

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTE FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



BID NUMBER: 04/2023/CTN/INFRA

**REQUEST FOR PROPOSAL (RFP) FOR THE
APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND
WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC,
33kV AC and 3kV DC OHTE FOR A PERIOD OF 36 MONTHS**

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| CLOSING DATE |2023 |
| CLOSING TIME | 24 November @ 12:00 pm |
| BRIEFING SESSION | COMPULSORY BRIEFING DATE: 07 November 2023 TIME: 10H00 am VENUE: Room 163, Infrastructure Building, Off Malta Road, Salt River, Cape Town |
| BID DOCUMENTS DELIVERY & RETURNABLE ADDRESS | PASSENGER RAIL AGENCY OF SOUTH AFRICA Metrorail Western Cape 1 Adderley Street Propnet Building 6th Floor Room 622A Cape Town |
| BIDDER NAME | |
| CIDB GRADING | 6EP OR Higher |
| CONTRACT PERIOD | 36 MONTHS |

Disclaimer

This document is provided solely for the purpose set out in this RFP and is not intended to form any part or basis of any investment decision by Bidders. The recipient should not consider the document as an investment recommendation by PRASA or any of its advisers.

Each person to whom this document (and other later documents) is made available must make his own independent assessment of the Project after making such investigation and taking such professional advice as he/she or it deems necessary. Neither the receipt of this document or any related document by any person, nor any information contained in the documents or distributed with them or previously or subsequently communicated to any Bidder or its advisers, is to be taken as constituting the giving of an investment advice by PRASA or its advisers.

Whilst reasonable care has been taken in preparing this RFP and other documents, they do not purport to be comprehensive or true and correct. Neither PRASA nor any of its advisers accept any liability or responsibility for the adequacy, accuracy or completeness of any of the information or opinions stated in any document.

They acquaint themselves with this RFP and take note that no representation or warranty, express or implied, is or will be given by PRASA, or any of its officers, employees, servants, agents or advisers with respect to the information or opinions contained in any document or on which any document is based. Any liability in respect of such representations or warranties, howsoever arising is hereby expressly disclaimed.

If any recipient, or its employees, advisers or agents make or offers to make any gift to any of the employees of PRASA or consultant to PRASA on the RFP either directly or through an intermediary then such recipient, Bidder will be disqualified forthwith from participating in the RFP.

Each recipient of this RFP agrees to keep confidential any information of a confidential nature which may be contained in the information provided (the "Confidential Information Provided"). The Confidential Information provided may be made available to Bidder's subcontractors, employees and professional advisers who are directly involved in the appraisal of such information (who must be made aware of the obligation of confidentiality) but shall not, either in the whole or in part, be copied, reproduced, distributed or otherwise made available to any other party in any circumstances without the prior written consent of PRASA, nor may it be used for any other purpose than that for which it is intended.

These requirements do not apply to any information, which is or becomes publicly available or is shown to have been made available (otherwise than through a breach of a confidentiality obligation). Bidders, Key Contractors and their constituent members, agents and advisers, may be required to sign confidentiality Contracts/undertakings (in such form as PRASA may require from time to time).

All Confidential Information Provided (including all copies thereof) remains the property of PRASA and must be delivered to PRASA on demand. Further, by receiving this RFP each Bidder and each of its members agrees to maintain its submission in Bid to this RFP confidential from third parties other than PRASA and its officials, officers and advisers who are required to review the same for the purpose of procurement of the RFP.

Any recipient residing outside the Republic of South Africa is urged to familiarise themselves with and to observe any regulatory requirements relevant to the proposed transaction (whether these derive from a regulatory authority within or outside the Republic of South Africa).

Any requirement set out in this RFP regarding the content of a response to the RFP is stipulated for the sole benefit of PRASA, and serves as expressly stated to the contrary, may be waived at its discretion at any stage in the procurement process.

PRASA is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of a Proposal in response to it. Please note that PRASA reserves the right to:

- Modify the RFP's goods / service(s) / works and request Respondents to re-bid on any changes;
- Withdraw, amend the RFP at any time without prior notice and liability to compensate or reimburse any respondent;
- Reject any Proposal which does not conform to instructions and specifications which are detailed herein
- Disqualify Proposals submitted after the stated submission deadline;
- Call a respondent to provide additional documents which PRASA may require which have not been submitted to PRASA.
- Withdraw the RFP on good cause shown;
- Award a contract in connection with this Proposal at any time after the RFP's closing date;
- Make no award at all;
- Validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence.

By submitting a bid, Respondents hereby irrevocably grant the necessary consent to PRASA to do so;

- Request annual financial statements prepared and signed off by a professional accountant or other documentation for the purposes of a due diligence exercise; and/or
- Not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provided for it.

To adopt any proposal made by any bidder at any time and to include such proposal in any procurement document which may or may not be made available to other bidders.

All costs and expenses incurred by Bidders in submitting responses to this RFP shall be borne by the Bidders and PRASA shall not be liable for any costs or expenses whatsoever or any claim for reimbursement of such costs or expenses.

Should a contract be awarded on the strength of information furnished by the Respondent, which after conclusion of the contract, is proved to have been incorrect, PRASA reserves the right to cancel the contract and/or place the Respondent on PRASA's list of Restricted Suppliers.

PRASA reserves the right to negotiate market-related price with the bidder scoring the highest points or cancel the bid; if the bidder does not agree to a market related price, negotiate a market related price with the bidder scoring the second highest points or cancel the bid; if the bidder scoring the second highest points does not agree to a market related price, negotiate a market related price with the bidder scoring the third highest points or cancel the bid. If the market related price is not agreed as envisaged in this paragraph, PRASA will cancel the bid.

PRASA reserves the right to negotiations Best and Final Offer (BAFO) with selected Respondents where none of the Proposals meet RFP requirement, are affordable and demonstrate value for money and there is no clear preferred response to the RFP

PRASA will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Proposal, whether or not the Respondent is awarded a contract.

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BID NUMBER: 04/2023/CTN/INFRA



LIST OF BID DOCUMENTS

| | |
|---|---------------|
| INVITATION TO BID PART A | Form A |
| TERMS AND CONDITIONS FOR BIDDING PART B | Form B |
| TENDER FORM (PRICING SCHEDULE) | Form C |
| SITE INSPECTION CERTIFICATE / PRE-TENDER BRIEFING SESSION | Form D |
| STATEMENT OF WORK SUCCESSFULLY CARRIED OUT BY BIDDER | Form E |
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REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTC FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



1 LIST OF ANNEXURES TO THE RFP

DRAFT CONTRACT

ANNEXURE A

RFP CLARIFICATION FORM

ANNEXURE B

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTC FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



2 ACRONYMS

| | |
|-------|--|
| BBBEE | Broad Based-Black Economic Empowerment |
| CIDB | Construction Industries Development Board |
| DTiC | The Department of Trade and Industry and Competition |
| PPPFA | Preferential Procurement Policy Framework Act 5 of 2000 (as amended from time to time) |
| PFMA | Public Finance Management Act No.1 of 1999 (as amended from time to time) |
| PRASA | Passenger Rail Agency of South Africa |
| RFP | Request for Proposal |
| SANAS | South African National Accreditation System |

3 INTERPRETATION

In this RFP, unless inconsistent with or otherwise indicated by the context –

- 4.1 headings have been inserted for convenience only and should not be taken into account in interpreting the RFP;
- 4.2 any reference to one gender shall include the other gender;
- 4.3 words in the singular shall include the plural and vice versa;
- 4.4 any reference to natural persons shall include legal persons and vice versa;
- 4.5 words defined in a specific clause have the same meaning in all other clauses of the RFP, unless the contrary is specifically indicated;
- 4.6 any reference to the RFP, schedule or appendix, shall be construed as including a reference to any RFP, schedule or appendix amending or substituting that RFP, schedule or appendix;
- 4.7 the schedules, appendices and Briefing Notes issued pursuant to this RFP, form an indivisible part of the RFP and together with further clarifying and amending information provided by PRASA, constitute the body of RFP documentation which must be complied with by Bidders;
- 4.8 in the event of any inconsistency between this RFP or other earlier information published with regard to the Project, the information in this RFP shall prevail; and
- 4.9 this RFP shall be governed by and applied in accordance with South African law.

4 DEFINITIONS

In this RFP and in any other project documents (as defined below) which so provides, the following words and expressions shall have the meaning assigned to them below and cognate expressions shall have a corresponding meaning, unless inconsistent with the context:

- 5.1 "Accounting Authority" means the Board of PRASA;
- 5.2 "Contract" means the Contract to be entered between PRASA and the successful Bidder for the provision of the services procured in this RFP.
- 5.3 "Bid" means the Bid to the RFP submitted by Bidders;
- 5.4 "Bidders Briefing Session" means the compulsory briefing session to be held at the offices of PRASA, in order to brief the Bidders about this tender;
- 5.5 "Black Enterprise" means an enterprise that is at least 51% beneficially owned by Black People and in which Black People have substantial Management Control. Such beneficial ownership may be held directly or through other Black Enterprises;
- 5.6 "Black Equity" means the voting equity held by Black People from time to time;
- 5.7 "Black People" has the same meaning as ascribed to the Broad-Based Black Economic Empowerment Act, 2003, as amended .
- 5.8 "Black Woman" means African, Coloured and Indian South Africa Female citizen;
- 5.9 "Briefing Note" means any correspondence to Bidders issued by the PRASA;
- 5.10 "Business Day" means any day except a Saturday, Sunday or public holiday in South Africa;
- 5.11 "Bidders" means individuals, organisations or consortia that have been submitted responses to the RFP in respect of the tender;
- 5.12 "Consortium" means any group of persons or firms jointly submitting a Bid as Bid to this RFP and "Consortia" means more than one Consortium;
- 5.13 "Contractor" the successful Bidders who has signed a Contract with PRASA in terms of this RFP.
- 5.14 "Closing Date" means the closing date for submission of bids/ Proposals by Bidders which is **24 November 2023 @ 12h00 pm.**
- 5.15 "Project" means this project for the **APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC AND 3kV DC OHTE FOR A PERIOD OF 36 MONTHS**
- 5.16 "RFP" means the Request for Proposals issued by PRASA for this tender; and
- 5.17 "Scope of Work" means the scope of work for this project as detailed out in the RFP technical specifications.

SECTION 1

NOTICE TO BIDDERS

1 INVITATION TO BID

You are hereby invited to submit a bid to meet the requirements of the Passenger Rail Agency of South Africa. Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations, or enterprises [hereinafter referred to as an **entity, Bidder**].

| | |
|---|--|
| BID DESCRIPTION | Appointment Of a Contractor to Provide an As and When Maintenance, Servicing and Repair for 11kV AC, 33kV AC and 3kV DC OHTE for a Period of 36 Months |
| BID ADVERT | This RFP may be downloaded directly from National Treasury's e-Tender Publication Portal at www.etenders.gov.za free of charge. With effect from 27 October 2023 |
| ISSUE DATE | 27 October 2023 |
| COLLECTION DATE DEADLINE (if applicable) | N/A |
| BRIEFING SESSION | COMPULSORY – YES 07 November 2023 @ 10H00 am Room 163, Infrastructure Building, Off Malta Road, Salt River |
| CLOSING DATE | 24 November 2023 @ 12h00 pm Bidders must ensure that bids are delivered timeously to the correct address. As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration. |
| VALIDITY PERIOD | 90 Working Days from Closing Date Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period. |
| CLOSING DATE FOR QUESTIONS | 22 November 2023 |
| CLOSING DATE FOR RESPONSES | 22 November 2023 |
| CONTACT PERSON | Tamie Mbambe – 021 449 3168 Email: nomathamsanqa.mbambe@prasa.com |

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTS FOR A PERIOD OF 36 MONTHS

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Any additional information or clarification will be emailed to all Respondents, if necessary.

2 FORMAL BRIEFING

A compulsory RFP briefing will be conducted at **Boardroom 163, Infrastructure Boardroom, Off Malta Road, Salt River on the 07th of November 2023, at 10h00 am.** [Respondents to provide own transportation and accommodation]. The briefing session will start punctually, and information will not be repeated for the benefit of Respondents arriving late.

Bidders will not be allowed at the briefing without the valid tender documentations. Late comers will be given a 15 minutes grace there after the doors will be closed

2.1 *A Certificate of Attendance in the form set out in Form D page 120 hereto must be completed and submitted with your Proposal as proof of attendance is required for a compulsory site meeting and/or RFP briefing.* Bidders must also appear on the Compulsory Briefing session Register.

3 BRIEFING SESSION MINUTES AND NOTES

3.1 PRASA will issue briefing session minutes or notes together with the response to the clarification questions on the **22 November 2023**

3.2 Clarifications will be issued to all Respondents to this RFP utilizing the contact details provided at receipt of the responses to the RFP documentation, after submission to the authorised representative.

3.3 Bidders / Respondents are requested to promptly confirm receipt of any clarifications sent to them.

3.4 Bidders / Respondents must ensure responses to the clarifications are received on or before the deadline date stated.

4 PROPOSAL SUBMISSION OF RFP RESPONSE

Proposal Responses should be submitted to PRASA in a sealed envelope addressed as follows:

The Secretariat / Tender Office

RFP No: **04/2023/CTN/INFRA**

Description of Bid **Appointment of a contractor to provide an As and When Maintenance, Servicing and Repair for 11KV AC, 33KV AC and 3KV DC OHTE for a period of 36 months.**

Closing date and time: **24 November 2023 at 12h00pm**

Closing address
Metrorail Western Cape
1 Adderley Street
Propnet Building
6th Floor Room 622A
Cape Town

5 DELIVERY INSTRUCTION FOR RFP

Delivery of Bid

The Bid envelopes must be deposited in the PRASA tender box which is located at Metrorail and must be addressed as follows:

METRORAIL WESTERN CAPE
NO 1 ADDERLEY STREET
PROPNET BUILDING
6TH FLOOR
ROOM 622
CAPE TOWN

5.1 B-BBEE Joint Ventures or Consortiums

Respondents who would wish to respond to this RFP as a Joint Venture [JV] or consortium with B-BBEE entities, should state their intention to do so in their RFP submission. Such Respondents should also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If such a JV or consortium agreement is unavailable, the partners should submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by PRASA through this RFP process. This written confirmation should clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to PRASA.

6 COMMUNICATION

6.1 For specific queries relating to this RFP during the RFP process, bidders are required to adhere strictly to the communication structure requirements. An RFP Clarification Form should be submitted to nomathamsanqa.mbambe@prasa.com before **22 November 2023** on or before close of business, substantially in the form set out in Annexure B page 137 hereto.

6.2 In the interest of fairness and transparency PRASA's response to such a query will be made available to the other Respondents who have attended a compulsory and a non-compulsory briefing session. For this purpose PRASA will communicate with Respondents using the contact details provided at the compulsory and a non-compulsory briefing session.

6.3 After the closing date of the RFP, a Respondent may only communicate in writing with the Bid Secretariat, at telephone number **021 449 3168**, email Nomathamsanqa.mbambe@prasa.com on any matter relating to its RFP Proposal.

6.4 Respondents are to note that changes to its submission will not be considered after the closing date.

6.5 Respondents are warned that a response will be liable for disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer(s) or employee of PRASA in respect of this RFP between the closing date and the date of the award of the business. Furthermore, Respondents found to be in collusion with one another will automatically be disqualified and restricted from doing business with PRASA in future.

6.6 Bidders are advised utilize this email address (**SCM.Complaints@prasa.co.za**) for lodging of complaints to PRASA in relation to this bid process. The following minimum information about the bidder must be included in the complaint:

6.6.1 Bid/Tender Description

6.6.2 Bid/Tender Reference Number

6.6.3 Closing date of Bid/Tender

6.6.4 Supplier Name;

6.6.5 Supplier Contact details

6.6.6 The detailed compliant

7 CONFIDENTIALITY

7.1 PRASA shall ensure all information related to this RFP is to be treated with strict confidence. In this regard Respondents / Bidders are required to certify that they have acquainted themselves with the Non-Disclosure Agreement All information related to a subsequent contract, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the Services , which is either directly or indirectly related to PRASA's business, written approval to divulge such information should be obtained from PRASA.

7.2 Respondents must clearly indicate whether any information submitted or requested from PRASA is confidential or should be treated confidentially by PRASA. In the absence of any such clear indication in writing, PRASA shall deem the response to the RFP to have waived any right to confidentiality and treat such information as public in nature.

8 INSTRUCTIONS FOR COMPLETING THE RFP

8.1 All responses to the RFP should be submitted in two sealed envelopes/boxes; the first envelop/box shall have the technical and compliance response, the second envelop/box shall only have the financial response and BBBEE response.

8.2 Bidders are required to package their response/Bid as follows:

Volume 1 (Envelop 1/Package 1)

- **Part A:** Mandatory Requirements Response
- **Part B:** Technical or Functional Response (response to scope of work)

Volume 2 (Envelop 2/ Package 2)

- **Part C:** Financial Proposal and Specific Goals

Volume 2 should be submitted in a separate sealed envelope. Bidders should make their pricing offer in envelop 2/package 2.

8.3 Bidders must submit 1 original response and may submit copies and an electronic version which must be contained in a Memory Card/External hard drive etc clearly marked in the Bidders name. PRASA reserves the right to consider information provided in all formats irrespective the format i.e original/copy/electronic.

- 8.4 Bidders should ensure that their response to the RFP is in accordance with the structure of this document.
- 8.5 Where Bidders are required to sign forms they are required to do so using preferably black ink pen.
- 8.6 Any documents forming part of the original responses to RFP but which are not original in nature, should be certified as a true copy by a Commissioner of Oaths.
- 8.7 Each response to RFP must be in English and submitted in A4 format, except other graphic illustrations, which may not exceed A3 format, unless the contrary is specifically allowed for in this RFP. Responses to RFP should be neatly and functionally bound, preferably according to their different sections.
- 8.8 The original responses to RFP must be signed by a person duly authorized by each consortium member and Subcontractor to sign on their behalf, which authorization must form part of the responses to RFP as proof of authorization. By signing the responses to RFP the signatory warrants that all information supplied by it in its responses to RFP is true and correct and that the responses to RFP and each party whom the responses to RFP signatory represents, considers themselves subject to and bound by the terms and conditions of this RFP.
- 8.9 The responses to RFP formulation should be clear and concise and follow a clear methodology which responses to RFP should explain upfront in a concise Executive Summary and follow throughout the responses to RFP.
- 8.10 Responses to RFP must provide sufficient information and detail in order to enable PRASA to evaluate the responses to RFP, but should not provide unnecessary detail which does not add value and detracts from the ability of PRASA to effectively evaluate and understand the responses to RFP. The use of numbered headings, bullet points, sections, appendices and schedules are encouraged.
- 8.11 Information submitted as part of a responses to RFP should as far as possible, be orderly according to the order of the required information requested by PRASA. All pages should be consecutively numbered.
- 8.12 Responses to RFP should ensure that each requirement contained in the RFP is succinctly addressed. Responses to RFP should as far as possible use the terms and definitions applied in this RFP and should clearly indicate its interpretation of any differing terminology applied.

8.13 Response to RFP documents are to be submitted to the address specified in this RFP, and Bidders should ensure that the original and copies (where applicable) are identical in all respects as PRASA will not accept any liability for having disqualified a bidder for failing to provide a mandatory returnable document.

8.14 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.

8.15 Any additional conditions must be embodied in an accompanying letter. Subject only to clause 16 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

8.16 Bidders are required to review the Contract. Bidders may further amend and or delete any part of the Draft Contract where they deem fit to do so. Where Bidders have amended and or deleted any part of the Contract, it must be clearly visible by using track changes and must ensure that the disc copy of their bid submission for the Draft Contract is in word version and not password protected. **It must be noted that the marked up Contract will form part of contract negotiations processes with the preferred bidder.**

9 RFP TIMETABLE

PRASA may at its sole discretion amend any of the milestone dates indicated in the table below. Bidders will be informed of any amendments to the timeline through the issue of the Addendum.

| RFP PROCESS | MILESTONE DATES |
|--|-----------------------------|
| Bid issue date | 27 October 2023 |
| Briefing Session for Bidders at the | 07 November 2023 @ 10H00 am |
| Closing date for Questions | 22 October 2023 |
| Closing date for Responses | 22 October 2023 |
| Closing Date for Submission of final Bid | 24 November 2023 @ 12h00pm |
| Evaluation of Proposals (Bidders note that PRASA may call for Presentation of bidders offers at any stage of the evaluation process) | TBA |
| Appointment of the successful Bidder | TBA |
| Contract Negotiations | TBA |

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| | |
|-----------------------|-----|
| Signing of Contract | TBA |
| Contract Commencement | TBA |

PRASA may at its sole discretion amend any of the milestone dates indicated in the table above. Bidders will be informed of any amendments to the timeline through the issue of briefing notes.

10 LEGAL COMPLIANCE

Bidders should ensure that they comply with all the requirements of the RFP and if Bidders fail to submit any of the required documents, such Bids may, at the sole discretion of PRASA, be disqualified. PRASA reserves the right to call a Bidder to provide additional documents which may have not been submitted.

The successful Bidder [hereinafter referred to as the **Service Provider**] shall be in full and complete compliance with any and all applicable laws and regulations.

11 NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE

Respondents are required to self-register on National Treasury's Central Supplier Database (CSD) which has been established to centrally administer supplier information for all organs of state and facilitate the verification of certain key supplier information. Only foreign suppliers with no local registered entity need not register on the CSD. The CSD can be accessed at <https://secure.csd.gov.za>. Respondents are required to provide the following to PRASA in order to enable it to verify information on the CSD:

Supplier Number: _____ **Unique registration reference number:** _____.

12 TAX COMPLIANCE

Respondents must be compliant when submitting a proposal to PRASA and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).

It is a condition of this RFP that the tax matters of the successful bidder be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

The Tax Compliance status requirements are also applicable to foreign Respondents/ individuals who wish to submit bids.

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTS FOR A PERIOD OF 36 MONTHS

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Respondents are required to be registered on the Central Supplier Database (CSD) as indicated in paragraph 12 and the National Treasury shall verify the Respondent's tax compliance status through the Central Supplier Database (CSD).

Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database (CSD) and their tax compliance status will be verified through the Central Supplier Database (CSD).

For this purpose, the attached SBD 1 marked pages 117-119 must be completed and submitted as an essential returnable document by the closing date and time of the bid.

New Tax Compliance Status (TCS) System

SARS has implemented a new Tax Compliance Status (TCS) system in terms of which a taxpayer is now able to authorise any 3rd party to verify its compliance status in one of two ways: either through the use of an electronic access PIN, or through the use of a Tax Clearance Certificate obtained from the new TCS system.

Respondents are required to provide the following to PRASA in order to enable it to verify their tax compliance status:

Tax Compliance Status (TCS) Pin: _____.

13 PROTECTION OF PERSONAL DATA

In responding to this bid, PRASA acknowledges that it may obtain and have access to personal data of the Respondents. PRASA agrees that it shall only process the information disclosed by Respondents in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law. Furthermore, PRASA will not otherwise modify, amend or alter any personal data submitted by Respondents or disclose or permit the disclosure of any personal data to any Third Party without the prior written consent from the Respondents. Similarly, PRASA requires Respondents to process any personal information disclosed by PRASA in the bidding process in the same manner.

SECTION 2

BACKGROUND OVERVIEW AND SCOPE REQUIREMENTS

1 INTRODUCTION AND BACKGROUND

Passenger Rail Agency of South Africa (“PRASA”) has identified the need to appoint a service provider for APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTE FOR A PERIOD OF 36 MONTHS.

2 OVERVIEW

INTRODUCTION

Infrastructure Electrical has one core function, to ensure that there is continuous availability of electrical power supply for the safe movement of trains. The output of this core function is dependent on several power supplies from various utilities. The Infrastructure Electrical department comprises of an Overhead Track Equipment (O.H.T.E) department and a Substation department. The Overhead Track Equipment carry various power supplies which emanates from one of many substations. This power is then distributed through the overhead line to supply Rollingstock and other PRASA electrical systems. The Substation Department receives power from Eskom utility and converts to direct current, it then feed PRASA systems. This project focuses on the maintenance, repairs, refurbish, supply and installation of 11kV AC, 33kV AC and 3kV DC OHTE. Layout Illustrating OHTE Figure 1: OHTE Layout

PRASA seeks to benefit from this partnership in the following ways: (**Project / Events Specific**)

- 2.1 PRASA must receive reduced cost of acquisition and improved service benefits resulting from the Service Provider's economies of scale and streamlined service processes.
- 2.2 PRASA must achieve appropriate availability that meets user needs while reducing costs for both PRASA and the chosen Service Provider(s).
- 2.3 PRASA must receive proactive improvements from the Service Provider with respect to provision of Services and related processes.

2.4 PRASA's overall competitive advantage must be strengthened by the chosen Service Provider's leading edge technology and service delivery systems.

2.5 PRASA end users must be able to rely on the chosen Service Provider's personnel for service enquiries, recommendations and substitutions.

2.6 PRASA must reduce costs by streamlining its acquisition of Services, including managed service processes on a Group basis.

