFP Phase 1 Vol. 2 Clause – 33.5.	<p><u>Arbitration</u> - The terms of reference for the arbitration as per the clause 33.5 (a) of the Concession Agreement is Arbitration Foundation of South Africa (the "AFSA Rules") with the seat of arbitration being in Durban, Republic of South Africa.</p> <p>We propose that the Arbitration be governed by International Rules of Arbitration (LCIA or ICC) with the seat of arbitration in a neutral place (e.g. Singapore, Paris, UK).</p>	See response to Question 39.

41.	Concession Agreement Clause – 1.1.	<p><u>Definition of Contract Year</u> – Limbs a) refer to Contract year being from the COD date and ending 30th June in the same calendar year.</p> <p>This definition presupposes that year one is likely to be less than 12 Gregorian months. Is this the intention that other key milestones in the project be calculated as such, for example, are we to consider the first year of project implementation as such?</p>	<p>Bidders comment is noted, and will be reviewed for the Phase 2 documents. The Term and Contract Year are two distinct definitions.</p> <ul style="list-style-type: none"> • The Term commences on the Effective Date and concludes on the Expiry Date (being 30 years after the Project Commercial Operation Date). The key milestones are therefore linked to the Term. • The Contract Year is a separate terminology used in the context of obligations that need to be repeated for each Contract Year of the Term. <p>See response to Question 17.</p>
42.	Concession Agreement Clause – 1.1.	<p><u>Decommissioning</u> - The contract does not define “Decommissioning” but it defines “Decommissioning Date” as the date when the existing plants are decommissioned and made safe.</p> <p>The lack of a definition of Decommissioning leaves the question begging as to what really amounts to effective decommissioning and making of the plant safe.</p>	<p>Bidders comment is noted and will be reviewed for the Phase 2 documents. The Concessionaire’s decommissioning obligations are outlined within Schedule 18 (Decommissioning Obligations).</p>
43.	Concession Agreement Clause – 1.1.	<p><u>“Delivery point”</u> is defined as the Reuse Water Offtake Delivery Point – which means the point where the Reuse Water supply Pipeline shall deliver the Reuse water to the Off taker.</p> <p>Please clarify who is responsible for the safety, maintenance and other of the supply pipeline network to the Offtakers for the duration of the project as this is not clear in the contract.</p>	<p>The Concessionaire retains responsibility for the O&M costs, including safety, for the Reuse Water Offtake Delivery Pipe up to the delivery point at Sappi for the Umkomaas Plant.</p> <p>The Municipality will retain responsibility for operations and maintenance of the raw sewerage conveyance systems.</p>

			Other terms for Offtake agreements at Umdloti will be negotiated between the Concessionaire and its respective Offtake partners. The Concessionaire shall retain responsibility for these pipelines.
44.	Concession Agreement Clause – 1.1.	<p><u>Bid bond definition</u> refers to performance security procured by the Concessionaire for the benefit of the Municipality in accordance with the RFP in an amount equal to the Bid Bond Amount.</p> <p>S. 4 of the Contract refers to the municipality returning the Bid Bond on the date when it receives the Performance Bond, Performance Bond is capitalized but not defined. Please clarify if the “Bid bond” and “Performance Bond” are meant to be different securities or are one and the same. If these are two different securities, then Contract needs to clarify when does one end and the other begin?</p>	The terms of the Performance Bond will be defined and included in the Phase 2 tender documents. Please refer to the response to Question 11.
45.	Concession Agreement Clause – 1.1.	<p><u>Good industry practice</u> – the definition refers to facilities regionally and internationally.</p> <p>Please clarify geographically what amounts to “regionally” and would that not amount to the region being international? which makes for a repetition in the definition.</p>	Clause will be redrafted for clarity.
46.	Concession Agreement Clause – 1.1.	<u>Project Agreements</u> – The definition does not include, Land / Site Agreements, and yet these are a major part of the project documents, and the land is to be provided to the Concessionaire by the municipality.	The Concessionaire’s rights with respect to the sites are outlined in clause 6 of the Contract. The land acquisition process is in its final stages and the Municipality will make this available to the Concessionaire as per the terms of the contract.

		Is there a particular reason why the agreements are omitted?	Further information on this request for clarification required from the Bidder to better understand the concerns expressed.
47.	Concession Agreement Clause – 1.1.	<p><u>Definition of Site</u> does not include the Raw Sewage Conveyance System (RSCS) and Reuse Water Supply Pipeline (RWSP).</p> <p>These systems appear to be under the Concessionaire's responsibility to secure the land and build these systems under Clause 6.1.d of the Contract. Are these to be classified as Site or are they not called Site?</p>	<p>It is confirmed that the RSCS has been defined separately from the Sites.</p> <p>Clause 6.1.(d) of the Contract confirms the Municipality will grant right of way (RoW) and grant the Concessionaire access to the land for the RSCS as a Condition(s) Precedent (CP) to effective date.</p> <p>The responsibility to assess the potential pipeline routes will however remain with the bidders.</p> <p>Bidders are invited to submit suggested drafting as a mark-up to the tender documents as part of the RFP Phase 1 optimization process.</p>
48.	Concession Agreement Clause – 3.5.	<p><u>Failure to satisfy conditions precedent</u> entitles the Municipality to claim from the Concessionaire an amount equal to the Bid Bond Amount. Such amount shall be immediately due and payable by the Concessionaire to the Municipality and the Municipality may make a demand under the Bid Bond to recover such amount.</p> <p>Our understanding is that the bid bond is intended to secure the bidding process up to the point of preferred bidder and signing of the Concession Agreement, where upon it will collapse or be replaced with a development bond / guarantee.</p> <p>Please clarify whether it is the intention that the Bid bond shall remain active up to financial close and why</p>	<p>The Bidders understanding is correct. The Performance Bond will be defined and the key terms for this will be included in the Volume 1 and 2 for phase 2.</p> <p>See responses to Questions 11 and 44.</p>

		this should be considering the requirement for a performance bond.	
49.	Concession Agreement Clause – 3.6.	<p><u>Environmental and social conditions</u> of effectiveness the requirement to have a Resettlement Action Plan (RAP) and a Livelihood Restoration Program (LRP) as a condition precedent.</p> <p>We understand the land constituting the Site is to be procured by the Municipality and given to the Concessionaire – In this regard, Concessionaire has no part to play in getting the RAP and LRPs done for the sites, this should be the responsibility of the Municipality.</p> <p>Please clarify on whose responsibility it is to procure the land for the Site other than the Raw Sewage Conveyance System and Reuse Water Supply Pipeline that have been curved out.</p> <p>If it is for the Concessionaire to do the RAP and the LRP, is this cost to be provided for outside the tariff?</p>	<p>Refer to response to Question 46.</p> <p>The RAP and LRP are Conditions Precedent (No. 14) for the Concessionaire under Schedule 2. Bidders are to price in the costs for the RAP and LRP within the tariff.</p>
50.	Concession Agreement Clause – 26.2 (Legal).	<p><u>Concessionaire representations and warranties.</u> Explain the requirement for the concessionaire to be a ring-fenced company for tax purposes.</p>	<p>The SPV should be ring fenced to limit the public sector's payments (via tariffs) from exposure to any other business of the Concessionaire which could fall into distress and burden the project SPV. The requirement to be domiciled in South Africa is to ensure all taxes due accrue to the government where the project is located, as the ultimate cost of the project is being borne by SA government.</p>

51.	RFP Vol. 2 - (Technical).	<u>Levels</u> - Please provide the finished ground levels in the proposed lift stations and new STPs to validate the design of conveyance system	KMZ files provided for the pipeline routes have been uploaded to the VDR. Bidders may refer to the feasibility study report for the assessment on the pipeline routes reviewed. The pipeline routes indicated were only to underpin costing for the feasibility.
52.	(Technical).	<u>Existing STPs</u> - Please provide as-built layout, building sections and PIDs of existing STPs to be decommissioned.	All available information on the sites of the existing plants has been uploaded to the VDR.
53.	(Technical).	<u>Existing lift stations</u> - Please provide as-built layout, building sections and PIDs of existing lift stations to be utilized in this project.	All available information on the as-built layouts and PIDs have been uploaded on the VDR. These may be dated, and sites possibly damaged following the 2022 storm. The Municipality has an ongoing tender to procure a contractor to refurbish the pump stations and restore flows to the Northern STPs.
54.	RFP Vol. 2 - (Technical).	<u>Area</u> - Please provide boundaries coordinates for new STPs sites or provide it in CAD file	Included in VDR in the KMZ format.
55.	RFP Vol. 2 - (Technical).	<u>Raw sewage pipelines</u> - Please provide the routes of the mentioned pipelines in CAD file.	Uploaded in VDR in the KMZ format.
56.	RFP Vol. 2 - (Technical).	<u>Effluent pipelines</u> - Please provide the routes of the effluent pipelines in CAD file and river discharge points location for both plants.	Uploaded in VDR in the KMZ format.
57.	RFP Vol. 2 - (Technical).	<u>Process</u> - Please confirm that advanced treatment processes other than conventional activated sludge process is accepted.	It has been confirmed that advanced treatment processes will be accepted. Bidders are advised to avoid experimental or unproven technologies. The submission requirements will be reviewed to require proof of successful deployment elsewhere.

