

## **Annexure 3:**

### **Commercial and Financial Requirements**

## Contents

<b>1</b>	<b>MINIMUM REQUIREMENTS</b>	<b>3</b>
1.1	Purpose of the Document	3
1.2	Introduction	3
1.3	Executive Overview	3
1.4	Preferred and Reserve Bidder	4
1.5	Bid Price	4
1.6	Form of Contract	6
1.7	Contract Price	6
1.8	Contract Price Variations and Adjustments	6
1.9	Bid Bond/Security	6
1.10	Performance Bond/Security	8
1.11	Advance Payment Bond/Security	9
1.12	Professional Personnel Registrations	10
1.13	Professional Company Registrations	11
1.14	Additional Tax Compliance Requirements	11
1.15	Additional B-BBEE Compliance Requirements	12
1.16	Additional CSD Compliance Requirements	13
1.17	Additional CIDB Compliance Requirements	13
1.18	Additional PPPF-2017 Compliance Requirements	14
1.19	Additional NIP Compliance Requirements	15
1.20	Additional Local Production and Content Compliance Requirements	15
1.21	Bidder Use of Existing Plant and Materials	17
1.22	Financial Management	17
1.23	Financial Performance Management	21
1.24	Bidder's Intellectual and Industrial Property	42

## 1 MINIMUM REQUIREMENTS

### 1.1 Purpose of the Document

- 1.1.1 The purpose of this document is to provide the Commercial and Financial Requirements (“CFR”) which form part of the minimum Requirements of the Passenger Rail Agency of South Africa (“PRASA”) for the planning, design, supply, construction, installation, testing, commissioning and maintenance of a new fully integrated, functional, complete and future-proofed PRASA Train Control System (“PTCS”) in PRASA’s KwaZulu-Natal (“KZN”) service region (“the Project”) that the Bidder shall meet and deliver at the Bidder’s cost therefore within the Bid Price.

### 1.2 Introduction

- 1.2.1 In conjunction with the contractual definitions and requirements of this Request for Proposal (“the RFP”), this document contains Conditions of Invitation and Instructions to Bidders to which the Bidder shall comply. The Bidder shall confirm unequivocal compliance with these Conditions of Invitation and Instructions to Bidders in the Statements of Compliance.
- 1.2.2 PRASA Requirements, Conditions of Invitation and Instructions to Bidders are, at a minimum, comprised of the following sets of documents that shall be read in conjunction:
- a) The General Technical Requirements (“GTR”), which defines overarching requirements, needs, expectations and outputs of the Project which the Bidder shall meet and achieve.
  - b) The Particular Technical Requirements (“PTR”), which defines specific requirements, needs, expectations and outputs of the Project which the Bidder shall meet and achieve.
  - c) The Commercial and Financial Requirements (“CFR”), which defines specific requirements needs, expectations and outputs of the Project which the Bidder shall meet and achieve.

### 1.3 Executive Overview

- 1.3.1 Notwithstanding any other PRASA Requirements stated throughout the RFP, the Bidder shall uncompromisingly deliver the whole of the Works required to achieve successful delivery of the Project.
- 1.3.2 The Bidder is deemed to be an expert in the Planning, Design, Supply, Construction, Installation, Testing, Commissioning and Maintenance of the Project/Works and shall, as part of the Bid Price, make provision for all costs required to achieve successful completion of the Works, the Project and the Contract.

- 1.3.3 PRASA shall not accept any Bidder exclusions or qualifications to any of PRASA's Requirements and/or Conditions of Invitation and/or Instructions to Bidder as stated throughout the RFP therefore no Bidder exclusions or qualifications to the Bid Price shall be accepted either. Exclusions or qualifications to any of PRASA's Requirements and/or Conditions of Invitation and/or Instructions to Bidder as stated throughout the RFP, by the Bidder, shall render the Bidder's Bid as being non-responsive.
- 1.3.4 The Bidder shall make provision for any additional Works and related costs, that the Bidder (being an expert) deems to be required, and as will be required, to achieve successful completion of the whole of the Works, the Project and the Contract, as part of the Bid Price.
- 1.3.5 Failure of the Bidder to meet any of PRASA's Requirements and/or Conditions of Invitation and/or Instructions to Bidder, as stated throughout the RFP, shall render the Bidder's Bid as being non-responsive.

#### **1.4 Preferred and Reserve Bidder**

- 1.4.1 PRASA reserves its rights to select a Preferred Bidder and a Reserve Bidder.
- 1.4.2 A Preferred Bidder shall be a Bidder to whom PRASA initially intends to award the Contract after successful conclusion of negotiations.
- 1.4.3 A Reserve Bidder shall be a Bidder to whom PRASA intends to award the Contract, if; the Preferred Bidder did not exist and/or agreement is not reached between PRASA and the Preferred Bidder for any reason whatsoever, subject to successful conclusion of negotiations with the Reserve Bidder.
- 1.4.4 PRASA reserves its rights not to award the Contract to any Bidder for which such decision shall be of no consequence, liability, or cost to PRASA.

#### **1.5 Bid Price**

- 1.5.1 PRASA shall enter a fixed price Contract with the Bidder. The Bidder shall therefore, as part of the all-inclusive Bid Price, include the following at a minimum:
- a) The price for the whole of the Works (regardless of whether of a temporary or permanent nature) including additional Works (regardless of whether of a temporary or permanent nature) which the Bidder deems to be required to achieve successful completion of the whole of the Works, the Project and the Contract.
  - b) All Funding costs which the Bidder will require to manage the Bidder's cash flow for the entire duration of the Contract (to be transparently and separately shown for every cost item included in the Bid Price).
  - c) All South African and International Taxes for the entire duration of the Contract (to be transparently and separately shown for every cost item included in the Bid Price).

- d) All Foreign Currency and Exchange (“FOREX”) costs for the entire duration of the Contract (to be transparently and separately shown for every cost item included in the Bid Price).
- e) All Escalation for the entire duration of the Contract (to be transparently and separately shown for every cost item included in the Bid Price).

1.5.2 The Bidder shall, at a minimum and as part of the Bid, complete the detailed Pricing Sheets (attached as Annexure 3.1). The Bidder shall transparently add, and separately show, any further detailed cost items to the Pricing Sheets as the Bidder deems required for meeting all obligations under the anticipated Contract. The Bidder shall take unequivocal responsibility for ensuring that all, formulae, arithmetical calculations and the like are correct in the detailed Pricing Sheets submitted as part of the Bid regardless of the fact the detailed Pricing Sheets have been provided by PRASA. The bidder is advised that the detailed Pricing Sheets (attached Annexure 3.1) may be subject to change, by PRASA, throughout the Bidding process. Updated detailed Pricing Sheets may therefore be issued as Briefing Notes should such need arise.

1.5.3 After deriving the Bidder’s intended Bid Price, the Bidder shall allow a bottom line PRASA Project Contingency Allowance equal to 10% of this intended Bid Price (including VAT) to form the Bid Price (which shall be the Price submitted in the Bidder’s Form of Offer excluding/including VAT as stipulate elsewhere in the RFP). The Bidder shall never place reliance on this Allowance when pricing the full requirements of the RFP, Contract, Project, and Works, nor throughout the duration of the Contract, since PRASA may at PRASA’s sole discretion, and at any point in time, remove this Allowance from the Initial or Total Contract Price for which such removal shall not relieve the Bidder of the Bidder’s obligations to deliver the Contract, Project, and Works, terms in any manner whatsoever. The Bidder’s summary Pricing Sheet shall therefore be structured as per the following example:

BID PRICE DESCRIPTION	VALUE
Bidder’s Price Meeting All Requirements of the RFP, Contract, Project, and Works	R 1,000,000.00
Add: VAT @ 15%	R 150,000.00
PRASA Project Contingency Allowance @ 10%	R 100,000.00
Add: VAT @ 15%	R 15,000.00
<b>BID PRICE EXCLUDING VAT</b>	<b>R 1,100,000.00</b>
Add: VAT @ 15%	R 165,000.00
<b>BID PRICE INCLUDING VAT</b>	<b>R 1,265,000.00</b>

- 1.5.4 The Bidder shall further, as part of the Bid, provide a detailed list of personnel envisaged to be utilised on the project together with each person's function/roles/responsibilities further providing Hourly Rates for each person linked to each function/role/responsibility. Such Hourly Rates shall be as at the base date of submission of the Bid and transparently demonstrate the calculation of each Hourly Rate (i.e. proven cost plus overhead plus profit) using the Department of Public Service and Administration ("DPSA") method.