3 KEY OBJECTIVES OF THE RFP

This RFP has been prepared for the following purposes:

3.1 TO SET OUT THE RULES OF PARTICIPATION IN THE BID PROCESS REFERRED TO IN THIS RFP.

3.2 TO DISSEMINATE INFORMATION ON THE PROJECT CONTEMPLATED IN THIS RFP.

3.3 TO GIVE GUIDANCE TO BIDDERS ON THE PREPARATION OF THEIR RFP BIDS.

3.4 TO GATHER INFORMATION FROM BIDDERS THAT IS VERIFIABLE AND CAN BE EVALUATED FOR THE PURPOSES OF APPOINTING A SUCCESSFUL BIDDER.

3.5 TO ENABLE PRASA TO SELECT A SUCCESSFUL BIDDER THAT IS:

- technically qualified and meet the empowerment criteria described in this RFP;
- Carry all the obligations of the Contract.

4 SCOPE OF WORK

The scope of work for this project shall entail the following activities:

Maintenance, repairs, refurbishment, and installations of the 11kV AC, 33kV AC and 3kV DC OHTE.

The appointed contractor is expected to attend to the following but not limited to:

- Conduct Maintenance, repairs, refurbishment, and installations of the 11kV AC, 33kV AC and 3kV DC OHTE.
- Perform preventive and predictive maintenance as per PRASA schedule.
- Respond to emergency within an hour from the time the fault is logged.
- The contractor is to provide their machinery or equipment to perform the necessary maintenance.

Below is the material list in which work will be done on 11kV, 33kV and 3kV OHTE, but not limited to below:

33kVAC, 11kV AC and 3kV DC OHTE Concrete Mast Poles

33kVAC, 11kV AC and 3kV DC Steel Mast Pole.

33kV AC, 11kV AC and 3kV DC Medium Weight Steel Mast

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33kV AC Heavy Weight Steel Mast 33kV AC Steel Tower Masts

33kVAC, 11kV AC and 3kV DC Lattice Bridge structures

11kV AC and 3kV DC A-Frame tensioning Bridge structure

33kVAC, 11kV AC and 3kV DC Boom structure

33kVAC, 11kV AC and 3kV DC Small steel Parts

33kVAC, 11kV AC and 3kV DC Concrete Foundations

33kVAC, 11kV AC and 3kV DC Suspension

33kVAC, 11kV AC and 3kV DC Numbering

Height Gauge

33kVAC, 11kV AC and 3kV DC Spark gaps

33kVAC and 11kV AC Tree branch cutting form Overhead

33kVAC, 11kV AC and 3kV DC Nuts and bolts

33kVAC, 11kV AC and 3kV DC Support Structures

3kV DC Track Switches

3kV DC Bonding

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11kV and 33kV AC Link switches

MOD's

33kVAC, 11kV AC and 3kV DC Lightning protection

3kV DC Section Insulators

33kVAC, 11kV AC and 3kV DC Insulators

3kV Overhead 33kV AC and 11kV AC transmission line

33kV AC and 11kV AC Aerial Bundle Cable

33kVAC, 11kV AC and 3kV DC OHTE underground cable

Earth Wire

Conductors,

TECHNICAL SPECIFICATIONS RELATED TO THIS PROJECT

Specifications and Drawings will be provided as needed and when required due to the nature of the contract (As and When), as the works that may arise are unpredictable.

Below are the Main Specifications and Drawings

| No | Specification, Drawings and Engineering Instruction | |
|-----------|--|---------------------|
| | Specification, Drawing No | Description |
| 1 | Specification for works on, over, under or adjacent to railway lines and near high voltage equipment. | E7/1 |
| 2 | Safety arrangements and procedural compliance with the occupational health and safety Act; Act 85 of 1983 and regulations. | E4E |
| 3 | Maintenance of 3kV DC Electrification | CEE-0128_ISS_85 |
| 4 | Drawings, catalogues, instruction manuals and spares list for electrical equipment supplied under contract | CEE 0224 |
| 5 | Code of Practice of Overhead Power Lines | SANS 10280:2004 |
| 6 | Conductors for Overhead Electrical Transmission Lines | SANS 182-2 |
| 7 | Painting of Steel Components of Electrical Equipment | CEE – 045 of 2002/1 |
| 8 | Occupational health and safety specification | MSHERQ-001 |
| 9 | 3kV DC Electrification | CEE 0128 |

Table 1: Specifications and Drawings.

Any further specifications and drawings required will be given to the appointed contractor as and when required, depending on the work that's carried out.

5 EVALUATION METHODOLOGY

The evaluation of Bids will be based on the information contained in Bids received in RFP and, which may be further supplemented by presentations and clarification information provided, if required. All Bids shall be equally evaluated by various committees involved in the evaluation process in accordance with stated Evaluation Criteria. Procurement integrity and fairness, transparency, competitiveness and full accountability will at all times be paramount.

5.1 EVALUATION AND SCORING METHODOLOGY

The evaluation of the Bids by the evaluation committees will be conducted at various levels. The following levels will be applied in the evaluation:

| LEVEL | DESCRIPTION |
|----------------------------------|---|
| Verify completeness | The Bid is checked for completeness and whether all required documentation, certificates; verify completeness warranties and other Bid requirements and formalities have been complied with. Incomplete Bids may be disqualified. |
| Verify compliance | The Bids are checked to verify that the essential RFP requirements have been met. Non-compliant Bids may be disqualified. |
| Detailed Evaluation of Technical | Detailed analysis of Bids to determine whether the Bidder is capable of delivering the Project in terms of business and technical requirements. The minimum threshold for technical evaluation is (70%), any bidder who fails to meet the minimum requirement will be disqualified and not proceed with the evaluation of Price and Specific Goals. |
| Specific Goals | Evaluate Specific Goals |
| Price Evaluation | Bidders will be evaluated on price offered. |
| Scoring | Scoring of Bids using the Evaluation Criteria. |
| Recommendation | Report formulation and recommendation of Preferred and Reserved Bidders |
| Approval | Approval and notification of the final Bidder. |

5.2 EVALUATION CRITERIA

Interested bidders for this project shall be evaluated in terms of their business credentials, financial standing, empowerment, technical capacity and experience. The evaluation committee shall use the following Evaluation Criteria depicted in Table 1 for the selection of the preferred bidder that shall execute construction work for the project.

| EVALUATION CRITERIA | WEIGHTING |
|-----------------------------------|------------------------------|
| Stage 1 – Compliance | |
| Stage 1A | Mandatory Requirements |
| Stage 1B | Other Mandatory Requirements |
| Stage 2 | |
| Technical/Functional Requirements | Threshold of 70% |
| Stage 3 | |
| Price | 80 |
| Specific Goals | 20 |
| TOTAL | 100 |

Details of the stages outlined in table 1 above are presented in the following sections.

6 STAGE 1: COMPLIANCE REQUIREMENTS

Bidders are to comply with the following requirements and failure to comply may lead to disqualification.

Stage 1A – Mandatory Requirements - (To be submitted in envelope 1)

If you do not submit/meet the following mandatory documents/requirements, your bid will be automatically disqualified.

Only bidders who comply with stage 1A will be evaluated further.

| No. | Description of requirement | |
|-----|--|---------------|
| a) | Completion of ALL RFP documentation (includes ALL) | X |
| b) | Briefing Session Form D. Bidders must also reflect on the Compulsory Briefing Session Attendance Register (Delete if not applicable) | X |
| c) | Joint Venture , Consortium Agreement or Partnering Agreement signed by all parties (If applicable). The agreement should indicate the leading bidder where applicable. | |
| d) | Proof of CIDB grading or higher | 6EP or Higher |

Stage 1B – Other Mandatory Requirements - (To be submitted in envelope 1)

If you do not submit/meet the following mandatory documents/requirements, PRASA may request the bidder to submit the information within five (5) working days. Should this information not be provided, your bid proposal will be disqualified.

Only bidders who comply with stage 1B will be evaluated further.

| No. | Description of requirement | |
|-----|---|---|
| a) | Letter of Good Standing: COID | X |
| b) | Valid SARS Pin | X |
| c) | Company Registration Documents | X |
| d) | Copies of Directors ID's Documents | X |
| e) | CSD supplier registration number | X |
| f) | Copies of the Rates and Taxes to Determine the footprint | X |
| g) | Professional Qualification | X |
| | <ul style="list-style-type: none"> Electrical Technician: National Diploma or higher Electrical Engineering (Heavy Current). Erector/Traction Linesman: C Green Certificate/A-Red Certificate | X |
| | NB: Provide copies of original qualifications and certificates of professional bodies. The copies must be certified by commissioner of oath. The date on the stamp shall be three | |

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| | | |
|--|--|--|
| | months or less old, before the closing date of the tender. If the qualification has been awarded in another language either than English, please provide translation in English | |
|--|--|--|

months or less old, before the closing date of the tender. If the qualification has been awarded in another language either than English, please provide translation in English

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STAGE 2: TECHNICAL / FUNCTIONALITY REQUIREMENTS - (To be submitted in envelope 1)

Interested bidders shall then be evaluated on functionality after meeting all compliance requirements outlined above. The minimum threshold for technical/functionality requirements is **70%** as per the standard Evaluation Criteria presented in Table above. Bidders who score below this minimum requirement shall not be considered for further evaluation in stage 3.

Details of the technical / functional requirements are presented in Table below

| Item | Criteria | Weight |
|-------------|--|---------------|
| 1 | Key Staff – Experience | 50 |
| 2 | Previous Company / Organisational Experience: | 50 |
| | TOTAL | 100 |

Technical Evaluation Criteria

FUNCTIONAL EVALUATION CRITERIA

Details of the scoring methodology presented above are outlined in Table 4 below

| CRITERIA | WEIGHT | SCORES | | | | | | | | | | | | | | | | | | | | | | | | |
|--|--|-----------------------|----|---------------------------|----|-----------------------|----|----------------------------|----|-----------------------|----|----------------------------|---|-----------------------|----|----------------------------|---|-----------------------|---|----------------------------|---|-----------------------|---|----------------------------|---|----|
| <p>1. <u>Experience of Key Personnel</u> (based on Submitted CVs)</p> <p>Provide CV of key personnel staff detailing experience and Knowledge related to the installation of 11kV, 33kV and 3kV OHTE transmission line.</p> <p>Score of key personnel staff will be allocated according to the number of years in the experience and knowledge related to working with DC overhead track equipment and medium voltages equipment.</p> | <p>5 years' experience or more. (Equate to a score of 50).</p> <table border="1" data-bbox="652 646 1117 736"> <tr> <td>Electrical Technician</td> <td>35</td> </tr> <tr> <td>Erector/Traction Linesman</td> <td>15</td> </tr> </table> <p>4 years' experience or more but less than 5 (Equate to a score of 45).</p> <table border="1" data-bbox="652 871 1117 961"> <tr> <td>Electrical Technician</td> <td>30</td> </tr> <tr> <td>Erector/ Traction Linesman</td> <td>10</td> </tr> </table> <p>3 years' experience or more but less than 4 (Equate to a score of 30).</p> <table border="1" data-bbox="652 1096 1117 1185"> <tr> <td>Electrical Technician</td> <td>23</td> </tr> <tr> <td>Erector/ Traction Linesman</td> <td>7</td> </tr> </table> <p>2 years' experience or more but less than 3 (Equate to a score of 20).</p> <table border="1" data-bbox="652 1320 1117 1410"> <tr> <td>Electrical Technician</td> <td>16</td> </tr> <tr> <td>Erector/ Traction Linesman</td> <td>4</td> </tr> </table> <p>1 year experience and less (Equate to a score of 10).</p> <table border="1" data-bbox="652 1545 1117 1635"> <tr> <td>Electrical Technician</td> <td>7</td> </tr> <tr> <td>Erector/ Traction Linesman</td> <td>3</td> </tr> </table> <p>No experience or No CVs submitted. (Equate to a score of 0).</p> <table border="1" data-bbox="652 1769 1117 1859"> <tr> <td>Electrical Technician</td> <td>0</td> </tr> <tr> <td>Erector/ Traction Linesman</td> <td>0</td> </tr> </table> | Electrical Technician | 35 | Erector/Traction Linesman | 15 | Electrical Technician | 30 | Erector/ Traction Linesman | 10 | Electrical Technician | 23 | Erector/ Traction Linesman | 7 | Electrical Technician | 16 | Erector/ Traction Linesman | 4 | Electrical Technician | 7 | Erector/ Traction Linesman | 3 | Electrical Technician | 0 | Erector/ Traction Linesman | 0 | 50 |
| Electrical Technician | 35 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Erector/Traction Linesman | 15 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Electrical Technician | 30 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Erector/ Traction Linesman | 10 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Electrical Technician | 23 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Erector/ Traction Linesman | 7 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Electrical Technician | 16 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Erector/ Traction Linesman | 4 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Electrical Technician | 7 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Erector/ Traction Linesman | 3 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Electrical Technician | 0 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Erector/ Traction Linesman | 0 | | | | | | | | | | | | | | | | | | | | | | | | | |

| CRITERIA | WEIGHT | SCORES | | | | | | | | | | | | |
|--|--|---------------------|----|---------------------|----|---------------------|----|---------------------|----|--------------------|----|--------------------------------|---|----|
| <p>2. <u>Organizational Experience</u></p> <p>Supply evidence of previous contracts in the form of projects/services/ contracts related to installation 11kV AC, 33kV AC and 3kV DC OHTE.</p> <p>The evidence should come in the form of five (5) completed reference letters, where 1 reference letter equates to 1 project completed. The reference letter must address the below items. Attached is a reference letter template that can be used. The reference letter must be sent to the company/business where services were previously rendered for. Should the bidder be in possession of an existing letter, the letter shall cover all aspects outlined below:</p> <p>A. <u>Previous client and completed works/services information</u></p> <ul style="list-style-type: none"> i. Name of the organisation ii. Description of works/goods/services that were provided iii. Duration <p>B. <u>Evaluation of Service Provider's Performance.</u></p> <ul style="list-style-type: none"> i. Project completed within the stipulated timeframes and adhering to lead times. ii Quality of products. | <table border="1" data-bbox="639 601 1235 889"> <tbody> <tr> <td>5 Reference Letters</td> <td>50</td> </tr> <tr> <td>4 Reference Letters</td> <td>40</td> </tr> <tr> <td>3 Reference Letters</td> <td>30</td> </tr> <tr> <td>2 Reference Letters</td> <td>20</td> </tr> <tr> <td>1 Reference Letter</td> <td>10</td> </tr> <tr> <td>No Project or Reference Letter</td> <td>0</td> </tr> </tbody> </table> | 5 Reference Letters | 50 | 4 Reference Letters | 40 | 3 Reference Letters | 30 | 2 Reference Letters | 20 | 1 Reference Letter | 10 | No Project or Reference Letter | 0 | 50 |
| 5 Reference Letters | 50 | | | | | | | | | | | | | |
| 4 Reference Letters | 40 | | | | | | | | | | | | | |
| 3 Reference Letters | 30 | | | | | | | | | | | | | |
| 2 Reference Letters | 20 | | | | | | | | | | | | | |
| 1 Reference Letter | 10 | | | | | | | | | | | | | |
| No Project or Reference Letter | 0 | | | | | | | | | | | | | |

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INDICATORS:

Prospective bidders should meet the minimum criteria of 70 points to qualify for further evaluation.

| QUALITY CRITERIA | INDICATORS | | | | | |
|--|---|--|--|--|--|---|
| | Not submitted Irrelevant= 0 Points | Poor= 10 Points | Average 20 Points | Good 30 Points | Very good 40 Points | Excellent = 50 points |
| Experience of Key Personnel based on submitted CVs Provide CV of key personnel staff detailing experience and knowledge related to working with DC overhead track equipment and medium voltages. Score of key personnel staff will be allocated according to the number of years in working with DC overhead track equipment and medium voltages work. | No experience or No CVs submitted. (Equates to a score of 0). | All key staff CVs was submitted. 1.Electrical Technician 2. Erector/Traction Linesman 1 year experience and less (Equates to a score of 1-10 points). | All key staff CVs was submitted. 1.Electrical Technician 2. Erector/Traction Linesman 2 years' experience or more but less than 3 (Equates to a score of 11-20 points). | All key staff CVs was submitted. 1.Electrical Technician 2. Erector/Traction Linesman 3 years' experience or more but less than 4 (Equates to a score of 21-30 points). | All key staff CVs was submitted. 1.Electrical Technician 2. Erector/Traction Linesman 4 years' experience or more but less than 5 (Equates to a score of 31-40 points). | All key staff CVs was submitted. 1.Electrical Technician 2. Erector/Traction Linesman 5 years' experience or more. (Equates to a score of 41-50 points). |

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| QUALITY CRITERIA | Not submitted / Irrelevant = 0 Points | INDICATORS | | | | |
|---|--|---|---|---|--|--|
| | | Poor = 10 Points | Average 20 Points | Good 30 Points | Very good 40 Points | Excellent = 50 points |
| <p><u>Organizational Experience</u></p> <p>Supply evidence of previous experience in the form of completed projects/services/ contracts related to installation 11kV AC, 33kV AC and 3kV DC OHTE.</p> <p>The evidence should come in the form of five (5) completed reference letters, where 1 reference letter equates to 1 project completed. The reference letter must address the below items. Attached is a reference letter template that can be used. The</p> | <p>No project completed with zero relevant reference letter equates to a score of 0</p> <p>equates to a score of 0</p> | <p>One project completed with one relevant reference letter equates to a score of 10</p> <p>Note: The reference letter must be signed and stamped by the company/business where the services were previously rendered and comply with the two listed criteria.</p> | <p>Two project successfully completed with two relevant reference letter equates to a score of 20.</p> <p>Note: The reference letter must be signed and stamped by the company/business where the services were previously rendered and comply with the two listed criteria.</p> | <p>Three projects successfully completed with three relevant reference letters equates to a score of 30.</p> <p>Note: The reference letter must be signed and stamped by the company/business where the services were previously rendered and comply with the two listed criteria.</p> | <p>Four projects successfully completed with four relevant reference letters equates to a score of 40.</p> <p>Note: The reference letter must be signed and stamped by the company/business where the services were previously rendered and comply with the two listed criteria</p> | <p>Five projects successfully completed with five relevant reference letters equates to a score of 50.</p> <p>Note: The reference letter must be signed and stamped by the company/business where the services were previously rendered and comply with the two listed criteria</p> |

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| | | | | | |
|--|--|---|---|---|---|
| <p>reference letter must be sent to the company/business where services were previously rendered for. Should the bidder be in possession of an existing letter, the letter shall cover all aspects outlined below:</p> <p>A. <u>Previous client and completed works/services information</u></p> <ul style="list-style-type: none"> i. Name of the organisation ii. Description of works/goods/services that were provided iii. Year <p>B. <u>Evaluation of Service Provider's Performance</u></p> <ul style="list-style-type: none"> i. Project completed within the stipulated timeframes and adhering | <p>negative report attributable to the Supplier, that reference letter will not be considered.</p> <p>If the reference letter does not feature all criteria, then the tenderer will be given the lowest score.</p> | <p>reflects a negative report attributable to the Supplier, that reference letter will not be considered.</p> <p>If the reference letters do not feature all criteria, then the tenderer will be given the lower score.</p> | <p>report attributable to the Supplier, that reference letter will not be considered.</p> <p>If the reference letters do not feature all criteria, then the tenderer will be given the lower score.</p> | <p>If the reference letters do not feature all criteria, then the tenderer will be given the lower score.</p> | <p>report attributable to the Supplier, that reference letter will not be considered.</p> <p>If the reference letters do not feature all criteria, then the tenderer will be given the lower score.</p> |
|--|--|---|---|---|---|

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| | | | | | | |
|------------------------|--|--|--|--|--|--|
| to lead times. | | | | | | |
| ii Quality of products | | | | | | |

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METRORAIL WESTERN CAPE

CONTACTABLE REFERENCE FOR TENDERER

Appointment of contractor to provide As and When Maintenance, Servicing and Repair for 11kV AC, 33kV AC and 3kV DC OHTE for a period of 36 months.

Name of the tenderer: _____

To: PRASA – Metrorail – Western Cape

I, the undersigned duly authorized representative, hereby furnish this reference on behalf of the organisation named herein:

A. Previous client and completed works/services information

I. Name of the organisation: _____

II. Description of works/goods/services that were provided :

III. Year : _____

B. Evaluation of service provider's performance

1. Were the works/service/ product completed/delivered within stipulated timeframes Yes _____ No _____

If no kindly comment

2. Were the works/services/product meet the expected and specified quality Yes _____

No

If no kindly comment

Signature: _____

Telephone: _____

Date: _____

The following formula shall be used by the Bid Evaluation Committee to score potential bidders on pricing:

Business stamp with date

STAGE 3: PRICING AND SPECIFIC GOALS - (To be submitted in envelope 2)

Bidders should provide their price proposal in envelope 2, which should include Form C (Financial Offer) and also provide proof of Specific Goals.

The following formula, shall be used by the Bid Evaluation Committee to allocate scores to the interested bidders :

The maximum points for this tender are allocated as follows:

| | POINTS |
|--|------------|
| PRICE | 80 |
| SPECIFIC GOALS | 20 |
| TOTAL POINTS FOR PRICE AND SPECIFIC GOALS | 100 |

FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

POINTS AWARDED FOR PRICE

THE 80/20 PREFERENCE POINT SYSTEMS

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

80/20

$$PS = 80 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

- (a) an invitation for tender for income-generating contracts, that either the 80/20 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
- (b) any other invitation for tender, that either the 80/20 reference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for the 80/20 preference point system.

Table 1: Specific goals for the tender and points claimed are indicated per the table below.

(Note to organs of state: Where 80/20 preference point system is applicable, corresponding points must also be indicated as such.

Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)

| The specific goals allocated points in terms of this tender | Number of points allocated (80/20 system) (To be completed by the organ of state) | Number of points claimed (80/20 system) (To be completed by the tenderer) | Evidence |
|---|--|--|--|
| B-BBEE Level1/Level 2 | 4 | | B-BBEE Certificate/Affidavit (in case of JV, a consolidated score card will be accepted) |
| Minimum 51% Black youth owned | 4 | | Certified copy of ID Documents of the Owners |
| Minimum 51% Black women owned | 4 | | Certified copy of ID Documents of the Owners |
| Minimum 51% Black owned | 4 | | B-BBEE Certificate/Affidavit |
| EME or QSE 51% Black Owned | 4 | | Audited Annual Financial/ B-BBEE Certificate /Affiavit |
| Total | 20 | | |

7 VALIDITY PERIOD

This RFP shall be valid for *[90 working days]* calculated from Bid closing date.

8 THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

8.1 National Industrial Participation Programme (NIPP) requirements:

The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

9 POST TENDER NEGOTIATION (IF APPLICABLE)

PRASA reserves the right to conduct post tender negotiations with a shortlist of Respondent(s). The shortlist could comprise of one or more Respondents. Should PRASA conduct post tender negotiations, Respondents will be requested to provide their best and final offers to PRASA based on such negotiations. A final evaluation will be conducted in terms of 80/20.

10 FINAL CONTRACT AWARD

PRASA will negotiate the final terms and condition the contract with the successful Respondent(s). This may include aspects such as Supplier Development, the B-BBEE Improvement Plan, price and delivery. Thereafter the final contract will be awarded to the successful Respondent(s).

11 FAIRNESS AND TRANSPARENCY

PRASA views fairness and transparency during the RFP Process as an absolute on which PRASA will not compromise. PRASA will ensure that all members of evaluation committees declare any conflicting or undue interest in the process and provide confidentiality undertakings to PRASA.

The evaluation process will be tightly monitored and controlled by PRASA to assure integrity and transparency throughout, with all processes and decisions taken being approved and auditable.

