

ANNEXURE A



REQUEST FOR PROPOSAL (RFP) FOR THE APPOINTMENT OF A SERVICE PROVIDER FOR EDUCATION, TRAINING & DEVELOPMENT (ETD) PROGRAMMES FOR THE FP&M SETA

JHB-FPMS-03-22-23

Date Issued: 08 NOVEMBER 2022

Closing Date: 29 NOVEMBER 2022

Time: 11:00am

Bid Validity Period: 120 days

TENDER TO BE SUBMITTED AT THE FOLLOWING ADDRESS:

FP&M SETA office,
8 Summit Road
Randburg
DunkeldWest
Johannesburg
2169

COMPULSORY BRIEFING *SESSION*

WEDNESDAY 16 NOVEMBER 2022 AT 11H00

FP&M SETA office, 8 Summit Road Randburg
DunkeldWest
Johannesburg
2169

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1. INTRODUCTION

The Fibre Processing and Manufacturing (FP&M) SETA was established in terms of the Skills Development Act of 1998.

The FP&M SETA is accredited as a quality assuring body by the South African Qualification Authority, in terms of regulation R1127 wherein the FP&M SETA is required to perform the following functions:

- a. accredit constituent providers for specific standards or qualifications registered on the National Qualifications Framework;
- b. promote quality amongst constituent providers;
- c. monitor provision by constituent providers;
- d. evaluate assessment and facilitation of moderation among constituent providers;
- e. register constituent assessors for specified registered standards or qualifications in terms of the criteria established for this purpose;
- f. take responsibility for the certification of constituent learners;
- g. develop a sector skills plan within a framework of the National Skills Development Strategy
- h. plan and report on the implementation of its SSP and service level agreement
- i. approve Workplace Skills Plans
- j. disburse mandatory and discretionary grants

2. PURPOSE OF THIS REQUEST FOR PROPOSAL (RFP)

The purpose of this Request for Proposal (RFP) is to solicit proposals from potential bidder(s) for Education, Training & Development (ETD) Programmes for a period of 6 months, on 80/20 PPPFA.

This RFP document details and incorporates, as far as possible, the tasks and responsibilities of the potential bidder required by the FP&M SETA appointment of a suitable organisation for Education, Training & Development (ETD) Programmes for the FP&M SETA .

This RFP does not constitute an offer to do business with the FP&M SETA, but merely serves as an invitation to bidder(s) to facilitate a requirements-based decision process.

3. LEGISLATIVE FRAMEWORK OF THE BID

3.1 Tax Legislation

3.1.1 Bidder(s) must be compliant when submitting a proposal to FP&M SETA 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).

3.1.2 It is a condition of this bid 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.

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

3.1.4 It is a requirement that bidders grant a written confirmation when submitting this bid that SARS may on an ongoing basis during the tenure of the contract disclose the bidder's tax compliance status and by submitting this bid such confirmation is deemed to have been granted.

3.1.5 Bidders are required to be registered on the Central Supplier Database and the National Treasury shall verify the bidder's tax compliance status through the Central Supplier Database.

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

3.2 Procurement Legislation

The FP&M SETA has a detailed evaluation methodology premised on Treasury Regulation 16A3 promulgated under Section 76 of the Public Finance Management Act, 1999 (Act, No. 1 of 1999), the Preferential Procurement Policy Framework Act 2000 (Act, No.5 of

2000) and the Broad-Based Black Economic Empowerment Act, 2003 (Act, No. 53 of 2003).

3.3 Technical Legislation and/or Standards

Bidder(s) should be cognisant of the legislation and/or standards specifically applicable to the services.

4. TIMELINE OF THE BID PROCESS

The period of validity of tender and the withdrawal of offers, after the closing date and time is **120** days. The project timeframes of this bid are set out below:

Activity	Due Date
Advertisement of bid on Government e-tender portal	08 November 2022
Compulsory Briefing Session	Yes – Wednesday 16 November 2022 11h00 – 8 Summit Rd 1 st Floor Randburg DunkeldWest Johannesburg 2196
Closing Date for Questions and Answers relating to bid from bidder(s)	22 November COB
Bid closing date	29 November 2022 at 11:00 am
Enquiries must be sent in writing to the following email addresses	tenders@fpmseta.org.za
Notice to bidder(s)	FP&M SETA will endeavor to inform bidders of the progress until conclusion of the tender.