58.	RFP Vol. 2 - (Technical).	<u>Disposal</u> - Please provide the location of proposed disposal sites for screening and sludge.	Sludge at Verulam, Umdloti and Genazzano is currently stockpiled and sent to for disposal at Shongweni (Hazard Waste Disposal) land fill site. At Craigieburn and Umkomaas it is stockpiled and sent to the Isipingo STP for onward agricultural use by local farmers. The Bidders are required to conduct their due-diligence and propose the waste disposal options.
59.	RFP Vol. 2 - (Technical).	<u>Feasibility Study</u> - Please provide the feasibility study mentioned in volume 2 item 4.1.2.	The Feasibility Study report has been uploaded to the VDR.
60.	Commercial.	<u>Tariffs</u> - Please provide electrical tariff / Kw applicable for STPs operation in the region.	See response to Question 23.
61.	RFP Vol. 1 - (Technical).	<u>Utilizing Sludge: Reuse Opportunities</u> - Please provide information about the heavy metals' concentration in the influent wastewater, particularly considering its implications for beneficial sludge reuse. Additionally, please specify the relevant standards more clearly for either reuse or disposal.	<p>A sampling and analysis campaign (full water analysis that included heavy metals content levels) was conducted in October 2020 as part of the feasibility study and the results have been uploaded to the VDR. Negligible levels of heavy metals were found in the influent.</p> <p>Refer to Schedule 3: Section 2.3 and 2.4 which sets out the discharge standards for the effluent and sludge including on the heavy metals as per the National Water (Act 36/1998).</p>
62.	RFP Vol. 2 - (Technical).	<u>Raw Sewage Conveyance Systems</u> - Please provide more specific details regarding the EWS standards applicable to the raw sewage conveyance infrastructure.	Please refer to Schedule 3: Technical Specifications under Clause 5.2.1. "No pipeline materials, pipeline routes or pumping equipment have been prescribed" for the RSCS. The Concessionaire is expected to submit these as part of their proposal.
63.	RFP Vol. 2 - (Technical).	<u>Effluent Standards, Umdloti STP and Umkomaas STP</u> - We understand that we need to comply with the treated effluent discharge standard (special limit) mentioned in Table 2-3 and Table 2-4. If there are any additional wastewater parameters that we need to	Refer also to paragraph 2.2.4 of the schedule which outlines the effluent quality to meet standards for the heavy metals as per National Water (Act 36/1998).

		comply with, please provide clearer specifications for those parameters.	
64.	RFP Vol. 2 - (Technical).	<u>Power supply</u> - Please clarify if there are any specific requirements regarding the source of the temporary and permanent power supply for the STP sites and pumping stations.	It has been confirmed that there are no specific requirements other than local legislation. Bidders are invited to submit their proposals and refer to the tariff booklet as provided in the VDR.
65.	RFP Vol. 2 - (Technical).	<u>Potable water supply</u> - Please clarify if there are any specific requirements regarding the potable water supply for the STP sites.	It is confirmed that there is currently no potable water supply to the sites of the new STPs. The Concessionaire retains responsibility for this and to ensure the potable water supply complies with the SANS 241 drinking water quality standards.
66.	RFP Vol. 2 - (Technical).	<u>Access, internal roads, and access control</u> - Please provide further details regarding the specifications or requirements for the design and construction of the access roads. Additionally, do you have any guidelines for the setup of the access control point to prevent unauthorized access?	The Municipality does not have specific access control and access road specifications. The relevant SABS/SANS codes will apply. Bidders are invited to make their suggestions withing their proposals.
67.	RFP Vol. 1 - Clause 6.1 (Technical).	<u>Utilizing Sludge: Reuse Opportunities</u> - Please confirm if biogas fuel power generators can also be considered as a means of supplying backup power in the event of a power failure by the utility company.	The Critical Components that need to remain powered during a power outage have been defined in the Contract. Bidders are required to make their own assessment into the respective power needs for these and submit a proposal accordingly. Use of biogas fuel power generators can be used as part of a mixed solution to guarantee required backup.
68.	RFP Vol. 1 - Clause 6.1 (Technical).	<u>Utilizing Sludge: Reuse Opportunities</u> - Please clarify If there are any minimum percentage requirements for biogas power generation which can be used and	No minimum requirements/limitations have been placed on the proportion of power from grid vs alternative solutions. Vol. 1 Section 6.1 also indicates heat and energy recovery ("combined heat and

		supplied for STP plant and remaining power supply will be taken from Power grid stations.	power”) will be encouraged. Bidders are invited to submit their proposals.
69.	RFP Vol. 2 - Clause 4.2 (Technical).	<u>Power supply</u> - Please clarify if there are any specific requirements regarding the source of the permanent power supply for the STP sites and pumping stations.	The Bidders are required to carry out their due diligence on their power supply requirements and to propose a solution as part of their bids.
70.	RFP Vol. 2 - Clause 4.2 (Technical).	<u>Power supply</u> - It was mentioned the concessionaire will make arrangements for temporary power supply to the various sites. Please clarify the site details and temporary power supply requirements.	The sites for both greenfield treatment plants will require back up power facilities as per clause 11.2 - Backup Power. The requirements for this are set out in Section 4.2.1 (Backup power supply) of Schedule 3 (Technical Specification).
71.	RFP Vol. 2 - Clause 4.2 (Technical).	<u>Power supply</u> - Please clarify the availability of power supply to the STP's and pumping station. Also Please clarify if there are any power limitations at power source. And please provide nearby power source & voltage range details to design permanent power supply arrangements to the STP's and pumping station.	This is for Bidders to clarify with the local electricity service provider, and to consider the cost of applying for a connection. Currently, there is no supply to either site.
72.	RFP Vol. 2 - Clause 4.2.1 (Technical).	<u>Backup Power supply</u> - Please provide further details regarding critical infrastructure which the concessionaire shall provide backup power supply.	The list of Critical Components has been defined within Volume 2: concession agreement under <u>Section 4.2.1 (f) Schedule 3 – Critical infrastructure shall include all processes and operation which, if interrupted, would result in either a deterioration in the quality of treated effluent or overflowing of process units and pumping installations, or both.</u>
73.	RFP Vol. 2 - Clause 17.1 (Technical).	<u>Metering & Monitoring System</u> - Please clarify if there are any specific requirements regarding the metering and monitoring system for each plant & pumping station.	Requirements on the metering and monitoring systems are outlined within Schedule 4 – Metering and Monitoring.

74.	RFP Vol. 2 - Clause 17.2 (Technical).	<u>Metering & Monitoring System</u> - Please clarify if there are any specific requirements that water quality parameters influent and effluent quality to be monitored and recorded through online	Refer to the response to No. 73.
75.	RFP Vol. 2 - Clause 2.3.1 (Technical).	<u>Metering & Monitoring System</u> - Please clarify further details of the requirement of one remote workstation selected by EWS	eThekweni Water and Sanitations (EWS) Head office, 3 Prior Road.
76.	RFP Vol. 1 - Clause [TBD] (Technical).	Please advise regarding the allocated land (m2) for Umdloti and Umkomaas, respectively based on the identified site boundaries in tender documents.	Approximate (indicative) areas of the allocated land are 12.9 ha for Umdloti and 4.0 ha for Umkomaas. Please refer to the response to Question 54.
77.	RFP Vol. 1 - Clause [TBD] (Technical).	Please provide all relevant EWS design standards; E&S etc.	Bidder requested to clarify which design standards would be required.
78.	RFP Vol. 1 - Clause [TBD] (Technical).	Please provide list of parameters to be tested for the monthly assessment of compliance with the requirements and standards that have been set out for the raw sewage conveyance systems, influent quality, treated effluent quality and sludge quality.	Please refer to CA, Schedule 4 – Metering and Monitoring and Schedule 3 – Technical Specifications for the requirements and standards.
79.	RFP Vol. 2 - Clause [TBD] (Technical).	Please upload Annexure B – Terms of Reference for an Environmental Monitoring Programme for the Umkomaas Regional Sewage Treatment Plant.	This has been uploaded to the VDR.

80.	RFP Vol. 1 – Page 1 & 8 (Technical).	<p>Please advise the correct Tender Closing Date.</p> <p>1. “Tender document Page 1 of 148 – Friday, 08 November 2024 at 11h00.”</p> <p>2. “Tender document Page 8 of 148 – Tender offers shall be delivered on or before Friday, 09 August 2024 at 11h00.”</p>	The tender closing date is Friday, 08, November 2024 at 11h00. This will be amended in the Phase 2 documents.
81.	RFP Vol. 1 – Page 67 (Technical).	<p>The tender calls for a conventional activated sludge (CAS) process whereas the client advised there is no specific treatment process or type of equipment or technology is prescribed. Please advise.</p> <p>Tender Document – Page 67 of 148</p> <p>“5.2.1 Conventional activated sludge STP with 35 MLD capacity.”</p> <p>“5.3.1 Conventional activated sludge STP with 11 MLD capacity.”</p>	No restrictions are placed on the technology employed provided it satisfies the performance requirements as set out in the tender including those for the waste handling and limits.
82.	RFP Vol. 1 – Clause [TBD (Legal).	<p>Being an equity investor - we are interested in ensuring that the project get the funding it requires to get started. With that being said we are aware that there are limited local equity partners available. Can an investor be present on more than one bid?</p>	<p>Bidders are advised that this will not be allowed to ensure no conflicts of interests arise and to maintain the integrity of the process.</p> <p>Refer to the response to Question 177.</p>
83.	RFP Vol. 1 – Clause 2.2.2.2(e) (Finance).	<p><u>Project Funding</u> - (e) request from each Interested Party and Respondent a fully developed, comprehensive, firm and Debt Provider underwritten</p>	A Comprehensive, firm and Debt underwritten Proposal will only be required at financial close.

