

**PROJECT: PHASE 2 SOLOMON-LINDA TOWN
URBAN DESIGN FRAMEWORK WITH AN
IMPLEMENTATION PLAN 2026**



TERMS OF REFERENCE (ToR)

uMSINGA LOCAL MUNICIPALITY

Section Dept.: **Development Planning Department**

Tel: **(033) - 493 8000/29**

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**Tugela Ferry
3010**

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MSINGA MUNICIPALITY

INVITATION TO TENDER

Bids are hereby invited in terms of section 18(a) of the Msinga Municipality's Supply Chain Management Policy together with section 83 of the Municipal Systems Act, No.32 of 2000, as amended and read together with sections 110,111 and 112 of the Municipal Finance Management Act No.56 of 2003 for:

APPOINTMENT OF A SERVICE PROVIDER FOR PHASE 2 SOLOMON-LINDA TOWN URBAN DESIGN FRAMEWORK WITH AN IMPLEMENTATION PLAN 2026

DESCRIPTION OF TENDER	TENDER NUMBER	NO DOCUMENT ONLY	DATE, TIME AND VENUE FOR COMPULSORY BRIEFING MEETING	CLOSING DATE AND TIME
APPOINTMENT OF A SERVICE PROVIDER FOR PHASE 2 SOLOMON-LINDA TOWN URBAN DESIGN FRAMEWORK WITH AN IMPLEMENTATION PLAN 2026	MS/2026/2027/001/951/DP	TOR WILL BE AVAILABLE ON MUNICIPAL WEBSITE: WWW.UMSINGA.GOV.ZA	29 JULY 2026 AT MUNICIPAL OFFICES, AT 10AM	07 AUGUST 2026 AT 12PM

TENDER DOCUMENTS

No tender document only TOR , available from Municipal website, www.umsinga.gov.za

TENDER ENQUIRIES

All enquiries shall be directed to IDP Manager , Mr S Shabalala or Olwethu Radebe on 033-4938029 during office hours.

SUBMISSION OF TENDERS

Tenders must be enclosed in a sealed envelope, addressed to the Municipal Manager, Msinga Municipality and clearly marked: **TENDER NUMBER, APPOINTMENT OF A SERVICE PROVIDER FOR PHASE 2 SOLOMON-LINDA TOWN URBAN DESIGN FRAMEWORK WITH AN IMPLEMENTATION PLAN 2026** and the bidders name and details. Tenders must be deposited in the tender box at the office of Msinga Municipality on the main Road (R33) opposite MPCC, Tugela Ferry on or before 12h00 on the closing date and no late or faxed tenders will be considered. Msinga Municipality does not bind itself to accept the lowest of any tender and reserves the right to accept the whole or any part of the tender.

1. EVALUATION CRITERIA

a) Administrative Compliance.

b) Functionality

c) PPPFA 2022 80/20, ownership specific goals set as follows:

- | | |
|--|------------|
| • Race (Black People – CSD Copy) | 5 Points |
| • Gender (Black women – CSD Copy) | 10 Points |
| • Enterprises located in Msinga municipal area | 2.5 Points |
| • Enterprises located in KZN | 2.5 Points |

a) Administrative Compliance.

1. Invalid or non-submission of the following documents will lead to immediate disqualification.

- **OBTAINING 70 POINTS ON FUNCTIONALITY**

- ✓ ATTACHED TAX CLERANCE PIN
- ✓ VALID LETTER OF GOOD STANDING
- ✓ CSD FULL REPORT
- ✓ COMPLETED AND SIGNED FORM OF OFFER
- ✓ FULLY COMPLETED MBD FORMS
- ✓ ATTENDED COMPULSORY SITE BRIEFING AND INSPECTION
- ✓ FULLY SIGNED AND INITIATED TENDER DOCUMENT
- ✓ MUNICIPAL RATES STATEMENT OR SWORN AFFIDAVIT FOR BUSINESS OPERATING IN RURAL AREAS
- ✓ JV AGREEMENT (IF APPLICABLE);

SL SOKHELA

MUNICIPAL MANAGER

2. TERMS OF REFERENCE

2.1 PURPOSE OF ASSIGNMENT

The purpose of these Terms of Reference (ToR) is to invite bids for the appointment of a suitably qualified multidisciplinary service provider to continue and complete the Solomon-Linda Urban Design Framework Plan (UDF) and associated statutory processes. Baseline outputs have been produced under a prior appointment and will be handed over to the successful bidder. This procurement focuses on the outstanding scope as defined in this ToR. The service provider must deliver outputs that are legally compliant, implementable, and capable of supporting SPLUMA decision-making, NEMA Environmental Authorisation, and subsequent Surveyor-General and Deeds Office processes. The project will be implemented in a phased approach and must be completed within eighteen (18) months from the date of appointment.

2.2 INTRODUCTION AND BACKGROUND

uMzinga Local Municipality is a Category B municipality within uMzinyathi District Municipality. The municipal area is predominantly rural and includes significant land under Traditional Authority jurisdiction held in trust by the Ingonyama Trust, alongside commercial farmland and limited urbanised settlements. Solomon-Linda Town (formerly Pomeroy) functions as the Municipality's key rural service centre, with Tugela Ferry, Keates Drift, Cwaka and other settlements forming part of the broader settlement network.