All dates and times in this bid are South African standard time.

Any time or date in this bid is subject to change at the FP&M SETA's discretion. The establishment of a time or date in this bid does not create an obligation on the part of the FP&M SETA to take any action or create any right in any way for any bidder to demand that any action be taken on the date established. The bidder accepts that, if the FP&M SETA extends the deadline for bid submission (the Closing Date) for any reason, the requirements of this bid otherwise apply equally to the extended deadline.

5. CONTACT AND COMMUNICATION

5.1 A nominated official of the bidder(s) can make enquiries in writing, to Supply Chain Management in writing to tenders@fpmseta.org.za. The bid reference number must be mentioned in all correspondence.

5.2 The delegated office of the FP&M SETA may communicate with Bidder(s) where clarity is sought in the bid proposal.

5.3 Any communication to an official or a person acting in an advisory capacity for the FP&M SETA in respect of the bid between the closing date and the award of the bid by the Bidder(s) is discouraged.

5.4 All communication between the Bidder(s) and the FP&M SETA must be done in writing.

5.5 Whilst all due care has been taken in connection with the preparation of this bid, the FP&M SETA makes no representations or warranties that the content of the bid or any information communicated to or provided to Bidder(s) during the bidding process is, or will be, accurate, current or complete. The FP&M SETA, and its employees and advisors will not be liable with respect to any information communicated which may not accurate, current or complete.

5.6 If Bidder(s) finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in this bid or any other information provided by the FP&M SETA (other than minor clerical matters), the Bidder(s) must promptly notify the FP&M SETA in writing of such discrepancy, ambiguity, error or inconsistency in order to afford the FP&M SETA an opportunity to consider what corrective action is necessary (if any).

5.7 Any actual discrepancy, ambiguity, error or inconsistency in the bid or any other information provided by the FP&M SETA will, if possible, be corrected and provided to all Bidder(s) without attribution to the Bidder(s) who provided the written notice.

5.8 All persons (including Bidder(s)) obtaining or receiving the bid and any other information in connection with the Bid or the Tendering process must keep the contents of the Bid and other such information confidential, and not disclose or use the information except as required for the purpose of developing a proposal in response to this Bid.

6. LATE BIDS

Bids received after the closing date and time, at the address indicated in the bid documents, will not be accepted for consideration and where practicable, be returned unopened to the Bidder(s).

7. COUNTER CONDITIONS

Bidders' attention is drawn to the fact that amendments to any of the Bid Conditions or setting of counter conditions by Bidders or qualifying any Bid Conditions will result in the invalidation of such bids.

8. FRONTING

8.1 Government supports the spirit of broad based black economic empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent and legally compliant manner. Against this background the Government condemn any form of fronting.

8.2 The Government, in ensuring that Bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry, be established during such enquiry / investigation, the onus will be on the Bidder / contractor to prove that fronting does not exist. Failure to do so within a period of 14 days from date of notification may invalidate the bid / contract and may also result in the restriction of the Bidder /contractor to conduct business with the public sector for a period not exceeding ten years, in addition to any other remedies the FP&M SETA may have against the Bidder / contractor concerned.

9. SUPPLIER DUE DILIGENCE

The FP&M SETA reserves the right to conduct supplier due diligence prior to final award or at any time during the contract period. This may include site visits and requests for additional information.

10. SUBMISSION OF PROPOSALS

10.1 Bid documents must be placed in the tender box at the FP&M SETA Offices, Reception Area, 8 Summit Road, 1st Floor, Dunkeld West, Johannesburg 2169 on the closing date 29 November 2022 at 11:00am or before the closing date between 9am to 3pm.