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTC FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



| | |
|---|-------------------------------|
| REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTE FOR A PERIOD OF 36 MONTHS | BID NUMBER: 04/2023/CTN/INFRA |
|---|-------------------------------|



SECTION 3

PRICING AND DELIVERY SCHEDULE

BILL OF QUANTITIES

| Appointment of contractor to provide As and when Maintenance, Servicing and Repair for 11kV AC, 33kV AC AND 3KV DC OHTE for a period of 36 months. | | | | | |
|--|---|------|-----------|-------|-------|
| Item | Description | Unit | Rate only | Hours | Total |
| 1 | <p>The contractor will indicate what percentage mark-up will be added to material used.</p> <p>NB: Invoices from place of purchase of all material used are to be submitted for scrutiny along with invoices for payment, and invoices for payment should clearly indicate the % markup added by the contractor.</p> | % | | N/A | |
| 2 | <p>The contractor will indicate their percentage mark up for specialised plant, equipment or work subcontracted to third parties. Proof of invoice will be required. NB: Prior approval will be required from the Project Manager before any work can be subcontracted out to third parties.</p> | % | | N/A | |

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTE FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



| | | | | |
|-----|---|------------|--|--|
| 3.1 | <p>Normal Working Hours TECHNICIAN</p> <p>The contractor is to tender their total cost per hour per Technician to perform Electrical work during normal working hours (07:30 to 16:00). This cost to include traveling cost but to exclude material and machinery, which has previously been dealt with.</p> | Rands/Hour | | |
| | <p>Normal Working Hours ERECTOR/TRACTION LINESMAN.</p> <p>The contractor is to tender their total cost per hour per Erector/Traction Linesman to perform Electrical work during normal working hours (07:30 to 16:00). This cost to include traveling cost but to exclude material and machinery, which has previously been dealt with.</p> | Rands/Hour | | |
| | <p>Normal Working Hours Labour.</p> <p>The contractor is to tender their total cost per hour per labourer to perform Electrical work during normal working hours (07:30 to 16:00). This cost to include traveling cost but to exclude material and machinery, which has previously been dealt with.</p> | Rands/Hour | | |

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTE FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



| | | | | | |
|-----|--|------------|--|--|--|
| 3.2 | <p>Overtime and Saturday TECHNICIAN</p> <p>The contractor is to tender their total cost per hour per Technician to perform Electrical work after normal working hours and Saturdays. This cost to include traveling cost but to exclude material and machinery, which has previously been dealt with.</p> | Rands/Hour | | | |
| | <p>Overtime and Saturday ERECTOR/TRACTION LINESMANS</p> <p>The contractor is to tender their total cost per hour per Erector/Traction Linesman to perform Electrical work after normal working hours and Saturdays. This cost to include traveling cost but to exclude material and machinery, which has previously been dealt with.</p> | Rands/Hour | | | |
| | <p>Overtime and Saturday LABOUR</p> <p>The contractor is to tender their total cost per hour per labour to perform Electrical work after normal working hours and Saturdays. This cost to include traveling cost but to exclude material and machinery, which has previously been dealt with.</p> | Rands/Hour | | | |
| 3.3 | Sunday and Public Holiday TECHNICIAN | | | | |

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTE FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



| | | | | | |
|--|---|------------|--|--|--|
| | The contractor is to tender their total cost per hour per Technician to perform Electrical work on Sundays and public holidays . This cost to include traveling cost but to exclude material and machinery, which has previously been dealt with. | Rands/Hour | | | |
| | Sunday and Public Holiday ERECTOR/TRACTION LINEMAN The contractor is to tender their total cost per hour per Erector/Traction Linesman, to perform Electrical work on Sundays and public holidays . This cost to include traveling cost but to exclude material and machinery, which has previously been dealt with. | Rands/Hour | | | |
| | Sunday and Public Holiday Labour The contractor is to tender their total cost per hour per labourer to perform Electrical work on Sundays and public holidays . This cost to include traveling cost but to exclude material and machinery, which has previously been dealt with. | Rands/Hour | | | |
| | SUBTOTAL | | | | |
| | VAT@ 15% | | | | |
| | TOTAL INCLUDING VAT | | | | |

Respondents are required to complete the Pricing Schedule/ BOQ and Form C (Volume 2 /Envelop 2)

1 PRICING

- 1.1. Prices must be quoted in South African Rand, inclusive of all applicable taxes.
- 1.2. Price offer is firm and clearly indicate the basis thereof.
- 1.3. Pricing Bill of Quantity is completed in line with schedule if applicable.
- 1.4. Cost breakdown must be indicated.
- 1.5. Price escalation basis and formula must be indicated.
- 1.6. To facilitate like-for like comparison bidders must submit pricing strictly in accordance with this Price schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being declared non-responsive.
- 1.7. Please note that should you have offered a discounted price(s), PRASA will only consider such price discount(s) in the final evaluation stage on an unconditional basis.
- 1.8. Respondents are to note that if price offered by the highest scoring bidder is not market related, PRASA may not award the contract to the Respondent. PRASA may:
 - 1.8.1. negotiate a market-related price with the Respondent scoring the highest points or cancel the RFP;
 - 1.8.2. if that Respondent does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the second highest points or cancel the RFP; and
 - 1.8.3. if the Respondent scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the third highest points or cancel the RFP.
 - 1.8.4. If a market-related price is not agreed with the Respondent scoring the third highest points, PRASA must cancel the RFP.
 - 1.8.5.

2

DISCLOSURE OF PRICES QUOTED

Respondents are to note that, on award of business, PRASA is required to publish the tendered prices and preferences claimed of the successful and unsuccessful Respondents inter alia on the National Treasury e-Tender Publication Portal, (www.etenders.gov.za) , the other medium used to advertise the bid i.e CIDB as required per National Treasury Instruction Note 09 of 2022/2023.

3

PERFORMANCE AND BID BONDS (WHERE APPLICABLE)

3.1. The preferred Bidder shall where applicable provide PRASA with a performance bond which shall be 10% of the value of the entire Project price offered and it shall be issued with 30 days of receipt of notice of appointment. The Performance Bond shall be valid for the Contract period.

4

OWNERSHIP OF DESIGN

4.1 The plans and design developed and to be provided by PRASA shall at all times remain the property of PRASA.

5

SERVICE LEVELS

5.1. An experienced national account representative(s) is required to work with PRASA's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.

5.2. PRASA will have quarterly reviews with the Service provider's account representative on an on-going basis.

5.3. PRASA reserves the right to request that any member of the Service provider's team involved on the PRASA account be replaced if deemed not to be adding value for PRASA.

5.4. The Service provider guarantees that it will achieve a 100% [hundred per cent] service level on the following measures:

- a) Random checks on compliance with quality/quantity/specifications
- b) On time delivery.

5.5. The Service provider must provide a telephone number for customer service calls.

5.6. Failure of the Service provider to comply with stated service level requirements will give PRASA the right to cancel the contract in whole, without penalty to PRASA, giving 30 [thirty] calendar days' notice to the Service provider of its intention to do so.

Acceptance of Service Levels:

| | |
|-----|--|
| YES | |
|-----|--|

6 TOTAL COST OF OWNERSHIP (TCO)

6.1. PRASA will strive to procure goods, services and works which contribute to its mission. In order to achieve this, PRASA must be committed to working with suppliers who share its goals of continuous improvement in service, quality and reduction of Total Cost of Ownership (TCO).

6.2. Respondents shall indicate whether they would be committed, for the duration of any contract which may be awarded through this RFP process, to participate with PRASA in its continuous improvement initiatives to reduce the total cost of ownership [TCO], which will reduce the overall cost of transportation services and related logistics provided by PRASA's operating divisions within South Africa to the ultimate benefit of all end-users.

7 FINANCIAL STABILITY

Respondents are required to submit their latest financial statements prepared and signed off by a professional accountant for the past N/A years with their Proposal in order to enable PRASA to establish financial stability.

SIGNED at _____ on this _____ day of _____ 2023

SIGNATURE OF WITNESSES

1 _____

ADDRESS OF WITNESSES

Name _____

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTC FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTS FOR A PERIOD OF 36 MONTHS
BID NUMBER: 04/2023/CTN/INFRA



8

VALIDITY OF RETURNABLE DOCUMENTS

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and valid B-BBEE Verification Certificate, for the duration of any contract emanating from this RFP. Should the Respondent be awarded the contract [the Agreement] and fail to present PRASA with such renewals as and when they become due, PRASA shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement forthwith without any liability and without prejudice to any claims which PRASA may have for damages against the Respondent.

SIGNED at _____ on this _____ day of _____ 2023

SIGNATURE OF WITNESSES

1 _____

ADDRESS OF WITNESSES

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

9 CERTIFICATE OF ACQUAINTANCE WITH RFP TERMS & CONDITIONS & APPLICABLE DOCUMENTS

By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this RFP, including those contained in any printed form stated to form part hereof, including but not limited to the documents stated below and PRASA will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered prices or any other purpose:

1. PRASA's General Bid Conditions*

2. Standard RFP Terms and Conditions for the supply of Goods or Services or Works to PRASA

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFP unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Bid. Any such submission shall be subject to review by PRASA's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be. A material deviation from the Standard terms or conditions could result in disqualification.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid to which they intend to respond, before submitting the bid. The Bidder agrees that he/she will have no claim based on an allegation that any aspect of this RFP was unclear but in respect of which he/she failed to obtain clarity.

The bidder understands that his/her Bid will be disqualified if this Certificate of Acquaintance with RFP documents included in the RFP as a returnable document, is found not to be true and complete in every respect.

SIGNED at _____ on this _____ day of _____ 2023

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTC FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

10

GENERAL CONDITIONS

10.1 ALTERNATIVE BIDS

Bidders may submit alternative Bid only if a main Bid, strictly in accordance with all the requirements of the RFP is also submitted. The alternative Bid is submitted with the main Bid together with a schedule that compares the requirements of the RFP with the alternative requirements the Bidders proposes. Bidders must note that in submitting an alternative Bid they accept that PRASA may accept or reject the alternative Bid and shall be evaluated in accordance with the criteria stipulated in this RFP.

10.2 PRASA'S TENDER FORMS

Bidders must sign and complete the PRASA's Bid Forms and attach all the required documents. Failure by Bidders to adhere to this requirement may lead to their disqualification.

10.3 PRECEDENT

In case of any conflict with this RFP and Bidders response, this RFP and its briefing notes shall take precedence.

10.4 RESPONSE TO RFP-CONFIDENTIALITY

Response to RFPs must clearly indicate whether any information conveyed to or requested from PRASA is confidential or should be treated confidentially by PRASA. In the absence of any such clear indication in writing from a response to RFP, PRASA shall deem the response to RFP to have waived any right to confidentiality and treat such information as public in nature.

Where a Bidder at any stage during the RFP Process indicates to PRASA that information or any response to RFP requested from PRASA is or should be treated confidentially, PRASA shall treat such information or response to RFP confidentially, unless PRASA believes that to ensure the transparency and competitiveness of the RFP Process the content of the information or response to RFP should be conveyed to all Bidders, in which event it shall apply the following process:

- PRASA shall confirm with the Bidder whether the raising of confidentiality applies to the entire response to the RFP or only specific elements or sections of the response;
- Where confidentiality is maintained by the Bidder and PRASA is of the opinion that the information or response to RFP if made publicly available would affect the commercial interests

of the Bidder or is commercially sensitive information, PRASA shall not release such information to other Bidders if providing such information or response to the RFP would prejudice the competitiveness and transparency of the RFP Process;

- Where PRASA is of the opinion that information provided is not commercially sensitive or would have no impact on the commercial interests of the relevant Bidder if released and fairness and transparency requires that such information be released to all Bidders, PRASA may:

- i. inform the relevant Bidder of the necessity to release such information and/or response to RFP and request the Bidder to consent to the release thereof by PRASA; or
- ii. obtain legal advice regarding the confidentiality of the relevant information and/or response to RFP and the legal ability of PRASA to release such information; or
- iii. refrain from releasing the information and/or response to RFP, in which event PRASA shall not take account of the contents of such information in the evaluation of the relevant response to RFP.

The above procedures regarding confidentiality shall not apply to any information which is already public knowledge or available in the public domain or in the hands of PRASA or is required to be disclosed by any legal or regulatory requirements or order of any competent court, tribunal or forum.

10.5 RESPONSE TO THE RFP – RFP DISQUALIFICATION

Responses to RFP which do not comply with the RFP requirements, formalities, terms and conditions may be disqualified by PRASA from further participation in the RFP Process.

In particular (but without prejudice to the generality of the foregoing) PRASA may disqualify, at its sole discretion and without prejudice to any other remedy it may have, a Bidder where the Bidder, or any of its consortium members, subcontractors or advisors have committed any act of misrepresentation, bad faith or dishonest conduct in any of its dealings with or information provided to PRASA.

10.6 CORRUPTION, GIFTS AND PAYMENTS

Neither the Bidders to RFPs, its equity members, the sub-contractors, consortium members nor any of their agents, lenders or advisors shall directly or indirectly offer or give to any person in the employment of PRASA or any other Government official or any of the Advisory Team any gift or consideration of any kind as an inducement or reward for appointing a particular Bidder, or for showing or omitting to show favour or disfavour to any of the Bidders, its equity members or the sub-contractors in relation to the Project.

In the event that any of the prohibited practices contemplated under the above paragraph is committed, PRASA shall be entitled to terminate any Response to RFP's status and to prohibit such

Response to RFP, its equity members, its SPV members, its Sub Contractors and their agents, lenders and advisors from participating in any further part of the procurement of the Project.

10.7 INSURANCE

Unless specifically provided for in this RFP or draft contracts, Bidders will be required to submit with their Bid for services professional indemnity insurance and works insurance to an extent (if any) if insurance provided by PRASA may not be for the full cover required in terms of the relevant category listed in this RFP. The Bidder is advised to seek qualified advice regarding insurance.

10.8 NO CONTACT POLICY

Bidders may only contact the bid administrator of PRASA as per the terms of the Communication Structure established by this RFP, except in the case of pre-existing commercial relationships, in which case contact may be maintained only with respect thereto and, in making such contact, no party may make reference to the Project or this RFP.

10.9 CONFLICT OF INTEREST

No Bidder member, subcontractor or advisor of the response to RFP may be a member of or in any other way participate or be involved, either directly or indirectly in more than one response to RFP or response to RFP during any stage of the Project procurement process, but excluding specialist suppliers of systems and equipment, non-core service providers or financial or commercial institutions whose role is limited purely to lending money or advancing credit to the response to RFP. Bidders are to sign the declaration of interest form. In order to prevent the conflict or potential conflict of interest between Lenders and Bidders to RFP, no advisors or the Contractor/s or Consortium/s to any response to RFP, consortium member or subcontractor may fulfil the role of arranger, underwriter and/or lead bank to the response to RFP. PRASA may disqualify the response to RFP from further participation in the event of a failure to comply with this provision. PRASA views the potential conflict of interest so great as to warrant the reduction of competition for advisory services.

10.10 COLLUSION AND CORRUPTION

Any Bidder shall, without prejudice to any other remedy available to PRASA, be disqualified, where the response to RFP –

- communicates to a person other than persons nominated by PRASA a material part of its response to RFP; or
- Enters into any Contract or arrangement with any other person or entity that it shall refrain from submitting a response to RFP to this RFP or as to any material part of its Response to RFP to this RFP (refer the prohibition contained in Section 4(1)(b)(iii) of the Competition Act 89 of 1998). . The Bidders represents that the Bidder has not, directly or indirectly, entered into any

agreement, arrangement or understanding or any such like for the purpose of, with the intention to, enter into collusive Bidding or with reasonable appreciation that, collusive any agreement, arrangement or understanding or any such like may result in or have the effect of collusive Bidding. The Bidder undertakes that in the process of the Bid but prior to PRASA awarding the Bid to a preferred bidder become involved in or be aware of or do or caused to be done any agreement, arrangement or understanding or any such like for the purpose of or which may result in or have the effect of a collusive Bid, the Bidder will notify PRASA of such any agreement, arrangement or understanding or any such like.; or

- offers or agrees to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done, or causing, or having caused to be done any act or omission in relation to the RFP Process or any proposed response to RFP (provided nothing contained in this paragraph shall prevent a response to RFP from paying any market-related commission or bonus to its employees or contractors within the agreed terms of their employment or contract).

10.11 CONSORTIUM CHANGES

If exceptional circumstances should arise in which after the submission to the bid and after closing date of submission of bids, there is change in the composition of the Bidder, either through substitution or omission of any member of the Bidder:

- The Response to RFP must notify PRASA in writing of the proposed changes supported by complete details of the material reasons for the changes, the parties impacted by the changes and the impact on the response to RFP.
- PRASA shall evaluate the reasons advanced by the Bidder for the requested changes to the Bidder structure and where PRASA is not satisfied that the reasons advanced are reasonable or material, refuse to accept the change and disqualify the response to RFP, or notify the Bidder in writing of its non-acceptance of the changes and require the Bidder to propose a suitable alternative to PRASA within 10 (TEN) days of its receipt of the decision of PRASA, upon receipt of which PRASA shall -
 - Evaluate the alternative proposed for suitability to PRASA, and where the alternative is accepted by PRASA, inform the Bidder in writing of such acceptance and PRASA shall reassess the response to RFP against the RFP requirements and criteria; or
 - Where the alternative is not accepted by PRASA, inform the Bidder in writing of such non-acceptance as well as its disqualification from the RFP Process.

iii. Where PRASA is satisfied that the changes requested under (i) above are reasonable and material, the response to RFP, shall be allowed to effect the required changes and PRASA shall reassess the response to RFP against the RFP requirements and criteria.

10.12 COSTS OF RESPONSE TO THE RFP SUBMISSION

All costs and expenses associated with or incurred by the Bidder in relation to any stage of the Project, shall be borne by the Bidder. PRASA shall not be liable for any such costs or expenses or any claim for reimbursement of such costs or expenses.

To avoid doubt, PRASA shall not be liable for any samples submitted by the Bidder in support of their Responses to RFP and reserves the right not to return to them such samples and to dispose of them at its discretion.

10.13 RESPONSE TO THE RFP WARRANTY

Bidders must provide a warranty as part of their Responses to RFP that their Responses to RFP are true and correct in all respects, that it does not contain a misrepresentation of any kind and that the taxes of all members of the Bidder company, consortium members and or subcontractors are in order and none of the members are undergoing corruption or any criminal-related investigations or have any past convictions for fraud or corruption.

11

CONDITIONS OF TENDER

General

| | | |
|--|---|--|
| Actions | 1 | PRASA's <i>Representative</i> and each <i>tenderer</i> submitting a tender shall act as stated in these Conditions of Tender and in a manner which is fair, equitable, transparent, competitive and cost-effective. |
| Interpretation | 2 | Terms shown in <i>italics</i> vary for each tender. The details of each term for this tender are identified in the Request for Tender / Scope of work/ specification. Terms shown in capital initials are defined terms in the appropriate conditions of contract. |
| | 3 | Any additional or amended requirements in the Scope of work/ specification, and additional requirements given in the Schedules in the <i>tender returnables</i> are deemed to be part of these Conditions of Tender. |
| | 4 | The Conditions of Tender and the Scope of work/ specification shall form part of any contract arising from this invitation to tender. |
| Communication | 5 | Each communication between PRASA and a <i>tenderer</i> shall be to or from PRASA's <i>Representative</i> only, and in a form that can be read, copied and recorded. Communication shall be in the English language. PRASA takes no responsibility for non-receipt of communications from or by a <i>tenderer</i> . |
| PRASA's rights to accept or reject any tender | 6 | PRASA may accept or reject any variation, deviation, tender, or alternative tender, and may cancel the tender process and reject all tenders at any time prior to the formation of a contract. PRASA or PRASA's <i>Representative</i> will not accept or incur any liability to a <i>tenderer</i> for such cancellation and rejection, but will give reasons for the action. PRASA reserves the right to accept the whole or any part of any tender. |
| | 7 | After the cancellation of the tender process or the rejection of all tenders PRASA may abandon the proposed work and services, have it performed in any other manner, or re-issue a similar invitation to tender at any time. |

Tenderer's obligations

The *tenderer* shall comply with the following obligations when submitting a tender and shall:

| | | |
|---|---|--|
| Eligibility | 1 | Submit a tender only if the <i>tenderer</i> complies with the criteria stated in the Scope of work/ specification. |
| Cost of tendering | 2 | Accept that PRASA will not compensate the <i>tenderer</i> for any costs incurred in the preparation and submission of a tender. |
| Check documents | 3 | Check the <i>tender documents</i> on receipt, including pages within them, and notify PRASA's <i>Representative</i> of any discrepancy or omissions in writing. |
| Copyright of documents | 4 | Use and copy the documents provided by PRASA only for the purpose of preparing and submitting a tender in response to this invitation. |
| Standardised specifications and other publications | 5 | Obtain, as necessary for submitting a tender, copies of the latest revision of standardised specifications and other publications, which are not attached but which are incorporated into the <i>tender documents</i> by reference. |
| Acknowledge receipt | 6 | Preferably complete the Receipt of invitation to submit a tender form attached to the Letter of Invitation and return it within five days of receipt of the invitation. |
| | 7 | Acknowledge receipt of Addenda / Tender Briefing Notes to the <i>tender documents</i> , which PRASA's <i>Representative</i> may issue, and if necessary apply for an extension to the <i>deadline for tender submission</i> , in order to take the Addenda into account. |
| Site visit and / or clarification meeting | 8 | Attend a site visit and/or clarification meeting at which <i>tenderers</i> may familiarise themselves with the proposed work, services or supply, location, etc. and raise questions, if provided for in the Scope of work/ specification. Details of the meeting are stated in the RFP document, i-tender website and CIDB website. |
| Seek clarification | 9 | Request clarification of the <i>tender documents</i> , if necessary, by notifying PRASA's <i>Representative</i> earlier than the <i>closing time for</i> |

clarification of queries.

| | | |
|---------------------------------|----|---|
| Insurance | 10 | Be informed of the risk that needs to be covered by insurance policy. The <i>tenderer</i> is advised to seek qualified advice regarding insurance. |
| Pricing the tender | 11 | Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes (except VAT), and other levies payable by the successful <i>tenderer</i> . Such duties, taxes and levies are those applicable 14 days prior to the <i>deadline for tender submission</i> . |
| | 12 | Show Value Added Tax (VAT) payable by PRASA separately as an addition to the tendered total of the prices. |
| | 13 | Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the <i>conditions of contract</i> . |
| | 14 | State the rates and Prices in South African Rand unless instructed otherwise as an additional condition in the Scope of work/ specification. The selected <i>conditions of contract</i> may provide for part payment in other currencies. |
| Alterations to documents | 15 | Not make any alterations or an addition to the tender documents, except to comply with instructions issued by PRASA's <i>Representative</i> or if necessary to correct errors made by the <i>tenderer</i> . All such alterations shall be initialled by all signatories to the tender. Corrections may not be made using correction fluid, correction tape or the like. |
| Alternative tenders | 16 | Submit alternative tenders only if a main tender, strictly in accordance with all the requirements of the <i>tender documents</i> is also submitted. The alternative tender is submitted with the main tender together with a schedule that compares the requirements of the <i>tender documents</i> with the alternative requirements the <i>tenderer</i> proposes. |
| | 17 | Accept that an alternative tender may be based only on the criteria stated in the Scope of work/ specification and as acceptable to PRASA. |
| Submitting a tender | 18 | Submit a tender for providing the whole of the works, services or supply identified in the Contract Data unless stated otherwise as an additional condition in the Scope of work/ specification. |

NOTE: 19 **Return the completed and signed *PRASA Tender Forms and SBD forms provided with the tender. Failure to submit all the required documentation will lead to disqualification***

20 **Submit the tender as an original plus 1 copy and an electronic version which should be contained in Memory Cards clearly marked in the Bidders name as stated in the RFP and provide an English translation for documentation submitted in a language other than English. Tenders may not be written in pencil but must be completed in ink.**

21 **Sign and initial the original and all copies of the tender where indicated. PRASA will hold the signatory duly authorised and liable on behalf of the *tenderer*.**

22 **Seal the original and each copy of the tender as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside PRASA's address and invitation to tender number stated in the Scope of work/ specification, **as well as the tenderer's name and contact address**. Where the tender is based on a two envelop system tenderers should further indicate in the package whether the document is **envelope / box 1 or 2**.**

23 **Seal original and copies together in an outer package that states on the outside only PRASA's address and invitation to tender number as stated in the Scope of work/ specification. The outer package should be marked "CONFIDENTIAL"**

24 **Accept that PRASA will not assume any responsibility for the misplacement or premature opening of the tender if the outer package is not sealed and marked as stated.**

Note:

PRASA prefers not to receive tenders by post, and takes no responsibility for delays in the postal system or in transit within or between PRASA offices.

PRASA prefers not to receive tenders by fax, PRASA takes no responsibility for difficulties in transmission caused by line or equipment faults.

Where tenders are sent via courier, PRASA takes no responsibility for tenders delivered to any other site than the tender office.

PRASA employees are not permitted to deposit a tender into the PRASA tender box on behalf of a tenderer, except those lodged by post or courier.

| | |
|---|---|
| Closing time | 25 Ensure that PRASA has received the tender at the stated address with the Scope of work / specification no later than the <i>deadline for tender submission</i> . Proof of posting will not be taken by PRASA as proof of delivery. PRASA will not accept a tender submitted telephonically, by Fax, E-mail or by telegraph unless stated otherwise in the Scope of work/ specification. |
| Tender validity | 26 Accept that, if PRASA extends the <i>deadline for tender submission</i> for any reason, the requirements of these Conditions of Tender apply equally to the extended deadline. |
| Clarification of tender after submission | 27 Hold the tender(s) valid for acceptance by PRASA at any time within the <i>validity period</i> after the <i>deadline for tender submission</i> . 28 Extend the <i>validity period</i> for a specified additional period if PRASA requests the <i>tenderer</i> to extend it. A <i>tenderer</i> agreeing to the request will not be required or permitted to modify a tender, except to the extent PRASA may allow for the effects of inflation over the additional period. |
| Submit bonds, policies etc. | 29 Provide clarification of a tender in response to a request to do so from PRASA's <i>Representative</i> during the evaluation of tenders. This may include providing a breakdown of rates or Prices. No change in the total of the Prices or substance of the tender is sought, offered, or permitted except as required by PRASA's <i>Representative</i> to confirm the correction of arithmetical errors discovered in the evaluation of tenders. The total of the Prices stated by the <i>tenderer</i> as corrected by PRASA's <i>Representative</i> with the concurrence of the <i>tenderer</i> , shall be binding upon the <i>tenderer</i> 30 If instructed by PRASA's <i>Representative</i> (before the formation of a contract), submit for PRASA's acceptance, the bonds, guarantees, policies and certificates of insurance required to be provided by the successful <i>tenderer</i> in terms of the <i>conditions of contract</i> . |
| | 31 Undertake to check the final draft of the contract provided by PRASA's <i>Representative</i> , and sign the Form of Agreement all within the time required. |

32 Where an agent on behalf of a principal submits a tender, an authenticated copy of the authority to act as an agent should be submitted with the tender.

Fulfil BEE requirements 33 Comply with PRASA's requirements regarding BBBEE Suppliers.