## **1.6 Form of Contract**

- 1.6.1 The Contract that shall be entered between PRASA and the Bidder is the Contract as annexed to the RFP.

## **1.7 Contract Price**

- 1.7.1 The Bidder's Bid Price, as may be amended through negotiations, shall be the fixed price Accepted Contract Amount or the Initial Contract Price ("ICP").

## **1.8 Contract Price Variations and Adjustments**

- 1.8.1 The ICP may be subject to Variations and Adjustments (additions or deductions) as the Contract is executed and in accordance with the provisions of the Contract for such adjustments. Such Variations and Adjustments shall from the Total Contract Price ("TCP" or the "Contract Value" as adjusted and varied from time to time throughout the duration of the Contract).
- 1.8.2 Unless otherwise agreed to in writing by PRASA, the Bidder's submission of Variations or Adjustments relating to any of the Bidder's obligation to meet the requirements of the RFP shall not, throughout the duration of the negotiations process nor the Contract, be entertained by PRASA.

## **1.9 Bid Bond/Security**

- 1.9.1 The Bidder shall, as part of the Bid, submit an irrevocable and unconditional payment-on-demand Bid Bond/Security to the value of R80,000,000.00 (Eighty Million Rand) and which shall remain valid for 365 calendar days after the closing date of the bid. The Bidder shall further extend the validity of the of the Bid Bond/Security as may be requested by PRASA throughout the duration of PRASA's procurement process.
- 1.9.2 PRASA shall, at PRASA's discretion and without substantiation, call upon the Bid Bond/Security if:
- a) Bidder making any misrepresentations in the Bid; and/or
  - b) Bidder or any of its advisors, officers, employees or agents allegedly engaging in any collusive action with respect to the RFP processes and/or PRASA's procurement processes; and/or

- c) Bidder or any of its advisors, officers, employees or agents allegedly engaging in illegal or fraudulent activities in relation to the RFP processes and/or PRASA's procurement processes; and/or
- d) Bidder's failure, if selected as the "Preferred Bidder" or "Reserve Bidder" (as defined in the RFP and for which the definition shall remain at the discretion of PRASA) by PRASA, to conclude a contract with PRASA on substantially the same terms and conditions as contained in the RFP or Bid (in either instance at the sole discretion of PRASA and to the satisfaction of PRASA); and/or
- e) Bidder, without PRASA's written agreement, withdraws the Bidder's Bid after the latest time specified by PRASA as the closing date for the Bid and/or before the expiry of the validity of the Bid as specified by PRASA; and/or
- f) Bidder refuses to accept any correction of errors in the Bidder's Bid in accordance with any conditions of invitation and/or instructions to bidders and/or the RFP processes and/or PRASA's procurement processes; and/or
- g) PRASA awards the Bid to the Bidder and the Bidder fails to comply with any conditions of the award and/or award instruction; and/or
- h) PRASA signs an agreement and/or contract with the Bidder and the Bidder fails to comply with any conditions of the agreement and/or contract and/or the agreement instruction and/or contract instruction respectively; and/or
- i) PRASA notifies a Bidder of the Bidder's appointment and/or PRASA signs an agreement and/or contract with the Bidder (the earliest date) and the Bidder fails to produce the actual Performance Bond/Security, in unequivocal compliance with PRASA's requirements and to the sole satisfaction of PRASA as per the RFP Performance Bond/Security Format provided (and any other instruction issue by PRASA), within 30 calendar days from the date of PRASA notification to the Bidder of the Bidder's appointment and/or PRASA signature of an agreement and/or contract with the Bidder (the earliest date); and/or
- j) PRASA signs an agreement and/or contract with the Bidder and the Bidder fails to perform any obligations and/or liabilities and/or comply with the agreement/contract and/or agreement/contract instruction respectively; and/or
- k) PRASA, in PRASA's opinion, is entitled to amounts recoverable from the Bidder for any reason whatsoever.

- 1.9.3 PRASA's calling upon of the Bid Bond/Security shall not, in any manner whatsoever, prejudice PRASA's rights nor limits in respect of PRASA claiming Damages or any other costs from the Bidder.
- 1.9.4 The Bid Bond/Security shall be provided by a South African bank whose primary place of business operations is South Africa.
- 1.9.5 The Bid Bond/Security template with which the Bidder shall comply is as annexed to the Contract that is annexed to the RFP.



## 1.10 Performance Bond/Security

- 1.10.1 The Bidder shall, within 30 calendar days from the date of PRASA notification to the Bidder of the Bidder's appointment and/or PRASA signature of an agreement and/or contract with the Bidder (the earliest date), submit an actual irrevocable and unconditional original payment-on-demand Performance Bond/Security equal to 10% of the ICP and which shall, at a minimum, remain valid for 365 calendar days after the Bidder's planned date of receipt of the Performance Certificate (for the whole of the Works) from PRASA. This actual Performance Bond/Security shall be provided by the same South African Bank (whose primary place of business operations is South Africa 'the Bank') that provided the Performance Bond/Security Letter of Intent as part of the Bidder's Bid.
- 1.10.2 The Bidder shall thereafter ensure that the Performance Bond/Security is always equal to 10% of the TCP and that the Performance Bond/Security remains valid for 365 calendar days after the planned date of issuance of the Performance Certificate by PRASA or for 365 calendar days after the actual date of issuance of the Performance Certificate by PRASA (the later of the 2 dates).
- 1.10.3 To facilitate the Performance Bond/Security always being equal to 10% of the TCP, the Bidder shall at a minimum, submit an original updated Performance Bond/Security to PRASA every 300 days from the Commencement Date. The Bidder shall use the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that an updated Performance Bond/Security is due, to calculate the value of the updated Performance Bond/Security that shall be provided.
- 1.10.4 PRASA shall, at PRASA's discretion and without substantiation, call upon the Performance Bond/Security if:
- a) PRASA awards the Contract to the Bidder and the Bidder fails to achieve completion of Validation to the absolute satisfaction of PRASA for which the Key Date is fixed as the 548<sup>th</sup> calendar day after the Commencement Date; and/or
  - b) PRASA awards the Contract to the Bidder and the Bidder, in PRASA's opinion, fails to comply with any Conditions of Contract; and/or
  - c) PRASA awards the Contract to the Bidder and the Bidder, in PRASA's opinion, fails to perform any obligations and/or liabilities and/or comply with the Contract; and/or
  - d) PRASA, in PRASA's opinion, is entitled to amounts recoverable from the Bidder for any reason whatsoever.
- 1.10.5 PRASA's calling upon of the Performance Bond/Security shall not, in any manner whatsoever, prejudice PRASA's rights nor limits in respect of claiming penalties, delay Damages and/or any other Damages and/or any other costs regardless of the limits set for such penalties and Damages (regardless of the reason for PRASA's calling upon the Performance Bond/Security).
- 1.10.6 The Performance Bond/Security shall be provided by a South African bank whose primary place of business operations is South Africa.



- 1.10.7 The Performance Bond/Security template with which the Bidder shall comply is as annexed to the Contract that is annexed to the RFP.