10.2 Bid documents will only be considered if received by the FP&M SETA before the closing date and time.

10.3 The bidder(s) are required to submit **Two (2)** copies of **tender documents 1: one (1) original and one (1) duplicate** and submit **One (1) electronic version** copy of tender document. **2 Two** price quotation (sealed separately) **(1) one original and (1) one, duplicate** and submit **(1) electronic version** **Example: USB or Disk** with content of each file by the Closing date **29 November 2022 at 11:00am**. Each file and USB must be marked correctly and sealed separately for ease of reference. Furthermore, the file and information in the USB must be labelled and submitted in the following format:

FILE 1 (TECHNICAL FILE)	FILE 2 (PRICE & BBBEE)
Exhibit 1: Pre-qualification documents <i>(Refer to Section 14.1 - Phase 1: Pre-qualification Criteria (Table 1))</i>	Exhibit 1: Pricing Schedule <i>(Refer to Section 15 – Pricing Proposal)</i>
Exhibit 2: <ul style="list-style-type: none">Technical Responses and Bidder Compliance checklist for Technical EvaluationSupporting documents for technical responses. <i>(Refer to Section 14.2 - Phase 2: Technical Evaluation Criteria)</i>	
Exhibit 3: <ul style="list-style-type: none">General Conditions of Contract (GCC)	
Exhibit 4: <ul style="list-style-type: none">Company ProfileAny other supplementary information	

10.4 Bidders are requested to ***initial each page*** of the tender document on the top right hand corner.

11. PRESENTATION /SITE VISIT DUE DILIGENCE

The FP&M SETA reserves the right to request presentations/site visit from the short-listed Bidders as part of the bid evaluation process.

12. DURATION OF THE CONTRACT

The successful bidder will be appointed for a period of **6 months**, after signing of a contract by the successful bidder. All work is to be carried out in accordance with the time schedule as agreed with the FP&M SETA.

13. TERMS OF REFERENCE

13.1 PURPOSE OF THE BID

The purpose of this bid is to invite suitable Service Providers to submit their bids for Education, Training & Development (ETD) Programmes for the Fibre Processing and Manufacturing Sector Education and Training Authority (FP&M SETA) on 80/20 PPPFA.

13.2 BACKGROUND

The Fibre Processing and Manufacturing (FP&M) SETA was established by the Minister of higher Education and Training on 01 April 2011 to 31 March 2016 with the license extended further until 31 March 2030.

The FP&M SETA is accredited as a quality assuring body by the South African Qualification Authority, in terms of regulation R1127 wherein the FP&M SETA is required to perform the following functions:

- a. Accredite constituent providers for specific standards or qualifications registered on the National Qualifications Framework;
- b. Promote quality amongst constituent providers;
- c. Monitor provision by constituent providers;
- d. Evaluate assessment and facilitation of moderation among constituent providers;

- e. Register constituent assessors for specified registered standards or qualifications in terms of the criteria established for this purpose;
- f. Take responsibility for the certification of constituent learners;

FP&M SETA is searching for service providers for Education, Training & Development (ETD) Programmes for the FP&M SETA

14. EVALUATION AND SELECTION CRITERIA

The FP&M SETA has set minimum standards (Phases) that a bidder needs to meet in order to be evaluated and selected as a successful bidder. The minimum standards consist of the following:

Pre-qualification Criteria (Phase 1)	Technical Evaluation Criteria (Phase 2)	Price and B- BBEE Evaluation (Phase 3)
Bidders must submit all documents as outlined in Phase 1 Bidders who do not comply on Phase 1 will be contacted to submit their administrative documents. Failure to comply within (7) calendar days given to submit administrative documents will lead to disqualification.	Bidder(s) are required to achieve a minimum of 80 points for Technical requirements out of 100 points to proceed to Phase 3	Bidder(s) will be evaluated out of price and B-BBEE on Phase 3

14.1 Phase 1: Pre-qualification Criteria (Administrative Requirements)

Without limiting the generality of FP&M SETA's other critical requirements for this Bid, bidder(s) must submit the documents listed in **Table 1** below. All documents must be completed and signed by the duly authorized representative of the prospective bidder(s).