		<p>Proposal in the prescribed format and capable of acceptance by the Municipality;</p> <p>Query: The above paragraph talks about a Comprehensive, firm and Debt Provide underwritten Proposal. Which means fully funded and approved by the funder's proposal.</p> <p>However on Section I (d) of Annexure 4 Part 4 talks about Letters of Intent or Letters of Support from planned lenders.</p> <p>Also: Section IV of Annexure 4 Part 4 talks about support letters from each of the funder providers in the indicative Financing Plan. Indicative Financing Plan will require Support letters.</p> <p>At what stage will a Comprehensive, firm and Debt underwritten Proposal be required?</p>	
84.	RFP Vol. 2 – Clause 5.2.6(e) (Finance).	<p><u>Project Funding</u> – Debt Funding Reduction Bidders are to note the implication of debt reduction on account of the proposed Transfer of the Transmission Pipelines.</p> <p>Please expand on the meaning of this paragraph. It is unclear.</p>	Bidders are to note that given the reimbursement for the transfer of the RSCS, its related costs should not be integrated into the tariffs during the operations period but rather should be set out separately as per the tender documents.
85.	RFP Vol. 1 – Clause [TBD] (Finance).	<p>Timeline: There is insufficient time to secure the required funding and carry out the detailed engineering designs, securing by-product offtakes and costings, notable only one month from the issuance of RFP phase 2 to RFP submissions a month later. This</p>	The request for an extension of bid submission deadline has been noted and will be considered. Any decision will be communicated promptly to all bidders.

		process would not be possible even within three months. Is this process a pre-decided one where normal market dynamics, not presently the case in SA, would require 9 to 12 months at least?	
86.	RFP Vol. 1 – Para 5.4.6 on page 34 of 148 (Legal).	<p><u>TVR1 and TVR2A, Section 33 MFMA-</u> It is stated here that the Municipality has, in terms of the MFMA and PPP Regulations, solicited the views of National Treasury for Treasury I and IIA approvals. We hereby request the reports.</p> <p>Have the Section 33 of the MFMA conditions been met in that environmental approvals and licenses and council resolutions have to be secured/approved prior to issuing and RFP?</p>	<p>It is confirmed that the TVR I and TVR IIA approvals were received and that these have been uploaded to the VDR.</p> <p>The responsibility of obtaining the Environmental approvals will remain with the Concessionaire.</p>
87.	RFP Vol. 1 – Para 5.4.6 on page 34 of 148 (Legal).	<p><u>TVR2B and TVR3-</u> Also querying the progress of IIB and III as delays in obtaining the views and approvals could add significant costs.</p>	<p>TVR IIB relates to the Evaluation of bids by the bid evaluation and bid adjudication committees, demonstrating value for money.</p> <p>TVR III relates to PPP agreement negotiations, PPP contract management plan and Treasury views and recommendation.</p> <p>Both activities can only commence post bid submission and evaluation.</p>
88.	RFP Vol. 1 – Para 5.6.3 - Social Upliftment table on page 37 of 148 (Legal).	<p><u>PPFA-</u> Specify the values and details of the four items need to obtain the points. E.g., is a bursary to fund one student's first year sufficient, or must this be for every year of the contract etc.</p> <p>Will these be a % of the total contract value and will the values be cumulative?</p>	<p>Bidder must list and specify the value of the four items over the contract term and the values must be cumulative.</p>

89.	RFP Vol. 1 – Para 5.6.3 – Promotion of SMMEs table on page 38 of 148 (Legal).	RFP Vol. 1 – Para 5.6.3 – Promotion of SMMEs table on page 38 of 148 (Legal).	Sub-contracting agreements must be submitted.
90.	RFP Vol. 1 – Para 7.3 on pages 44-45 of 148 (Finance)	Finance- Clarify whether or not financial institutions may for example provide letters of undertaking to more than one bidder?	Financial institutions may provide letters of undertaking to more than one bidder.
91.	RFP Vol. 1 – Para 9.2.2 on pages 58 of 148 (Legal)	PPFA- This states that the 90/10 system will apply with the 10 points being for BBBEE requirements. How does this fit in with the points allocation described on pages 36-38? Will those points be used for the 10 points? The split of points is detailed on page 61. This is probably correct and not 9.2.2 on page 58?	Each of the “Ownership”, “Social Upliftment” and “promotion SMMEs” concurs with a 33.33% weighting to determine the 10/90 BBBEE score. The split of points on page 61 is the same as the references to PPPFA at pages 36 to 38, and at page 58 are consistent. Bidder to note the percentage weighting (1/3) for each of goal in each of the three tables.
92.	RFP Vol. 1 – Para 9.3.4 on page 59 of 148 (Legal)	PPFA- Does this CPG declaration affidavit refer to the Economic Development Commitments (pp141-145)?	This statement is correct, though MBD 6.1 (Annexure 1D16) is a declaration, and not an affidavit.
93.	RFP Vol. 1 – Para 9.3.13 on page 60 of 148 (Legal)	Returnable Documents- The UIF certificates of compliance are no longer issued by the Department of Employment and Labour as per circular 2B/2022 dated 06/04/2022. What we can submit is the SARS monthly return showing the current commitment.	The returnable “Certificate of Compliance / Good Standing from the Department of Employment and Labour for UIF (Unemployment Insurance Fund)” is no longer required for submission by bidders as per Department of Employment and Labour circular 2B/2022 dated 06/04/2022.

94.	RFP Vol. 1 – Appendix 1 and Annexure 1A Part 2 on pages 69-75 (Legal)	<p>Returnable Documents- Appendix 1 and Annexure 1A Part 2 on pages 69-75</p> <p>Which of these needs to be submitted with the 08 August submission?</p>	<p>Appendix 1 is due to be submitted if an Interested Party elects to participate in the Concession Agreement Mark-Up stage;</p> <p>Annexures 1A to Annexure 1D are due at bid submission; and</p> <p>Annexure 1E (VDR Undertaking) is due when a Respondent or Bidders wishes to access the Virtual Data Room.</p>
95.		<p>Annexure 1D11 on page 99 of 148.</p> <p>Must there be a CSD registration for the consortium or must each member submit their own as is the case for the TCS?</p>	<p>Each member of the JV/Consortium is required to submit their certificate of registration.</p>
96.		<p>General Question – what must be submitted on 08 August? Consortium Agreement, Tax Clearance, CSD etc.? See points listed under 9.3 on pages 59-60</p>	<p>Refer to the response to Question 94.</p>
97.	RFP Vol. 1 – Clause 2.1.3 Page 24/148 (Finance)	<p>Bid Bond- All bidders must maintain validity of bid bond at all times.</p> <p>Is this required even if a bidder is not the preferred or reserved bidder?</p>	<p>Yes, all bidders are expected to maintain the bid bond validity. Bid bonds of non-preferred bidders will be returned promptly.</p> <p>Bidders not selected as the Preferred Bidder or Reserve Bidder will be notified, and their participation in the procurement will cease, and they will be released from the requirement to maintain a Bid Bond. Refer to the clause 5.3 of the bid bond.</p>
98.	RFP Vol. 1 – Clause 4.3.4 Page 30/148 (Legal)	<p>RFP states that “land and all improvements thereon” will be owned by the municipality for the duration of the project. Should concessionaire not own the improvements for the duration of the concession?</p>	<p>Ownership of improvements lies with the Municipality.</p>

99.	RFP Vol. 2 – Clause 5.2.2 Page 33/148 (Technical)	Can the feasibility study be made available to bidders?	The feasibility study is included in the VDR.
100.	RFP Vol. 2 – Page 2: Actual availability (Technical).	<p>Actual availability - “..., and regardless of whether the municipality delivers Influent or accepts Treated Effluent.”</p> <p>Surely the municipality will have a contractual obligation to deliver effluent as this is not in the scope of the concessionaire?</p>	The municipality will not have a contractual obligation to deliver effluent. Payment of the availability component of the tariff does not require actual delivery of Influent.
101.	RFP Vol. 2 – Page 34 (a) 2: Actual availability (Technical).	<p>EIA WULA - design, finance, construct and commission ...” does this mean that licensing is excluded from the concessionaire’s scope? This is needs to be overtly stated by the Muni as the EIA and licensing with WULA’s can take 2 to 3 years that have not been allowed for, so what are the ROD outcomes as they will dictate the boundaries the PPP has to operated within?</p> <p>Clause 2.2 on page 65 of Volume 1 states “Obtaining all regulatory approvals, including licensing of the infrastructure and discharges (e.g. Environmental authorizations and water use licenses);” for Umdloti which is a direct contradiction of Volume 2 and cannot fit in the two years construction as construction may not commence before licensing is granted, its simply illegal.</p> <p>and .. “3.2. Obtaining all regulatory approvals, including licensing of the infrastructure and discharges</p>	<p>It is expected that the process to apply for the EIA and WULA takes up to 12 months based off experience with previous projects.</p> <p>The responsibility for obtaining the initial consents for the Project is typically a Concessionaire risk and this is reflected in the Concession Agreement.</p> <p>The Concessionaire is responsible for obtaining consents as a Condition Precedent (see clause 3.3(a) and Sections C and D of Schedule 2 (Project Specific Information) to the Effective Date. Under clause 6.2(b)(iv), the Concessionaire is also deemed to have verified the accuracy and reliability of all information and satisfied itself as to the Laws and Consents required to be obtained and maintained to undertake the Project and the obligations under the Concession Agreement.</p> <p>However, the Concessionaire is entitled to:</p> <p>(a) a Relief Event for any unplanned delay in obtaining Consent (see paragraph (g) of the definition of Relief Event; and</p>