### **1.11 Advance Payment Bond/Security**

- 1.11.1 The Bidder shall obtain and maintain (at the Bidder's cost) an irrevocable and unconditional original payment-on-demand Advance Payment Bond/Security equal to the total amount of any Mobilisation and/or Advance Payment to be made and/or made and which shall remain valid for 365 calendar days after the Bidder's planned date of receipt of the Performance Certificate (for the whole of the Works) from the PRASA. If the terms of the Advance Payment Bond/Security specify an expiry date, and the Bidder has not become entitled to receive the Performance Certificate by the date 60 calendar days before the expiry date, the Bidder shall extend the validity of the Advance Payment Bond/Security until the issue of the Performance Certificate by PRASA.
- 1.11.2 The Bidder shall, within 14 calendar days of the Commencement Date, submit an irrevocable and unconditional original payment-on-demand Advance Payment Bond/Security equal to the Mobilisation Allowance to be certified under Payment Milestone 1.
- 1.11.3 PRASA shall, at its own discretion and without substantiation, call upon the Advance Payment Bond/Security if:
- a) PRASA awards the Contract to the Bidder and the Bidder fails to achieve completion of Validation to the absolute satisfaction of PRASA for which the Key Date is fixed as the 548<sup>th</sup> calendar day after the Commencement Date; and/or
  - b) The Bidder, in the PRASA's opinion, fails to comply with any Condition(s) of the Contract; and/or
  - c) The Bidder, in PRASA's opinion, fails to perform any obligation(s), and/or liabilities and/or comply with the Contract; and/or
  - d) In PRASA's opinion, is entitled to amounts recoverable from the Bidder for any reason whatsoever.
- 1.11.4 PRASA's calling upon of the Advance Payment Bond/Security shall not, in any manner whatsoever, prejudice PRASA's rights nor limit in respect of claiming penalties, delay Damages and/or any other Damages and/or any other costs regardless of the limits set for such penalties and Damages, regardless of the reason for PRASA's calling upon the Advance Payment Bond/Security.
- 1.11.5 The Advance Payment Bond/Security shall be provided by a South African Bank whose primary place of business operations is South Africa.
- 1.11.6 The Advance Payment Bond/Security template with which the Bidder shall comply is as annexed to the Contract that is annexed to the RFP.

## 1.12 Professional Personnel Registrations

- 1.12.1 All personnel deployed on this Project, by the Bidder (including, but not limited to, personnel deployed by; the main Bidder, joint venture partners and/or consortium members and/or subcontractors and/or direct contractors and/or similar), shall be appropriately skilled and experienced (list to be attached for the Key Personnel: Project Manager, Commercial Manager, Controls Manager, Quantity Surveyor, Project Scheduler, Document Controller, Designers, Checkers, Testers, etc.) and shall have the applicable requisite mandatory and professional; qualifications, certifications and registrations as required by all applicable legislation, regulations, bylaws and industry best practice. This is an absolute requirement at the time of bidding and validity of such qualifications, certifications and registrations shall be maintained, on an uninterrupted basis, for the entire duration of the Contract. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).
- 1.12.2 PRASA may, solely at PRASA's discretion and without consequence or liability to PRASA, instruct the Bidder to remove any of the Bidder's personnel deployed throughout the duration of the Contract for any reason deemed appropriate by PRASA. The Bidder shall immediately comply with this instruction and appoint suitable replacement personnel within 60 calendar days of receiving such an instruction for which such replacement personnel shall first be approved in writing by PRASA. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

### 1.13 Professional Company Registrations

- 1.13.1 All companies deployed on this Project, by the Bidder (including, but not limited to; the main Bidder, joint venture partners and/or consortium members and/or subcontractors and/or direct contractors and/or similar), shall be appropriately skilled and experienced and shall have the applicable requisite mandatory and professional; qualifications, certifications and registrations as required by all applicable legislation, regulations, bylaws and industry best practice. This is an absolute requirement at the time of bidding and validity of such qualifications, certifications and registrations shall be maintained, on an uninterrupted basis, for the entire duration of the Contract. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).
- 1.13.2 PRASA may, solely at PRASA's discretion and without consequence or liability to PRASA, instruct the Bidder to remove any of the Bidder's companies deployed throughout the duration of the Contract for any reason deemed appropriate by PRASA. The Bidder shall immediately comply with this instruction and appoint suitable replacement companies within 60 calendar days of receiving such an instruction for which such replacement companies shall first be approved in writing by PRASA. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

### 1.14 Additional Tax Compliance Requirements

- 1.14.1 Joint Ventures and Consortium Bidders are eligible to submit Bids provided that:
- a) Every member of the joint venture/consortium has a valid Tax Pin issued by SARS.
- 1.14.2 Joint Ventures and Consortium Bidders are eligible to get paid provided that:
- a) A joint venture/consortium VAT number is provided prior to the issuance of the Bidder's first invoice or if agreed to in writing by PRASA then at the latest prior to issuance of the Bidder's fourth invoice

- 1.14.3 The Bidder shall, on an uninterrupted basis, maintain the Bidder's compliant Tax Status and Clearance as was submitted as part of the Bidder's Bid for the duration of the Contract. The Bidder shall further provide any proof and supporting documents of compliant Tax Clearance immediately upon receipt of a request from PRASA for the Bidder to do so. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).
- 1.14.4 The Bidder shall, on an uninterrupted basis, comply with all South African and International Tax laws, regulations and compliance requirements stated throughout the RFP. The Bidder shall further provide any proof and unredacted supporting documents proving compliance as specified throughout the RFP or immediately upon receipt of a request from PRASA for the Bidder to do so. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

## **1.15 Additional B-BBEE Compliance Requirements**

- 1.15.1 The Bidder shall, on an uninterrupted basis, maintain the Bidder's compliant B-BBEE Certification Level as was submitted as part of the Bidder's Bid for the duration of the Contract. The Bidder shall further provide any proof and supporting documents of the B-BBEE Certification Level immediately upon receipt of a request from PRASA for the Bidder to do so. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).
- 1.15.2 The Bidder shall, on an uninterrupted basis, comply with all B-BBEE laws, regulations and compliance requirements stated throughout the RFP. The Bidder shall further provide any proof and unredacted supporting documents proving compliance as specified throughout the RFP or immediately upon receipt of a request from PRASA for the Bidder to do so. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

## **1.16 Additional CSD Compliance Requirements**

- 1.16.1 The Bidder shall, on an uninterrupted basis, maintain the Bidder's compliant CSD Registration Status as was submitted as part of the Bidder's Bid for the duration of the Contract. The Bidder shall further provide any proof and supporting documents of compliant CSD Registration immediately upon receipt of a request from PRASA for the Bidder to do so. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

## **1.17 Additional CIDB Compliance Requirements**

- 1.17.1 Bidders are advised that it is in their own interest, to obtain their own copies of the following acts, regulations and standards referred to in this document, together with any gazetted amendments thereto, as they are essential for the Bidder getting acquainted with the basics of Construction and management requirements:
- a) The Construction Industry Development Board ("CIDB") Act No. 38 of 2000 and the regulations in terms of the CIDB Act 38 of 2000, Government Notice No. 692 of 9 June 2004, as amended.
- 1.17.2 Only those Bidders who are registered with the CIDB, in a Bidder grading Designation equal to or higher than a Bidder grading Designation of 9EP, are eligible to have their tenders evaluated. Individual bidding entities shall therefore at the time of bidding have, and provide proof of, a valid Bidder grading Designation of 9EP as issued by the CIDB. Joint ventures and consortiums are eligible to submit tenders provided that:
- a) If unincorporated, every member of the joint venture/consortium has a valid registration with the CIDB as applicable and the lead joint venture partner/consortium member shall at the time of bidding have, and provide proof of, a valid Bidder grading Designation of 9EP as issued by the CIDB.
  - b) If incorporated, the joint venture shall at the time of bidding have, and provide proof of, a valid combined Bidder grading Designation of 9CE as issued by the CIDB
  - c) The combined Bidder grading Designation calculated in accordance with the Construction Industry Development laws and regulations is equal to or higher than a Bidder grading Designation determined in accordance with the sum bidded for a 9EP class of Construction work determined in accordance with Regulation 25 (1B) or 25 (7A) of the Construction Industry Development laws and regulations.

- 1.17.3 The Bidder shall, on an uninterrupted basis, maintain the Bidder's compliant CIDB grading Designation as was submitted as part of the Bidder's Bid, and ensure that all of the Bidder's sub-contractors are compliant with their requisite CIDB grading Designations for their respective value of Works to be delivered, for the duration of the Contract. The Bidder shall further provide any proof and supporting documents of the CIDB grading Designation immediately upon receipt of a request from PRASA for the Bidder to do so. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

## **1.18 Additional PPPF-2017 Compliance Requirements**

- 1.18.1 The Bidder shall, at no additional cost to PRASA, adhere to all related legislation (as amended from time to time) and any further instructions and targets that PRASA may instruct the Bidder to comply with (on behalf of PRASA or on behalf of any other organ of the South African Government) throughout the duration of the Contract.
- 1.18.2 The Bidder may follow the link <http://www.thedtic.gov.za> (*mutatis mutandis*) and go to the section titled "Sectors and Service" for more information on all minimum requirements related to B-BBEE and New Preferential Procurement laws and regulations that will apply for this Project. PRASA does not accept any liability for provision of this link since the Bidder shall satisfy itself that all information is attained from the DTIC and any other relevant organ of the South African Government when preparing the Bidder's Bid.
- 1.18.3 The Bidder shall, on an uninterrupted basis, comply with all Preferential Procurement laws, regulations and compliance requirements stated throughout the RFP. The Bidder shall further provide any proof and unredacted supporting documents proving compliance as specified throughout the RFP or immediately upon receipt of a request from PRASA for the Bidder to do so. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).