Table 1: Documents that must be submitted for Pre-qualification

Document that must be submitted	Comply	Do not Comply
Invitation to Bid – SBD 1 Complete and sign the supplied pro forma document		
Tax Status SBD 1 1.Written confirmation that SARS may on an ongoing basis during the tenure of the contract disclose the bidder's tax compliance status. 2.Proof of Registration on the Central Supplier Database 3.Vendor number		
Preference Point Claim Form – SBD 6.1 Non-submission will lead to a zero (0) score on BBBEE		
Registration on Central Supplier Database (CSD) The Service Provider must be registered as a service provider on the Central Supplier Database (CSD). If you are not registered proceed to complete the registration of your company prior to submitting your proposal. Visit https://secure.csd.gov.za/submitting your proposal. Visit to obtain your vendor number. Submit proof of registration		

Financial Statement not older than 2 years The submitted statements must be audited		
Pricing Schedule Submit full details of the pricing proposal in a separate Envelope 1 original, 1 duplicate and 1 electronic version		

14.2 Phase 2: Technical Evaluation Criteria = 100 points

Bids that do not obtain a **minimum score of 80** for functionality evaluation will be disqualified and will not be considered for further evaluation and price and BBBEE points.

All bidders that submit will be evaluated according to the following:

- Administrative Requirements
- Technical Functionality
- PPPFA (Price and BBBEE preference points)

Proposals will be evaluated, and points will be allocated and weighed on the following basis:

NO	CRITERION	INDIVIDUAL ITEM WEIGHT	TOTAL WEIGHTING
1.	Experience and Expertise of the service provider in undertaking similar projects and performing similar work particularly in the SETA or training provider environment. 1. Company Profile indicating expertise and capacity - Project Team CVs - list of facilitators, assessors, and moderators. Minimum of 3 persons per intervention in the major provinces and 2 in the smaller provinces 2. Ability to deliver training nationally 3. Acceptable training venues be used 4. Proof of handling a project of over R4 Million	10 Points 5 Points 5 Points 5 Points	30
2.	Proof of accreditation with ETDP SETA 1. ETDP Accreditation	5 Points	5 Points
3.	References Proof of working with SETAs and training providers / TVETs - a minimum of three (3) SETA references and (2) Public / Private Provider references must be provided with reference to ETD programmes.	10 Points	10 Points
4.	Detailed Programme delivery, Programme relevance and learner support strategy to ensure that learners submit portfolios of evidence. 1. Sound implementation and delivery methodology	5 Points	

NO	CRITERION	INDIVIDUAL ITEM WEIGHT	TOTAL WEIGHTING
	2. Sound learner support strategy 3. Understanding of the FP&M Sector 4. Relevance – Course Outline and Technical Proposal alignment to project objectives 5. Any value add services – Bonus Points	5 Points 5 Points 5 Points 5 Points	25
5.	Prospective provider's organizational resource capacity and capability to undertake the project	15 Points	15
6.	Project Implementation Plan (outlining Key Performance Indicators (KPI) / Key activities with Objectively Verifiable Indicators (OVI), Milestones, Budget, Deliverables, etc.) 1. Sound project plan covering all of the above	15 Points	15
	Total		Tw 100

Bidders who do not obtain a threshold of 80 for functionality will be disqualified immediately and will not be eligible to be evaluated on Price and BBEE

14.3 Phase 3: Price and BBEE Evaluation (80+20) = 100 points

Only Bidders that have met the **80** points threshold in Phase 1 will be evaluated in Phase 2 for price and BBEE. Price and BBEE will be evaluated as follows:

In terms of regulation 6 of the Preferential Procurement Regulations pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), responsive bids will be adjudicated on the **80/20**-preference point system in terms of which points are awarded to bidders on the basis of:

- The bid price (maximum **80** points)
- B-BBEE status level of contributor (maximum **20** points)

i. Stage 1 – Price Evaluation (80 Points)

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

The following formula will be used to calculate the points for price:

Where

Ps = Points scored for comparative price of bid under consideration

Pt = Comparative price of bid under consideration

Pmin = Comparative price of lowest acceptable bid

ii. Stage 2 – BBEE Evaluation (20 Points)

a. BBEE Points allocation

A maximum of **20** points may be allocated to a bidder for attaining their B-BBEE status level of contributor in accordance with the table below:

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

B-BBEE points may be allocated to bidders on submission of the following documentation or evidence:

- A duly completed Preference Point Claim Form: Standard Bidding Document (SBD 6.1); and
- B-BBEE Certificate

b. Joint Ventures, Consortiums and Trusts

A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.