In accordance with section 21 of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA), the Municipal Spatial Development Framework (SDF) may identify designated areas requiring more detailed local plans. The Municipality has identified Solomon-Linda Town as a priority area requiring an Urban Design Framework (UDF) to guide land use management, infrastructure coordination, investment prioritisation and regulatory compliance, and to support structured economic development.

The Solomon-Linda UDF project has commenced and baseline outputs have been produced under a prior appointment; including core diagnostic, spatial development proposals and draft layout plans. Additional and outstanding scope has since been identified, including specialist studies required to inform statutory planning and environmental authorisation processes, and the completion of statutory processes through to decision stage. Due to the extent/value of the outstanding scope, the Municipality is procuring the completion of the outstanding scope through a new competitive process. The successful bidder will be required to assume and utilise the baseline outputs provided by the Municipality and deliver the remaining scope as defined in this ToR.

2.3 PLANNING PROBLEM CONTEXT (SOLOMON-LINDA)

Solomon-Linda Town faces development management and investment challenges. A detailed Urban Design Framework (UDF), supported by the required statutory approvals, is needed to address these challenges, including the following:

- Limited formally planned and serviced land, and complex land tenure/administration in a predominantly rural/traditional authority context, which constrains orderly development and investment certainty.
- Infrastructure planning and costing constraints (bulk water, sanitation, stormwater and environmental constraints) which require detailed specialist verification to confirm capacity, risks and feasible solutions.
- Increased pressure from informal economic activity and ad hoc land use change, resulting in fragmented land use patterns and enforcement challenges.
- Difficulty in prioritising and sequencing public facilities and catalytic projects in the absence of an approval-ready spatial framework, statutory compliance, and a realistic implementation programme.

2.4 PROCUREMENT CONTINUATION STATEMENT

This ToR procures the outstanding scope required to continue and complete the Solomon-Linda Urban Design Framework (UDF) Plan and to progress the associated statutory approvals and implementation-readiness processes.

Baseline documents from the prior appointment will be provided by the Municipality for context and continuity. These baseline documents do not constitute the inception deliverable for this continuation appointment. The successful bidder shall prepare and obtain PSC approval of a Continuation Inception Report for the outstanding scope, which will serve as the controlling project management document for the remainder of the assignment.

Bidders must price the outstanding scope only. Duplication of completed work is excluded, except where a targeted gap assessment process demonstrates a critical deficiency that prevents delivery of the outstanding scope and the Municipality issues a written instruction to address such deficiency.

Gap Assessment Process:

- a) Within ten (10) working days of appointment and receipt of the baseline handover pack, the Service Provider must submit a Gap Assessment Memorandum to the Municipality/PSC identifying any alleged critical deficiencies in the baseline outputs that may prevent delivery of the outstanding scope.
- b) The Gap Assessment Memorandum must specify: (i) the baseline deliverable/document affected; (ii) the deficiency; (iii) why it prevents delivery; (iv) the minimum corrective work proposed; and (v) the cost and programme implications.
- c) No corrective work may commence unless the Municipality/PSC issues written approval and a written instruction. Any work undertaken without written instruction will be at the Service Provider's own cost and risk.
- d) The Municipality/PSC will issue a written decision within ten (10) working days of receipt (approve/partially approve/reject/request further particulars).
- e) Where the Municipality and Service Provider disagree on whether a deficiency is "critical", the matter must be escalated to the PSC for resolution within five (5) working days; the Municipality's written decision will be final for purposes of this contract.

Completed UDF Components:

1. Situation analysis/status quo report prepared, including a detailed land use audit, bulk services assessment, and environmental overlay.
2. Desktop geotechnical investigation report.
3. Draft spatial proposals prepared, including an urban design concept plan, three-dimensional drawings, and draft town planning layout(s).
4. Stakeholder engagement.

Accordingly, the outstanding scope to be delivered under this continuation appointment is defined in **Section 2.7 SCOPE OF WORK** in this ToR.

2.5 OBJECTIVE

The objective of the project is to continue and complete the Solomon-Linda Urban Design Framework (UDF) Plan and secure the statutory outcomes required for implementation, as follows:

- 1) Undertake and consolidate specialist studies required to inform statutory planning (SPLUMA) and environmental authorisation (NEMA), and translate findings into spatial constraints, mitigation measures and implementable design responses.
- 2) Prepare and manage statutory planning processes in terms of SPLUMA to decision stage.
- 3) Undertake the applicable Environmental Authorisation process in terms of NEMA to decision stage.
- 4) Finalise an approval-ready and implementable Solomon-Linda UDF package, including:
 - a) A refined spatial framework and layout plan(s) incorporating specialist constraints and statutory requirements.

- b) Development controls and implementation measures that guide orderly land use management and prevent incompatible land uses.
 - c) A prioritised implementation programme, including sequencing, indicative costing, responsibilities and funding/investment packaging where applicable.
- 5) Undertake cadastral survey and progress Surveyor-General and Deeds Office processes required for implementation readiness.