		(e.g. Environmental authorizations and water use licenses);” for Umkomaas.	<p>(b) time and cost relief if there are issues with obtaining new or amended Consents as they relate to a Change in Law (see clauses 3.4 and 28.1).</p> <p>The Municipality is only required to provide reasonable assistance to the Concessionaire in obtaining the Consents from the relevant Governmental Authorities, provided the Concessionaire has complied with the requirements of Laws in applying for such Consent (see clause 7.9(c)).</p>
102.	RFP Vol. 2 – Page 37: Reimbursable Grant (Finance)	<p>Grant- How much is this (USD 1,450,000 or around R27m) as we have to include it in our costings and cash flows? Is this so called MIGA support and to be held in escrow?</p>	<p>The Reimbursable Grant is the project development costs incurred on the project in the form of transaction advisory services, and bidders are expected to factor this cost in their financial analysis/costing.</p> <p>The grant is not related to the proposed MIGA support.</p>
103.	RFP Vol. 2 – Page 37: Reimbursable Grant (Finance)	<p>Grant- the failure of the Concessionaire to make timely progress in the satisfaction of the Conditions Precedentthen, the Municipality shall be entitled to demand payment from the Concessionaire in an amount equal to the Bid Bond Amount” What if the municipality is in default, how does the Concessionaire claim damages without a long and prolonged period as described in “then, the Concessionaire shall be entitled to payment of the reasonable and direct development costs incurred by the Concessionaire up to the date of termination (including the Reimbursable Grant), subject to a maximum amount equal to the sum of the value of the Bid Bond Amount and the Reimbursable Grant.”</p> <p>Is the IFC reimbursable Grant a form of guarantee to the Concessionaire? I suggest an out of court</p>	<p>The IFC reimbursable Grant is not a form of guarantee to the Concessionaire.</p>

		mechanism like arbitration that would expedite the payments? If we can have this amended then it's a fair deal in my opinion.	
104.	RFP Vol. 2 (Finance)	IFC MIGA- is this PPP MIGA supported with their guarantees, per this IFC/WB document page 20 in the general section of our Google Drive: https://drive.google.com/file/d/1mUx-s3u70Trt1pecs3prbhBYBBzn5pf/view?usp=drive_link	MIGA support is not currently structured into the project, however this is being considered for interested investors/lenders.
105.	RFP Vol. 2 - Page 77: By-Products (Technical)	Sludge disposal- Should landfill disposal site/s no longer be available as they were at time of tendering not be considered as Force Majeure? Maybe its covered by clause 28.1 (a) on page 119?	This will not be considered an event of force majeure. Bidders are invited to submit suggested drafting as a mark-up to the tender documents as part of the RFP Phase 1 optimization process. Refer to the response to Question 58.
106.	RFP Vol. 2 - Page 100: Project Monitoring Steering Committee (Legal)	Steering Committee: Surely weekly meetings on Mondays from 08h00 to 12h00 are onerous? Two reps from each of the two parties required too?	Bidders are invited to submit suggested drafting as a mark-up to the tender documents as part of the RFP Phase 1 optimization process.
107.	RFP Vol. 2 - Page 147: Schedule 2 (Finance)	Bid Bond- Bid Bond is ZAR 3,000,000 and MUST BE CONFIRMED as taking precedence over Volume ONE's stated R30m, page 53 point 7.15. although I suspect its R30m as the Volume 1 documents all have R30m in words too.	Refer to the response to Question 24.
108.	RFP Vol. 2 - Page 206: 16.10	Governing Law: English law?	Refer to the response to Question 39.

	Governing Law (Legal)		
109.	RFP Vol. 2 - Page 67: 5.2.1 and 5.3.1 state: (Technical)	Technology- Page 67: 5.2.1 and 5.3.1 state: “Conventional activated sludge STP” which infers that we cannot offer alternatives that have lower O&M costs and better produced effluents?	No restriction is placed on the technology employed provided it satisfies the performance requirements as set out in the tender including the waste handling and limits.
110.	RFP Vol. 2 (Technical)	Quality data- Could not find influent and effluent quality data?	Bidders are to refer to the feasibility study and annexures in the VDR.
111.	RFP Vol. 2 (Technical)	Quality data- It is essential to obtain the historical influent analyses in order to design the process and to assess the treatment and disposal of the sludge as well as to assess the effect of any industrial effluent to be treated.	Bidders are to refer to the feasibility study and annexures in the VDR.
112.	RFP Vol. 2 (Finance)	Affordability- Confirm that the risk of affordability of the municipal revenue (billing efficiency, collection efficiency, tariff setting) resides firmly with the city	It is confirmed that the affordability risk resides with the Municipality.
113.	RFP Vol. 2 (Finance)	Finance- Indicate the rationale for the 70% factor being applied to the annual escalation which will steadily erode the recovery of costs over the concession period.	Refer to the response to Question 30.
114.	RFP Vol. 2 (Finance)	Tariff- Whilst variable costs (such as energy costs) are reimbursed – it is indicated on a linear scale whereas input costs will not necessarily be linear (e.g. step tariffs), and not necessarily in line with CPI.	Kindly clarify the question.

115.	RFP Vol. 2 (Technical)	Hand back - The hand back condition requirements may be open to different interpretation (the requirement is stated as the assets to be in “good working condition). It is suggested that a more precise minimum condition and functionality (and agreed scales) are stated to enable asset management measures to be effective to the needs through to the end of the concession period.	<p>Please refer to CA Clause 32.2, which, amongst other, describes the Hand Back Conditions:</p> <p>(A) the Plants have been maintained by the Concessionaire in accordance with its obligations under this Agreement.</p> <p>(B) the Plants are in a good working condition, fair wear and tear accepted, and shall have a mechanical residual life of ten (10) years.</p> <p>(C) the Plants are in a good working condition, fair wear and tear accepted, and shall have a civil residual life of thirty (30) years.</p> <p>Bidders are to take note that while Schedule 3 (technical specification) does not stipulate the design life, hand back conditions are to be met.</p>
116.	RFP Vol. 2 (Legal)	Municipal Default – In the event of Default of the City and it not being remedied and therefore the Termination Payment being due – provision for interest to accrue is not sufficient to address the scenario of non-payment.	For further consideration, the bidder is requested to clarify what additional costs are expected and to suggest drafting to addressing this.
117.	RFP Vol. 2 (Legal)	<p>Due to the change and delay in dates for the Compulsory Clarification Meetings, we herewith kindly request that the Project Procurement Programme is extended and that the new Closing Time for Tender Submission will be Friday, 17 January 2025 (and not Friday 08 November 2024). The extended time will also give consideration for the South African Christmas break.</p> <p>Given the magnitude of the scope and considering the discussion points during the site visit held, this extension will allow bidders adequate time to review</p>	The request for an extension of bid submission deadline has been noted and will be considered. Any decision will be communicated promptly to all bidders.

		the information shared, and prepare a comprehensive and competitive bid.	
118.	RFP Vol. 2 – Schedule 3 – Technical Specifications, Section 2.2.1 – Plant hydraulic capacity (Technical)	<p>Plant Capacity- It is stated that “The Umdloti STP shall have an initial capacity of 20 MLD and shall be expanded to 35 MLD when required. The Umkomaas STP shall have an initial capacity of 6 MLD and shall be expanded to 11 MLD when required.”</p> <p>1) During bid conference, EWS clarified that the plant capacity for uMdloti and Umkomaas shall be 20 MLD and 6 MLD respectively and shall be designed, constructed and commissioned in 24 months. EWS may advise to upgrade to expanded capacity within 20 years from initial COD. Please confirm our understanding.</p> <p>2) Please provide details of infrastructure that should be planned and constructed to allow for expanded capacity.</p>	<p>Bidder’s understanding is correct.</p> <p>The correct capacity for the Umkomaas site is initial 6 MLD, after expansion 11 MLD. The correct capacity for the uMdloti site is initial 20 MLD, after expansion 35 MLD.</p> <p>It is the Concessionaire’s responsibility to decide which infrastructure is to be planned and constructed to allow for the possible expansion.</p> <p>The Concessionaire is to note that the expansion will be via a self-standing module.</p> <p>Because the Raw Sewage Conveyance System will be planned and constructed for the “expanded” capacity, it is prescribed to plan and construct the civil structures of the inlet works of the STPs for the expanded capacity.</p> <p>The same may be prescribed for the outlet works of the STPs. It has also been considered to specify the hydraulic capacity of the treated effluent (reuse) pipeline from Umkomaas STP to Sappi; i.e. at 11 MLD.</p>
119.	RFP Vol. 2 - Schedule 3 – Technical Specifications,	<p>Plant Capacity- It is stated that “It is possible that the long-term treatment capacity at the uMdloti STP will be equivalent to an ADWF of 125 MLD....”.</p> <p>Whereas in Volume 1, Annex A – Project Description Overview, Section 5.2.2, it is mentioned as,</p>	<p>The bidder mentions the long-term capacity of 125 MLD for uMdloti STP. This is indeed specified in Schedule 3, Clause 4.1.3. “The Concessionaire shall design the STPs subject to the requirements of the Concession Agreement (ADWF of 35 MLD and 11 MLD in two stages at uMdloti and Umkomaas respectively) with a layout that</p>