A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.

Bidders must submit concrete proof of the existence of joint ventures and/or consortium arrangements. The **FP&M SETA** will accept signed agreements as acceptable proof of the existence of a joint venture and/or consortium arrangement.

The joint venture and/or consortium agreements must clearly set out the roles and responsibilities of the Lead Partner and the joint venture and/or consortium party. The agreement must also clearly identify the Lead Partner, who shall be given the power of

attorney to bind the other party/parties in respect of matters pertaining to the joint venture and/or consortium arrangement.

iii. Stage 3 (80 + 20 = 100 points)

The Price and BBBEE points will be consolidated

15. PRICING PROPOSALS

Pricing Proposal must be submitted in separate sealed file (File 2). The file must clearly marked "Pricing Proposals" and the in file there must be a detail price breakdown.

Bidders are required to indicate rate per each item inclusive of all applicable taxes;

Bidders are required to indicate if prices are fixed or not, If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index.

NOTES REGARDING PRICING

*The rates **MUST** be all inclusive. This means, all direct and indirect related cost must be included. Note that failure to propose the rates will render the entire bid as non-responsive and will result in the bidder scoring zero out of 80 points achievable on the price criteria*

16. GENERAL CONDITIONS OF CONTRACT

Any award made to a bidder(s) under this bid is conditional, amongst others, upon –

- a. The bidder(s) accepting the terms and conditions contained in the General Conditions of Contract as the minimum terms and conditions upon which FP&M SETA is prepared to enter into a contract with the successful Bidder(s).
- b. The bidder submitting the General Conditions of Contract to the FP&M SETA together with its bid, duly signed by an authorised representative of the bidder.

17. CONTRACT PRICE ADJUSTMENT

Contract price adjustments will be done annually on the anniversary of the contract start date. The price adjustment will be based on the Consumer Price Index Headline Inflation

STATS SA P0141 (CPI), Table E	Table E - All Items
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18. SERVICE LEVEL AGREEMENT

18.1. Upon award the FP&M SETA and the successful bidder will conclude a Service Level Agreement regulating the specific terms and conditions applicable to the services being procured by the FP&M SETA, more or less in the format of the draft Service Level Indicators included in this tender pack.

18.2. The FP&M SETA reserves the right to vary the proposed draft Service Level Indicators during the course of negotiations with a bidder by amending or adding thereto.

18.3. Bidder(s) are requested to:

- a. Comment on draft Service Level Indicators and where necessary, make proposals to the indicators;
- b. Explain each comment and/or amendment; and
- c. Use an easily identifiable colour font or “track changes” for all changes and/or amendments to the Service Level Indicators for ease of reference.

18.4. The FP&M SETA reserves the right to accept or reject any or all amendments or additions proposed by a bidder if such amendments or additions are unacceptable to the FP&M SETA or pose a risk to the organisation.

19. SPECIAL CONDITIONS OF THIS BID

The FP&M SETA reserves the right:

19.1. To award this tender to a bidder that did not score the highest total number of points, only in accordance with section 2(1)(f) of the PPPFA (Act 5 of 2000)

19.2. To negotiate with one or more preferred bidder(s) identified in the evaluation process, regarding any terms and conditions, including price without offering the same opportunity to any other bidder(s) who has not been awarded the status of the preferred bidder(s).

19.3. To accept part of a tender rather than the whole tender.

19.4. To carry out site inspections, product evaluations or explanatory meetings in order to verify the nature and quality of the services offered by the bidder(s), whether before or after adjudication of the Bid.

19.5. To correct any mistakes at any stage of the tender that may have been in the Bid documents or occurred at any stage of the tender process.