PRASA'S UNDERTAKINGS

PRASA, and PRASA's *Representative*, shall:

Respond to clarification 1 Respond to a request for clarification received earlier than the *closing time for clarification of queries*. The response is notified to all *tenderers*.

Issue Addenda 2 If necessary, issue to each *tenderer* from time to time during the period from the date of the Letter of Invitation until the *closing time for clarification of queries*, Addenda that may amend, amplify, or add to the *tender documents*. If a *tenderer* applies for an extension to the *deadline for tender submission*, in order to take Addenda into account in preparing a tender, PRASA may grant such an extension and PRASA's *Representative* shall notify the extension to all *tenderers*.

Return late tenders 3 Return tenders received after the *deadline for tender submission* unopened to the *tenderer* submitting a late tender. Tenders will be deemed late if they are not in the designated tender box at the date and time stipulated as the deadline for tender submission.

Non-disclosure 4 Not disclose to *tenderers*, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tenders and recommendations for the award of a contract.

Grounds for rejection 5 Consider rejecting a tender if there is any effort by a *tenderer* to influence the processing of tenders or contract award.

Disqualification 6 Instantly disqualify a *tenderer* (and his tender) if it is established that the *tenderer* offered an inducement to any person with a view to influencing the placing of a contract arising from this invitation to tender.

Test for responsiveness 7 Determine before detailed evaluation, whether each tender properly

received

- meets the requirements of these Conditions of Tender,
- has been properly signed, and
- is responsive to the requirements of the *tender documents*.

8 Judge a responsive tender as one which conforms to all the terms, conditions, and specifications of the *tender documents* without material deviation or qualification. A material deviation or qualification is one which, in PRASA 's opinion would

- detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Contract Data,
- change PRASA's or the *tenderer's* risks and responsibilities under the contract, or
- affect the competitive position of other *tenderers* presenting responsive tenders, if it were to be rectified.

| | | |
|------------------------|----|--|
| Non-responsive tenders | 10 | Reject a non-responsive tender, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation. |
| Arithmetical errors | 11 | <p>Check responsive tenders for arithmetical errors, correcting them as follows:</p> <ul style="list-style-type: none">• Where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern.• If a bill of quantities applies and there is a discrepancy between the rate and the line item total, resulting from multiplying the rate by the quantity, the rate as quoted shall govern. Where there is an obviously gross misplacement of the decimal point in the rate, the line item total as quoted shall govern, and the rate will be corrected.• Where there is an error in the total of the Prices, either as a result of other corrections required by this checking process or in the <i>tenderer's</i> addition of prices, the total of the Prices, if any, will be corrected. |
| | 12 | Reject a tender if the <i>tenderer</i> does not accept the corrected total of the Prices (if any). |
| Evaluating the tender | 13 | Evaluate responsive tenders in accordance with the procedure stated in the RFP / Scope of work/ specification. The evaluated tender price will be disclosed only to the relevant PRASA tender committee and will not be disclosed to <i>tenderers</i> or any other person. |

| | | |
|----------------------------------|----|---|
| Clarification of a tender | 14 | Obtain from a <i>tenderer</i> clarification of any matter in the tender which may not be clear or could give rise to ambiguity in a contract arising from this tender if the matter were not to be clarified. |
| Acceptance of tender | 15 | Notify PRASA's acceptance to the successful <i>tenderer</i> before the expiry of the <i>validity period</i> , or agreed additional period. Providing the notice of acceptance does not contain any qualifying statements, it will constitute the formation of a contract between PRASA and the successful <i>tenderer</i> . |
| Notice to unsuccessful tenderers | 16 | After the successful <i>tenderer</i> has acknowledged PRASA's notice of acceptance, notify other <i>tenderers</i> that their tenders have not been accepted, following PRASA's current procedures. |
| Prepare contract documents | 17 | Revise the contract documents issued by PRASA as part of the <i>tender documents</i> to take account of <ul style="list-style-type: none">• Addenda issued during the tender period,• inclusion of some of the <i>tender returnables</i>, and• other revisions agreed between PRASA and the successful <i>tenderer</i>, before the issue of PRASA's notice of acceptance (of the tender). |
| Issue final contract | 18 | Issue the final contract documents to the successful <i>tenderer</i> for acceptance within one week of the date of PRASA's notice of acceptance. |
| Sign Form of Agreement | 19 | Arrange for authorised signatories of both parties to complete and sign the original and one copy of the Form of Agreement within two weeks of the date of PRASA's notice of acceptance of the tender. If either party requires the signatories to initial every page of the contract documents, the signatories for the other party shall comply with the request. |
| Provide copies of the contracts | 20 | Provide to the successful <i>tenderer</i> the number of copies stated in the Scope of work/ specification of the signed copy of the contracts within three weeks of the date of PRASA's acceptance of the tender. |

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTS FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



DRAFT OF A CONTRACT

ANNEXURE A



PASSANGER RAIL AGENCY OF SOUTH AFRICA
E5 (FEB 2008)

CONTRACT

CONTRACT NUMBER : _____

CONTRACTOR : _____

NATURE OF WORK : _____

LOCALITY OR PLACE : _____

DATE OF ACCEPTANCE
OF TENDER : _____

DATE OF COMPLETION
DUE : _____ 20_____

APPROXIMATE VALUE : _____

PASSANGER RAIL AGENCY OF SOUTH AFRICA

CONTRACT

Contract No. :

CONTRACT made and entered into by and between Passenger Rail Agency of South Africa, a company duly incorporated according to the legal succession to the South African Transport Service Amendment Act (Act 38 of 2008), with its registered address at Jorissen Place, 66 Jorissen Street, Braamfontein, Johannesburg, or Private Bag X101, Braamfontein, 2017, (hereinafter referred to as "PRASA"), of the one part, and a company registered under the Company laws of South Africa, with its head office or registered office at (hereinafter referred to as "the CONTRACTOR") represented herein by in his capacity as being duly authorised thereto by a Resolution of the Board of Directors/Certificate of Partners dated a certified copy of which is annexed hereto, of the other part.

WHEREAS THE PRASA is desirous of
IN THE METRORAIL REGION at/near in the Province of (hereinafter referred to as "the WORKS") and has caused to be prepared specifications, drawings of the work to be done and bills of quantities/schedule of quantities/schedule of prices,

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:-

- (1) The Contractor shall execute and complete the WORKS in accordance with the terms and conditions contained in the documents referred to in clause (2) hereof.
- (2) This agreement, together with the documents annexed hereto and listed in the schedule of contract documents, which schedule is itself annexed hereto, shall constitute the contract. Such documents shall be signed by the parties.
- (3) The amount to be paid by PRASA to the Contractor for the due and faithful performance of the WORKS and which will become payable at the times and in the manner specified in the general conditions of contract will be:-
 - (i) a sum to be ascertained from the quantities of work carried out at the rates shown in the bills of quantities/schedule of quantities/schedule of prices attached hereto, amounting to approximately R

OR

- (ii) where bills of quantities/schedule of quantities/schedule of prices do not form part of the contract, the sum of R00 (..... Cents) Including VAT.
- (4) The whole of the WORKS included in the contract shall be completed by the

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTS FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



day of _____ 20 _____ subject to completion in stages as laid down in the project specification/special conditions and to such extensions of time as may be granted.

(5) Should the Contractor fail to complete the WORKS or any stage of the WORKS by the date(s) stipulated or by such extended date(s) as may be allowed by PRASA in terms of the project specification/special conditions of contract, the Contractor shall pay to PRASA the penalty for which provision is made in the project specification/special conditions. PRASA's claim for such penalty shall not in any way be prejudiced by either the ordering of variations or the encountering of adverse sub-surface conditions of an extraordinary nature which could not have been foreseen or ascertained in the type of work tendered for.

Application for relief from the obligation to pay a penalty will be considered by PRASA, but shall be granted only if the Contractor can prove to the reasonable satisfaction of PRASA that the penalty is out of proportion to the prejudice suffered by PRASA by reason of the act or omission in respect of which the penalty was stipulated.

6. LATEST EDITION OF SPECIFICATIONS/STANDARDS

All specifications/standards referred to in the contract documents but not bound therein shall be the latest edition or revision published at least 3 months before the closing date for receipt of tenders.

Signed by the Contractor at _____ on this _____ day of _____ 20 _____ in the presence of the undersigned witnesses.

CONTRACTOR

AS WITNESSES:

1. _____

2. _____

Signed on behalf of PRASA at _____ on this _____

day of _____ 20 _____ in the presence of the undersigned witnesses.

p.p. PRASA

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTC FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



AS WITNESSES:

1. _____

2. _____

GENERAL CONDITIONS OF CONTRACT

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INSURANCE SCHEDULE TO E5 (PRASA) CONDITIONS OF CONTRACT

PASSENGER RAIL AGENCY OF SOUTH AFRICA

GENERAL CONDITIONS OF CONTRACT

1. DEFINITIONS, INTERPRETATIONS AND GENERAL PROVISIONS

1.1 In this Contract, unless inconsistent with the context: -

ADVERSE SUBSURFACE CONDITIONS means any latent condition of an extraordinary nature and/or extent which exists under the site, but which could not reasonably have been foreseen by anyone experienced in the type of work tendered for, and which results in material and/or method of construction being so different from that which was contemplated at the time of conclusion of this Contract as to materially affect the cost of the WORKS and the sufficiency and/or applicability of the rates and/or prices in the Bill.

BILL means any document titled Schedule of Quantities, Bill of Quantities, Schedule of Prices or Schedule of Quantities and Prices, forming part of the documents constituting the Contract, either by incorporation into the Project Specification or as a separate document and by which the amount to be paid to the Contractor for the performance of the Works is ascertained or to be ascertained.

CONSTRUCTION PLANT means any machine, excluding a tool, and any vehicle, excluding a passenger vehicle, used on the site for the carrying out of the WORKS.

DAY shall mean a calendar day. Where a specific number of days is allowed in the Contract for the performance of any act or is stipulated for the extinction of any right or the duration of any event or circumstance, the days between 16 December and 5 January (both days included) and the day from which the period concerned is stated to commence shall be excluded from the calculation of the number of days concerned.

DRAWINGS means all the drawings referred to in the contract documents, made by the Project Manager and furnished to the Contractor, or submitted by the Contractor and approved in writing by the Project Manager, any revisions of such drawings and any such other drawings as may from time to time be furnished or approved by the Project Manager.

EXECUTIVE OFFICER means the person appointed by PRASA from time to time as the executive officer to act according to the rights, powers held by, and obligations placed upon him in terms of the Contract.

EQUIPMENT means any machine, appliance, apparatus, device or installation of a mechanical, electrical or electronic nature to be incorporated, provided or installed as part of the WORKS or any device used on site for the carrying out of the WORKS.

MATERIAL means any constructional substance or ingredient, which will form a permanent part of the WORKS, and the substances in or that has been removed from, excavations and earthworks.

NOMINATED CONTRACTOR means a Contractor appointed by PRASA in terms of clause 31.1.

NOMINATED SUPPLIER means a person, firm or company nominated by PRASA in terms of clause 32.1 hereof.

NORMAL WORKING HOURS means the hours of work, as determined by a wage regulating measure or statutory enactment for any trade or activity, in respect of which the basic minimum rate of pay is applicable, and excludes all time for which a higher rate of pay is obligatory. Where no wage regulating measure is in force, the normal hours will be 07h00 to 17h00 Mondays to Fridays, including a daily meal break.

OPEN LINE means a railway line in use for the movement of railway traffic.

PROJECT MANAGER means the person or juristic person appointed by PRASA from time to time as the Project Manager, to administer the Contract according to the powers and rights held by and obligations placed upon him in terms of the Contract.

PROJECT SPECIFICATION means any document titled Project Specification, Special Conditions of Contract and Specifications, Special Conditions and Specifications, or Special Conditions, forming part of the documents constituting the Contract and which stipulates the special contract provisions and specifications pertaining to the Contract.

SITE means the land and other place, including any river- or seabed, on, under, over, in or through which the **WORKS** are to be executed or carried out, and any other land or place made available by PRASA in connection with the **WORKS**.

SITE INSTRUCTION means any instruction, direction, order or clarification, other than a Variation Order, given by the Technical Officer or his duly authorised deputy, by way of the Site Instruction Book.

TECHNICAL OFFICER means the person or juristic person appointed by PRASA from time to time as the Technical Officer, to administer the Contractor's performance and execution of the **WORKS** according to the powers and rights held by and obligations placed upon the Technical Officer in terms of the Contract.

TEMPORARY WORKS means any work(s) or installation(s) required for or concerning the construction or installation of the **WORKS**, but not forming part of the permanent **WORKS**.

TOOL means any instrument, powered or otherwise, which is accepted as a hand tool by the industry concerned and which is normally used in a manual operation.

VARIATION ORDER means a written order given by the competent PRASA authority in terms of clause 14.11 hereof, and also in the form of a written addendum by which new and/or adjusted rates and/or prices are incorporated into the Contract in terms of clause 30.9 hereof.

WORKS means the works to be executed in terms of the Contract.

- 1.2 Where the context requires, a word importing the singular also includes the plural and vice versa and the male gender likewise includes the female gender.
- 1.3 The clause headings in these general conditions of contract are not deemed to be part thereof and will not be taken into consideration in the interpretation of the Contract.
- 1.4 Any grant by PRASA or the Contractor (the grantor), or by any of the persons authorised to act on their behalf, to the other of any concession, waiver, condonation or allowance shall not, in respect of any specific event or circumstance other than that in respect of which the grant was

made, constitute a waiver of the rights of the grantor in terms of the Contract or an estoppel of the grantor's right to enforce the provisions of the Contract.

1.5 The law which is to govern the Contract and in terms of which the Contract is to be interpreted shall be the law of the Republic of South Africa unless otherwise stated in the Project Specification.

1.6 Value-added tax in terms of the Value-added Tax Act No. 89 of 1991 shall be dealt with as follows: -

1.6.1 In Tendering;

Value-added tax shall not be included in the tendered rates and prices.

1.6.2 In payment;

Value-added tax shall not be reflected on monthly contract payment certificates, but paid separately on the presentation of a tax-invoice by the Contractor.

The value of the work reflected on the tax-invoice must correspond with the nett amount indicated on the contract payment certificate.

1.6.3 Changes to the VAT rate will be dealt with in accordance with sections 67 and 67A of the Act.

2. CESSION, ASSIGNMENT AND SUBCONTRACTING

2.1 The Contractor shall not cede or assign the Contract or any part thereof without the prior written approval of the Executive Officer.

2.2 The Contractor shall not enter into any subcontract without the prior written approval of the Project Manager, which approval will not unreasonably be withheld. The subcontractor, in respect of whom approval is so granted and his employees or workmen, shall for all the intentions and purposes of the Contract, be deemed to be workmen of the Contractor, as provided in clause 7 hereof.

2.3 Approval given in terms of clauses 2.1 and 2.2 hereof shall not relieve the Contractor of any responsibility, duty or obligation imposed upon him by the Contract, and the Contractor shall in particular be and remain solely liable and responsible for all acts, omissions, negligence or breaches of contract on the part of the assignee or any of his employees, and for all acts, omissions or negligence of any subcontractor or any of his employees.

2.4 The Contractor shall during the term of this agreement not be allowed to proceed with any of the following matters before the prior written consent of PRASA Tender and Procurement Committee has been obtained:

2.4.1 any transfer of any amount of shares of the Contractor;

2.4.2 any change in the composition of the Contractor;

2.4.3 any change in the ownership of the Contractor; or

2.4.4 any material change in the constitution, memorandum, articles of association or similar document providing for the creation, formation or incorporation of the Contractor.

2.4.5 any change on the BEE component of the Contractor.

3. CONTRACTOR'S GENERAL OBLIGATIONS

3.1 The Contractor's general obligations under the Contract comprise the design (to the extent stipulated in the Contract), construction, manufacture, installation, completion and maintenance of the WORKS and, unless otherwise stipulated, the provision at his own expense of all supervision, labour, plant, tools, equipment, material, transport, consumable stores, services, samples and temporary works, and everything, whether of a temporary or permanent nature, required in and for the construction, installation, completion and maintenance of the WORKS.

3.2 Where the Contract expressly provides that part of or the whole of the WORKS shall be designed by the Contractor, he shall, notwithstanding any approval of the Project Manager, be liable for any error or deficiency in such design and in any drawing or document supplied by him in respect thereof, and for any loss or damage arising out of such error or deficiency.

3.3 Save in respect of PRASA's design of the WORKS or specified method of construction and proprietary brand materials, the Contractor shall, and hereby does indemnify PRASA against -

- (i) liability for infringement of any patent, design, trade mark, name, or other protected right; and
- (ii) any legal costs or disbursements incurred in connection with any of the matters referred to in subparagraph (i) hereof, whenever the liability contemplated in sub-paragraph (i) hereof is due to or arises out of anything done, omitted or undertaken, or the use of any plant, process, machine or material, in terms of or for the purpose of the Contract.

The indemnification shall cover all claims, demands proceedings, damages, costs, charges and expenses in relation thereto and arising therefrom.

4. DRAWINGS

4.1 The drawings will remain in the sole custody of the Technical Officer. Three copies thereof will be furnished to the Contractor free of cost, but any further copies shall be paid for by the Contractor. The Contractor shall give reasonable notice in writing to the Technical Officer of any further drawing or specification that may be required for the execution of the WORKS.

One copy of the drawings furnished to the Contractor as aforesaid shall be kept by the Contractor on the site, and shall at all reasonable times be available for inspection and use by the Technical Officer and his deputies appointed in terms of clause 13.2 hereof.

4.2 Where the design of the WORKS or part of the WORKS is done by the Contractor, he shall, unless otherwise directed, submit paper prints, in triplicate, of all plans or drawings of such WORKS to the Project Manager whose written approval must be obtained before the work concerned is commenced. Such approval shall be subject to clause 3.2 hereof.

4.3 Scaled dimensions are not to be used, and where no figure dimensions are given on the drawings or in the Bill or any specifications, the Technical Officer is to be requested in writing for an instruction regarding the correct dimensions.

4.4 The Contractor shall, in accordance with the Technical Officer's written instructions, maintain a register on site of all drawings and revisions thereof in the chronological order in which they are delivered to him or approved in terms of clause 4.2 hereof.

4.5 The Contractor shall timeously and carefully examine all drawings and shall immediately notify the Technical Officer in writing of any error, inaccuracy, discrepancy or inconsistency detected by him, or raise an objection thereto in order that it may be rectified or decided upon without disruption or delays to the progress of the work.

4.6 The Contractor hereby grants to PRASA a non-exclusive licence, in accordance with the provisions of section 22 of the Copyright Act, 1978 -

to copy any plan, diagram, drawing, specification, bill of quantities, design calculation or other similar document made by the Contractor, other than under the direction or control of PRASA, in connection with the WORKS;

to make free and unrestricted use thereof for its own purposes;

to provide copies thereof to consultants to be used by them for consultations and consulting services to PRASA;

to provide other parties with copies thereof where tenders are invited by PRASA.

Such non-exclusive licence shall apply mutatis mutandis to any plan, diagram, drawing, specification, bill, design calculation or other similar document made, other than under the direction or control of PRASA, by any subcontractor of the Contractor. The provisions of this clause shall in the case of materials, machines or equipment to be provided as part of the WORKS, not apply in respect of documents created for the manufacturing thereof.

No separate or extra payment shall be made by PRASA in respect of any non-exclusive licence granted in terms hereof.

5. SITE AND SUFFICIENCY OF TENDER

5.1 The Contractor shall be held to have inspected and examined the site and its surroundings and to have satisfied himself before submitting his tender as to the nature of the ground and sub-surface, the underground services, the form and nature of the site, the extent and nature of the WORKS, the quantities and the materials necessary for the completion of the WORKS, the means of access to the site, the accommodation and camping sites he may require, and in general, to have obtained all requisite information as to the risks, contingencies and other circumstances including the local climatic conditions and environmental requirements which may influence or affect his tender.

5.2 Disclosure by PRASA of any information in respect of investigations into or exploratory work of whatever nature in regard to the site of the WORKS, either by reference to such investigation or exploratory work or reports thereon, or by inclusion of information in the tender/contract documents, shall not relieve the Contractor of his obligations under clause 5.1 hereof.

5.2.1 The Contractor shall be held to have satisfied himself before tendering as to the correctness and sufficiency of his tender and of the rates and prices stated in the Bill. These rates and prices shall be sufficient to cover all his obligations under the contract and everything necessary for the proper completion and maintenance of the WORKS, and shall not be conditional upon the correctness of any opinion or interpretation given in any information disclosed or provided by PRASA.

5.2.2 No claim by the Contractor will be considered in respect of any of the rates and prices being insufficient or inapplicable on account of the materials, methods of construction and site and/or subsurface conditions being different from those assumed by him in tendering for the Contract, except in the case of adverse subsurface conditions.

5.4 If, during the execution of the WORKS, the Contractor encounters or becomes aware of adverse subsurface conditions which in his opinion give rise to a claim in terms of clause 5.3.2 hereof, he shall notify the Project Manager within 2 days of the occurrence thereof.

The Contractor shall, within 14 days of giving such notification, deliver to the Project Manager full particulars of such claims or intended claims, with copies thereof to be delivered to the Technical Officer, stating: -

- (i) the nature and extent of the adverse subsurface conditions encountered;
- (ii) what effect they will have on the work and completion time of WORKS;
- (iii) the extent to which the sufficiency and/or applicability of the rates and prices in the Bill are affected thereby and
- (iv) whether or not he intends to lodge a claim in terms of clause 5.3.2 hereof.

Unless or until otherwise instructed by the Project Manager the Contractor shall continue with the execution of the WORKS and carry out such work as may be reasonable in the encountered subsurface conditions.

5.5 The Project Manager, shall, upon receipt of the Contractor's notification and particulars of claims or intended claims, in terms of clause 5.4 hereof, after having examined the site and the subsurface and after having considered the claims and the Technical Officer's comments and recommendations in respect thereof, report the circumstances to the Executive Officer, together with his own comments and recommendations. Thereafter, and subject to a special mandate from the Executive Officer, he may, either;

- (i) instruct the Contractor to suspend the further execution of the whole or part of the WORKS pending further investigation and redesign of the whole or part of the WORKS and determination of additional remuneration and additional time for executing the work in the adverse subsurface conditions encountered, all in terms of clauses 14.11, 17.2 and 30 hereof, or
- (ii) instruct that the Contractor continues with the whole or part of the WORKS on the basis that the effect of the adverse subsurface conditions will constitute a variation to be dealt with in terms of clauses 14.11, 17.2 and 30 hereof, or
- (iii) notify the Contractor that the contract is terminated in terms of clause 38.1.3 hereof.

Any instruction or notification, given in terms hereof shall not in any way affect or diminish the Project Manager's right to reject or deny the Contractor's claims in part or in full, should he disagree with any aspect thereof.

5.6 PRASA will make the site available to the Contractor in accordance with the programme of work submitted and approved in terms of clause 14.6 hereof. The site the Contractor occupies shall be as pointed out or agreed to by the Technical Officer or as shown on the drawings. The Contractor shall make his own arrangements for occupation or use of any area outside the designated site.

5.7 The Contractor shall clear the site of the WORKS to enable him to carry out and complete the Contract.

5.8 Should it be necessary to maintain, discontinue, disconnect, remove or relocate any installation or service on, under or above the site, the Contractor, with the prior approval of the Technical Officer and other person or authority concerned, shall cause it to be maintained, discontinued, disconnected, removed or relocated as the case may be in such a manner as may be required either by the owner of a private installation or by the local authority or statutory authority in the case of a public utility installation. The Contractor shall be responsible for sending all requisite notices to any person or authority concerned, and for making arrangements for the maintenance, discontinuance, disconnection, removal or relocation of the said installation or service as the case may be.

The Contractor shall be responsible for the payment of any fee or charge that may become payable to any person, local authority or statutory authority concerned in connection with any of the above-mentioned matters or arrangements. PRASA will reimburse the Contractor for these payments unless otherwise stipulated in the contract documents. Any alteration required to an installation controlled by PRASA or Telkom S.A. Limited will be arranged by PRASA at no cost to the Contractor. Where the existence or location of a service or installation was unknown or unforeseeable, the Technical Officer may order the removal or relocation thereof by the Contractor as a variation to be dealt with in terms of clauses 14.11 and 30, or on dayworks in terms of clause 16 hereof.

5.9 All fossils, coins, articles of value or antiquity and structures or other remains or things of archaeological interest discovered on the site shall, as between PRASA and the Contractor, be deemed to be the absolute property of PRASA.

The Contractor shall take reasonable precautions to prevent his workmen or any other person from removing or damaging any such article or thing and shall, immediately upon discovery thereof and before removal, inform the Technical Officer of such discovery and carry out the Technical Officer's orders as to the disposal thereof where necessary, at the expense of PRASA as a variation order in terms of clauses 14.11 and 30, or on a dayworks basis in terms of clause 16 hereof.

5.10 The Contractor shall not advertise or trade on PRASA property unless the written authority of the Project Manager has first been obtained. All information to be displayed on notice and advertising boards on the site regarding the nature of business to be conducted by the Contractor shall be submitted for approval before the boards are erected or trading is commenced.

6. ACCESS, RIGHTS-OF-WAY AND CAMPSITES

6.1 Where entry onto PRASA's property is restricted, permission to enter will be given only for the purpose of carrying out the WORKS and will be subject to the terms and conditions lay down by PRASA.