	Section 4.1.3 – Sewage treatment plants (Technical)	<p>“Infrastructure must be planned and constructed to allow for future expansion (outside of this PPP) to 112 MLD within the identified site boundary.”</p> <p>1. Please confirm the future expansion capacity of uMdloti STP to be considered.</p> <p>2. Please provide details of infrastructure that should be planned and constructed to allow for future expansion.</p>	<p>leaves sufficient space to accommodate the long-term capacity. »</p> <p>The long-term capacity of Umkomaas STP is set at 20 MLD.</p> <p>Bidders should not confuse the expansion capacity and the long-term capacity.</p> <p>The long-term capacity is specified only in view of possible future space requirements at the STP sites. No infrastructure needs to be planned for this possible long-term capacity.</p>
120.	RFP Vol. 2 - Schedule 3 – Technical Specifications, Table 2.2: Design flows, new STPs (Technical)	<p>Plant Capacity- We noticed that the given PFhour values for Initial capacity (4.2) and After expansion capacity (4.0) for Umdloti STP is seems to be incorrect. Based on the given formula, $PF_{hour} = 38 \times ADF - 0.24$, where ADF is the average daily flow in m3/day</p> <p>The calculated PFhour values would be 3.53 for initial capacity and 3.08 for expansion capacity. Please clarify.</p>	<p>The bidder is correct in that the application of the formula in footnote 2) to Table 2-2 yields lower peak factors. However, as clarified in footnote 3), the peak hourly flows for Umdloti STP are calculated as the arithmetic sum of the contributing flows from the raw sewage conveyance infrastructure feeding the STP.</p> <p>The bidder is advised to use its engineering judgement in determining peak flows at the STP.</p>
121.	RFP Vol. 2 - Schedule 3 – Technical Specifications, Section 2.4.4 – Disposal of grit and screenings (Technical)	<p>It is noted that “Disposal of grit and screenings on site will not be permitted. All grit, screenings and detritus that is produced at the sites must be properly disposed of at a suitable waste disposal site.”</p> <p>Please provide us the location of waste disposal site near to the proposed STPs.</p>	Refer to the response to Question 58.
122.	RFP Vol. 2 - Schedule 3 –	It is stated that “There is currently no suitable power supply to either of the STP sites.”	Refer to the response to Question 69.

	Technical Specifications, Section 4.2 – Power supply to infrastructure (Technical)	Please provide us any basic information regarding nearby power source available nearby the STP sites in order to estimate the cost of transmission lines (OHL/UG cables) to STPs and any requirement of upgrading the existing substations. Also, please clarify the scope of operation of this power infrastructure.	
123.	RFP Vol. 2 - Schedule 3 – Technical Specifications, Section 4.3 – Potable water supply to infrastructure (Technical)	<p>It is stated that “There is currently no suitable potable water supply to either of the STP sites.”</p> <p>Please provide us any basic information regarding nearby municipality water source available nearby the STP sites in order to estimate the cost of transmission pipelines.</p>	See response to Question 65.
124.	RFP Vol. 2 - Schedule 3 – Technical Specifications, Section 4.7 – Topographical surveys and Geotechnical investigations (Technical)	<p>It is stated that “No topographical surveys or geotechnical investigations have been undertaken for the STP site or the conveyance pipeline routes.”</p> <p>However as agreed during the site visit, EWS had provided the topographical information for both STP sites and pipeline routes, however the geotechnical information is provided for the new uMdloti STP site only.</p> <p>Please provide geotechnical information for the new Umkomaas STP site as well.</p>	The available geotechnical data for the Umdloti site has been uploaded to the VDR. Geotechnical and topographical information is not available for the Umkomaas site and RSCS routes. The preferred bidder will be expected to carry out these studies as part of the project scope.

125.	RFP Vol. 2 - Schedule 3 – Technical Specifications, Section 4.1.4 – Treated effluent reuse pipeline (Umkomass) (Technical)	<p>It is stated that “No sites have been identified for the treated effluent reuse pipeline and no land acquisition process has been undertaken.”</p> <p>Although it is stated in Section 4.1.1 as, “It will be the responsibility of the eThekweni Municipality to negotiate, arrange and register all land and servitude rights.”, it is uncertain that when EWS would secure the necessary land (ROW) for TSE reuse pipeline from the new Umkomass STP to SAPPI plant. Please clarify.</p>	It is confirmed that it remains the Municipality’s responsibility to acquire the land for the reuse pipeline.
126.	RFP Vol. 2 - Schedule 3 – Technical Specifications, Section 1.3 – Scope of Works (Technical)	<p>The Scope of works is not included the following requirement of new pump stations and upgrading of existing pump stations, as mentioned in Schedule 16 – ToR for ESIA for Umdloti and Umkomass STPs:</p> <ol style="list-style-type: none"> 1) Upgrading of the existing Sea tides PS and La Mercy PS to accommodate the new flows. 2) New Umdloti PS to be located in the existing Umdloti STP. 3) New Umkomass PS to be located in the existing Umkomass STP <p>During the site visit, EWS had clarified that the above scope of works will be part of EWS responsibility. Please confirm our understanding.</p>	The new pump stations (PS) are part of the Sewage Conveyance System and are part of the scope of works of the Concessionaire.

127.	RFP Vol. 2 - Schedule 3 – Technical Specifications, Section 5.2.1 – Technical requirements for Raw sewage conveyance pipelines (Technical)	It is stated that “No pipeline materials, pipeline routes or pumping equipment have been prescribed.” Bidder understands that EWS has no specific requirement in selection of pipeline materials, pipeline routes or pumping equipment. Bidders are free to design and submit their technically feasible and economical proposal. Please confirm.	Yes, this is correct, with the additional that works shall comply with Prescribed Standards (Schedule 3, clause 6).
128.	RFP Vol. 2 - Schedule 3 – Technical Specifications, Section 5.2.3 – Technical requirements for Treated effluent reuse infrastructure (Technical)	It is stated that “No specific treatment process or type of equipment is prescribed.” Bidder understands that EWS has no specific requirement in treatment process or type of equipment. Bidders are free to design the plant and submit their technically feasible and economical proposal. Please confirm.	This is correct. No restrictions are placed on the technology employed provided it satisfies the requirements as set out in the tender.
129.	RFP Vol. 2 - Section 3.6 – Funding Structure and Contractual Matrix	As mentioned in the Organogram for the basic contractual arrangements, please provide the following agreements that are not included in the Volume 2, Concession Agreement: 1) Shareholders Agreement	Bidders retain responsibility of preparing the documents listed alongside and templates will not be provided as part of the package of tender documents.

	Part T1 Tendering Procedures / Closing Time (Legal)	2) Financing Agreement 3) EPC Contract Agreement 4) O&M Contract Agreement	
130.	Volume 1 Instruction to Bidders T1,1,1 Tender Notice and Invitation to Tender, Opening of Proposals (Legal)	It is stated that “Tenders will be opened immediately after the closing time for tenders.”. Please advise what kind of information will be disclosed at the time of Opening of Proposals.	Information disclosed at the time of Opening of Proposals will be limited to the names of the bidders/JVs/Consortiums as indicated on the cover page of the proposals. The list will be published on the Municipality's tender page after opening.
131.	Volume 1 Instruction to Bidders Chapter B Instructions 1 Section1, 1.1 Glossary of Terms, Existing STPs (Technical)	Site visit to STP at King Shaka International Airport. Please advise how to check the current conditions of the STP?	Bidders interested in a site visit to the KSIA site are requested to put the requests through to the Project Officer for consideration. The decommissioning of the KSIA site will not form part of the Concessionaire's scope of works. Refer to the response to Question 164.
132.	Volume 1 Instruction to Bidders Chapter B Instructions 1	It is stated that “(b) Umkomaas STP from 11 MLD to 20MLD”.	<u>For the Umdloti STP:</u> In Concession Agreement: <ul style="list-style-type: none"> • Initial capacity 20 MLD • After expansion 35 MLD For purpose of space availability only:

	Section1, 1.1 Glossary of Terms, Potential Increased STP Capacity (Technical)	Please confirm correct capacity is from 6MLD to 11MLD.	<ul style="list-style-type: none"> Long-term capacity 125 MLD <p><u>For the Umkomaas STP:</u> In Concession Agreement:</p> <ul style="list-style-type: none"> Initial capacity 6 MLD After expansion 11 MLD <p>For purpose of space availability only:</p> <ul style="list-style-type: none"> Long-term capacity 20 MLD
133.	Volume 1 Instruction to Bidders Chapter B Instructions 1 Section 3, 3.5 National Industrial Participation Programme 3.5.3 (Finance)	<p>It is stated that “Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million will have a NIP obligation.”</p> <p>Please confirm correct currency is ZAR and not USD.</p>	The threshold for the NIP obligations is US\$10 million. Bidders are requested to consult the legal due-diligence report provided in the VDR.
134.	Volume 1 Instruction to Bidders Chapter B Instructions 1 Section 3.4 External Framework 4.3.2 (Legal)	<p>It is stated that “The Municipality will procure the requisite real rights over land on which any Transmission Pipeline(s) for the Project is to traverse, and ensure that those real rights (servitude or right of way) continue for the duration of the Concession Agreement.”</p> <p>Please confirm if the Municipality cannot procure the requisite real rights over land, will it constitute Owner’s default?</p>	The Municipality will provide land access rights consistent with what is set out in clause 6.1 (Access to and rights over the Site). To the extent access is not provided in accordance with this provision, a Site Risk Event arises.