19.6. To cancel and/or terminate the tender process at any stage, including after the Closing Date and/or after presentations have been made, and/or after tenders have been evaluated and/or after the preferred bidder(s) have been notified of their status as such.

25.7. Award to multiple bidders based either on size or geographic considerations.

20. The FP&M SETA REQUIRES BIDDER(S) TO DECLARE

In the Bidder's Technical response, bidder(s) are required to declare the following:

20.1. Confirm that the bidder(s) is to: –

- a. Act honestly, fairly, and with due skill, care and diligence, in the interests of the FP&M SETA;
- b. Have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of the services;
- c. Act with circumspection and treat the FP&M SETA fairly in a situation of conflicting interests;
- d. Comply with all applicable statutory or common law requirements applicable to the conduct of business;
- e. Make adequate disclosures of relevant material information including disclosures of actual or potential own interests, in relation to dealings with the FP&M SETA;
- f. Avoidance of fraudulent and misleading advertising, canvassing and marketing;
- g. To conduct their business activities with transparency and consistently uphold the interests and needs of the FP&M SETA as a client before any other consideration; and

- h. To ensure that any information acquired by the bidder(s) from the FP&M SETA will not be used or disclosed unless the written consent of the client has been obtained to do so.

21. CONFLICT OF INTEREST, CORRUPTION AND FRAUD

21.1. The FP&M SETA reserves its right to disqualify any bidder who either itself or any of whose members (save for such members who hold a minority interest in the bidder through shares listed on any recognized stock exchange), indirect members (being any person or entity who indirectly holds at least a 15% interest in the bidder other than in the context of shares listed on a recognized stock exchange), directors or members of senior management, whether in respect of FP&M SETA or any other government organ or entity and whether from the Republic of South Africa or otherwise ("Government Entity")

- a. engages in any collusive tendering, anti-competitive conduct, or any other similar conduct, including but not limited to any collusion with any other bidder in respect of the subject matter of this bid;
- b. seeks any assistance, other than assistance officially provided by a Government Entity, from any employee, advisor or other representative of a Government Entity in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity;
- c. makes or offers any gift, gratuity, anything of value or other inducement, whether lawful or unlawful, to any of the FP&M SETA's officers, directors, employees, advisors or other representatives;
- d. makes or offers any gift, gratuity, anything of any value or other inducement, to any Government Entity's officers, directors, employees, advisors or other representatives in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity;
- e. accepts anything of value or an inducement that would or may provide financial gain, advantage or benefit in relation to procurement or services provided or to be provided to a Government Entity;

- f. pays or agrees to pay to any person any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or results from, the award of any tender, contract, right or entitlement which is in any way related to procurement or the rendering of any services to a Government Entity;
- g. has in the past engaged in any matter referred to above; or
- h. has been found guilty in a court of law on charges of fraud and/or forgery, regardless of whether or not a prison term was imposed and despite such bidder, member or director's name not specifically appearing on the List of Tender Defaulters kept at National Treasury.

22. MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT

22.1. The bidder should note that the terms of its Tender will be incorporated in the proposed contract by reference and that the FP&M SETA relies upon the bidder's Tender as a material representation in making an award to a successful bidder and in concluding an agreement with the bidder.

22.2. It follows therefore that misrepresentations in a Tender may give rise to service termination and a claim by the FP&M SETA against the bidder notwithstanding the conclusion of the Service Level Agreement between the FP&M SETA and the bidder for the provision of the Service in question. In the event of a conflict between the bidder's proposal and the Service Level Agreement concluded between the parties, the Service Level Agreement will prevail.

23. PREPARATION COSTS

The Bidder will bear all its costs in preparing, submitting and presenting any response or Tender to this bid and all other costs incurred by it throughout the bid process. Furthermore, no statement in this bid will be construed as placing the FP&M SETA, its employees or agents under any obligation whatsoever, including in respect of costs,

expenses or losses incurred by the bidder(s) in the preparation of their response to this bid.