6.2 The Contractor shall arrange for campsites, workplaces and access thereto as well as for any right-of-way over private property to the site of the WORKS, and for access within the boundaries of PRASA's property. The owners of private property to be traversed shall be approached and treated with tact and courtesy by the Contractor, who shall, if necessary, obtain a letter of introduction to such property owners from the Technical Officer.

The Contractor shall be responsible for the closing of all gates on roads and tracks used by him or his employees. Except with the prior approval of the Technical Officer and the owner or occupier of any private land to be traversed, the Contractor shall not cut, lower, damage,

remove or otherwise interfere with any fence or gate which is either on PRASA's property or on private property and which restricts access to the WORKS. Where such approval has been given, the Contractor shall prevent entry of animals or unauthorised persons onto PRASA's or private property, and shall make the fences safe against trespass at the close of each day's work.

- 6.3 The Contractor shall take all reasonable steps to confine the movement of vehicles and plant to the approved right-of-way to minimise damage to property, crops and natural vegetation.
- 6.4 When access is no longer required, and before completion of the WORKS, the Contractor shall repair, restore or replace any fence or gate damaged during execution of the WORKS to the satisfaction of the Technical Officer and shall furnish the Technical Officer with a certificate signed by the owner and occupier of land over which he has gained access to a campsite, workplace and the WORKS, certifying that the owner and occupier have no claim against the Contractor or PRASA arising from the Contractor's use of the land. Should the Contractor be unable to obtain the required certificate, he shall report the circumstances to the Technical Officer.
- 6.5 Security fences erected in the vicinity of commuter stations shall not be cut or interfered with in any way without the express approval of PRASA.

7. WORKMEN

- 7.1 All persons employed by the Contractor to carry out the Contract shall be competent, responsible and of good character.
- 7.2 If, in the opinion of the Technical Officer, any person employed by the Contractor is inefficient, negligent, disrespectful or objectionable, the Technical Officer may, after consultation with the Contractor, instruct that such person be removed from the WORKS.
- 7.3 During the currency of the Contract, the Contractor shall not approach any employee of PRASA with a view to offering him employment in any capacity whatsoever.
- 7.4 The Contractor shall, upon request, provide the Technical Officer with a weekly statement of the number of persons employed on the WORKS each day by the Contractor and any subcontractor, the capacity in which employed and the total number of hours worked in that week for each grade of staff separately. The statement shall be supported by documentary evidence when so required by the Technical Officer.

8. HOUSING OF EMPLOYEES

- 8.1 The Contractor shall make his own arrangements for the housing of his employees.
- 8.2 Where the Contractor accommodates his employees in an area under the jurisdiction of a local authority, he shall observe all the requirements of the controlling authority.
- 8.3 Fouling of the area inside or outside PRASA's boundaries must be prevented. The Contractor may be called upon by the Technical Officer to dispose of any foul or waste matter.

9. HOURS OF WORK

9.1 The Contractor shall confine his work to normal working hours except when work outside these hours is:

- (i) specifically provided for in the Contract, or
- (ii) permitted by the Technical Officer at the Contractor's request, or
- (iii) ordered by the Technical Officer, or
- (iv) normally carried out in multiple shifts.

9.2 When the Contractor proposes to work outside normal working hours, he shall apply to the Technical Officer at least seven days before he proposes to introduce such working. Permission will not be withheld unreasonably, and will be subject to such conditions as the Technical Officer may impose to protect PRASA's interests. Such permission may be withdrawn at any time. The Contractor shall not be entitled to any claim for additional payment arising from either the refusal to permit such working or the granting of such permission or withdrawal of permission.

9.3 Where the Contractor is ordered to work outside normal working hours, and where no specific provision exists in the Contract for such work, the work shall be carried out in terms of clause 16.1 hereof.

10. COMPLIANCE WITH STATUTES AND SAFETY RULES

10.1 The Contractor shall comply with all applicable legislation and PRASA safety requirements. The costs of such compliance shall be borne by the Contractor and shall be deemed to have been allowed for in the rates and prices in the Contract.

10.2 The Contractor shall, in particular, comply with the following Acts: -

- (i) The Compensation for Occupational Injuries and Diseases Act, (Act 130 of 1993); The Contractor shall produce proof of his registration and good standing with the Compensation Commissioner in terms of the Act.
- (ii) The Occupational Health and Safety Act (Act 85 of 1993); The Contractor is in terms of section 37(2) of the Occupational Health and Safety Act 85 of 1993, deemed to be an employer in his own right with duties as prescribed in the Act, and agrees to ensure that all work will be performed or machinery and plant used in accordance with the provisions of the Act in respect of all persons in his employ, other persons on the premises or the site or place of the works or on the works to be executed by him and under his control in terms of the Contract. The agreements in this Contract and all documents attached or referred to, form an integral part of the arrangements and procedures mentioned in the aforementioned section.
The Explosives Act (Act. 15 of 2003) and applicable regulations, as well the Blasting regulations from the Occupational Health and Safety Act (Act 85 of 1993); The Contractor shall when applicable, furnish the Project Manager with copies of the permits authorising him or his employee, to establish an explosives magazine on or near the site and to undertake blasting operations in compliance with the Act.
- (iv) The Labour Relations Act, 1995 (Act No. 66 of 1995);
- (v) The Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- (vi) The Employment Equity Act, 1998 (Act No. 55 of 1998);
- (vii) Value-added Tax Act, 1991 (Act. No. 89 of 1991);
- (viii) Income Tax Act, 1962 (Act No. 58 of 1962);
- (ix) National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002); and
- (x) Provincial Ordinances and Local Authority By-laws, and all relevant Regulations framed there under having an effect on his business or the operator provided in terms of this agreement.

10.3 The Contractor shall comply with the Specification E.4E, Safety Arrangements and Procedural Compliance with the Occupational Health and Safety Act, Act 85 of 1993 and Regulations, and shall, before commencement with the execution of the Contract, which shall include site establishment and delivery of construction plant, equipment or materials, submit to the Technical Officer,

- documentary proof of his procedural compliance with the Act and
- particulars of the Health and Safety Programme to be implemented on the site in accordance with the Specification E.4E.

The Contractor's Health and Safety Programme will be subject to agreement by the Technical Officer, who may order supplementary and/or additional safety arrangements and/or different safe working methods to ensure full compliance by the Contractor with his obligations as an employer in terms of the Act.

10.4 The Contractor shall comply with the current Specification for Works On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment - E7/1, if applicable, and shall take particular care of the safety of his employees working on or in close proximity to a railway line during track occupations as well as under normal operational conditions. He shall also comply with all other safety requirements, regulations and guidelines of PRASA applicable to the nature of WORKS carried out under the Contract, and as instructed by the Technical Officer from time to time.

10.5 In addition to compliance with clause 10.2 hereof, the Contractor shall report all incidents contemplated by Section 24 of Act. 85 of 1993 to the Technical Officer. Any incident resulting in the death of or injury to any person on the WORKS shall be reported within 24 hours of its occurrence and any other incident shall be reported within 48 hours of its occurrence.

11. CONSTRUCTION PLANT, EQUIPMENT AND MATERIAL

11.1 The Contractor shall supply and use suitable and sufficient construction plant, tools, equipment and material as may be required to carry out the WORKS efficiently. Only the construction plant, tools, equipment and material which are required for this purpose shall be brought onto the site and shall be stored, stacked or erected in such a way as not to interfere with other work or traffic. The Contractor shall furnish statements showing details of construction plant, tools, equipment and material employed or used on the WORKS on a day to day basis indicating types, numbers, quantities, hours worked, idle time, etc. all as stipulated in the Project Specification or as directed by the Technical Officer.

11.2 PRASA will not be responsible for any loss of or damage to any such plant, tools, and equipment or material, excepting loss or damage of which the proximate cause is the negligence of PRASA or its employees.

11.3 No construction plant, tools or equipment brought onto the site shall be removed from the site without the written consent of the Technical Officer, which consent will not be withheld unreasonably.

11.4 PRASA shall, in the case of material breach of the Contract by the Contractor and cancellation thereof by PRASA in terms of Clause 37, have a lien over all the Contractor's site establishment and temporary buildings, construction plant, tools, equipment and material brought onto site by the Contractor or on his behalf.

11.5 The Contractor shall take all reasonable care to prevent loss of or damage to any material supplied by PRASA and shall use the material in the most economical way. Materials supplied by PRASA shall at all times be and remain the property of PRASA. Material lost or damaged through negligence on the part of the Contractor or his employees shall be made good by the Contractor, or the value thereof will be deducted from money falling due to him.

11.6 Receipts for all material supplied by PRASA shall be provided by the Contractor at the time of delivery thereof.

11.7 Material supplied by PRASA, which has become surplus to requirements, shall be handed back to PRASA and receipts obtained therefore.

11.8 When trucks consigned to PRASA or the Contractor are to be off-loaded by the Contractor, the Technical Officer will give the Contractor at least 24 hours notice of the place and expected date and time of placing of trucks for off-loading.

The Contractor shall off-load the trucks as expeditiously as possible, but if he fails to off-load any truck within 24 hours of it being placed for off-loading, he shall be liable to pay the penalties specified in the Project Specification for all the time between the expiry of the 24 hour period allowed and the time the truck is finally off-loaded.

As soon as he has off-loaded any truck, the Contractor shall advise the nearest trains operations centre and the Technical Officer giving the date, time and the number of the truck off-loaded.

The same conditions and penalties will apply to empty trucks into which the Contractor is to load released material or material supplied by PRASA surplus to requirements.

11.9 PRASA will not provide any rolling stock, plant or equipment for use on the contract works, save where such provision is expressly agreed to in terms of a special provision of the Contract, in which case the provision of such rolling stock, plant and equipment and the use thereof shall be subject to the following terms and conditions.

- (i) Specialised items of rolling stock essential to the WORKS, together with the necessary locomotive will be provided at the cost of PRASA.
- (ii) The use of such rolling stock shall be limited to the periods and sections of track indicated by PRASA.
- (iii) The Contractor shall pay PRASA a penalty for the use of the specified rolling stock for any period in excess of that determined in terms of paragraph (ii) hereof. The penalty shall be a fixed hourly charge based on the estimated all-inclusive hourly cost.
- (iv) The Contractor shall not use the rolling stock for purposes other than for those expressly stipulated in the Project Specification without permission of the Technical Officer.

Should the Contractor wish to hire from PRASA rolling stock other than that envisaged herein with or without a locomotive, or any other plant and equipment, for the purpose of the fulfilment of the Contractor's obligations under the Contract, a request from the Contractor to such effect will not be unreasonably refused by PRASA, provided that the parties are able to reach agreement as to the terms and conditions of such hire.

12. TRANSPORT

12.1 PRASA shall have the right of first refusal to contract for the provision of its rail, road, air and harbour services for the transport of material, plant, equipment and personnel required for the purposes of the Contract, both nationally and internationally, when applicable.

The use by the Contractor of such services shall be subject to the tariffs and conditions of contract applicable to the use of such services.

13. SUPERVISION

13.1 The Technical Officer will provide overall technical superintendence of the WORKS, and may direct the Contractor in terms of the provisions of the Contract or in respect of any measures which the Technical Officer may require for the operations of PRASA, the safety of trains, property and workmen of PRASA, and for the safety of other property and persons. The Contractor shall carry out the directions of the Technical Officer. The superintendence exercised by the Technical Officer, including any agreement, approval, refusal or withdrawal of any approval given, shall not relieve the Contractor of any of his duties and liabilities under the Contract, and shall not imply any assumption by PRASA or by the Technical Officer of the legal and other responsibilities of the Contractor in carrying out the WORKS.

13.2 The Technical Officer may delegate to any deputy or other person, any of his duties or functions under the Contract. On receiving notice in writing of such delegation, the Contractor shall recognise and obey the deputy or person to whom any such duties or functions have been delegated as if he were the Technical Officer.

13.3 The Contractor shall exercise supervision over the WORKS at all times when work is performed or shall be represented by an agent having full power and authority to act on behalf of the Contractor. Such agent shall be competent and responsible, and have adequate experience in carrying out work of a similar nature to the WORKS, and shall exercise personal supervision on behalf of the Contractor. The Technical Officer shall be notified in writing of such appointment which will be subject to his approval.

13.4 The Contractor or his duly authorised agent shall be available on the site at all times while the WORKS are in progress to receive the orders and directions of the Technical Officer.

14. EXECUTION OF WORK

14.1 The Contractor shall, before commencing work, ascertain from the Technical Officer whether overhead or underground electrical conductors are affected by the WORKS, and he shall ensure that any precautionary measures required by the Technical Officer are strictly observed.

14.2 The Contractor shall be responsible for the detailed siting of his temporary buildings and stocks of material. Where such siting is on PRASA property, the Contractor shall occupy only the sites indicated to him by the Technical Officer.

14.3 The Technical Officer will supply the basic lines and levels for the WORKS. These shall be maintained and protected by the Contractor, who shall arrange for their replacement at his own cost if disturbed. The Contractor shall set out the WORKS from such lines and levels. The Contractor shall check the basic lines and levels supplied by the Technical Officer and, if any

errors are found, shall notify the Technical Officer of such errors. He shall not do any further setting out or carry out any of the WORKS until these errors have been corrected.

Should the Technical Officer assist the Contractor at any time by setting out any portion of the WORKS, this will be at the entire risk and responsibility of the Contractor. Such setting out of the WORKS shall not relieve the Contractor of his responsibility for the correct setting out of the WORKS or provide any basis for a claim by the Contractor against PRASA. Any error by the Contractor in the setting out of the WORKS, at whatever time it may be discovered, shall forthwith be rectified by the Contractor at his own expense.

14.4 All instructions to the Contractor will be in writing and shall be deemed to have been received if left with the Contractor or his agent at the WORKS or at the business premises of the Contractor or at his office on the site.

The Contractor shall supply and have available on the site at all times two A4 size triplicate carbon copy books. In one book, site instructions will be recorded. The other book shall be used by the Contractor as a diary for recording day by day the state of the weather, the work done each day and full details of any circumstance which may affect the progress of the WORKS. The original sheet of each set of 3 pages will be removed from both books and retained by the Technical Officer. The Contractor may remove the second sheet but the third sheet shall be retained on the site until completion of the WORKS, when it shall be handed over to the Technical Officer.

14.5 Except as provided for in clause 40 hereof, the Contractor shall not communicate with the Project Manager or the Executive Officer except through the Technical Officer.

14.6 A programme of work showing the order thereof shall be submitted for approval as follows: -

14.6.1 The Contractor shall, within 3 weeks of the date of acceptance of his tender, submit a programme of work in the form of a bar chart or other means acceptable to the Technical Officer, showing, inter alia, the duration, expected delivery dates of materials, plant and equipment, and the starting and completion dates of each major activity in the Contract. Where the activity is ongoing and not of a one-off nature the proposed weekly production rate shall be indicated.

14.6.2 A cash flow diagram showing the estimated monthly value of work based on the programme shall be submitted with the programme.

14.6.3 The programme will be subject to approval by the Technical Officer, but such approval will not relieve the Contractor of his obligations to undertake the work in an order and manner to ensure proper completion by the date/s specified in the Contract.

14.6.4 The Contractor shall, on an ongoing basis during the course of the Contract, monitor his progress against the programme which shall be reviewed and updated when necessary with the consent or at the direction of the Technical Officer. Details of such progress control shall be provided to the Technical Officer. Except where the provisions of clauses 17.1 to 17.7 and 28 hereof apply, a revision of the programme will not relieve the Contractor of his obligation to complete the WORKS by the specified date/s.

Neither the submission by the Contractor nor the approval by the Technical Officer of a revised programme shall imply either that the Contractor is in any way relieved of his obligations in terms of the Contract, or that he is entitled to any extensions of time or compensation.

14.7 Should the Technical Officer, at any time, be of the opinion that the rate of progress of the WORKS or any part thereof is too slow to achieve the completion of the WORKS or any part thereof by the stipulated date or such extended date of completion as may have been determined in terms of clauses 17.1 to 17.7 and 28 hereof, and that such lack of progress will have a serious adverse effect on any of PRASA's interests or activities, he may notify the Contractor in writing, but the Contractor shall not be relieved of his obligations if such notice is not given.

The Contractor shall thereupon take steps to expedite progress to complete the WORKS or any part thereof by the stipulated date or extended date of completion. The Contractor shall advise the Technical Officer in writing immediately it becomes apparent to him that there will be a delay in the execution of the WORKS.

14.8 The Contractor and his employees shall give, without additional remuneration, safe and proper facilities as and when required to authorised officers of PRASA to enable them to inspect the WORKS or to perform any other duties or functions connected with the WORKS. The Contractor shall allow the Technical Officer access to workshops or other places where work is being prepared for the Contract, for the purpose of inspecting such work.

14.9 Specialist advisors may be appointed by PRASA in connection with matters relating to specialist portions of the WORKS or special work which may be required to be executed on the WORKS. Such specialist advisors will be referred to in the Project Specification by appropriate designations describing the nature of their functions.

Any instruction of such specialist advisor which involves a variation to or departure from the Contract, will be given in writing to the Contractor through the Technical Officer provided, however, that should an emergency arise during the execution of the WORKS, the advisor concerned will have authority to give instructions direct to the Contractor on behalf of PRASA for taking such steps as he may deem necessary to deal with such emergency.

The Contractor shall carry out these instructions which will be confirmed in writing by the Technical Officer within 7 days after the date that they were given. In the absence of receipt of such confirmation, the Contractor shall notify the Technical Officer, in writing, within the following 7 days that he has received such instructions from the specialist concerned.

14.10 The Project Manager may, at any time, execute or cause to be executed by persons other than the Contractor, any portion of the WORKS if he considers it necessary to carry out such portion of the WORKS to accelerate the programme for completion of the WORKS or in the interest of safety or to suit the requirements of PRASA. The portion of the WORKS executed by the Project Manager or by persons other than the Contractor shall be treated as an omission and the provisions of clauses 14.11, 30.1 and 30.2 hereof shall apply.

14.11 The Project Manager and, by his authority, the Technical Officer may order alterations, extras, additions to or omissions from the WORKS.

14.11.1 Such orders shall include, but not be limited to, any variation of the form, quality, quantity or execution of the WORKS or any part thereof that may in the Project Manager's discretion be necessary for the purposes of PRASA and/or for dealing with changed circumstances and conditions such as those provided for under clauses 5.3.1 to 5.5 hereof. These orders may, inter alia, result in:

- (i) an increase or decrease in the quantity of any work,
- (ii) an omission of any work,
- (iii) a change in the design, character, quality or kind of any work,
- (iv) a change in the levels, lines, position and dimensions of any part of the WORKS,
- (v) the execution of additional work of any kind necessary for completion of the WORKS,
- (vi) a change in any specified or approved sequence or timing of construction of any part of the WORKS,
- (vii) a suspension of the execution and/or construction of the whole or part of the WORKS or
- (viii) a change in the method of construction and/or execution of the WORKS.

14.11.2 The Contractor shall carry out or give effect to the orders of the Project Manager or Technical Officer in accordance with the drawings and specifications that may from time to time be issued in conjunction with such orders. The Contractor shall obtain written confirmation of all verbal orders given to him.

14.11.3 The Contractor shall not make any variation and shall not substitute new items of material and/or equipment without an instruction from the Project Manager or Technical Officer. He shall submit fully detailed and motivated proposals of any intended variation or substitution to the Technical Officer for his approval.

14.11.4 Where the quantity of work increases or decreases as a result of an instruction given in terms of this clause or as a result of the measured quantities exceeding or being less than those stated in the Bill, and where the amount to be paid to the Contractor is ascertained from the quantities of work carried out at schedule rates, a variation order is not required except where,

- due to the final measured quantity differing from the estimated quantity by more than 20%, or
- due to adverse subsurface conditions or different conditions the rate(s) and/or price(s) being insufficient or inapplicable,

adjusted/new rates are to be determined in terms of clauses 30.2, 30.3 and 30.5, a variation order will be issued in terms of clause 30.9.

14.11.5 When the amount to be paid to the Contractor for the performance of the WORKS is a lumpsum and a Bill do not form part of the Contract, variation orders will be issued in respect of all instructions given in terms of clause 14.11.1 and which affect the amount to be paid to the Contractor.

14.12 The Contractor shall carry out the WORKS in a proper and workmanlike manner with the materials and to the quality standards described in the Bill and/or the Project Specification and shall complete the work to the satisfaction of the Technical Officer.

14.13 The Contractor shall, when required to do so in terms of a special provision of the Contract or by an order of the Project Manager, attend upon nominated suppliers, nominated and other contractors and PRASA workers performing work that are part of or contiguous to the WORKS. He shall, when requested, assist with their requirements for the effective performance of such works and shall afford such facilities, as may be available in his own site establishment, for the execution of such work.

14.14 Except where provision is made in the Bill for payment for attendance upon a Nominated Contractor in terms of clause 31.4, the Contractor will, be reimbursed for direct expenses incurred by him in complying with the provisions of clause 14.13. Any dispute arising between the Contractor and PRASA workmen or other contractors in connection with such associated

or contiguous work, will be settled by the Project Manager who will convey his decision to the Contractor and other parties concerned.

- 14.15 The Contractor shall co-ordinate the execution of the WORKS and ensure that close collaboration is achieved between all workmen and subcontractors under his supervision and control and nominated suppliers, nominated and other contractors and PRASA workers performing contiguous work or part of the WORKS.
- 14.16 No work, including excavations and foundations, shall be covered up or put out of view without the approval of the Technical Officer. The Contractor shall give due notice to the Technical Officer whenever any such work is ready or about to be ready for examination, and the Technical Officer will, without unreasonable delay, examine such work, unless he considers it unnecessary and advises the Contractor accordingly.
- 14.17 The Contractor shall uncover any part of the WORKS or make any opening in or through the WORKS as the Technical Officer may direct, and shall reinstate or make good such work to the satisfaction of the Technical Officer. If any part of the WORKS has been covered up or put out of view after compliance with the requirements of clause 14.16 hereof and, after such uncovering, is found to be executed in accordance with the Contract, the direct expenses of uncovering, making any opening in or through the WORKS and the reinstating and making good thereof will be borne by PRASA, but in any other case all such expenses shall be borne by the Contractor or will be recovered from the Contractor.

15. SAMPLING AND TESTING OF MATERIAL AND INSTALLATIONS

- 15.1 The Contractor shall furnish such samples or prototypes of materials or equipment as may be called for by the Technical Officer who may, in his discretion, require the Contractor to subject any such samples or prototypes to appropriate tests.

When required by the Technical Officer, the Contractor shall afford every facility for the inspection and testing of such materials or equipment and shall supply all material, instruments, assistance and facilities that may be required for the purpose of such inspection or tests.

- 15.2 Only materials and equipment, which comply in all respects with the approved samples and prototypes, shall be brought on to the site or used on the WORKS. Material and equipment, which do not comply in all respects with the approved samples and prototypes, may be rejected by the Technical Officer. The Contractor, at his own cost, shall remove and replace any rejected material or equipment together with that portion of the WORKS affected by it.
- 15.3 The Contractor shall arrange to carry out such further tests on completed works and equipment installed as ordered by the Technical Officer.
- 15.4 The direct cost of any sampling and testing ordered that is different from and/or additional to testing and sampling stipulated in the Project Specification, shall be reimbursed to the Contractor save in the event that the materials and workmanship tested do not comply with the Contract or where previous testing and sampling done by the Contractor did not comply with specified procedures or methods.
- 15.5 The approval by the Technical Officer of any materials or equipment shall not relieve the Contractor of his obligation to comply fully with the contract specifications for the complete WORKS.

16. DAYWORK

16.1 The Technical Officer may order that any additional or substituted work or work ordered in terms of clauses 9.1 (iii) and 9.3, be executed on a dayworks basis. For work so ordered and executed, the Contractor shall be paid in accordance with the dayworks schedules and at the rates and prices quoted by him in the Bill or, in the absence of provision in the daywork schedules for any particular item, the Contractor shall be paid-

- (i) the gross actual wages and benefits paid by him to and/or on behalf of the workmen for the period they were engaged on the additional or substituted work plus 30 percent, and
- (ii) the direct cost at the site of material supplied by the Contractor and actually used in the additional or substituted work plus 12 percent.

These payments will be held to fully recompense the Contractor for all costs for the use of tools and equipment and financial charges of any description incurred by him and his subcontractors, and will include all overhead costs and profits.

The use of construction plant will be charged out separately on a plant hire basis at the rates quoted in the Bill or, where no such rates exist, at rates agreed upon between the Project Manager and the Contractor. Rates for the hire of plant shall be deemed to cover all costs for the supply, operation, maintenance and repair of the plant.

16.2 The Contractor shall submit to the Technical Officer by Tuesday of each week, a detailed statement in triplicate, covering the work done on a daywork basis during the preceding week up to midnight on Saturday.

This statement shall show the actual time worked, the rates of pay, the actual amounts earned by the workmen and the material and plant used on the WORKS. It shall be countersigned by the Technical Officer and shall be the sole source of information used to calculate payments due for such work.

17. ADDITIONAL TIME

17.1 When the Contractor considers that for any reason stipulated in clause 17.2 hereof he is entitled to additional time to complete the WORKS or portions of the WORKS, he shall submit an application in writing to the Technical Officer, setting out in detail the reasons for the application and stating the specific additional time required.