135.	Volume 1 Instruction to Bidders Chapter B Instructions 1 Section3 , 4 External Framework 4.3.3 (Legal)	It is stated that “4.3.3. All land required for the Project (Project Sites and Transmission Pipeline route land) will be made available by the Municipality to the Successful Bidder on a no charge or fee basis” What is the fee level?	The land acquisition process is in its final stages. Refer to the responses to Questions 46, 134, 139, 153 and 170.
136.	Volume 1 Instruction to Bidders Chapter B Instructions 1 Section3 6 Project Procurement Process, Timetable and Due Diligence 6.3 Indicative Project Procurement programme (Legal)	Bidder request to extend “3. Latest Date for Respondents to Submit Queries: 2 weeks later, and 8 Last Date for Respondents / Bidders to Submit Queries ; 2 weeks later” , as 2 weeks from site visit is too short to review all the points and not all the information is available in the Data Room.	The request for an extension of bid submission deadline has been noted and will be considered. Any decision will be communicated promptly to all bidders.
137.	Volume 1 Instruction to Bidders Chapter B Instructions 1	Please confirm this 7.4.2. is for Phase 1? Please confirm 8.1.4 is for Phase 2?	Both are in relation to phase 2 submission. Refer to the response to Question 157.

	Section 3.7 Instructions to Bidders 7.4 Submissions of Proposal 7.4.2 (Legal)		
138.	Volume 1 Instruction to Bidders Chapter D Evaluation 9 Evaluation Structure and Criteria 9.1.1. © (Legal)	Please advise who is Accounting Officer?	The Municipal Manager is the accounting officer of the Municipality, providing leadership on issues of governance.
139.	Annex A Project Description Overview 4 Raw Sewage System 4.3 (Technical)	It is not clear how to get approval for pipeline route. May the bidder understand this is the responsibility of the Municipality?	This is the responsibility of the Municipality and is made clear in 4.3.3 as noted below; “4.3.3 All land required for the Project (Project Sites and Transmission Pipeline route land) will be made available by the Municipality to the Successful Bidder on a no charge or fee basis.”
140.	Annex A Project Description Overview 5 Sewage Treatment Plants 5.2 (Technical)	It is stated that “uMdloti STP Transmission Pipelines” but should be corrected to “uMdloti STP “. Please confirm.	Confirmed, and will be updated in Phase 2

141.	Annex A Project Description Overview 7 Decommissioning of Existing STPs 7.2 (Technical)	Please advise there is “the origin point for the Transmission Pipelines”.	Sewage flows, presently arriving at the old STPs, shall be diverted and lead into the new transmission pipelines/ sewage conveyance systems. It is the Concessionaire's responsibility to plan the configuration of this 'origin point'.
142.	Annex A Project Description Overview 8 Operation of Infrastructure (Legal)	Please advise the “ a defined period”.	The Transfer Date will be agreed upon between the Municipality and Concessionaire. Refer to Schedule 23 - Raw Sewage Conveyance System Transfer Agreement
143.	Concession Agreement / Relief Event (i) (Legal)	Please confirm “Business Forum (Construction Mafia)” is included.	The concession agreement will be revised to limit punitive penalties due to interruptions from construction mafias.
144.	Concession Agreement /Clause 7A.9 © (Legal)	Please advise what is “Transco”.	Refer to the response to Question 12.
145.	Concession Agreement /Clause 16.1 (Legal)	Please advise the correct website of the Municipality SCM Policies.	https://www.durban.gov.za/pages/business/supply-chain-management https://www.durban.gov.za/pages/government/documents?d=Legislation%20and%20Policies/SCM%20Policy%20and%20Applicable%20Regulations%20Acts

			https://www.durban.gov.za/storage/Documents/Legislation%20and%20Policies/SCM%20Policy%20and%20Applicable%20Regulations%20Acts/Supply%20Chain%20Management%20Policy%202023.pdf
146.	Concession Agreement / Clause 25.3 (a) (Legal)	Please confirm the “Concessionaire” in line 4 of the Clause 25.3 (a) should be the “Municipality”.	Correct. Refer to the response for No. 36.
147.	Concession Agreement / Schedule 1 / Section B (Legal)	Please confirm it is mandatory Concessionaire should have both Anchor Sponsor(s) and Technical Partner.	It is compulsory for the Concessionaire to have an Anchor Sponsor(s) and Technical Partner for the tender. This may be the same entity provided the required conditions are met.
148.	Concession Agreement / 1 Definitions and Interpretation / Minimum Interest (Legal)	<p>Please confirm one Anchor Sponsor should have more than 50% of the share capital of the Concessionaire, or otherwise 2 Anchor Sponsors should have more than 30% each of the share capital of the Concessionaire.</p> <p>In case the Concessionaire have 2 Anchor Sponsors and 1 Technical Partner, minimum 80% of the share capital of the Concessionaire is now allowed to transfer before 5th anniversary of Commercial Operation Date. Is the Bidder’s understanding correct? Bidder request the Owner to consider to withdraw this condition.</p>	<p>Bidders are invited to submit suggested drafting as a mark-up to the tender documents as part of the RFP Phase 1 optimization process.</p> <p>Refer to the response for No. 15.</p>
149.	RFP Vol. 1- Section 9.4 – Stage 2: Evaluation of	Will the Reference installations of the mother company, be accepted in a flow through principle as references of the mother company in the Qualification Criteria?	The Bidder will be required to submit proof of ownership of the subsidiary at submission.

	Qualification Criteria, Page 59 (Legal)		
150.	<p>RFP Vol. 1- Chapter B - Instructions, Section 1.1 - Glossary of Terms.</p> <p>Section 2: uMdloti STP (Northern Project Area) & Section 3: Umkomaas STP (Southern Project Area)</p> <p>Royal Haskoning DHV- Presentation eThekweni Wastewater PPP, Bidder Conference – Technical Aspects, as provided in the</p>	<p>Please confirm the desired capacity of the STP's with regards to Initial Capacity and Capacity After Expansion.</p> <p>2. Please confirm whether 'Capacity After Expansion' refers to the expansion that could be implemented as part of the Concession Agreement and not e.g. the final system capacity (e.g. 112 MLD for uMdloti.</p> <p>3. Please confirm whether all Common Infrastructure (e.g. sewage and reticulation piping) should be designed for the 'Capacity After Expansion' or the 'Initial Capacity'.</p>	<p>Refer to the responses to Questions 118 and 132.</p> <p><u>For the Umdloti STP:</u></p> <p>In Concession Agreement:</p> <ul style="list-style-type: none"> • Initial capacity 20 MLD • After expansion 35 MLD <p>For purpose of space availability only:</p> <ul style="list-style-type: none"> • Long-term capacity 125 MLD <p><u>For the Umkomaas STP:</u></p> <p>In Concession Agreement:</p> <ul style="list-style-type: none"> • Initial capacity 6 MLD • After expansion 11 MLD <p>For purpose of space availability only:</p> <ul style="list-style-type: none"> • Long-term capacity 20 MLD

	VDR (Technical)		
151.	RFP Vol. 1- Glossary page 18, Proposal Submission Date Volume 1, page 1, Tender Submission (Legal)	As per the inconsistency noted in the adjacent column, please confirm the correct submission data for the proposal, for each phase.	The proposal submission date is Friday, 08 November 2024. Any updates to be made to the tender timeline will be communicated. Refer to the responses to Question 1.
152.	RFP Vol. 1- 3.6.3 Funding Structure, page 28 (Finance).	Kindly confirm that no government guarantees are contemplated	Refer to the responses to Question 36.
153.	RFP Vol. 1- Chapter B - Instructions, Section 4.4 – Integration with Other Role Players (Legal)	Please elaborate what the role of Dube Tradeport in the project will be?	The municipality will enter into an agreement with Dube Trade Port to lease land for the uMdloti site. Negotiations on the acquisition are at an advanced stage.
154.	RFP Vol. 1- 5.2.2 Affordability, page 33 (Legal)	Please share the complete feasibility study, including the figures and pages that were not included in the pdf version shared on the virtual data room.	The full feasibility study and annexures have been uploaded to the VDR. Any redacted pages within the reports are confidential and do not contain material information that would limit a bidder in the preparation of a responsive bid.

		May you please also include annexures that are referenced in the feasibility study.	These redacted sections will not be shared with the Bidders.
155.	RFP Vol. 1- 5.6.3 RDP Goal Social Upliftment, page 37 (Legal)	Please clarify the rating system for the Social Upliftment of Communities: The maximum goal points = 10 The total for the items listed in this table = more than 10.	Bidder to note the percentage weighting (1/3) for each of goal in each of the three tables.
156.	RFP Vol. 1- 6.3 Project Procurement Programme, page 42 (Legal)	Please confirm the month for Point 4. Response Submission Date (Date: Month 2) and Point 5. Submission of Respondent comments and mark-up to RFP Phase 1 Volume 2 and Respondent Information Form (Date: Month 3)	The Response Submission Date is 3 months from the advert date which was 26 th July 2024. The Bidders comment is noted and will be clarified as part of the Phase 2 process.
157.	RFP Vol. 1- 7.4.2. Tender offer, page 45 (Legal)	Please confirm if the 6 copies are to be hard printed copies.	<p>This is correct. Bidders are required to submit 1 (one) original printed and bound in a volume(s) and 6 (six) hard copies thereof (clearly marked as 'original', and each copy marked as 'copy 1', 'copy 2', [...] 'copy 6').</p> <p>This clause will be amended in the Phase 2 documents to align with clause 8.1.4. (b).</p>
158.	RFP Vol. 1- 8.1.4. Format of submission, page 54 (Legal)	<p>Kindly note that section 7.4.2 and section 8.1.4 regarding the number of copies required for submission, is contradictory.</p> <p>Please confirm if 6 copies are required, as described in section 7.4.2, or if bidders should follow section 8.1.4: 3 hard copies and 2 electronic copies</p>	Refer to the response to Question 157.
159.	RFP Vol. 1- Evaluation	Please confirm who the Accounting Officer is?	See response to Question 138.