24. INDEMNITY

If a bidder break FP&M SETAs the conditions of this bid and, as a result of that breach, the FP&M SETA incurs costs or damages (including, without limitation, the cost of any investigations, procedural impairment, repetition of all or part of the bid process and/or enforcement of intellectual property rights or confidentiality obligations), then the bidder indemnifies and holds the FP&M SETA harmless from any and all such costs which the FP&M SETA may incur and for any damages or losses the FP&M SETA may suffer.

25. PRECEDENCE

This document will prevail over any information provided during any briefing session whether oral or written, unless such written information provided, expressly amends this document by reference.

26. LIMITATION OF LIABILITY

A bidder participates in this bid process entirely at its own risk and cost. The FP&M SETA shall not be liable to compensate a bidder on any grounds whatsoever for any costs incurred or any damages suffered as a result of the Bidder's participation in this Bid process.

27. TAX COMPLIANCE

No tender shall be awarded to a bidder who is not tax compliant. The FP&M SETA reserves the right to withdraw an award made, or cancel a contract concluded with a successful bidder in the event that it is established that such bidder was in fact not tax compliant at the time of the award, or has submitted a fraudulent Tax Clearance Certificate to The FP&M SETA, or whose verification against the Central Supplier Database (CSD) proves non-compliant. The FP&M SETA further reserves the right to cancel a contract with a successful bidder in the event that such bidder does not remain tax compliant for the full term of the contract.

28. TENDER DEFAULTERS AND RESTRICTED SUPPLIERS

No tender shall be awarded to a bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. The FP&M SETA reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been blacklisted with National Treasury by another government institution.

29. GOVERNING LAW

South African law governs this bid and the bid response process. The bidder agrees to submit to the exclusive jurisdiction of the South African courts in any dispute of any kind that may arise out of or in connection with the subject matter of this bid, the bid itself and all processes associated with the bid.

30. RESPONSIBILITY FOR SUB-CONTRACTORS AND BIDDER'S PERSONNEL

A bidder is responsible for ensuring that its personnel (including agents, officers, directors, employees, advisors and other representatives), its sub-contractors (if any) and personnel of its sub-contractors comply with all terms and conditions of this bid. In the event that The FP&M SETA allows a bidder to make use of sub-contractors, such sub-contractors will at all times remain the responsibility of the bidder and the FP&M SETA will not under any circumstances be liable for any losses or damages incurred by or caused by such sub-contractors.

31. CONFIDENTIALITY

Except as may be required by operation of law, by a court or by a regulatory authority having appropriate jurisdiction, no information contained in or relating to this bid or a bidder's tender(s) will be disclosed by any bidder or other person not officially involved with the FP&M SETA's examination and evaluation of a Tender.

No part of the bid may be distributed, reproduced, stored or transmitted, in any form or by any means, electronic, photocopying, recording or otherwise, in whole or in part except for

the purpose of preparing a Tender. This bid and any other documents supplied by the FP&M SETA remain proprietary to the FP&M SETA and must be promptly returned to the FP&M SETA upon request together with all copies, electronic versions, excerpts or summaries thereof or work derived there from.

Throughout this bid process and thereafter, bidder(s) must secure the FP&M SETA's written approval prior to the release of any information that pertains to (i) the potential work or activities to which this bid relates; or (ii) the process which follows this bid. Failure to adhere to this requirement may result in disqualification from the bid process and civil action.

32. THE FP&M SETA PROPRIETARY INFORMATION

Bidder will on their bid cover letter make declaration that they did not have access to any the FP&M SETA proprietary information or any other matter that may have unfairly placed that bidder in a preferential position in relation to any of the other bidder(s).

33. AVAILABILITY OF FUNDS

Should funds no longer be available to pay for the execution of the responsibilities of this bid (RFP: **JHB-FPMS-03-22-23**), the FP&M SETA may terminate the Agreement at its own discretion or temporarily suspend all or part of the services by notice to the successful bidder who shall immediately make arrangements to stop the performance of the services and minimize further expenditure: Provided that the successful bidder shall thereupon be entitled to payment in full for the services delivered, up to the date of cancellation or suspension.