17.2 Applications for additional time will only be considered in respect of-

- (i) alterations, extras, or additions to the WORKS ordered by the Project Manager or the Technical Officer in terms of clause 14.11 hereof;
- (ii) an increase in the quantities shown in the Bill;
- (iii) delays caused by encountering adverse subsurface conditions in terms of clause 5.3.2 hereof;
- (iv) delays where the Contractor can prove to the reasonable satisfaction of the Project Manager that-

the circumstance that caused the delay was unforeseeable at the time of tendering,

and

that the Contractor had taken steps and/or displayed reasonable care and diligence in attempting to avoid or minimise the delay and consequences thereof,

or

the circumstance, if foreseeable, was such that it was beyond the Contractor's control,

and

that he could not have been reasonably expected to have taken it into account in undertaking his obligations under the contract.

The extent of any additional time granted shall be commensurate with the delay attributable to such circumstance. (Delays attributable to PRASA, the Project Manager or Technical Officer are to be dealt with in terms of clause 28 hereof.)

17.3 No additional time will be granted unless the application is made in writing within 28 days after

—

- (i) receipt of the order from the Project Manager or Technical Officer for alterations, extras or additions to the WORKS; or
- (ii) receipt of the Project Manager's payment certificate in which quantities are increased beyond those shown in the Bill; or
- (iii) the commencement of a delay qualifying in terms of clauses 17.2 (iii) and 17.2 (iv) hereof.

17.4 The application shall be for a specific additional time except in those cases where, in the opinion of the Project Manager, circumstances are such that a specific time cannot yet be determined, when written notice of intention to claim will be accepted as meeting the requirements of clause 17.3 hereof. In such cases, the Contractor shall submit the request for a definite period of time within the period stipulated by the Project Manager.

17.5 The entries in the site diary shall be deemed to be a comprehensive record of any and all facts/circumstances to be relied upon by the Contractor in respect of any application for additional time and/or compensation. Without detracting from the foregoing the Project Manager may, in his sole discretion, require the Contractor to supply and/or record any further information.

17.6 The Project Manager will advise the Contractor in writing what additional time, if any will be allowed. This additional time will not necessarily apply to the whole of the WORKS, but may in specific cases apply to only particular portions of the WORKS.

17.7 Compensation for increased costs related to additional time granted in terms hereof, will be payable only in respect of delays caused by circumstances and events stipulated in clauses 17.2 (i), (ii) and (iii) hereof and shall be determined as follows: -

- (i) Additional time-related preliminary and general allowances as are appropriate and applicable having regard to other compensation which may have been determined in respect of the

circumstances concerned, but not exceeding the amounts payable in terms of the rates and prices in the Bill for such time-related preliminary and general costs.

(ii) Additional time-related expenses as are included in the determination of additional compensation in terms of clauses 30.1 to 30.6 hereof, where applicable and justifiable.

18. CARE OF THE WORKS AND REPAIRS

18.1 From commencement to completion of the WORKS, the Contractor shall take full responsibility for the care thereof and of all, material and temporary worker works.

18.2 In the event of the WORKS or any part thereof or any material or temporary works being destroyed or damaged through any cause, except through any of the excepted risks as defined in clause 18.3 hereof, the Contractor shall, at his own cost and subject to the provisions of clause 39, repair and make good such damage so that, on completion, the WORKS shall be in good order and condition and in conformity in every respect with the requirements of the Contract.

In the event of destruction or damage occurring through any of the excepted risks, the Contractor shall repair and make good the damage to the extent ordered by the Project Manager or Technical Officer in terms of clause 14.11 and/or 16 hereof at the cost of PRASA. Compensation will be determined in terms of clauses 30.1 to 30.6 or 16.1 hereof.

18.3 The "excepted risks" are –

(i) any perils insurable through the South African Special Risks Insurance Association (SASRIA), such as riot, strike or public disorder or any act or activity which is calculated or directed to bring about such perils, but excluding any such perils as strike, public disorder, act or activity which is committed, caused or instigated by the Contractor, his employees and/or any subcontractors;

(ii) war hostilities including mutiny or military uprising or usurped power, insurrection, rebellion or revolution/or proclamation of martial law (whether war be declared or not);

(iii) any event which, after the closing date of tenders, is defined as a risk in terms of insurance offered by SASRIA;

(iv) any event for which a fund has been established in terms of the War Damage Insurance and Compensation Act, No 85 of 1976 as amended;

(v) a cause due solely to use or occupation by PRASA of any portion of the WORKS;

(vi) a cause due solely to the design of the WORKS when the Contractor did not provide the design.

18.4 The Contractor shall be responsible for damage caused by him during the period of defects liability and maintenance in terms of clause 27 hereof.

19. SURVEY BEACONS AND PEGS

19.1 The Contractor shall not on any account move or damage any beacon, bench mark, reference mark, signal or trigonometrical station in the execution of the WORKS without the written approval of the Technical Officer.

Should the Contractor be responsible for any such occurrence, he shall report the circumstances to the Technical Officer who will arrange with the Director-General of Surveys for replacement of the beacon or mark at the cost of the Contractor.

19.2 The Contractor shall not move or damage any cadastral or mining beacon without the written approval of the Technical Officer and before it has been referenced by a registered land surveyor. Any old boundary beacon, which becomes an internal beacon on creation of new boundaries, shall not be moved without the written approval of the Technical Officer.

Should the Contractor move or damage any cadastral or mining beacon without authority, he shall be responsible for having it replaced, at his cost, by a land surveyor.

19.3 The Contractor shall preserve all pegs and bench marks. Such survey points shall not be removed without the written approval of the Technical Officer. Should any peg or benchmark be removed without authority, the Technical Officer will arrange for its replacement and the cost will be recovered from the Contractor. No claim will be considered for delay in replacing any such peg or bench mark. Each peg replaced shall be checked by the Contractor.

19.4 Where a new boundary has been established, beacons on the fence line shall not be disturbed, and fence posts or anchors may not be placed or excavations made within 0,6 m of any beacon without the prior written approval of the Technical Officer.

20. TAKING OVER PORTIONS OF THE WORKS

20.1 Before completion of the whole contract, PRASA may take over any completed portion of the WORKS. The terms and conditions under which such completed portion will be taken over shall be as specified in the Contract and where no such terms and conditions are specified, the Project Manager will, after consultation with the Contractor, advise him in writing of the terms and conditions of such take-over. This will not relieve the Contractor of his obligation to complete the WORKS by the stipulated date or such extended date of completion as may have been agreed upon in terms of clauses 17.1 to 17.7 and 28 hereof.

20.2 If PRASA's interests are adversely affected by the failure of the Contractor to adhere to the approved programme of work, PRASA reserves the right to take over, occupy or use any uncompleted portion of the WORKS. The Contractor will be advised in writing by the Project Manager of the terms and conditions of such take-over, occupation or use, but this will not relieve the Contractor of his obligation to complete the WORKS by the stipulated date or such extended date of completion as may have been determined in terms of clauses 17.1 to 17.7 and 28 hereof.

21. COMPLETION OF THE WORKS

21.1 The whole of the WORKS, including all alterations, extras, additions and omissions, shall be completed and delivered to PRASA by the stipulated date or such extended date of completion as may have been determined in terms of clauses 17.1 to 17.7 and/or clause 28 hereof.

21.2 When the WORKS or portions thereof have been completed to the satisfaction of the Technical Officer and left in a clean, neat and tidy condition, the Technical Officer will give the Contractor a CERTIFICATE OF COMPLETION confirming that the WORKS or portions thereof have been completed and stating the date on which the defects liability and maintenance period referred to in clauses 27.5 and 27.6 hereof is to commence. Separate CERTIFICATES OF COMPLETION will be given for completed portions of the WORKS in cases where completion of such portions is specified in the Contract as being required before the completion of the entire WORKS, or for completed portions of the WORKS taken over by PRASA in terms of clause 20.1 hereof.

Until the Technical Officer, issues a CERTIFICATE OF COMPLETION, the WORKS or specified portions thereof shall not be deemed to have been completed.

- 21.3 On receipt of a CERTIFICATE OF COMPLETION for the entire WORKS or the finally completed portion thereof the Contractor shall, unless otherwise ordered by the Technical Officer, remove from the site all construction plant, material and temporary works not required for making good of defects in the WORKS or portions thereof covered by such CERTIFICATE, other than material which is the property of PRASA.
- 21.4 After expiry of the defects liability and maintenance period(s), and when all making good under clauses 27.5 and 27.6 hereof has been completed, the Contractor shall remove all the remaining construction plant and material from the site, other than material which is the property of PRASA, and leave the site in a clean, neat and tidy condition.

22. TEMPORARY LEVEL CROSSINGS

- 22.1 The Technical Officer may, on request of the Contractor, and if necessary for the purpose of execution of the WORKS, permit the construction of a temporary level crossing over a railway line at a position approved by the Technical Officer and at the Contractor's cost. The period for which the temporary level crossing is permitted will be at the discretion of the Technical Officer.
- 22.2 PRASA will, at its own cost, provide protection and supervise the construction of the road over the track(s) and for a distance of 3 metres beyond the outermost rails, as well as the erection of all road signs and height gauges.

The Contractor shall exercise extreme caution in carrying out this work, especially in respect of damage to tracks, services, overhead power and communications routes and contact with "live" overhead electrical equipment.

All PRASA electrical, telecommunications and signal services deviations or alterations to accommodate the level crossing will be done by PRASA at its own cost. All other work required by the Technical Officer to establish the temporary level crossing, including protection, deviation or support of other services and drainage, shall be carried out by the Contractor at his own cost.

- 22.3 The Contractor shall take all necessary steps including the provision of gates, locks and, where necessary, watchmen to restrict the use of the temporary level crossing to himself and his employees, his subcontractors and their employees, the staff of PRASA and to such other persons as the Technical Officer may permit and of whose identity the Contractor will be advised. If so ordered by the Technical Officer, the Contractor shall provide persons to control road traffic using the temporary level crossing. Such persons shall stop all road traffic when any approaching train is within seven hundred and fifty metres of the temporary level crossing, and shall not allow road traffic to proceed over it until the lines are clear.
- 22.4 The Contractor shall maintain the temporary level crossing in good condition for the period it is in use. Maintenance of the portion of the temporary level crossing over the tracks and three metres beyond the outermost rail shall be done under the supervision and protection of PRASA, and at the cost of the Contractor.

22.5 When the temporary level crossing is no longer required by the Contractor, or permitted by PRASA, the Contractor shall remove it and restore the site to its original condition. Work over the tracks and up to three metres beyond the outermost tracks will be supervised by PRASA.

Such supervision and restoration of PRASA electrical, telecommunication and signalling services to their original position will be undertaken by PRASA at its own cost. The Contractor at his own cost shall restore other services.

23. BLASTING AND USE OF EXPLOSIVES

23.1 No blasting shall be carried out except with the prior written permission of the Technical Officer and under such conditions as he may impose.

23.2 The Contractor shall arrange for the supply, transport storage and use of explosives.

23.3 The Contractor shall have labour, tools and plant, to the satisfaction of the Technical Officer, available on the site to clear immediately any stones or debris deposited on the track or formation by blasting, and to repair any damage to the track or formation immediately after blasting. Repairs to the track shall be carried out only under the supervision of a duly authorised representative of PRASA.

23.4 The Contractor shall notify the Technical Officer of his intention to blast at least 14 days before the commencement of any blasting operations.

23.5 Before any blasting is undertaken, the Contractor and the Technical Officer shall jointly examine and measure up any buildings, houses or structures in the vicinity of the proposed blasting to establish the extent of any existing cracking or damage to such structures, etc. The Contractor, shall, subject to the provisions stipulated in the Insurance Policy in terms of clause 39 hereof, make good any deterioration of such buildings, houses, or structures, which, in the opinion of the Technical Officer, was directly caused by the blasting.

23.6 When blasting within 500m of a railway line, the Contractor shall observe the requirements stipulated in PRASA's current specification E7/1 for Works On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment.

23.7 After completion of the blasting the Contractor shall obtain a written clearance from each landowner in the vicinity of the blasting operations to the effect that all claims for compensation in respect of damage caused by the blasting operations to their respective properties, have been settled.

24. PROTECTION OF PERSONS AND PROPERTY

24.1 The Contractor shall provide and maintain all lights, guards, barriers, fencing and watchmen when and where necessary or as required by the Technical Officer or by any statutory authority, for the protection of the WORKS and for the safety and convenience of the public.

Red, yellow, green or blue lights, and red, yellow, green or white flags shall not be used by the Contractor in such a position that they can be mistaken for railway signals. The Contractor shall obtain the permission of the Port Captain before installing any light within the precincts of a port.

24.2 The Contractor shall take all the requisite measures and precautions during the course of the WORKS to –

- (i) protect the public and property of the public,
- (ii) protect the property and workmen of both PRASA and the Contractor,
- (iii) avoid damage to and prevent trespass on adjoining properties, and
- (iv) ensure compliance with any instruction issued by the Technical Officer or other authorised person, and with any stipulation embodied in the contract documents which affects the safety of any person or thing.

24.3 PRASA will provide, at its own cost, protection for the safe working of trains during such operations as the Technical Officer may consider necessary. Protection by PRASA for any purpose whatsoever, does not absolve the Contractor of his responsibilities in terms of the Contract.

24.4 The Contractor shall take all precautions and appoint guards, watchmen and compound managers for prevention of disorder among and misconduct by the persons employed on the WORKS and by any other persons, whether employees or not, on the site of the WORKS and for the preservation of the peace and protection of persons and property in the neighbourhood of the WORKS. Any relocation of camps because of disorder shall be at the Contractor's expense.

24.5 All operations necessary for the execution of the WORKS, including the provision of any temporary works and camping sites, shall be carried out so as not to cause veld fires, ground and environmental pollution, soil erosion or restriction of or interference with streams, furrows, drains and water supplies.

If the original surface of the ground is disturbed in connection with the WORKS, it shall be made good by the Contractor to the satisfaction of the land owner, occupier or responsible authority. The Contractor shall take all reasonable steps to minimise noise and disturbance when carrying out the WORKS, including work permitted outside normal working hours.

24.6 Dumping of waste or excess materials by the Contractor shall, in urban areas, be done under the direction and control of, and at sites made available by the local authority. Dumping outside local authority boundaries shall be done only with the express permission and under the direction and control of the Technical Officer. The Contractor shall comply with environmental protection measures and specifications stipulated by the Technical Officer and/or local and environmental authorities.

25. USE OF EXISTING ROADS

25.1 The Contractor shall take every reasonable precaution to prevent damage to any roads or bridges used to obtain access to the site, and shall select routes, use vehicles, and restrict loads so that any extraordinary traffic as may arise from the moving of plant or material to or from the site shall be limited as far as is reasonably possible.

25.2 The Contractor shall not occupy or interfere in any way with the free use of any public or private road, right-of-way, path or street unless the Technical Officer has obtained the approval of the road authority concerned.

26. INTERFERENCE WITH PRASA'S ASSETS AND WORK ON OPEN LINES

26.1 The Contractor shall not interfere in any manner whatsoever with an open line, nor shall he carry out any work or perform any act which affects the security, use or safety of an open line except with the authority of the Technical Officer and in the presence of a duly authorised representative of PRASA.

26.2 The Contractor shall not carry out any work or operate any plant, or place any material whatsoever nearer than three metres from the centre line of any open line except with the written permission of the Technical Officer and subject to such conditions as he may impose.

26.3 Care must be taken not to interfere with or damage any services such as overhead wire routes, cables or pipes, except as provided for in clauses 5.7 and 5.8 hereof. The Contractor will be held responsible for any damage to or interruption of such services arising from any act or omission on his part or of any of his employees, or persons engaged by him on the WORKS. The cost of repairing, replacing or restoring the services, as well as all other costs arising from any damage to services, shall be borne by, and will be recovered from the Contractor.

26.4 Authority granted by the Technical Officer and the presence of an authorised representative of PRASA in terms hereof, shall not relieve the Contractor of his duty to comply with PRASA's current specification E7/1 for Works On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment.

27. DEFECTS LIABILITY AND MAINTENANCE

27.1 When, in the opinion of the Technical Officer, any part of the work done or any items of material used or equipment installed or intended for use or installation is not in accordance with the requirements of the Contract, whether or not payment for such work, equipment or material has been made, he may order the Contractor in writing to remove any such objectionable part, item or component thereof, to replace it with an acceptable part, item or component and to rectify or reconstruct the WORKS without cost to PRASA.

27.2 If the Contractor fails to comply with such an order within 10 days of the date thereof, the Technical Officer may cause the rejected parts or items to be removed, the defective work to be demolished and replaced by proper work, and the cost thereof to be recovered from the Contractor.

27.3 If requested in writing by the Technical Officer, the Contractor shall search for the cause of any defect, imperfection or fault under the direction of the Technical Officer. When such defect, imperfection or fault is one for which the Contractor is not liable, the actual direct cost of the work carried out by the Contractor in searching as aforesaid and making good thereof will be borne by PRASA.

27.4 PRASA will not accept the WORKS as complete until all defects of every kind have been made good to the satisfaction of the Technical Officer.

27.5 Within a reasonable time after receipt of written instructions from the Technical Officer, the Contractor shall make good to the satisfaction of the Technical Officer all defective material and workmanship which are not in accordance with the Contract and which may appear within a period of 6 months, or such other period as stipulated in the Project Specification, after the date stated in the CERTIFICATE OF COMPLETION, and shall repair all damage caused thereby.

27.6 Where it is expressly stipulated, in respect of any particular work included in the Contract that certain obligations are to continue beyond the period of six months and after the issue of the CERTIFICATE OF COMPLETION, the extended period shall apply in respect of such work.

Where such continuing obligations are to be undertaken by a subcontractor alone and not jointly with the Contractor, PRASA shall have the right to enforce compliance with such obligations, and where any cession of the Contractor's rights against such subcontractor may be required for this purpose, such rights shall be deemed to have been duly ceded to PRASA by the Contractor.

27.7 Should the Contractor fail to comply with the provisions of clauses 27.5 and 27.6 hereof, PRASA may cause the required work to be carried out at the expense of the Contractor and may recover the cost thereof from the Contractor.

Nothing contained in this clause shall be construed as absolving the Contractor from fulfilling the general obligations imposed on him in terms of clause 3 hereof, or any particular obligations stipulated elsewhere in the Contract.

28. DELAYS ATTRIBUTABLE TO PRASA OR THE TECHNICAL OFFICER

28.1 If the Contractor suffers delay and/or incurs extra expense as a result of: -

- (i) failure by PRASA to make available the site or part of the site or any right of access thereto which may have been agreed upon;
- (ii) delay on the part of PRASA in supplying such material as is to be provided by it;
- (iii) delay on the part of PRASA or the Technical Officer in giving or supplying orders or drawings or in complying with any of their respective duties and obligations under the Contract, with which compliance is necessary to enable the WORKS to proceed in accordance with any approved programme;
- (iv) the necessity for PRASA to correct or resolve any inaccuracy, discrepancy or inconsistency in drawings or other documents forming part of the Contract;

he shall, within 2 days of the commencement of such circumstances, notify the Technical Officer in writing of the delay, the particulars and the consequences thereof.

28.2 The Contractor may submit a claim for additional time and compensation in respect of the direct losses and additional expenses caused by the delay, provided that such claim will be considered only if the full claim details are submitted to the Project Manager within 28 days after the delay has ended. The particulars of the delay and the consequences thereof shall be recorded in the site diary, which shall be deemed to be a comprehensive record of any and all circumstances relating to the claim.

The Contractor shall provide the Project Manager with such further information as he may require to investigate the claim and determine the amount of additional time and/or compensation. The Contractor will be advised in writing by the Project Manager what additional time, if any, will be allowed for delay, and what sum, if any, will be paid to the Contractor to compensate him for any direct loss and/or expense incurred by him as a consequence of the delay.

29. SECURITY AND RETENTION MONEY

29.1 Security in the amount equal to either ten per cent or five per cent of the contract price, as elected by the Contractor, shall be provided by the Contractor for the due and faithful performance by him of all the duties and obligations resting upon and assumed by him in terms of the Contract. Such security shall be in the form of –

(i) Government or approved Municipal stocks in negotiable form, or
(ii) a deed of suretyship furnished by an approved bank, insurance or guarantee corporation in such form as may be prescribed by PRASA, provided however that the Project Manager may, upon written application by the Contractor, return to the Contractor the whole or part of such security held by PRASA when the retention money, more fully described in clauses 29.2 and 29.3 hereof, has reached an amount which the Project Manager in his sole discretion considers sufficient for the protection of PRASA. PRASA is entitled to hold all or portion of the security until the completion of the Contract and the expiry of the defects liability and maintenance period.

29.2 Either five or ten per cent of the value of the work completed, as reflected by the nett monthly amounts certified for payment, will be retained by PRASA for the due and proper fulfilment of the Contract, until such retention money is sufficient, in the opinion of the Project Manager, for the protection of PRASA. PRASA is entitled to hold all or portion of the retention money until the completion of the Contract and the expiry of the maintenance period.

29.3 Retention money shall be 5 percent when the security referred to in clause 29.1 hereof is 10 percent and 10 percent when the said security is 5 percent.

30. **RATES AND PRICES FOR INCREASES OR DECREASES IN QUANTITIES OR VARIATIONS**

30.1 Where the final measured quantity of any scheduled item differs from the estimated quantity by 20 percent or less, the rate quoted in the Bill shall apply to the whole of the final measured quantity.

30.2 Where the final measured quantity of any scheduled item differs from the estimated quantity by more than 20 percent, either the Project Manager or the Contractor may request an adjustment of the scheduled rate for such item.

Where the quantity is increased, the adjustment shall be in respect only of that portion of the final measured quantity, which exceeds the original quantity plus 20 percent. Such rate adjustment shall be agreed between the Project Manager and the Contractor.

30.3 When, as a consequence of an order of the Project Manager or the Technical Officer given in terms of clauses 5.5 and/or 14.11 hereof, the WORKS or any part thereof which is covered by a scheduled item or items, is to be carried out in adverse subsurface conditions as provided in clause 5.3 hereof or under conditions which are different from those specified in the Contract, and as a consequence of such adverse or different conditions the respective rate(s) and/or price(s) are caused to be insufficient and/or inapplicable, sufficient and/or new rates and prices shall be determined in terms of clause 30.5 hereof.

30.4 When alterations, extras or additions ordered in terms of clauses 5.5 and/or 14.11 hereof, are similar in character and carried out under conditions similar to work which has been specified in the Contract and for which the Contractor has tendered rates in the items scheduled in the Bill, such rates shall apply to the alterations, extras or additions, subject to the provisions of clause 30.2 hereof.

30.5 When alterations, extras or additions are not of a character similar to work for which rates and prices were tendered, or are not executed under conditions similar to those specified in the Contract, the alterations, extras or additions shall be treated as new payment items for which rates and prices have to be determined by negotiation between the Contractor and the Project Manager.

In the determination of such rates and prices, the rates quoted in the Bill shall form the basis, as far as may be reasonable, of such determination, failing which fair rates and/or prices shall be determined and agreed between the Project Manager and the Contractor.

30.6 When called upon to do so by the Project Manager for the purpose of the determination of adjusted and/or new rates and prices in terms of clauses 30.2, 30.3 and 30.5 hereof, the Contractor shall submit to the Project Manager full particulars of his tender assumptions and of the composite tender make-up of the appropriate rates and prices in the Bill so as to provide a basis for such determination.

30.7 Where the Project Manager and the Contractor cannot reach a negotiated agreement, the Project Manager will determine new rates and/or prices which he considers to be fair and reasonable, and shall issue a provisional variation order on the basis of such new rates and/or prices.

30.8 The determination of new and/or adjusted rates and prices, whether or not by way of a negotiated agreement between the Project Manager and the Contractor in terms of clauses 30.2, 30.3 and/or 30.5, or on a provisional basis by the Project Manager in terms of clause 30.7 hereof, shall all be provisional and subject to the approval of the Executive Officer.

The Executive Officer shall have the power, subject to the provisions of clause 40, to vary and/or amend any or all such new and/or adjusted and varied rates and prices and to replace them with such rates and/or prices as he may deem reasonable and/or appropriate in the circumstances.

30.9 The incorporation into the Contract of all new or revised rates/prices shall be effected by way of a written variation order issued by the Project Manager.

31. NOMINATED CONTRACT WORKS

Any work, for which an "estimated cost" is included in the Bill, may be undertaken by a contractor appointed by PRASA. Such contractor shall hereinafter be referred to as a Nominated Contractor. The "estimated cost" will represent an estimated cost of the nominated contract work. The amount of the estimated cost shall not be included in the contract amount. Any nominated contractor will be employed in consultation with the Contractor and paid by PRASA. The Contractor, the Nominated Contractor and PRASA shall be the parties to the nominated contract.

The Contractor shall supervise, attend upon and work in conjunction with the Nominated Contractor and shall provide such access, services and facilities to him as he may require for the proper performance of the part of the WORKS included in the nominated contract.

The supervision of and attendance upon the Nominated Contractor by the Contractor, shall include the following duties and obligations in respect of the WORKS performed by the Nominated Contractor, all as provided for in the General Conditions of Contract for Works

undertaken by Nominated Contract, SPK5M (N), a copy of which is available for inspection by the Contractor at the offices of the Project Manager.