- 1.18.4 The Bidder shall, on an uninterrupted basis, do all legal things necessary and comply with all Local Community Involvement compliance requirements stated throughout the RFP. This shall include taking full responsibility of ensuring all necessary Local Community Involvement initiatives are fulfilled, and targets met, to ensure successful delivery of the Project and the whole of the Works for the entire duration of the Contract. The Bidder shall further provide any proof and unredacted supporting documents proving compliance as specified throughout the RFP or immediately upon receipt of a request from PRASA for the Bidder to do so. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

## **1.19 Additional NIP Compliance Requirements**

- 1.19.1 The Bidder shall, at no additional cost to PRASA, adhere to all related legislation (as amended from time to time) and any further instructions and targets that PRASA may instruct the Bidder to comply with (on behalf of PRASA or on behalf of any other organ of the South African Government) throughout the duration of the Contract.
- 1.19.2 The Bidder may follow the link <http://www.thedtic.gov.za> (*mutatis mutandis*) and go to the section titled “Sectors and Service” for more information on all minimum requirements related to NIP that will apply for this Project. PRASA does not accept any liability for provision of this link since the Bidder shall satisfy itself that all information is attained from the DTIC and any other relevant organ of the South African Government when preparing the Bidder’s Bid.
- 1.19.3 The Bidder shall, on an uninterrupted basis, comply with all National Industrial Participation (“NIP”) Programme and compliance requirements stated throughout the RFP. The Bidder shall further provide any proof and unredacted supporting documents proving compliance as specified throughout the RFP or immediately upon receipt of a request from PRASA for the Bidder to do so. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

## **1.20 Additional Local Production and Content Compliance Requirements**

- 1.20.1 The DTIC has designated and determined the stipulated minimum threshold for the permanent way, rail signalling Systems and associated Components, steel products and Components for construction, electrical cable products, transformer and rail electrification sector for Local Production and Content.



- 1.20.2 The stipulated minimum threshold percentages for Local Production and Content for the different classes and/or designated sectors of this Project (and which are available at <http://www.thedtic.gov.za/sectors-and-services-2/industrial-development/industrial-procurement/> “*mutatis mutandis*” or as otherwise stated in an Instruction Note issued by the DTIC) and in accordance with the Bidder’s compliant solution and Detailed Pricing Sheets are as follows:
- a) Rail Signalling Systems and associated Components – 65% local content.
  - b) Steel products and Components for construction – 100% local content.
  - c) Electrical cable products – 90% local content.
  - d) Permanent way – 90% local content.
  - e) Rail electrification sector (OHTE) – 100% local content (if duly self-designated by PRASA at the time of bidding).
  - f) Transformers – depending on the class and envisaged replacement of any transformer.
- 1.20.3 The Bidder shall, at no additional cost to PRASA, adhere to all related legislation (as amended from time to time) and any further instructions and targets that PRASA may instruct the Bidder to comply with (on behalf of PRASA or on behalf of any other organ of the South African Government) throughout the duration of the Contract.
- 1.20.4 In addition to the above, the Bidder may follow the link <http://www.thedtic.gov.za> (*mutatis mutandis*) and go to the section titled “Sectors and Service” for all minimum requirements and copies of all instruction notes related to Local Production and Content that will apply for this Project. PRASA does not accept any liability for provision of this link since the Bidder shall satisfy itself that all information is attained from the DTIC and any other relevant organ of the South African Government when preparing the Bidder’s Bid.
- 1.20.5 The Bidder shall, on an uninterrupted basis, comply with all Local Production and Content laws, regulations and compliance requirements stated throughout the RFP. The Bidder shall further provide any proof and unredacted supporting documents proving compliance as specified throughout the RFP or immediately upon receipt of a request from PRASA for the Bidder to do so. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

- 1.20.6 The Bidder shall, on an uninterrupted basis, do all legal things necessary and comply with all Local Community Involvement compliance requirements stated throughout the RFP. This shall include taking full responsibility of ensuring all necessary Local Community Involvement initiatives are fulfilled, and targets met, to ensure successful delivery of the Project and the whole of the Works for the entire duration of the Contract. The Bidder shall further provide any proof and unredacted supporting documents proving compliance as specified throughout the RFP or immediately upon receipt of a request from PRASA for the Bidder to do so. Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced until the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

## **1.21 Bidder Use of Existing Plant and Materials**

- 1.21.1 PRASA may have certain Plant and Materials available in storage that shall be used by the Bidder. The Bidder shall use as much existing, Plant and Materials as possible and if not possible then motivate why not in a robust but controllable manner.
- 1.21.2 Notwithstanding the above requirement, the Bidder shall ensure that the Bidder's complete offered solution remains compliant with the RFP and that the Bidder has satisfied itself that such Plant and Materials are suitable for use by the Bidder therefore the Bidder shall accept all risk related to the use of such Plant and Materials.
- 1.21.3 Should the Bidder wish not use any existing Plant and Materials or to replace any existing Plant and Materials with new Plant and Materials, the Bidder shall first make PRASA a fair market value offer to pay PRASA for such existing Plant and Materials for which such offer shall first be accepted by PRASA.
- 1.21.4 PRASA's acceptance or rejection of the Bidder's offer shall not prejudice PRASA's rights in terms of the RFP and Contract in any manner whatsoever and shall not relieve the Bidder of the Bidder's obligations and/or liabilities in terms of the RFP and the Contract and shall not affect the Bid/Contract Programme in any manner whatsoever.
- 1.21.5 The Bidder's disposal of existing Plant and Materials can only be implemented once a final decision has been made by PRASA in respect of acceptance or rejection of the Bidder's disposal proposal, and the timeline for PRASA making a decision in this regard shall be absorbed in all the Bidder's Programme(s) so that there is no impact on achievement of the contracted Completion Date.

## **1.22 Financial Management**

### **1.22.1 Mobilisation Allowance**

- 1.22.1.1 PRASA may pay the Bidder a Mobilisation Allowance of an amount equal to 5% of the ICP as reflected under Payment Certificate 1.

- 1.22.1.2 Should the Bidder fail to achieve completion of Validation, to the absolute satisfaction of PRASA for which the Key Date is fixed as the 548<sup>th</sup> calendar day after the Commencement Date, the Bidder shall, at a minimum, refund PRASA with the full Mobilisation Allowance amount plus daily compound interest (for which such interest shall be calculated, using the ruling historic Repo Rates as issued by the South African Reserve Bank, from the date on which the Bidder was paid the Mobilisation Allowance up to the calendar day on which the Bidder pays the Mobilisation Allowance back to PRASA). The Bidder's refund of the Mobilisation Allowance amount shall form part of PRASA's claim for Damages, and other costs, from the Bidder (as described elsewhere through this RFP).

#### **1.22.2 Retention**

- 1.22.2.1 PRASA shall, throughout the duration of the Contract and in addition to the Performance Bond/Security, withhold 10% of all amounts certified due and payable in all Payment Certificates in Retention.
- 1.22.2.2 Retention shall, at PRASA's discretion, be placed in an interest-bearing bank account held by a South African bank whose primary place of business operations is South Africa. Bank charges and other administrative charges shall be offset against interest earned in the bank account.
- 1.22.2.3 Retention shall be held for the purposes stipulated in the Contract and the release of Retention, by PRASA, shall (notwithstanding anything to the contrary in the Form of Contract) be as follows:
- a) An amount equal to 50% of the total Retention held after issuance of a PRASA signed Taking-Over Certificate (for the whole of the Works) whereby the Bidder shall issue a Statement (once the amount including interest is approved by PRASA).
  - b) An amount equal to the balance of the Retention held after issuance of a PRASA signed Performance Certificate (for the whole of the Works) for which the Bidder shall issue a Statement (once the amount including interest is approved by PRASA).