	Structure, page 58 (Legal)		
160.	RFP Vol. 1- 9.5.6. Evaluation, page 62 (Legal)	Please clarify Clause 9.5.6 with regards to subcontracting and Economic Development points. Can the shareholding differ between the SPV and the O&M company?	Yes, there is no requirement for SPV shareholders to be shareholders in any first-tier subcontractor entity, or any other subcontractor of the project company.
161.	RFP Vol. 1- 9.7 Decision, page 62 (Legal)	Please clarify this Clause - is the Accounting Officer OR Bid Award Committee ultimately responsible for making the decision?	The Bid Award Committee is ultimately responsible for making the award decision.
162.	RFP Vol. 2- Schedule 3 – Technical Specifications, Section 2.2.3 – Effluent Standards, Umkomaas STP (Technical)	Please advise whether this table for Reuse at Sappi is the complete list of parameters to which the treated effluent to Sappi needs to comply with.	It is confirmed that the table for Reuse at Sappi is the complete list of parameters to be met. The effluent at the Reuse quality should however also comply with Section 2.2.4 as set out in the NWA (36/1998).
163.	RFP Vol. 1- Annex A – Project Description Overview, Section 7 - Decommissioning of Existing	1. Please confirm who will be in charge of O&M of the existing works during construction of the new works. 2. Please elaborate on what the expectation of the decommissioning work is. E.g., is it expected that all aboveground Mechanical and ECI equipment, including motor driven equipment, piping and valves, process instrumentation, Motor Control Centres, Cables and Cable Racking etc. be removed. If so, should all buried piping also be removed? 3. Please elaborate on what is expected on 'making	1. The municipality will retain responsibility of the existing STPs during the construction period. 2. The scope of the decommissioning activities are relevant to aboveground infrastructure; all others are to be made safe (please refer to the relevant Country legislation and regulations). 3. If not demolished filled in where required. Refer to obligations in line with SA Legislation and regulations.

	STP's (Technical)	safe' of existing structures. Is the expectation that civil works will be demolished (if not Reused).	
164.	RFP Vol. 2 - Schedule 18 - Decommissioning of existing STPs, Section 1 -General (Technical)	It was understood from the compulsory Briefing Meeting that the requirement for decommissioning of the KSIA package STP has not been finalized and is still being negotiated with Dube Tradeport. 1. Please confirm whether decommissioning of the KSIA package STP is included in the scope of supply. 2. If decommissioning is excluded from the scope of supply, please advise whether the conveyance pipeline (from KSIA to Umdloti) is included in the scope of supply.	The decommissioning of the KSIA STP will not form part of the project scope. However, the conveyance pipeline (from KSIA to Umdloti) is included in the scope of this project for the Concessionaire.
165.	RFP Vol. 1 - Technical Dataroom, Section 3.4 – Geotechnical Information (document. Geotechnical Assessment of The Cottonlands Site For The Dube Tradeport Corporation, dated February 2024) (Technical)	It is unclear as to whether this document is relevant to the proposed new uMdloti and Umkomaas sites Please confirm whether the document is relevant to the two new sites and, if not, please provide the necessary Geotechnical Information for the two new sites.	The geotechnical information provided in the VDR relates to the site of the new uMdloti STP. Geotechnical and topographical information are not available for the Umkomaas site. The preferred bidder is expected to carry out these studies as part of the project scope. Refer to the response to Question 124 and 179.

166.	RFP Vol. 1 - Annex A: Project Description Overview, Section 2: uMdloti STP (Northern Project Area)	Please elaborate on the decision to treat the effluent to 'special limits' instead of 'general limits'.	The decision to treat the effluent to 'special limits' is to comply with local environmental regulations. This is because the Treated Effluent is to be discharged upstream of an ecologically sensitive waterbody, the uMdloti estuary. Bidders are to refer to Table 2.3 in Schedule 3.
167.	RFP Vol. 1 - Annex A: Project Description Overview, Section 5 – Sewage Treatment Plant (Technical)	<p>Please elaborate how the 2 weeks per year mill shutdown will be managed with the concessionaire</p> <ol style="list-style-type: none"> 1. Would it be possible for Sappi to provide advanced notice (say 1 - 2 months) when this shutdown will occur? 2. In case of no advance notice by Sappi, can the Special Limit discharge requirement be waived for the advance notice period, and for this advance notice period the "Reuse at Sappi" standard will be accepted? 3. Could a situation arise where Sappi could refuse to accept the water on short (unplanned) notice? 4. Could a situation arise where Sappi can only accept a portion of the treated effluent, thus that the effluent has to be discharged to the river as well as provided to Sappi? 	<ol style="list-style-type: none"> 1. We expect that these are plant maintenance periods, planned well in advance by Sappi. Bidders are invited to submit suggested drafting as a mark-up to the tender documents as part of the RFP Phase 1 optimization process. 2. It is foreseen that, during periods that Sappi cannot receive the effluent in its plant, it will discharge the (excess) effluent through its own sea outfall, hence the second point would not be expected to arise. 3. See point 2. 4. Sappi's water requirement exceeds 100 MLD, hence the fourth point is not expected to arise. See point 2.
168.	RFP Vol. 2 - Schedule 4 – Metering and Monitoring, Section 3 –	Please advise the Criteria for Determining Compliance, specifically with regards to compliance with the Treated Effluent specifications. The criteria should include reporting period (e.g. weekly, or monthly), the compliance criteria (e.g. number of samples that has to be compliant in the period) and	Bidders are to refer to Schedule 3 – Technical Specifications, Clauses 2.2.2 and 2.2.3 (Effluent Standards) for compliance with the Treated Effluent specifications. The Bidders comments have been noted and will be amended in the Phase 2 documents.

	Compliance Assessment (Technical)	procedure for retesting in the event of a non-compliance. Schedule 4 - Metering and Monitoring mentions that the 'criteria for determining compliance are set out in Schedule 3', however, this information is not provided in Schedule 3. Similarly, the document also refers to Clause 11.7 of the Concession Agreement. Clause 11.7 - Performance Standards Compliance Report is, however, not provided in the Concession Agreement (the only reference to 'Performance Standards Compliance Report is Clause 5.7, which again provides no compliance criteria)	<ul style="list-style-type: none"> • Compliance is determined daily, using 24-hour flow-proportional samples. • The treated effluent shall be deemed to have complied with the discharge standard for biological parameters if all of the determinants listed in the tables 2-3 and 2-4, (with the exception of pH,) do not exceed the values given in the table. • As per Clause 3.1, The Concessionaire's responsibility for meeting the effluent standard for biological parameters is waived in case of an Off-Specification Influent Event, as specified in Clause 3.1. • As per Clause 3.2, the Concessionaire shall not be responsible for meeting the discharge standards for heavy metals. <p>As set out in Schedule 4 – Metering and Monitoring, Clause 3, the Concessionaire shall undertake monthly assessments of compliance.</p>
169.	RFP Vol. 2 - Schedule 3 – Technical Specifications, Section 2.4 - Sludge Treatment and Reuse Schedule 3 - Technical Specifications, Section 2.2.4 – Discharge	<p>Please provide clarity on what is the requirement for the sludge quality for final disposal, and also what the current sludge quality is, as well as the current disposal route (agriculture / landfill) and associated costs.</p> <p>Please also advise on how the beneficial reuse of sludge would be evaluated. With reference to Section 2.2.4 and 3.2 in Schedule 3 - Technical Specifications, please clarify the requirement related to the discharge standard for heavy metals.</p>	<p>Bidders are to refer to Schedule 3 Section 2.4 for the sludge treatment and reuse requirements and 2.2.4 for the discharge standards for Heavy Metals. Bidders are invited to prepare their own estimates for the disposal routes (agriculture/landfill).</p> <p>The beneficial reuse of sludge will be preferred by EWS, particularly where this involves the production of agricultural compost. Note, however, that this is not a prescribed requirement. The evaluation for beneficial reuse of sludge will otherwise be based on whether the solution meets the required technical specifications and how cost-effective the solution will be.</p>

	Standard for Heavy Metals Schedule 3 – Technical Specifications, Section 3.2 - Heavy Metals (Technical)		
170.	RFP Vol. 1 - Section 7.15 – Bid Bond. Concession Agreement, Schedule 2- Project Specific Information (Legal)	<p>Please advise the progress / status of the land lease of the Project Sites.</p> <p>Has the Municipality considered alternative routing of the conveyance piping in its planning for the land lease of the sites?</p>	<p>The municipality is in advanced stage of negotiations with the Dube Trade Port for the acquisition of land for the uMdloti site; with acquisition of the Umkomaas site similarly advanced.</p> <p>Alternative routes for the routing of the conveyance piping were already assessed during the planning phase. The route for the feasibility has also been uploaded to the VDR.</p>
171.	RFP Vol. 2 - Definitions page 22 & 23 (Technical)	Can you be more precise as regards the difference between Off-Specification Influent and Polluted Influent? Both refer to non-compliance with Section 3 (Raw Sewage Quality) of Schedule 3 (Technical Specification).	<p>Under the Concession Agreement, the key distinction between Off-Specification Influent and Polluted Influent is in respect of the Concessionaire's obligations (as set out in clause 10.8).</p> <p>We understand the terms to mean the following:</p> <ul style="list-style-type: none"> • Polluted Influent is influent in which any of the parameters are above the Raw Sewage Quality Threshold values as set out in Schedule 3 – Technical Specifications, Clauses 3 (Raw Sewage Quality) • Off-Specification Influent is defined as Raw Sewage quality exceeding threshold values for two or more consecutive days.