- (i) The supervision and control of the Nominated Contractor's conformance to specification and quality during the execution of the nominated contract works and during the defects liability and maintenance period after completion thereof.
- (ii) The taking over and incorporation of the nominated contract works into the WORKS and providing custody and protection thereof as part and parcel of the WORKS for the duration of the Contract and defects liability and maintenance periods.
- (iii) On satisfactory completion thereof, to issue a CERTIFICATE OF COMPLETION and to advise the Technical Officer in respect of payments to be made by PRASA in terms of the nominated contract provisions.

The Contractor will be paid for such supervision and attendance upon the Nominated Contractor at the percentage fee tendered pro rata to the estimated cost in the Bill or to the contract price of the nominated contract, whichever is the highest.

32. NOMINATED SUPPLIERS AND PRIME COST SUMS

32.1 Any material for which a prime cost sum is included in the Bill and which is to be incorporated or installed in the WORKS by the Contractor, shall be supplied by the person or firm nominated in writing by PRASA. Such prime cost sum (hereinafter referred to as a "P.C. sum") is the net sum to be paid to the supplier.

Such supplier hereinafter referred to as a "Nominated Supplier" shall be appointed and paid either by the Contractor or PRASA, as agreed between the Project Manager and the Contractor. PRASA may, alternatively, elect to supply such material itself.

32.2 At the settlement of accounts, any amount paid or payable by the Contractor to a Nominated Supplier will be set against the appropriate P.C. sum and the balance, after allowing pro rata for the Contractor's attendance fee and profit, as shown in the Bill, will be added to or deducted from the contract amount as the case may be. Where, however, the Nominated Supplier is appointed and paid directly by PRASA, or the material has been supplied by PRASA in terms of clause 32.1 hereof, the amount of the P.C. sum will be deducted in full from the contract amount. If the Bill provides for the Contractor's attendance fee and profit on such P.C. sum, such provisions will remain unaltered.

32.3 The provisions of clauses 31.2 and 31.3 hereof relating to a Nominated Contractor and work executed by him shall apply mutatis mutandis to and in respect of a Nominated Supplier and material supplied by him.

33. PROVISIONAL WORK

Any item marked "provisional", the quantity of which may be nil or either more or less than that stated in the Bill when compared with the actual amount of work/material necessary and executed/supplied, shall be measured by the Technical Officer from time to time as the work proceeds, and in the presence of the Contractor or the Contractor's agent. The quantity of such work executed/material supplied, shall be paid for at the rates quoted in the Bill, and shall not be subject to the provisions of clause 30.2 hereof.

Where, in the case of a provisional item, the nature or amount of any variation or increase or decrease of the quantities stated in the Bill is such that it results in a change in method, process of construction or source of supply relative to the nature or amount of the whole or part of the work stated in the Contract, and which renders the rate or price for such item unreasonable or inapplicable, either the Project Manager or the Contractor shall be entitled, in compliance with clause 33.3, to require that a new rate or price be fixed which in the circumstances is fair and reasonable.

No change in terms of this clause shall be made to the Contract Price or to any rate or price unless, as soon as is practicable and, in the case of extra or additional work, before the commencement of such work, notice shall have been given in writing –

- (i) by the Contractor to the Project Manager of his intention to claim a new or varied rate or price in terms of clause 33.2 or
- (ii) by the Project Manager to the Contractor of his intention to vary a rate or price in terms of clause 33.2.

The provisions of clauses 30.4 to 30.9 inclusive shall apply mutatis mutandis to the determination of any new or varied rate or price in terms hereof.

34. RECOVERY OF MONEY FROM THE CONTRACTOR

All money, whether a liquidated amount or not, that may become payable to PRASA by the Contractor in terms of any clause or condition incorporated in the Contract may be recovered from the Contractor by deduction or recovery:

- (i) from money, including retention money, due to or to become due to the Contractor under this or any other contract he may have with PRASA, or
- (ii) from any money realised as a result of the sale of any stocks provided in terms of clause 29.1 hereof, or from the guarantor in the case of a deed of suretyship; or
- (iii) in any manner provided for in the Contract or decided upon by PRASA, provided that nothing herein contained shall affect the operation of setoff as between PRASA and the Contractor.

35. INCREASE OR DECREASE IN COSTS

- 35.1 Unless otherwise provided for in the Project Specification or unless a fixed contract price was tendered in the tender letter and accepted by PRASA, the amount payable under the Contract will be determined by the application of the contract price adjustment factor(s) derived from the formula (e) described in the Project Specification to allow for any increases or decreases, which may occur after the closing date of the submission of tenders and before the stipulated date or such extended date of completion as may have been determined in terms of clauses 17.1 to 17.7 and/or clause 28 hereof.
- 35.2 If a new rate or price is negotiated during the period of the Contract, the calendar month in which the new rates were applicable shall be clearly stipulated in the variation order. The amounts arising from the application of the new rate to the affected quantity will be subject to the contract price adjustment factor based on the indexes ruling for the calendar month so stipulated.

35.3 The contract price adjustment factor to be applied after the stipulated completion date or such extended date of completion as may have been determined in terms of clauses 17.1 to 17.7 and/or 28 hereof, shall be half that applicable at the stipulated date or extended date of completion, except in respect of work completed prior to such date or extended date, and certified in terms of clause 36.3 hereof for payment thereafter, in which event the contract price adjustment factors applicable at the date of completion will be applied.

35.4 Any additions to or deductions from the amount payable, brought about by the application of the contract price adjustment factor, shall be deemed to have made full allowance for all increases or decreases in cost from any cause whatsoever, including all overhead costs and any increases and decreases therein, and profit.

36. PAYMENT CERTIFICATES AND CLAIMS PROCEDURE

36.1 On or about the fifteenth day of each month, the Technical Officer shall make either a progress measurement or an estimate of the work done, including any duly authorised alteration, extra, addition or omission.

36.2 Thereafter the Project Manager will issue a certificate authorising payment of such sum of money as he may consider represents the value of the work referred to in clause 36.1 hereof.

36.3 The Contractor shall be entitled to receive payment of the amount authorised in the said certificate, subject to the deduction of retention money in terms of clauses 29.2 and 29.3 hereof, within 30 days after the day of progress measurement or estimate by the Technical Officer or receipt of a VAT-invoice from the Contractor, whichever is the later.

Such payment shall be regarded as an open payment and both certificate and payment shall be subject to revision and adjustment by the Project Manager, if at any time he is of the opinion that the certificate does not represent accurately the proportion or value of work completed, having regard to the remaining portion of the WORKS still to be executed by the Contractor.

36.4 In the event of failure by PRASA to make payment within the time stipulated in clause 36.3, he shall pay to the Contractor interest at prime overdraft rate as certified by the Contractor's bankers upon all overdue payments of such certified amounts, from the date on which such payments should have been made.

36.5 The Project Manager's certificate authorising payment in respect of any work referred to in clause 36.1 hereof shall not imply acceptance of the work or of the material used, and shall not prejudice the right of the Technical Officer or Project Manager to reject work or material not in accordance with the Contract, nor the right of PRASA to recover any amounts paid to the Contractor in respect of such rejected work or material.

36.6 Notwithstanding any outstanding undetermined disputes, arbitrations and claims that may still exist, the Project Manager shall, within 28 days after the expiry of the defects liability and maintenance period/s or completion of the rectification of defects under clauses 27.5 and 27.6 hereof, whichever is the later, submit a Final Certificate for approval by the Executive Officer, together with a statement of Particulars of Outstanding Matters such as undetermined claims, disputes and arbitrations.

36.7 The Project Manager shall, within 14 days after approval by the Executive Officer, issue the Final Certificate together with the Particulars of Outstanding Matters to the Contractor,

authorising payment of all money due for completed work and payment of all retention money and return of all surety as is then held by PRASA, after deducting any money due by the Contractor to PRASA.

- 36.8 After receipt of the Final Certificate and the Particulars of Outstanding Matters, the Contractor, shall, by countersigning both documents, certify his acceptance and confirmation of the correctness of the amounts shown and particulars given and that no further claims or unresolved matters are outstanding in respect of the Contract.
- 36.9 After receipt of the Contractor's certification in terms of clause 36.8 hereof no new claims or matters will be permitted or considered by the Project Manager or PRASA.
- 36.10 Within 30 days after the receipt of the Contractor's certification, PRASA will pay to the Contractor the balance of all money due under the Contract in terms of the Final Certificate after deductions in terms of clause 36.7 have been effected.
- 36.11 Where the Contractor fails to certify the Final Certificate and Particulars of Outstanding Matters, and has not disputed the correctness thereof within 3 months after their receipt by him, the Contractor shall be deemed to be in agreement with such certificate and particulars, and PRASA will effect payment in terms thereof. Any claim arising from the Final Certificate or in connection with the Contract, whether contractual or delictual, which has not been lodged with the Project Manager previously or within a period of 3 months after receipt by the Contractor of the Final Certificate, will not be considered or admitted by PRASA, and the Contractor accepts and acknowledges that, by his failure to lodge a fully detailed and motivated claim within the above stipulated period of 3 months, he waives such claim and relieves PRASA of responsibility for, or any obligation to consider such claim.
- 36.12 Neither the issue of the Final Certificate nor any payment made thereunder shall release the Contractor from any liability, whether arising under the Contract or in common law, to indemnify PRASA against, and to reimburse it in respect of, any claim made or to be made against it by a third party for damage or loss sustained by such third party in consequence of any wrongful act or omission of the Contractor, his subcontractors or his or their employees or representatives during execution of the WORKS.
- 36.13 The following procedure shall apply to claims for additional payments in terms of the provisions of the Contract;
 - 36.13.1 If the Contractor intends to claim any additional payment in terms of any clause in the Contract other than clauses 5, 17.1 to 17.7 and clause 28 hereof, he shall submit his claim, or give notice in writing of his intention to claim, to the Project Manager within 14 days of the commencement of the events giving rise to the claim.

The notice of intention to claim shall include the grounds upon which the claim will be based. From the commencement of these events, the Contractor shall keep all such contemporary records as are necessary to support any claim he may submit.
 - 36.13.2 Without necessarily admitting liability, the Project Manager may instruct the Contractor to keep such further contemporary records of events as are material to a possible claim.

36.13.3 If the Contractor fails to comply with the provisions of clauses 36.13.1 and 36.13.2 hereof in respect of any claim or intended claim, such claim will not be considered.

36.13.4 If a notice of intention to claim has been submitted in terms of clause 36.13.1, the amount of the claim and detailed documentation in support thereof shall be submitted by the Contractor to the Project Manager within 28 days after the events giving rise to the claim have ceased. If it is not reasonably possible to assess the amount of the claim within this period, the Project Manager may agree in writing to such extended period as may be necessary.

36.14 Save for the provisions for interest payments in clause 36.4 hereof and, if provided in the Bill, for continuing finance charges, no liability will be accepted by PRASA in respect of interest or financing costs in respect of any unliquidated claims and unresolved matters arising and accumulating during the contract period or such extended period as determined in terms of clauses 17 or 28 hereof.

36.15 Payment of the amounts due by PRASA to the Contractor, save where expressly otherwise agreed, will be made by cheque and sent by registered post to the Contractor's postal address or any other address requested in writing by the Contractor. The Contractor authorises the S.A. Post Office Limited to act as his delivery agent, and the risk that payment may not be received transfers to the Contractor upon the posting thereof. The date of postage of the cheque shall be deemed to be the date of payment for the purposes of clause 36.4 hereof.

37. BREACHES AND REMEDIES

Should the Contractor commit any breach or default of any kind mentioned in clause 37.2 hereof, the Executive Officer may exercise, subject to the provisions of clause 40 hereof, for and on behalf of PRASA, immediately, in whole or in part and consecutively or concurrently, all or any of the options, rights and powers set out in clause 37.3 hereof.

Breaches or defaults entitling the Executive Officer to act in terms of clause 37.3 hereof shall be the following: -

37.2.1 Insolvency of the Contractor or an act of insolvency comprising, inter alia, the following: -

- (i) liquidation or sequestration of the Contractor's estate (provisionally or finally); or
- (ii) the Contractor publishing a notice of surrender of his estate as insolvent; or
- (iii) the Contractor entering into a compromise with the general body of his creditors; or
- (iv) the Contractor having an execution levied on his goods.

37.2.2 Material breach of the Contract by the Contractor comprising, inter alia: -

- (i) the abandonment or repudiation of the Contract;
- (ii) suspension of progress of the WORKS without contractual cause;
- (iii) failure to remove materials from the site or to demolish and replace work, which materials or work has been condemned or rejected by the Technical Officer;
- (iv) failure, after he has been notified in terms of clause 14.7 hereof to achieve a rate of progress on the WORKS which will ensure completion by the stipulated date or such extended date of completion as may have been determined in terms of clauses 17.1 to 17.7 and 28 hereof;
- (v) assigning of the Contract without the consent in writing of the Executive Officer having first been obtained;
- (vi) subcontracting any part of the Contract without the Project Manager's approval;

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTS FOR A PERIOD OF 36 MONTHS

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- (vii) failing to provide the deed of suretyship in terms of clause 29 hereof;
- (viii) failing to satisfy any judgement or arbitrator's award entered against him within 7 days after such judgement or award is so entered or to satisfy any attachment order against property within 3 days of its issue;
- (ix) conviction of the Contractor or any of his employees in a court of law for any offence which adversely affects the interests of PRASA.

In the event of any breach or default mentioned in clause 37.2 hereof, the Executive Officer may exercise any of the following options, rights and powers: -

To cancel the Contract and to invoke PRASA's lien over the Contractor's site establishment, temporary buildings, construction plant, equipment and materials, and any indemnities or safeguards in favour of PRASA in terms of the Contract.

To take over full possession and control of the whole or any portion of the WORKS and the Contractor's construction plant, equipment, tools and material used thereon, and control of any or all of the Contractor's employees (with or without accepting any liability for arrear salaries or wages, or for any contracts of personal service) and to continue and complete the WORKS, by employment of such of the Contractor's employees and using such of his site establishment, temporary buildings, construction plant, equipment, tools and materials, as are necessary in the discretion of the Project Manager, all for the account of and at the cost and risk of the Contractor.

To remove and dismiss any person employed by the Contractor and, for the account of and at the cost and risk of the Contractor, to engage or appoint any other person under such conditions and to pay him such salary or wage as the Project Manager may deem fit

To obtain from any source whatsoever, at the cost of the Contractor, such construction plant, tools equipment and material as are necessary, in the opinion of the Project Manager, for the proper completion of the Contract.

To dismiss the Contractor from any further control of the execution of the Contract, and thereafter to take over full control of and to utilise the whole or any portion of the construction plant, equipment, tools and material belonging to the Contractor, and to employ any person other than the Contractor to complete the Contract, in each case for the account of and at the risk and cost of the Contractor, after or without offering such work for tender and without the interference or intervention in any way by the Contractor.

After the said work has been completed by such other person and such other person has been paid therefore, the Project Manager shall issue the Final Certificate when so authorised by the Executive Officer. Should any money be shown to be due by the Contractor to PRASA, the Contractor and/or his guarantor shall forthwith pay such money to PRASA, failing which PRASA may recover the said amount from the Contractor.

To reduce, in the case where the Contractor's defective materials, workmanship and/or performance is accepted by PRASA, any one or all of the rates and prices in the Contract by the amounts of PRASA's losses, or by the costs of rectifying such defective materials, workmanship and/or performance of the Contractor, or by the amounts that the Contract WORKS are reduced in value as a consequence of the deficiencies.

All wages, salaries, costs, expenses and damages paid, incurred or sustained by PRASA for which the Contractor is liable in terms of the Contract, shall be paid by the Contractor on demand or shall be recovered as provided for in clause 34 hereof.

In any action taken or instituted by PRASA in terms of clauses 37.1 to 37.4 hereof, or any clause of the Contract read alone or in conjunction with these clauses, a certificate issued by the Project Manager shall be deemed to be proof of any amount due by the Contractor to PRASA or by PRASA to the Contractor.

No action taken or instituted by PRASA in terms of clauses 37.1 to 37.4 hereof or any clause of the Contract read alone or in conjunction with these clauses, shall prejudice or detract from PRASA's right to recover penalties for late completion or damages for any other breach or default committed by the Contractor in respect of the Contract.

38. VOLUNTARY TERMINATION OF THE CONTRACT AND REMEDIES IN CONSEQUENCE THEREOF

38.1 The occurrence of the following circumstances shall, subject to the provisions of clause 40, entitle either of the parties to voluntary terminate the Contract by mutual agreement or by giving the other party 30 days written notice of such termination: -

38.1.1 The outbreak of war or armed hostilities (whether war be declared or not) in any part of the world, or the imposition of economic sanctions between governments or any other action of a like kind and if any such event will materially affect the execution or cost of the WORKS;

38.1.2 The declaration of a state of emergency by the Government, riots, commotion, politically motivated sabotage, acts of terrorism or disorder, which are all beyond the control of either the Contractor or PRASA, and which will materially affect the execution of the works or the supply of labour or materials or materially interfere with access to the site or constitute a material risk to persons or property associated with the Contract;

38.1.3 The occurrence of unforeseeable adverse subsurface conditions as envisaged in clause 5.3 hereof and which materially affects the cost of the WORKS to the extent that the entire project or the Contract is rendered uneconomical for either one or both of the parties;

38.1.4 A change of circumstances beyond the control of the parties and external to the contract provisions, to the extent that the viability or cost of the project or the Contract is materially and adversely affected to such an extent that the continued performance of the Contract would materially prejudice any one or both of the parties and that it would be reasonable to allow the prejudiced party to withdraw from the Contract.

38.2 Upon such notice of termination: -

38.2.1 the parties shall continue with the execution of the Contract during the period of notification unless otherwise directed by the Project Manager;

38.2.2 all the provisions of the Contract, including this clause shall continue to apply for the purpose of: -

(i) resolving any dispute, and
(ii) ascertaining the amounts payable by either PRASA or the Contractor to the other;

38.2.3 the Project Manager will be entitled to take possession and occupation of the site, the WORKS and any materials which are the property of PRASA; and

38.2.4 the Contractor and his subcontractors and all their employees and agents shall, within 7 days after the date of termination stipulated in the notice or as agreed, remove all construction plant materials and other assets, belonging to them from the site.

38.3 If the Contract is terminated as aforesaid, the Contractor shall be paid by PRASA such amounts or items that have not already been covered by payments made to the Contractor, for all the work executed prior to the date of termination, at the rates and prices provided in the Contract, and in addition

38.3.1 the amounts payable in respect of any provisional items and PC sums, referred to in the Bill, in so far as the work or service comprised therein has been carried out or performed by the Contractor, and a proper proportion of any such items which have been partially carried out or performed; plus

38.3.2 the cost of materials, plant or goods reasonably ordered for the WORKS, which have been delivered to the site and paid for by the Contractor, or of which the Contractor is legally liable to accept delivery, such materials, plant or goods becoming the property of PRASA upon such payments being made; plus

38.3.3 a sum, being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the WORKS in so far as such expenditure has not been covered by any other payments referred to in this clause.

38.4 In the event of termination of the Contract by PRASA in the circumstances described in clause 38.1.4 hereof, the Contractor shall be entitled to additional payment amounting to 12 percent of the total contract amount as tendered, after the total sum of the amounts determined in accordance with clauses 38.3, 38.3.1, 38.3.2 and 38.3.3 hereof has been deducted.

38.5 In the event of termination of the Contract by the Contractor in circumstances described in clause 38.1.4 hereof, the Contractor shall not be entitled to any payments in terms of clause 38.3.3 hereof, but he shall instead pay to PRASA an amount equal to 12 percent of the total contract amount as tendered after the total sum of the amounts determined in accordance with clauses 38.3, 38.3.1 and 38.3.2 hereof has been deducted.

38.6 PRASA shall, against any payments due under clause 38, be entitled to be credited with any outstanding balances due from the Contractor, for advances in respect of the Contractor's equipment, materials and construction plant and any other sums which, at the date of termination, were recoverable by PRASA from the Contractor under the terms of the Contract. Any sums payable under this clause shall be determined by the Executive Officer in conjunction with the Project Manager and the Contractor, and he shall notify the Contractor accordingly.

39. INDEMNITIES AND INSURANCE

39.1 The Contractor shall, and hereby does indemnify PRASA against -

(i) liability for infringement of any patent, design, trade mark, name, or other protected right; and

(ii) any legal costs or disbursements incurred in connection with any of the matters referred to in paragraph (i) hereof,

whenever the liability contemplated in paragraph (i) hereof is due to arise out of anything done, omitted or undertaken, or the use of any plant, process, machine or material, in terms of or for the purpose of the contract.

39.2 The Contractor hereby indemnifies and holds harmless PRASA against any loss, liability, damage, harm, which the PRASA may suffer and/or any claim which may be brought against PRASA whether it be a claim by the Contractor, the Contractor's members, employees, agents, or representatives, or by any third party, or the estate of such person or entity; arising from or connected directly or indirectly to:

39.2.1 the Contractor's performance, non-performance or mal-performance of any of the terms of this agreement (including without limitation the provision, performance, rendering or supply of the Services, and the breach of any warranty contained in this agreement, or the use or occupation of the Premises, and/or the Service Area, or the Contractor not having disclosed any fact or circumstance material to this agreement, or the Contractor not having the necessary authority or approvals to enter into this agreement); and/or

39.2.2 any act or omission of any or all of the Contractor's members, employees, agents, representatives, and/or suppliers;

39.2.3 any damage to, loss of, and/or destruction of property belonging to or in the possession of a commuter, harm, loss, theft, or destruction to property belonging to, in the possession of, and/or under the control of PRASA;

39.2.4 any harm, injury or death suffered or sustained by a commuter, where such harm arises from, is connected to or is caused by an act or omission of the Contractor's employees, agents, representatives, or by an act of any third party where such act occurs near or within the proximity of any employee, agent, representative of the Contractor and such employee, agent, representative could or should have prevented same from occurring.

39.3 Such indemnity shall extend also to all expenditure, disbursements, and all legal costs on an Attorney and Own-Client basis which may be incurred by PRASA as result of such loss, liability, damage or claim including without limitation the cost of opposing any action, motion, or prosecuting any appeal, and the cost of obtaining professional opinion relating to any aspect of same, as well as but not limited to any of the following:

39.3.1 any damage to the PRASA property, whether movable or immovable;

39.3.2 loss, harm, or destruction of property belonging to PRASA, whether movable or immovable;

39.3.3 liability in respect of any damage, loss, harm or destruction of property, whether moveable or immovable, belonging to commuters and/or third parties;

39.3.4 liability in respect of death, injury, unlawful/wrongful arrest, malicious prosecution, assault, defamation, unlawful search, illness or disease to commuters, PRASA employees and/or third parties.

39.4 Insurance Effected by PRASA

a) Notwithstanding anything elsewhere contained in this Contract and without limiting the obligations, liabilities or responsibilities of the Contractor in any way whatsoever (including but not limited to any requirement for the provision by the Contractor of any other insurances) PRASA shall effect and maintain as appropriate in the joint names of PRASA, the Contractor and where relevant Sub-contractors the following insurances which are subject to the terms, limits, exceptions and conditions of the Policy.

CONTRACT WORKS Insurance - which will provide cover against accidental physical loss of or damage to the Works, Temporary Works and materials intended for incorporation in the Works.

PUBLIC LIABILITY Insurance - which will provide indemnity against legal liability in the event of accidental death of or injury to third party persons and/or loss of or damage to third party property arising directly from the execution of the contract and occurring during the period of insurance with a limit of indemnity in respect of all claims arising from any one occurrence or series of occurrences consequent on or attributable to one source or original cause as specified in the Schedule hereto.

- b) PRASA shall pay the premium and stamp duty in connection with the insurance effected by PRASA
- c) The Contractor shall not include any premium charges for this insurance except to the extent which he may deem necessary in his own interests to effect supplementary insurance to the insurance effected by PRASA. PRASA reserves the right to call for full information regarding insurance costs included by the Contractor.
- d) The Contractor shall give all notices and observe all conditions and requirements of such insurances and shall communicate to PRASA's Insurance Brokers any facts or information known to him which may in any way affect the validity or enforceability of the policies.
- e) Any further clarification of the scope of cover provided by the Policies arranged by PRASA should be obtained from PRASA or their Insurance Brokers.

39.5 In the event of any occurrence which is likely to or could give rise to a claim under the insurances arranged by PRASA the Contractor shall:

- a) in addition to any statutory requirement or other requirements contained in the Contract, immediately notify PRASA's Insurance Brokers or the Insurers by telephone, telex, or telefax giving the circumstances, nature and an estimate of the loss or damage or liability.
- b) complete a Claims Advice Form available from the Insurance Brokers to whom the form must be returned without delay.
- c) negotiate the settlement of claims with the Insurers through PRASA's Insurance Brokers and shall when required to do so obtain PRASA's approval of such settlement.

PRASA and Insurers shall have the right to make all and any enquiries on the site of the Works or elsewhere as to the cause and results of any such occurrence and the Contractor shall co-operate in the carrying out of such enquiries.

39.6 The Contractor will be liable for the amount of the Deductible (First Amount Payable) in respect of any claim made by or against the Contractor or Sub-contractors under the insurances effected by PRASA

The Deductibles (First Amount Payable) for which the Contractors are responsible and which the Contractors are responsible and which are applicable in respect of each and every occurrence or series of occurrence attributable to one source or original cause giving rise to loss or damage or liability indemnifiable shall be as specified in the Schedule hereto.