#### **1.22.3 Financial Management Plan ("FMP") and Schedule of Payment Milestones ("SPM")**

- 1.22.3.1 The Bidder shall, as part of the proposed Bidder's Financial Management Plan ("FMP") propose a comprehensive, unambiguous and transparent Schedule of Payment Milestones ("SPM") within which each Payment Milestone shall be linked to Major Milestones, Deliverables and Key Dates linked to the Bid Programme.
- 1.22.3.2 The FMP and SPM shall be subject to scrutiny and approval by PRASA during the negotiations stage after which the Final FMP shall be included as an Annexure to the Contract.

- 1.22.3.3 Payment Milestone 1 shall be the “Mobilisation Allowance” for an amount equal to 5% of the ICP as/under Payment Certificate 1. The criteria to be met, for this Payment Milestone to be achieved shall, at a minimum, be; signature of the Contract by all parties, the Bidder’s submission of all Performance Bonds/Securities, the Bidder’s submission of all Insurances, the Bidder’s establishment of a fully operational Project Office and achievement of the Commencement Date.
- 1.22.3.4 Payment Milestone 2 shall be “Completion of Validation” for an amount equal to 10% of the ICP as/under Payment Certificate 2 less amounts for the Mobilisation Allowance Payment Milestone and Retention. The criteria to be met, for this Payment Milestone to be achieved, shall be the Bidder’s successful completion of Validation, to the absolute satisfaction of PRASA for which the Key Date is fixed as the 548<sup>th</sup> calendar day after the Commencement Date.
- 1.22.3.5 Payment Milestones relating to PRASA advanced payments for Plant and Materials shall not be entertained since PRASA shall not make any advanced payments for Plant and Materials. Only the following Payment Milestones for Plant and Materials may be permitted:
- a) “Installation of Plant and Materials” for an amount equal to 50% of the Plant and Materials value less amounts for Retention. The criteria to be met, for this Payment Milestone to be achieved, shall be that such Plant and Materials has been installed and approved by PRASA in complete compliance and adherence with all requirements and specifications of the RFP and the Contract.
  - b) “Successful Testing and Commissioning of Plant and Materials” for an amount equal to 50% of the Plant and Materials value less amounts for Retention. The criteria to be met, for this Payment Milestone to be achieved, shall be that such Plant and Materials has been installed, tested, commissioned and approved by PRASA in complete compliance and adherence with all requirements and specifications of the RFP and the Contract.
- 1.22.3.6 PRASA issuance of a Taking Over Certificate (for the whole of the Works) shall be a Payment Milestone. The value of this Milestone shall be equal to 50% of the total Retention held as the time of issuance of a Taking Over Certificate (for the whole of the Works).
- 1.22.3.7 PRASA issuance of a Performance Certificate (for the whole of the Works) shall be the Final Payment Milestone. The value of this Milestone shall be equal to the balance of Retention held plus any other amounts that may be due to the Bidder as at the time of issuance of a Performance Certificate (for the whole of the Works).
- 1.22.3.8 Payment Milestones relating to PRASA’s potential usage of the PRASA Project Contingency Allowance shall be dealt with separately on a case by case basis in the form of written instructions to be issued by PRASA as and when such need arises.

#### **1.22.4 Payment Certification, Invoicing and Payment**

- 1.22.4.1 The Bidder shall, at most, be entitled to issue one Statement (Claim for Payment Milestones achieved), on the second Friday of each calendar month, requesting PRASA's review, Valuation and issuance of a Payment Certificate (Interim Payment Certificate "IPC" or the Final Payment Certificate "FPC").
- 1.22.4.2 IPCs may be issued by PRASA for all Statements relating to all Payment Milestones with exception of the Final Payment Milestone.
- 1.22.4.3 Only an FPC may be issued by PRASA for the Statement relating to the Final Payment Milestone once all conditions of Contract have been met to the full satisfaction of PRASA and the Performance Certificate has been issued by PRASA.
- 1.22.4.4 Each Statement shall attach all necessary unredacted supporting documentation (as requested and/or instructed by PRASA) fully demonstrating that the requirements for PRASA's issuance of a Valuation and Payment Certificate has been met in terms of the PRASA approved FMP and SPM for each Payment Milestone claimed.
- 1.22.4.5 The Bidder shall further include any additions and/or deductions which may become due, at the time of issuance of a Statement, under any post Contract signature Agreement or Determination as allowed for under the Contract.
- 1.22.4.6 PRASA shall, within 56 calendar days of receiving the Statement, revert to the Bidder either totally rejecting the Bidder's Statement providing reasons, or rejecting the Bidder's Statement requesting correction and resubmission of the Statement by the Bidder for second review by PRASA, or provide the related Valuation and Payment Certificate (which shall further include any deductions of amounts which PRASA shall deem to be due/owed to PRASA by the Bidder).
- 1.22.4.7 Issuance of a Payment Certificate by PRASA (which authorises the Bidder to accordingly issue a valid Invoice) and PRASA's payment of any Invoice raised shall not imply nor be deemed to imply PRASA's acceptance of any part of the Works or any Section of the Works or the whole of the Works.
- 1.22.4.8 PRASA issuance of a Payment Certificate shall never prejudice PRASA's rights to reject any part of the Works or any Section of the Works or the whole of the Works which PRASA shall deem not to be in accordance with the Contract.
- 1.22.4.9 PRASA issuance of a Payment Certificate shall never prejudice PRASA's rights to recover any amounts paid to the Bidder in respect of any part of the Works or any Section of the Works or the whole of the Works that is rejected by PRASA.
- 1.22.4.10 All invoicing and payments made under the Contract shall be in accordance with the PRASA approved SPM and FMP unless otherwise instructed by PRASA.
- 1.22.4.11 The Bidder shall, within 14 calendar days of receiving a Payment Certificate, issue and deliver an original valid Invoice (for the exact amount reflected on the Payment Certificate) and an original Statement of Account (reflecting all valid Invoices and Payments as at that date) to PRASA.

- 1.22.4.12 PRASA shall endeavour to pay any valid Invoice (duly issued, delivered, and received in accordance with the Contract) within 60 calendar days from the date of PRASA's receipt of each valid Invoice from the Bidder. Failure by PRASA to pay any duly issued and delivered valid Invoice, within this 60 calendar day period, shall attract a penalty of 0.025% of the value of each valid Invoice (excluding VAT) per delayed day (calculated on a simple and not compounded basis). The total of all penalties that may become applicable in terms of this provision, throughout the duration of the Contract, shall not exceed 1% of the ICP.
- 1.22.4.13 An additional penalty shall apply should PRASA, for whatever reason, fail to effect payment of any valid Invoice (duly issued, delivered, and received in accordance with the Contract) within 90 calendar days from the date of PRASA's receipt of each valid Invoice from the Bidder. Failure by PRASA to pay any duly issued and delivered valid Invoice, within this 90 calendar day period, shall attract an additional penalty of 0.025% of the value of each valid Invoice (excluding VAT) per delayed day for the period between 60 calendar days and 90 calendar days (calculated on a simple and not compounded basis). The total of all penalties that may become applicable in terms of this provision, throughout the duration of the Contract, shall not exceed 1% of the ICP.
- 1.22.4.14 Should PRASA for whatever reason fail to effect payment of any valid Invoice (duly issued, delivered, and received in accordance with the Contract) within 120 calendar days from the date of PRASA's receipt of each valid Invoice from the Bidder, and the amount owed of any valid Invoice exceeds 10% of the TCP, the Bidder shall, subject to adherence of Notices and Claims requirements and any other provisions of the Contract, be entitled to suspend all further work in relation to the Contract and claim an Extension of Time ("EoT") with unredacted proven related costs as a result of such suspension. In this regard, the TCP shall be as reflected in the latest Payment Certificate issued by PRASA, at the time that a valid Notice is submitted in accordance with the Contract.