			<p>Such event has bearing on the Concessionaire's responsibility for compliance with the effluent quality standard.</p> <p>In the case of receiving Off-Specification Influent, the Concessionaire must continue with their obligations under the Agreement.</p> <p>In the case of receiving Polluted Influent, the Concessionaire must treat the Polluted Influent, and may bypass the Polluted Influent to protect the Facilities from the Polluted Influent.</p> <p>In both cases, the Concessionaire is not liable for Penalty Deductions to the extent the Minimum Performance Standards are impacted by the Off-Specification / Polluted Influent. The Concessionaire is also entitled to time and cost relief as they are also Influent Relief Events (which are Municipality Risk Events).</p>
172.	<p>RFP Vol 2 - Raw Water Conveyance Systems</p> <p>7A.9 Transfer of Raw Sewage Conveyance System c) page 68 (Legal)</p>	Who is Transco?	Refer to the response to Question 12.
173.	<p>15 Payment and Invoicing 15.1 c) i) (Legal)</p>	Please confirm whether SAPPI is paying directly to the Concessionaire, or not.	SAPPI will make nominal payments to the municipality, with the Concessionaire to receive its project related payments from the municipality.

			The Concessionaire is however allowed to directly negotiate off-take agreements for the Umdloti STP.
174.	16 Supply Chain Management (Legal)	Does this mean that the Concessionaire has to apply the Public Procurement rules? Construction Contractor & O&M Contractor are chosen by the Concessionaire according to its rules and, as part of the PPP proposal, are nominated at Tender submission stage.	This provision will only apply to the Private Party after the Concession Agreement comes into force. The Concessionaire's procurement processes should reflect public sectors procurement rules (including competitive, open & fair process etc.).
175.	Virtual Data Room (Technical)	Some software are not known: .kmz (in 3.1), .vsd (in 3.5), .cpg / .dbf / .prj / .shp and .shx (in 5.4). May these files please be shared as a pdf in order for all bidders to access them?	<p>Converting the files from their current formats to PDF would compromise the integrity and functionality of the data they contain.</p> <p>These formats were specifically chosen for their ability to convey complex and detailed geographic information that is best viewed and manipulated within Geographic Information Systems (GIS) applications.</p>
176.	Virtual Data Room (Technical)	Chapters "5.5 Relevant PPP Laws and Regulations" and "5.6 Umkomaas Reuse Water Purchase Agreement" are currently empty.	<p>The Legal due diligence undertaken as part of the feasibility study has been uploaded to the VDR for informational purposes only. PPP Laws and Regulations will not be uploaded to the VDR and this folder will be deleted.</p> <p>The draft final Heads of Terms for the Reuse Water Purchase Agreement (RWPA) has been uploaded in the VDR. The RWPA will be executed between the concessionaire and SAPPI upon signing of the concession agreement (commercial close).</p>
177.	Point 7.2.4 in Section 7 of Chapter B of the	Point 7.2.4 in Section 7 of Chapter B of the Procurement Document states that "a Tenderer will not be eligible to submit a tender if: (in the case of JV submissions, two or more JV entities have common	Each entity or firm is restricted to participation in a single consortium or joint venture (JV) for this tender.

	Procurement Document	<p>directors/shareholders or common entities tendering for the same works.”</p> <p>{Company A} has a 40% shareholding in {Company B} (a French based utility company) and we just wanted to find out if {Company A} (a infrastructure developer and investor) can bid separately from {Company B}? i.e. can {Company A} and {Company B} be in different JVs? These two companies technically have different core businesses.</p>	<p>In this instance entities with common shareholding/directors are not allowed to be in different JV's and bid separately. Volume 1 will be amended accordingly to clarify this restriction in Phase 2.</p> <p>Refer to the Volume 1 Clauses 7.12.4 and 7.14.</p>
178.	RFP Volume 1 - Clause 7.3 and 7.14	<p>As EPC subcontractor, {Bidder} is the licensee for a proprietary technology in South Africa. Bidder would like to offer the technology to all interested main bidders responding to the enquiry.</p> <p>The offering of the technology to any or each main bidder, in the opinion of bidder, does not jeopardise the client nor does it place any of the bidders at an advantaged/ disadvantage over the other bidders electing to utilise the a technology as part of their main offer for the project. The reason for this is that the technology forms only a limited portion of the total project scope and its application would be uniquely applied according to each main bidders strategic solution to the overall project. We consider technology as no different to other proprietary technology or equipment.</p> <p>It is bidder's opinion that the technology offers a distinct value proposition to the project and therefore Ethekweni as the end client. This is evidenced through the process and engineering advantages that the</p>	<p>The tender for the public-private partnership project is designed to be technologically agnostic, with no preference for specific technologies or providers.</p> <p>The municipality is committed to a fair and competitive bidding process. All bidders are invited to submit proposals that they believe fulfill the project's objectives and comply with the requirements detailed in the tender documents.</p> <p>Proposals will be evaluated strictly on their merits, focusing on adherence to the technical / output specifications. Solutions that meet the tender requirements will be considered on an equal footing to ensure an unbiased selection process that does not favor any particular technology or provider.</p>

		technology offers, ie; significantly reduced footprint and reduced electrical consumption in addition to others.	
179.	Technical Data Room, Section 3.4 - Geotechnical Information (document Geotechnical Assessment Of The Cottonlands Site For The Dube Tradeport Corporation, dated February 2024)	<p>Document provides geotechnical information for 6 sites (Portions 4, 6, 8, 10, 11 and Cottonlands) as conducted for ACSA. However, it is not clear how this document relates to the proposed new sites (uMdloti and Umkomaas).</p> <p>Please confirm if detailed onsite geotechnical study, for the two new sites (uMdloti and Umkomaas), will be provided to Bidders.</p>	<p>The geotechnical information provided in the VDR relates to the site of the greenfield uMdloti STP. Geotechnical and topographical information is not available for the Umkomaas site, and the preferred bidder is expected to carry out these studies as part of the project scope.</p> <p>Refer to the responses to Questions 124 and 165.</p>
180.	Volume 1, Paragraph 3.6.3 Funding Structure, page 28 “	<p>“No government guarantee will be furnished by the provincial government of Kwa-Zulu Natal, or the Government to the Successful Bidder, or any of its shareholders, or Debt Provider(s).”</p> <p>Bankability is a handicap for municipalities, also so for eThekweni and especially for this social PPP scheme. Please reconsider the exclusion of a national government guarantee. In consideration of this, kindly confirm that no Government or provincial government guarantees will be provided. If confirmed, what type of other guarantees (DBSA?) can be expected to</p>	Refer to the response to Question 36.

		enhance the credit risk of eThekweni Municipality and satisfy the lenders?	
181.	Annexure 5(B) - Full Reports Preliminary Studies Eng Concepts	<p>With regards to the treatment processes (UM25EE_1.doc), specific technologies are proposed in the feasibility report and concept design (Annexure 5(B) - Full Reports Preliminary Studies Eng Concepts). Some of these technologies are patented.</p> <p>Please advise whether alternative technologies can be used for the project?</p> <p>Please also advise what technologies and processes are prescriptive and non-negotiable for the project, if any.</p>	<p>No restriction is placed on the technology employed provided it satisfies the performance requirements as set out in the tender including the waste handling and limits.</p> <p>Refer to the response to Question 81.</p>
182.	Submission structure and process	<p>Clarification on the submission structure and process for the phase 1 RFP submission, dated for the 9 August 2024.</p> <p>a) a. Are we required to follow the submission requirements of section 7.4 of the RFP? i.e. an original and six copies together with a digital copy on a memory stick?</p> <p>b) That the required submission structure should only include detail as provided in section 2.2.1?</p> <p>i. Cover Letter</p> <p>ii. Mark-up of the Concession agreement</p> <p>iii. The Determination of Payments (Schedule 7)</p> <p>iv. Project Insurances (Schedule 5)</p> <p>v. Technical Specifications (Schedule 3)</p> <p>vi. With no other supporting information required.</p>	<p>a) Bidders are advised that an original and six copies will be required. Refer to the response to Question 157.</p> <p>b) For the required submission structure, Bidders are requested to refer to Volume 1: Instructions to Bidders including the mandatory requirements set out in Annexures 1A to 1D (Mandatory Proposal Requirements) of RFP Phase 2.</p>

183.	Extension of timelines.	<p>For the phase 1 submission, a 4-week extension on the 9 August 2024 submission date.</p> <p>b. With this extension the receipt of the final Phase 2 RFP will be issued around the 12 October 2024. Further the current allowance for 1 month after receipt of this Phase 2 RFP is extremely tight to complete and adjust our proposals to details of the final concession agreement. It is therefore requested that the submission of the phase 2 RFP be moved to the end of February 2025.</p>	<p>The request for an extension of bid submission deadline has been noted and will be considered. Any decision will be communicated promptly to all bidders.</p>
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