Any amount which becomes payable to the Contractor or any of his Sub-contractors as a result of a claim under the Contract Works Insurance shall, if required by PRASA, be paid net of the Deductible to PRASA who shall pay the Contractor from the proceeds of such payment upon rectification, repair or reinstatement of the loss or damage but this provision shall not in any way affect the Contractor's obligations, liabilities or responsibilities in terms of the Contract.

39.7 Insurance Effected by the Contractor

The Contractor and Sub-contractor shall, where applicable, provide as a minimum the following:

- a) Insurance of Construction Plant and Equipment (including tools, offices and other temporary structures and contents) and other things (except those intended for incorporation into the Works) brought onto the site for a sum sufficient to provide for their replacement.
- b) Insurance in terms of the provisions of the Compensation for Occupational Injuries and Diseases Act, (Act 130 of 1993) as amended.
- c) Employer's Common Law Liability Insurance with a limit of indemnity of not less than the amount specified in the Schedule hereto.
- d) Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability indemnity with a limit of indemnity of not less than the amount specified in the Schedule hereto.
- e) Where the Contract involves manufacturing and/or fabrication of the Works or parts thereof at premises other than at the Contract Site PRASA shall be entitled to require the Contractor to satisfy PRASA that adequate Professional Indemnity Insurance in respect of liability arising from any act, omission or neglect in such design work has been arranged.

39.8 a) The insurances to be provided by the Contractor and his Sub-contractor shall be effected with Insurers and on terms approved by PRASA (which approval shall not be unreasonably withheld) and shall be maintained in force for the duration required (including any period of maintenance). The Contractor shall within fourteen (14) days of commencement of the contract produce to PRASA the relevant Policy of Policies of Insurance.

39.8 b) If the Contractor fails to effect and keep in force the insurances referred to then PRASA may effect and keep in force any such insurances and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount paid by PRASA from any monies due or which may become due to the Contractor or recover same as a debt from the Contractor.

39.9 Sub-contractors

The Contractor shall:

- a) ensure that all potential and appointed Sub-contractors are aware of the whole contents of this clause, and
- b) enforce the compliance by Sub-contractors with this clause where applicable.

39.10 Riot Insurance

PRASA shall arrange cover for any damage caused as a result of riot only in respect of those works for which in its opinion, it is deemed necessary. This shall be indicated on the attached Insurance Schedule.

40. RESOLUTION OF DISPUTES

- 40.1 If a dispute of any kind arises between the Contractor and the Technical Officer, in connection with or arising out of the Contract or the execution of the WORKS, whether during the execution of the WORKS or after their completion, and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation, the matter in dispute shall, within 14 days of dispute having arisen, be referred to the Project Manager with a copy to the Executive Officer. The Project Manager shall decide the matter within 28 days of receipt of the reference and notify the Contractor and Technical Officer of his decision.
- 40.2 If a dispute arises between the Project Manager and the Contractor, including a dispute arising out of the Project Manager's decision in terms of clause 40.1 hereof, or if the Contractor is dissatisfied with any instruction, assessment, determination, valuation, variation or ruling given or made by the Executive Officer in terms of his powers under the Contract, the matter shall be referred in writing to the Executive Officer within 28 days of the decision of the Project Manager or of the dispute or dissatisfaction, as the case may be, having arisen.
- 40.3 The parties shall thereafter endeavour to settle the dispute by way of negotiation.

The procedure and forum for the negotiations shall be subject to agreement between the parties. The negotiations shall be without prejudice to either of the parties and neither shall be entitled to rely upon admissions or concessions made during such procedures in any ensuing arbitration and/or litigation proceedings.

Either of the parties may elect that the negotiation proceedings be facilitated by an independent Mediator. In such case, the provisions of Clause 40.7 shall apply mutatis mutandis to the appointment of the Mediator. Each party shall bear its own costs in respect of the mediation and pay half of the Mediator's agreed fees and expenses.

- 40.4 If the parties fail to reach a negotiated settlement, or negotiations break down on account of a deadlock, the Executive Officer shall decide the dispute on behalf of PRASA and shall advise his decision in writing to the Project Manager and the Contractor within 42 days after the day of receipt by him of the reference in terms of clause 40.2. The Executive Officer's decision shall forthwith be given effect to by the Project Manager, the Technical Officer and the Contractor.
- 40.5 Unless the Contract has already been completed, repudiated or otherwise terminated, the Contractor shall, in every case proceed with the WORKS with all due diligence, unless and until the Executive Officer's decision has been revised, as hereinafter provided for, by an arbitral award.

The Executive Officer's decision shall be final and binding on the parties unless it is disputed by the Contractor in terms of clause 40.6 hereof.

40.6 Should the Contractor be dissatisfied with the decision of the Executive Officer in terms of clause 40.4, he may, within 28 days after the receipt thereof, declare the matter to be in dispute by written notification to the Executive Officer. Unless otherwise agreed, the matter shall be referred to an Arbitrator appointed in terms of clause 40.7 hereof.

40.7 The appointment of an arbitrator shall be made by agreement between the parties, after a written submission has been made by either party to the other of a shortlist containing the names of 3 suitably qualified persons.

If the parties fail to agree within 14 days of receipt of the submission, either party may apply for the nomination of a suitably qualified person by the Chairperson for the time being of the Association of Arbitrators of South Africa, or by the Vice Chairperson in the absence of the Chairperson.

40.8 The reference to the Arbitrator shall, unless otherwise agreed, be deemed to be a submission to the arbitration of a single arbitrator in terms of the Arbitration Act (Act No. 42 of 1965, as amended), or any legislation passed in substitution thereof. The arbitration shall, unless otherwise agreed, be conducted in accordance with the Rules for the Conduct of Arbitrations published by the Association of Arbitrators.

40.9 The Arbitrator shall have full power to open up, review and revise any decision, opinion, direction, certificate or valuation of the Technical Officer, the Project Manager or the Executive Officer in so far as it may in his opinion be necessary to do so for the proper determination of the dispute.

Neither party to the Contract shall be limited in the proceedings before the Arbitrator to the evidence or arguments submitted to the Technical Officer, the Project Manager or the Executive Officer, for the purposes of preceding proceedings. The award of the Arbitrator shall be final and binding on the parties.

40.10 Arbitration proceedings may be entered into after and at any time before the completion or alleged completion of the WORKS, provided always –

- (i) that the preceding dispute resolution procedures stipulated herein have been followed and fully exhausted,
- (ii) that no decision given by the Technical Officer, the Project Manager or the Executive Officer in accordance with the foregoing provisions shall disqualify him as a witness and from giving evidence before the Arbitrator on any matter whatsoever relevant to the dispute so referred to the Arbitrator.

40.11 Any amount which may become payable by the Contractor to PRASA in consequence of any decision by the Executive Officer or of an arbitrator's award, as the case may be, in accordance with the foregoing provisions of this clause, may be recovered in any manner described in clause 34 hereof or by instituting action in a court of competent jurisdiction.

40.12 The Arbitrator's fees and expenses shall be borne by the parties concerned in accordance with the terms of the Arbitrator's award. Should one party pay the Arbitrator's fees, this party will have the right to recover from the other party any amount of such fee for which that party is responsible in terms of the Arbitrator's award.

41. INSOLVENCY

Should the Contractor commit any act of insolvency or being a natural person be sequestrated or assign, surrender or attempt to assign or surrender his estate or being a partnership be dissolved, or be liquidated or placed under judicial management or be wound up (whether provisionally or finally), no payments due and payable from that date shall be made by PRASA to the Contractor direct, but only to the liquidator, trustee or judicial manager as the case may be of the estate.

42. CONFIDENTIALITY

42.1 The Contractor expressly undertakes to keep confidential and not to disclose to any person:

42.1.1 the details of this contract, the details of the negotiations leading to this contract, and the information handed over to such party during the course of negotiations, as well as the details of all the transactions or agreements contemplated in his contract; and

42.1.2 all information relating to the business or the operations and affairs of the parties (together "confidential information"); without the prior written consent of PRASA, which consent may be withheld.

42.2 The Contractor agrees to keep all information confidential and to disclose it only to those officers, directors, employees, consultants and professional advisors in its employ who:

42.2.1 have a need to know (and then only to the extent that each such person has a need to know);

42.2.2 are aware that the confidential information should be kept confidential;

42.2.3 are aware of the disclosing party's undertaking in relation to such information in terms of this contract; and

42.2.4 have been directed by the disclosing party to keep the confidential information confidential.

42.3 The undertakings given by parties in relation to the maintenance and non-disclosure of confidential information in terms of this contract, do not extend to information that is required by the provisions of any law, statute or regulation or during any court proceedings and subject to the provisions of this contract, the party required to make the disclosure has taken all responsible steps to oppose or prevent the disclosure of and to limit, as far as reasonably possible, the extent of such disclosure and has consulted PRASA prior to making such disclosure.

43. DISCREPANCIES IN DOCUMENTS

(i) In the event of any discrepancy or inconsistency between the project specification and any other document the project specification shall prevail.

(ii) The General Conditions of Contract shall rule over all other documents excepting the project specification.

(iii) Where any drawing is inconsistent with the description in the project specification the project specification shall rule in preference to the drawing.

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTS FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



(iv) The requirements shown on particular drawings shall rule over those shown on standard or type drawings, and particular drawings shall rule over the requirements of standard specifications and SABS 1200 specifications

Signed by the Contractor at _____ on

this _____ day of _____ 20 _____ in the

presence of the undersigned witnesses.

CONTRACTOR

AS WITNESSES:

1. _____

2. _____

Signed on behalf of PRASA at _____ on

this _____ day of _____ 20 _____ in the

presence of the undersigned witnesses.

p.p. PRASA

AS WITNESSES: -

1. _____

2. _____

INSURANCE SCHEDULE TO E5 (PRASA) CONDITIONS OF CONTRACT

1. PRASA INSURANCE BROKERS:

Alexander Forbes & Omnidrisk Solutions jointly

c/o Group Executive Manager: Legal and Compliance
Passenger Rail Agency of South Africa (PRASA)
Jorissen Place, (Postal address:
66 Jorissen Street, Private Bag X101,
BRAAMFONTEIN Braamfontein, 2017.)

Tel: (011) 773 1600
Fax: (011) 773 1622

2. INSURANCES ARRANGED BY PRASA

(Only applicable to Contracts which at award do not exceed R 120, 000, 000.00 in value and where the construction period does not exceed 24-months)

2.1 Contract Works Insurance:

In respect of loss or damage-

2.1.1 Limit of indemnity

Contract works - full value limited up to R 120, 000, 000.00 per contract.

2.1.2 Deductibles

| | | |
|-------------------|-----------------|-------------------------------------|
| Contracts up to | R 2, 500, 000 | R 5, 000.00 |
| Contracts between | R 2, 500, 001 | and R 5, 000, 000.00 R 10, 000.00 |
| Contracts between | R 5, 000, 001 | and R 20, 000, 000.00 R 15. 000.00 |
| Contracts between | R 20, 000, 001 | and R 50, 000, 000.00 R 20, 000.00 |
| Contracts between | R 50, 000, 001 | and R 70, 000, 000.00 R 30, 000.00 |
| Contracts between | R 70, 000, 001 | and R 100, 000, 000.00 R 50, 000.00 |
| Contracts between | R 100, 000, 001 | and R 120, 000, 000.00 R 75, 000.00 |

2.2. Public Liability Insurance

2.2.1. Limit of indemnity – R 10, 000, 000.00

2.2.2. Deductibles

In respect of Liability arising out of-

Loss of or damage to public utilities R 10, 000.00

Loss of or damage to any property R 5, 000.00

Loss of or damage due to Spread of Fire R 10, 000.00

2.3. SASRIA Special Risk/ Riot Insurance: Arranged

Note: The above limits and deductibles are renewable annually and the current policy period is for 12 months effective 01/04/2023 to 31/03/2024.

3. INSURANCES TO BE ARRANGED BY CONTRACTORS

Refer to clause 39 of this contract.

3.1 Employer's Common Law Liability Insurance: Limit of Indemnity – not less than R10, 000,000.00

3.2 Motor Vehicle Liability Insurance: Limit of Indemnity – not less than R10, 000, 000.00

3.3 Where design or project management work is undertaken by or on behalf of the Contractor the Contractor shall disclose to the Employer details of the relevant Professional Indemnity Insurance which would apply in respect of liability arising from any act omission or neglect in such work.

OR

3.3 Where design or project management work is undertaken by or on behalf of the Contractor the Contractor shall satisfy the Employer that Professional Indemnity Insurance in respect of liability arising from any act omission or neglect in such work has been arranged. The limit of indemnity under this insurance shall be for not less than R..... . This insurance shall remain in force after

Annexure 1

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REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTE FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



SBD1

FORM A: INVITATION TO BID

PART A

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY) - PRASA

| | | | | | |
|-------------|---|---------------|------------------|---------------|----------|
| BID NUMBER: | 04/2023/CTN/INFRA | CLOSING DATE: | 24 November 2023 | CLOSING TIME: | 12h00 PM |
| DESCRIPTION | APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC AND 3kV DC OHTE FOR A PERIOD OF 36 MONTHS | | | | |

THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)

Metrorail Western Cape
1 Adderley Street
Propnet Building
6th Floor Room 622A
Cape Town

SUPPLIER INFORMATION

| | | | | |
|-------------------------|------|--|--------|--|
| NAME OF BIDDER | | | | |
| POSTAL ADDRESS | | | | |
| STREET ADDRESS | | | | |
| TELEPHONE NUMBER | CODE | | NUMBER | |
| CELLPHONE NUMBER | | | | |
| FACSIMILE NUMBER | CODE | | NUMBER | |
| E-MAIL ADDRESS | | | | |
| VAT REGISTRATION NUMBER | | | | |

| | | | | |
|---|------------------------------------|--------------------------|--|---|
| 2.1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED? | <input type="checkbox"/> Yes No | <input type="checkbox"/> | 2.2 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED? | <input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ANSWER PART B:3 BELOW] |
|---|------------------------------------|--------------------------|--|---|

SIGNATURE OF BIDDER **DATE**

| | |
|---|--|
| CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.) | |
|---|--|

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTE FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



With effect from **27 November 2023** the tender documents can be downloaded on National Treasury e-tender website

1. A compulsory tender briefing meeting with representatives of the Employer will take place at

VENUE: **Boardroom 163, Infrastructure Building, Off Malta Road, Salt River**
TIME: **10h00 am**
DATE: **07 November 2023**

- Bidders failing to attend the compulsory tender briefing session will be disqualified.

Tender No: 04/2023/CTN/INFRA

Description: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC AND 3kV DC OHTE FOR A PERIOD OF 36 MONTHS

I/We declare that I/We have read the above-mentioned notice and that it is understood by me/us.

Signed at _____ on this _____ (day) of _____ (month) 20____.

WITNESSES :

BIDDER :

Signature _____

FORM B: TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED—(NOT TO BE RE-TYPED) OR ONLINE
- 1.3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES).

WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION.

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER.
- 2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- 3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? YES NO
- 3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA?
 YES NO
- 3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA?
 YES NO
- 3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA?
 YES NO

IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTE FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



FORM D: SITE INSPECTION / PRE-TENDER BRIEFING SESSION (COMPULSORY)

| | |
|-----------------------|---|
| Request number: | 04/2023/CTN/INFRA |
| Request for Proposal: | APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC AND 3kV DC OHTE FOR A PERIOD OF 36 MONTHS |

Attendance

This is to certify that _____ has / have today attended the site inspection / tender briefing session to which this enquiry relates.

THUS DONE and SIGNED at _____ on this
_____ day of _____

for / on behalf of PRASA

Designation

Acknowledgement

This is to certify that the Bidder has / have acquainted himself / themselves with the Contract, Project Specification / Special Conditions, Specifications and / or Bills of Quantities / Schedule of Quantities / Schedule of Prices, together with the drawings enumerated therein, as laid down by the PRASA for the carrying out of the proposed WORKS to which the enquiry relates

THUS DONE and SIGNED at _____

on this _____ day of _____

DULY AUTHORISED SIGNATORY(IES)

WITNESSES

1. _____

1. _____

2. _____

2. _____

3. _____

3. _____

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTE FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



FORM E: STATEMENT OF WORKS SUCCESSFULLY CARRIED OUT BY BIDDER

CURRENT TENDER DETAILS

| | |
|-----------------|--|
| Request number: | 04/2023/CTN/INFRA |
| Request for: | APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC AND 3kV DC OHTE FOR A PERIOD OF 36 MONTHS |

Bidders must state particulars of the works successfully carried out

| CLIENT | TEL. NUMBER | NATURE OF WORKS | VALUE OF WORKS FOR WHICH BIDDER WAS DIRECTLY RESPONSIBLE | CONTRACT/PROJECT PERIOD |
|--------|-------------|-----------------|--|-------------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

If the space provided above is insufficient for all the information, Bidder should furnish the information separately.

FORM F: SECURITY SCREENING FORM

I/We the under-signed in my/our capacity as indicated below hereby declare that I/we do not have previous conviction/s or civil Judgment/s registered against my/our name/s. I further confirm that there is no criminal or civil proceeding pending or being instituted against me or the Institution. I also declare that there are no Criminal Investigations pending against me or the Institution.

SECTION 1

*to be completed by the Bidder (Compulsory)

| | |
|-----------------------------------|---|
| Name of Company/Trust/Partnership | Registration number of Company/Trust No |
| Physical Address | Vat Registration Number |
| Name of Auditing Firm | Previous Name/s of Company |
| Contact no. (Land line) | |
| Name of Holding Company if any | Tender Number |
| Tax Number/PIN Number | |
| | Banking Details |
| | Bank Name: |
| | Acc Number: |
| | Acc Holder: |
| | Branch Name: |
| | Branch Code: |

SECTION 2

Directors'/Trustees'/Partners' or Principals' Details

| Name & Surname | | Identity Number | Date of Appointment | Shares |
|----------------|--|-----------------|---------------------|--------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |

*If the company has more than five directors/principals a list of all shareholders must be appended as Annexure "A"

SECTION 3

Only applicable for the Security Providers

| Name of Company/Trust/Partnership | PSIRA Registration Number |
|-----------------------------------|---------------------------|
| | |

Please attach a letter of GOOD STANDING from PSIRA

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTS FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



SECTION 4

Declaration of all Judgments (Directors & Company) and Outstanding Debt

| Director / Company | Reason for Judgment | Date of Judgment | Nature of Debt | Amount |
|--------------------|---------------------|------------------|----------------|--------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |

*If more than five incidents are listed, attach a list as annexure "C"

SECTION 5

I / We the under-mentioned in my / our capacity as indicated hereby declare that I am / we are not insolvent nor have been liquidated or any steps in this regard have been taken or are pending against me / us. I /We further declare that I/We have not been part of an entity which was liquidated in the last 5 years.

| Full Name(s) | ID Number | Capacity | Signature |
|--------------|-----------|----------|-----------|
| 1. | | | |
| 2. | | | |
| 3. | | | |

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTC FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



SECTION 6

DECLARATION AND ACKNOWLEDGEMENT OF CONSENT

I Declare that the information provided above is true and correct. I also consent that a security screening be conducted on the company/trust or partnership and directors.

Contact Person: Tel no.

BIDDER'S DULY AUTHORISED SIGNATORY

Date

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTC FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



FORM- G: ACKNOWLEDGMENT

I / We, as duly authorised to sign on behalf of the Tenderer, hereby certify that the information provided is true and correct. If information is found to be incorrect, PRASA may in addition to other remedies; blacklist the supplier in question, circulate and publicise the nature of the contravention to all potential users of the supplier (both in the public and private sectors).

THUS DONE and SIGNED at _____

on this _____ day of _____

DULY AUTHORISED SIGNATORY(IES)

WITNESSES

1. _____

1. _____

2. _____

2. _____

3. _____

3. _____

SBD4 BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

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

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

| Full Name | Identity Number | Name of State institution |
|-----------|-----------------|---------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

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

2.2.1 If so, furnish particulars:

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

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

2.3.1 If so, furnish particulars:

3 DECLARATION

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

3.1 I have read and I understand the contents of this disclosure;

3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;

3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.

3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.

3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding

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

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTS FOR A PERIOD OF 36 MONTHS

BID NUMBER: 04/2023/CTN/INFRA



ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

.....

Signature

Date

.....

Position Name of bidder

SBD 5: THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

This document must be signed and submitted together with your bid

INTRODUCTION

The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

1 PILLARS OF THE PROGRAMME

1.1 The NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million will have a NIP obligation. This threshold of US\$ 10 million can be reached as follows:

- (a) Any single contract with imported content exceeding US\$10 million.
 - or
- (b) Multiple contracts for the same goods, works or services each with imported content exceeding US\$3 million awarded to one seller over a 2 year period which in total exceeds US\$10 million.
 - or
- (c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content will exceed US\$10 million.
 - or
- (d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$10 million.

1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30 % of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIP obligation on a *pro-rata* basis.

1.3 To satisfy the NIP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.

1.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

2 REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY

2.1 In order to ensure effective implementation of the programme, successful

bidders (contractors) are required to, immediately after the award of a contract that is in excess of **R10 million** (ten million Rands), submit details of such a contract to the DTI for reporting purposes.

2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million Rands) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1. (d) above.

3 BID SUBMISSION AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)

3.1 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with the bid on the closing date and time.

3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1

(d) above and to enable the DTI in determining the NIP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million Rands), to contact and furnish the DTI with the following information:

- Bid / contract number.
- Description of the goods, works or services.
- Date on which the contract was accepted.
- Name, address and contact details of the government institution.
- Value of the contract.
- Imported content of the contract, if possible.

3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr Elias Malapane within five (5) working days after award of the contract. Mr Malapane may be contacted on telephone (012) 394 1401, facsimile (012) 394 2401 or e-mail at Elias@thedi.gov.za for further details about the programme.

4 PROCESS TO SATISFY THE NIP OBLIGATION

4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:

- a. the contractor and the DTI will determine the NIP obligation;
- b. the contractor and the DTI will sign the NIP obligation agreement;
- c. the contractor will submit a performance guarantee to the DTI;
- d. the contractor will submit a business concept for consideration and approval by the DTI;
- e. upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
- f. the contractor will implement the business plans; and
- g. the contractor will submit bi-annual progress reports on approved plans to the DTI.

4.2 The NIP obligation agreement is between the DTI and the successful bidder

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTC FOR A PERIOD OF 36 MONTHS

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(contractor)and, therefore, does not involve the purchasing institution.

Bid number Closing date:.....

Name of bidder.....

Postal address

.....
Signature..... Name (in print).....

Date.....

SBD 6.1

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 **To be completed by the organ of state**

- a) The applicable preference point system for this tender is the 80/20 preference point system.
- The 80/20 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

1.4 **To be completed by the organ of state:**

The maximum points for this tender are allocated as follows:

| | POINTS |
|--|------------|
| PRICE | 80 |
| SPECIFIC GOALS | 20 |
| Total points for Price and SPECIFIC GOALS | 100 |

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

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

2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1 POINTS AWARDED FOR PRICE

3.1.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

80/20

$$Ps = 80 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

3.2 FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

3.2.1 POINTS AWARDED FOR PRICE

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

80/20

$$Ps = 80 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

Where

Ps = Points scored for price of tender under consideration
 Pt = Price of tender under consideration
 P_{max} = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/documentation stated in the conditions of this tender:

4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

- (a) an invitation for tender for income-generating contracts, that either the 80/20 reference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
- (b) any other invitation for tender, that either the 80/20 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for 80/20 preference point system.

Table 1: Specific goals for the tender and points claimed are indicated per the table below.
(Note to organs of state: Where 80/20 preference point system is applicable, corresponding points must also be indicated as such.

Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)

| The specific goals allocated points in terms of this tender | Number of points allocated (80/20 system) (To be completed by the organ of state) | Number of points claimed (80/20 system) (To be completed by the tenderer) | Evidence |
|---|--|--|--|
| B-BBEE Level1/Level 2 | 4 | | B-BBEE Certificate/Affidavit (in case of JV, a consolidated score card will be accepted) |
| Minimum 51% Black youth owned | 4 | | Certified copy of ID Documents of the Owners |
| Minimum 51% Black women owned | 4 | | Certified copy of ID Documents of the Owners |
| Minimum 51% Black owned | 4 | | B-BBEE Certificate/Affidavit |

| | | | |
|----------------------------|----|--|--|
| EME or QSE 51% Black Owned | 4 | | Audited Annual Financial/ B-BBEE Certificate / Affidavit |
| Total | 20 | | |

DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

Partnership/Joint Venture / Consortium

One-person business/sole property

Close corporation

Public Company

Personal Liability Company

(Pty) Limited

Non-Profit Company

State Owned Company

[Tick applicable box]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –

- (a) disqualify the person from the tendering process;
- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution, if deemed necessary.

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SIGNATURE(S) OF TENDERER(S)

SURNAME AND NAME:

DATE:

ADDRESS:

.....

.....

REQUEST FOR THE: APPOINTMENT OF A CONTRACTOR TO PROVIDE AN AS AND WHEN MAINTENANCE, SERVICING AND REPAIR FOR 11kV AC, 33kV AC and 3kV DC OHTE FOR A PERIOD OF 36 MONTHS

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ANNEXURE B