## **1.23 Financial Performance Management**

### **1.23.1 Penalties**

- 1.23.1.1 PRASA shall recover the Penalty(s) applied, for each incident, from the Bidder through the Recovery Statement(s) which shall be included in a Payment Certificate(s) that is forthcoming from the date of PRASA's decision to apply the Penalty or by any other means deemed necessary by PRASA.
- 1.23.1.2 PRASA's application of the Penalty(s) shall not relieve the Bidder of the Bidder's obligations and/or liabilities in terms of the RFP and the Contract.



1.23.1.3 Works Specification:

- a) The Bidder shall unequivocally commit to comprehensive and uncompromised execution of the Works through strict adherence to the Works Specification, the RFP, the Contract and achievement of all Key Dates, within the specified Time for Completion for the whole of the Works.

Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced discretionary right to immediately terminate the Contract, without allowing the Bidder any period of rectification, and all costs, Damages and a Penalty(s) related to such termination shall be borne by the Bidder.

1.23.1.4 PRASA Acceptance of Bidder's Project Documentation, Reports and Designs:

- a) Failure of the Bidder to meet any document management, reporting and Design procedures and requirements at any time throughout the duration of the Contract, shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

Failure in this regard shall further mean:

- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day on which the incident commenced and the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder
- The Penalty payable shall be calculated at 0.025% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 2.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident



1.23.1.5 Professional Personnel Registrations:

- a) All personnel deployed on this Project, by the Bidder (including, but not limited to, personnel deployed by; the main Bidder, joint venture partners and/or consortium members and/or subcontractors and/or direct contractors and/or similar), shall be appropriately skilled and experienced (list to be attached for the Key Personnel: Senior Project Manager, Senior Commercial Manager, Senior Controls Manager, Senior Quantity Surveyor, Senior Programmer/Scheduler, Senior Occupational Health and Safety Manager, Senior Environmental and Heritage Manager, Senior Quality Manager, Senior BEE and Localisation Manager, Senior Public Participation and Community Liaison Manager, Senior Skills Development and Training Manager, Senior Security and Vandalism Manager, Engineers Designers, Checkers, Testers, etc.) and shall have the requisite mandatory and professional; qualifications, certifications and registrations as required by all applicable legislation, regulations, bylaws and industry best practice.

This is an absolute requirement at the time of bidding and validity of such qualifications, certifications and registrations shall be maintained, on an uninterrupted basis, for the entire duration of the Contract.

Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

Failure in this regard shall further mean:

- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day on which the incident commenced and the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder
  - The Penalty, per incident, payable shall be calculated at 0.025% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 2.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident
- b) PRASA may, solely at PRASA's discretion and without consequence or liability to PRASA, instruct the Bidder to remove any of the Bidder's personnel deployed throughout the duration of the Contract for any reason deemed appropriate by PRASA.

The Bidder shall immediately comply with this instruction and appoint suitable replacement personnel within 60 calendar days of receiving such an instruction for which such replacement personnel shall first be approved in writing by PRASA.

Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

Failure in this regard shall further mean:

- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day on which the incident commenced and the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder
- The Penalty payable shall be calculated at 0.025% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 2.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

#### 1.23.1.6 Professional Company Registrations:

- a) All companies deployed on this Project, by the Bidder (including, but not limited to; the main Bidder, joint venture partners and/or consortium members and/or subcontractors and/or direct contractors and/or similar), shall be appropriately skilled and experienced and shall have the requisite mandatory and professional; qualifications, certifications and registrations as required by all applicable legislation, regulations, bylaws and industry best practice.

This is an absolute requirement at the time of bidding and validity of such qualifications, certifications and registrations shall be maintained, on an uninterrupted basis, for the entire duration of the Contract.

Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

Failure in this regard shall further mean:

- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day on which the incident commenced and the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder
  - The Penalty payable shall be calculated at 0.025% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 2.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident
- b) PRASA may, solely at PRASA's discretion and without consequence or liability to PRASA, instruct the Bidder to remove any of the Bidder's companies deployed throughout the duration of the Contract for any reason deemed appropriate by PRASA.

The Bidder shall immediately comply with this instruction and appoint suitable replacement companies within 60 calendar days of receiving such an instruction for which such replacement companies shall first be approved in writing by PRASA.

Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

Failure in this regard shall further mean:

- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day on which the incident commenced and the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder

- The Penalty payable shall be calculated at 0.025% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 2.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.7 Tax and VAT Compliance:

The Bidder, shall on an uninterrupted basis, maintain, compliant Tax Clearance, a was submitted as part of the Bidder's Bid, for the duration of the Contract.

The Bidder shall further provide any proof and supporting documents of compliant Tax Clearance immediately upon receipt of a request from PRASA for the Bidder to do so.

Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

Failure in this regard shall further mean:

- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day on which the incident commenced and the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder
- The Penalty payable shall be calculated at 0.025% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 2.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.8 B-BBEE Certification Compliance:

- a) The Bidder, shall on an uninterrupted basis, maintain, the B-BBEE certification level, that was submitted as part of the Bidder's Bid, for the duration of the Contract.

The Bidder shall further provide any proof and supporting documents of the B-BBEE certification level immediately upon receipt of a request from PRASA for the Bidder to do so.

Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

Failure in this regard shall further mean:

- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day on which the incident commenced and the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder
- The Penalty payable shall be calculated at 0.025% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 2.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.9 National Treasury Central Supplier Database Compliance:

- a) The Bidder, shall on an uninterrupted basis, maintain, a compliant “CSD” registration, as was submitted as part of the Bidder’s Bid, for the duration of the Contract.

The Bidder shall further provide any proof and supporting documents of compliant “CSD” registration immediately upon receipt of a request from PRASA for the Bidder to do so.

Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

Failure in this regard shall further mean:

- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day on which the incident commenced and the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder
- The Penalty payable shall be calculated at 0.025% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 2.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.10 Construction Industry Development (“CIDB”) Regulations:

- a) The Bidder, shall on an uninterrupted basis, maintain, the CIDB grading Designation, that was submitted as part of the Bidder’s Bid, for the duration of the Contract.

The Bidder shall further provide any proof and supporting documents of the CIDB grading Designation immediately upon receipt of a request from PRASA for the Bidder to do so.

Failure of the Bidder to meet any of these requirements at any time throughout the duration of the Contract shall give PRASA an unprejudiced right to immediately apply penalties (as specified throughout the RFP) for each incident (from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder).

Failure in this regard shall further mean:

- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date that PRASA decides is the date on which the incident commenced to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day on which the incident commenced and the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder



- The Penalty payable shall be calculated at 0.025% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 2.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.11 Project Initiation Report:

- a) The Bidder shall prepare and submit a Project Initiation Report no later than 15 working calendar days after the Commencement Date. In this regard, if the Bidder fails to submit a suitable Project Initiation Report in compliance with the RFP and Contract:
- The Penalty shall be payable for each elapsed calendar day calculated from the date on which the report is due to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day the report is due to the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder
  - The Penalty payable shall be calculated at 0.050% of the TCP multiplied by the number of elapsed calendar days but shall not exceed 5.000% of the TCP. The TCP that will be used for the calculation of the Penalty, for each incident, will be the as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.12 Weekly Dashboard Reports:

- a) The Bidder shall prepare high-level Weekly Dashboard Reports and submit same to PRASA. The 1<sup>st</sup> Weekly Dashboard Report shall be issued on the 1<sup>st</sup> Thursday of the calendar month after the calendar month in which the Commencement Date falls thereafter every 1<sup>st</sup> Thursday of the month after the month in which the 1<sup>st</sup> report is due. In this regard, if the Bidder fails to submit suitable Weekly Dashboard Reports in compliance with the RFP and Contract:
- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date on which a report is due to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day the report is due to the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder



- The Penalty payable shall be calculated at 0.050% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 5.000% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.13 Monthly Progress Reports:

- a) The Bidder shall prepare detailed Monthly Progress Reports and submit same to PRASA on the 2<sup>nd</sup> Thursday of each calendar month. The 1<sup>st</sup> Monthly Progress Report shall be issued on the 2<sup>nd</sup> Thursday of the calendar month after the calendar month in which the Commencement Date falls thereafter the 2<sup>nd</sup> Thursday of the month after the month in which the 1<sup>st</sup> report is due. In this regard, if the Bidder fails to submit suitable Monthly Progress Reports in compliance with the RFP and Contract:
- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date on which a report is due to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day the report is due to the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder
  - The Penalty payable shall be calculated at 0.050% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 5.000% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.14 Annual Progress Reports:

- a) The Bidder shall prepare detailed Annual Progress Reports and submit same to PRASA. The 1<sup>st</sup> Annual Progress Report shall be issued on the 365<sup>th</sup> calendar day from the Commencement Date thereafter every 365 calendar days from the date on which the 1<sup>st</sup> report is due. In this regard, if the Bidder fails to submit suitable Annual Progress Reports in compliance with the RFP and Contract:
- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date on which a report is due to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day the report is due to the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder

- The Penalty payable shall be calculated at 0.050% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 5.000% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.15 B-BBEE and New Preferential Procurement Compliance Reports:

- a) The Bidder shall prepare detailed B-BBEE and New Preferential Procurement Compliance Reports and submit same to PRASA. The 1<sup>st</sup> B-BBEE and Preferential Procurement Compliance Report shall be issued 150 calendar days after the Commencement Date thereafter every 150 calendar days from the date on which the 1<sup>st</sup> report is due. In this regard, if the Bidder fails to submit suitable B-BBEE and Preferential Procurement Compliance Reports in compliance with the RFP and Contract:
  - The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date on which a report is due to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day the report is due to the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder
  - The Penalty payable shall be calculated at 0.075% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 7.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.16 National Industrial Participation ("NIP") Programme Compliance Reports:

- a) The Bidder shall prepare detailed National Industrial Participation ("NIP") Programme Compliance Reports and submit same to PRASA. The 1<sup>st</sup> National Industrial Participation ("NIP") Programme Compliance Report shall be issued 150 calendar days after the Commencement Date thereafter every 150 calendar days from the date on which the 1<sup>st</sup> report is due. In this regard, if the Bidder fails to submit suitable National Industrial Participation ("NIP") Programme Compliance Reports in compliance with the RFP and Contract:
  - The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date on which a report is due to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day the report is due to the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder

- The Penalty payable shall be calculated at 0.075% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 7.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.17 Local Production and Content Compliance Reports:

- a) The Bidder shall prepare detailed Local Production and Content Compliance Reports and submit same to PRASA. The 1<sup>st</sup> Local Production and Content Compliance Report shall be issued 150 calendar days after the Commencement Date thereafter every 150 calendar days from the date on which the 1<sup>st</sup> report is due. In this regard, if the Bidder fails to submit suitable Local Production and Content Compliance Reports in compliance with the RFP and Contract:
- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date on which a report is due to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day the report is due to the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder
  - The Penalty payable shall be calculated at 0.075% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 7.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.18 Training Compliance Reports:

- a) The Bidder shall prepare detailed Training Compliance Reports and submit same to PRASA. The 1<sup>st</sup> Training Compliance Reports shall be issued 150 calendar days after the Commencement Date thereafter every 150 calendar days from the date on which the 1<sup>st</sup> report is due. In this regard, if the Bidder fails to submit suitable Training Compliance Reports in compliance with the RFP and Contract:
- The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date on which a report is due to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day the report is due to the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder

- The Penalty payable shall be calculated at 0.075% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 7.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.19 Spares, Maintenance and Life Cycle Cost (“LCC”) Replacement Reports:

- a) The Bidder shall prepare detailed Spares, Maintenance and Life Cycle Cost (“LCC”) Replacement Reports and submit same to PRASA. The 1<sup>st</sup> Spares, Maintenance and Life Cycle Cost (“LCC”) Replacement Report shall be issued 150 calendar days after the 1<sup>st</sup> Section of the Works has been tested, commissioned and handed over to PRASA thereafter every 150 calendar days from the date on which the 1<sup>st</sup> report is due. The final Spares, Maintenance and Life Cycle Cost (“LCC”) Replacement Report shall be issued 75 calendar days prior to completion of the full Maintenance, Warranty and Defects Liability responsibility period. In this regard, if the Bidder fails to submit suitable Spares, Maintenance and Life Cycle Cost (“LCC”) Replacement Reports in compliance with the RFP and Contract:
  - The Penalty, per incident, shall be payable for each elapsed calendar day calculated from the date on which a report is due to the date on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder. Elapsed calendar days shall include the calendar day the report is due to the calendar day on which PRASA confirms, in writing, that PRASA is completely satisfied that the incident is completely resolved by the Bidder
  - The Penalty payable shall be calculated at 0.075% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 7.500% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident

1.23.1.20 B-BBEE and New Preferential Procurement Targets:

- a) The minimum Penalty(s) for the Bidder failing to transparently meet B-BBEE and New Preferential Procurement Targets in compliance with the RFP and Contract, is as follows:
- If the Bidder fails to ensure and transparently prove that 5% of the total B-BBEE and New Preferential Procurement Target is met and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 300 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 5% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 300 calendar days from the Commencement Date
  - If the Bidder fails to ensure and transparently prove that 10% of the total B-BBEE and New Preferential Procurement Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 600 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 10% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 600 calendar days from the Commencement Date
  - If the Bidder fails to ensure and transparently prove that 20% of the total B-BBEE and New Preferential Procurement Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 900 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 20% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 900 calendar days from the Commencement Date
  - If the Bidder fails to ensure and transparently prove that 40% of the total B-BBEE and New Preferential Procurement Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 1200 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 40% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 1200 calendar days from the Commencement Date

- If the Bidder fails to ensure and transparently prove that 60% of the total B-BBEE and New Preferential Procurement Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 1500 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 60% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 1500 calendar days from the Commencement Date
- If the Bidder fails to ensure and transparently prove that 80% of the total B-BBEE and New Preferential Procurement Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 1800 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 80% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 1800 calendar days from the Commencement Date
- If the Bidder fails to ensure and transparently prove that 90% of the total B-BBEE and New Preferential Procurement Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 2100 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 90% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 2100 calendar days from the Commencement Date
- If the Bidder fails to ensure and transparently prove that 95% of the total B-BBEE and New Preferential Procurement Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 2400 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 95% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 2400 calendar days from the Commencement Date



- If the Bidder fails to ensure and transparently prove that 100% of the total B-BBEE and New Preferential Procurement Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 2550 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 100% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 2550 calendar days from the Commencement Date

1.23.1.21 National Industrial Participation (“NIP”) Programme Targets:

- a) The minimum Penalty(s) for the Bidder failing to transparently meet National Industrial Participation (“NIP”) Programme Targets in compliance with the RFP and Contract, is as follows:
- If the Bidder fails to ensure and transparently prove that 5% of the total National Industrial Participation (“NIP”) Programme Target is met and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 300 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 5% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 300 calendar days from the Commencement Date
  - If the Bidder fails to ensure and transparently prove that 10% of the total National Industrial Participation (“NIP”) Programme Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 600 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 10% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 600 calendar days from the Commencement Date
  - If the Bidder fails to ensure and transparently prove that 20% of the total National Industrial Participation (“NIP”) Programme Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 900 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 20% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 900 calendar days from the Commencement Date



- If the Bidder fails to ensure and transparently prove that 40% of the total National Industrial Participation (“NIP”) Programme Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 1200 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 40% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 1200 calendar days from the Commencement Date
- If the Bidder fails to ensure and transparently prove that 60% of the total National Industrial Participation (“NIP”) Programme Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 1500 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 60% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 1500 calendar days from the Commencement Date
- If the Bidder fails to ensure and transparently prove that 80% of the total National Industrial Participation (“NIP”) Programme Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 1800 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 80% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 1800 calendar days from the Commencement Date
- If the Bidder fails to ensure and transparently prove that 90% of the total National Industrial Participation (“NIP”) Programme Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 2100 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 90% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 2100 calendar days from the Commencement Date

- If the Bidder fails to ensure and transparently prove that 95% of the total National Industrial Participation (“NIP”) Programme Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 2400 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 95% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 2400 calendar days from the Commencement Date
- If the Bidder fails to ensure and transparently prove that 100% of the total National Industrial Participation (“NIP”) Programme Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 2550 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 100% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 2550 calendar days from the Commencement Date

1.23.1.22 Local Production and Content Targets:

- a) The minimum Penalty(s) for the Bidder failing to transparently meet Local Production and Content Targets in compliance with the RFP and Contract, is as follows:
- If the Bidder fails to ensure and transparently prove that 5% of the total Local Production and Content Target is met and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 300 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 5% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 300 calendar days from the Commencement Date
  - If the Bidder fails to ensure and transparently prove that 10% of the total Local Production and Content Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 600 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 10% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 600 calendar days from the Commencement Date

- If the Bidder fails to ensure and transparently prove that 20% of the total Local Production and Content Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 900 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 20% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 900 calendar days from the Commencement Date
- If the Bidder fails to ensure and transparently prove that 40% of the total Local Production and Content Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 1200 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 40% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 1200 calendar days from the Commencement Date
- If the Bidder fails to ensure and transparently prove that 60% of the total Local Production and Content Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 1500 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 60% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 1500 calendar days from the Commencement Date
- If the Bidder fails to ensure and transparently prove that 80% of the total Local Production and Content Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 1800 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 80% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 1800 calendar days from the Commencement Date

- If the Bidder fails to ensure and transparently prove that 90% of the total Local Production and Content Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 2100 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 90% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 2100 calendar days from the Commencement Date
- If the Bidder fails to ensure and transparently prove that 95% of the total Local Production and Content Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 2400 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 95% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 2400 calendar days from the Commencement Date
- If the Bidder fails to ensure and transparently prove that 100% of the total Local Production and Content Target is met, cumulatively, and paid to relevant joint venture partners, consortium members, subcontractors, employees and suppliers as at 2550 calendar days from the Commencement Date, PRASA shall, unilaterally and without notice to the Bidder, apply a Penalty equal to 100% of the total shortfall value. The total shortfall value shall be calculated as 100% of the total target minus total actual money paid to the relevant subcontractors, employees and suppliers as at 2550 calendar days from the Commencement Date

## **1.23.2 Delay Damages**

### **1.23.2.1 Major Milestones, Deliverables and Key Dates:**

- a) If the Bidder fails to achieve any Major Milestone(s) and/or meet any Deliverable(s) on any Key Date(s) per the Approved Baseline Contract Programme/Approved Programme (as referenced elsewhere in the RFP) the Bidder shall pay delay Damages, and any other costs, to PRASA for this default.
- b) The delay Damages, per incident, shall be payable for each elapsed calendar day calculated from the calendar date on which a Key Date falls as per the Approved Baseline Contract Programme/Approved Programme (as referenced elsewhere in the RFP) to the actual date on which the related Major Milestone is achieved and Deliverables met or the planned delayed date on which the related Major Milestone may be achieved and Deliverables met (the later of the 2 dates).

- c) Elapsed calendar days shall include the calendar day on which a Key Date falls as per the Approved Baseline Contract Programme/Approved Programme (as referenced elsewhere in the RFP) to the actual calendar day on which the related Major Milestone is achieved and Deliverables met or the planned delayed date on which the related Major Milestone may be achieved and Deliverables met.
- d) The minimum delay Damages payable shall be calculated at 0.1% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 20.000% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident.

**1.23.2.2 Delay Damages – Time for Completion:**

- a) If the Bidder fails to complete the whole of the Works on the Completion Date as per the Approved Baseline Contract Programme/Approved Programme (as referenced elsewhere in the RFP) the Bidder shall pay delay Damages, and other costs, to PRASA for this default.
- b) The delay Damages, per incident, shall be payable for each elapsed calendar day calculated from the calendar date on which the Completion Date falls as per the Approved Baseline Contract Programme/Approved Programme (as referenced elsewhere in the RFP) to the actual date on which completion of the whole of the Works is achieved or the planned delayed date on which completion of the whole of the Works may be achieved (the later of the 2 dates).
- c) Elapsed calendar days shall include the calendar day on which the Completion Date falls as per the Approved Baseline Contract Programme/Approved Programme (as referenced elsewhere in the RFP) to the actual day on which completion of the whole of the Works is achieved or the planned delayed date on which completion of the whole of the Works may be achieved.
- d) The minimum delay Damages payable shall be calculated at 0.1% of the TCP multiplied by the number of elapsed calendar days, per incident, but shall not exceed 20.000% of the TCP per incident. The TCP that will be used for the calculation of the Penalty, for each incident, will be the TCP as reflected in the latest Payment Certificate issued by PRASA, at the time that the Penalty is to be calculated for each incident.

**1.23.3 Gainshare and Painshare Mechanism**

- 1.23.3.1 PRASA anticipates PRASA and the Bidder equitably sharing in the financial “gain” of the Project’s success and the financial “pain” of the Project’s underachievement therefore PRASA and the Bidder must have a shared interest in the overall success of the project.

- 1.23.3.2 PRASA is, subject to absolute transparency and provision of unredacted comprehensive information and proven costs from the Bidder, amenable to sharing any savings relating to any cost items included in the TCP, on an equal basis with the Bidder (50% to PRASA and 50% to Bidder).
- 1.23.3.3 PRASA is, subject to absolute transparency and provision of unredacted comprehensive information and proven costs from the Bidder, amenable to sharing any proven cost overruns relating to variations included in the TCP, on an equal basis with the Bidder (50% to PRASA and 50% to Bidder).
- 1.23.3.4 This mechanism shall not apply to Suspension and/or Termination and/or similar of Sections of the Works and/or the whole of the Works and/or the Contract.
- 1.23.3.5 The anticipated Gainshare and Painshare mechanism may, at PRASA's discretion, be discussed, finalised and agreed between PRASA and the Bidder during Contract negotiations thereafter included in the Contract.
- 1.23.3.6 Mention of this mechanism in the RFP does not relieve the Bidder of the Bidder's obligation to provide a complete Bid Price as stipulated elsewhere in the RFP.

## **1.24 Bidder's Intellectual and Industrial Property**

- 1.24.1 The Bidder's Intellectual and Industrial Property shall, at a minimum, mean all of the Bidder's documents, designs, procedures, manuals, training Material, reports, patents, registered designs, copyrights, trademarks, trade names, trade secrets, Technology, Software and other intellectual or industrial property rights relating to this RFP, the Contract and the Bidder's Bid.
- 1.24.2 The Bidder shall be deemed, by signing the Contract, to transparently transfer ownership of the Bidder's Intellectual and Industrial Property to PRASA.
- 1.24.3 The Bidder shall be deemed, by signing the Contract, to transparently give PRASA full non-terminable transferable non-exclusive royalty-free ownership to copy, use and communicate the Bidder's Intellectual and Industrial Property including making and using modifications of them as required by PRASA. This ownership shall, at a minimum:
- a) Apply throughout the duration of the Contract or the actual or the intended working life (whichever is longer) of the relevant Sections of the Works and/or the whole of the Works (regardless of the Works being of a temporary or permanent nature).
  - b) Entitle any PRASA approved entity or person in proper possession of the relevant Section of the Works or the whole of the Works (regardless of the Works being of a temporary or permanent nature) to copy, use and communicate the Bidder's Intellectual and Industrial Property for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing Sections of the Works and/or the whole of the Works (regardless of the Works being of a temporary or permanent nature).



- c) In the case of the Bidder's Intellectual and Industrial Property, permit use of the Bidder's Intellectual and Industrial Property on any PRASA approved computer on and off the Site(s) and other places as envisaged by PRASA, including replacements of any computers supplied by the Bidder.

- 1.24.4 All Contract and Project documentation and data, including but not limited to; Designs, procedures, manuals, training Material, reports and other documents produced as part of the Works under the Contract, shall immediately become the intellectual property of PRASA on acceptance/approval of the document by PRASA, to be used, modified or distributed by PRASA in any way PRASA sees fit, not compromising the intellectual property rights or safety case of the PTCS.
- 1.24.5 All Software configuration files shall immediately become the intellectual property of PRASA on the date of Commissioning or the date of Payment (the earlier date of the 2) of such Software, to be used, modified or distributed by PRASA in any way PRASA sees fit.
- 1.24.6 The Bidder's Intellectual and Industrial Property made by (or on behalf of) the Bidder shall, at PRASA's discretion, be used, copied or communicated to a PRASA approved third Party by (or on behalf of) PRASA for purposes deemed necessary by PRASA.