2.6 SCOPE OF WORK

The appointed Service Provider will be required to continue and complete the Solomon-Linda Urban Design Framework (UDF) Plan by delivering the outstanding scope of work set out below, in line with the objectives of this ToR.

NO	SCOPE OF WORK	DESCRIPTION OF SCOPE	ACTIVITIES	DELIVERABLES
1.	Inception Planning	Compilation of an Inception Report	• Acceptance of appointment. • Conclude and sign the Service Level Agreement (SLA) between the Service Provider and the Municipality. • Conduct a mobilisation and inception meeting with the Development Planning Director, Project Leader and Planning Team. • Confirm the Project Steering Committee (PSC) composition, roles, meeting schedule and reporting lines. • Prepare and submit a Draft Inception Report (for PSC approval) setting out: ◦ Confirmation of project objectives and the outstanding scope to be delivered under this continuation appointment. ◦ Stakeholder identification and engagement plan (including indicative meeting schedule/projections). ◦ Roles and responsibilities matrix for the Municipality, Service Provider and specialists. ◦ Programme/schedule, budget and cashflow aligned to the approved phases. ◦ Communication and project governance plan, including roles/responsibilities and reporting lines for: - Project Steering Committee (PSC); - Stakeholder engagement/public participation; - Municipal Planning Tribunal (MPT) and EXCO (as applicable); - Municipal Council (as applicable).	• Signed appointment letter & Service Level Agreement (SLA). • Details of PSC members approved by the Municipality. • PSC Approved Inception Report • Skills Transfer Plan

			○ Risk register, dependencies and mitigation measures. • Skills Transfer and Capacity Building: ○ The Service Provider shall undertake selected elements of the assignment jointly with the Municipal Town Planner and GIS official to ensure practical skills transfer. ○ A minimum of 48 hours must be allocated to structured joint working sessions over the course of the assignment. ○ Joint working sessions must, at a minimum, cover the following scope elements: - review and interpretation of specialist constraints and opportunities; - preparation and updating of the consolidated constraints/opportunities plan and GIS layers; - layout refinement and interpretation of the layout change log; and - preparation of statutory submission packs and public participation proof dossiers.	
2.	Specialist Studies to Inform statutory planning (SPLUMA and NEMA)	Engineering and Services	• Conduct a Detailed Bulk Infrastructure Assessment (including stormwater reservoir options and WWTW capacity) to confirm bulk services capacity and preferred servicing solutions for water, sanitation and stormwater, and to set out implications for the UDF layout, phasing and implementation programme. • Prepare a Stormwater Management Plan, setting out design criteria, preferred routing and attenuation options, and an implementation and maintenance framework.	• PSC approved specialist studies. • Consolidated GIS Data pack. • Finalised town planning layout(s).
		Environmental / Biophysical	• Conduct a Terrestrial Biodiversity Assessment, including sensitivity mapping, buffer requirements and mitigation measures. • Undertake Flood line Delineation, including model assumptions, flood line mapping, recommended setbacks and implications for developable areas.	

			• Conduct a Detailed Geohydrological Assessment to confirm groundwater conditions, contamination risk and required mitigation measures. • Undertake Air Quality Monitoring, including findings and recommended mitigation measures.	
		Geotechnical and Land Suitability	• Detailed Geotechnical Investigation Report, aligned to the draft layout/development plan, including: ◦ Geotechnical parameters and recommendations for roads, services and building platforms across the development footprint; and ◦ A burial suitability assessment for the proposed cemetery site(s), including targeted test locations, groundwater/rock considerations, excavation suitability and constraints mapping.	
		Survey/ Base Mapping	• Undertake a Topographical Survey to feasibility assessments (including stormwater routing, road gradients and building platforms) and to support the preparation of layout plans and statutory submission drawings.	
		Heritage	• Conduct a Heritage Impact Assessment, including heritage sensitivity mapping, identification of any permitting requirements, recommended mitigation measures, and engagement with the relevant authority where required.	
		Integration Deliverable	• Prepare a Consolidated Constraints and Opportunities Plan (maps and GIS layers) integrating all specialist findings into a single coordinated spatial constraints/opportunities framework. • Submit a GIS Data Pack (geodatabase/shapefiles) containing all mapped outputs, with complete metadata (projection, source, date and limitations). • Update/refine the draft layout, only where required by confirmed specialist constraints and recommendations, and provide an updated draft layout with a change log.	
3.	Statutory Planning (SPLUMA)	Prepare, lodge and manage	• Town Planning Motivation and Approval (SPLUMA):	

and Environmental Authorisation (NEMA) with Stakeholder Engagement	statutory applications and associated engagement, tracked to decision stage.	○ Review and consolidate baseline Urban Design Framework outputs and municipal inputs. ○ Prepare the SPLUMA Motivation Report aligning with the Municipal SDF, IDP, and other policy instruments. ○ Prepare layout plans and all required supporting drawings for submission. ○ Complete and lodge SPLUMA application and all required annexures. ○ Facilitate statutory stakeholder engagements. ○ Liaise with the Municipal Planning Tribunal (MPT), respond to comments, and track the application to decision stage. • Environmental Authorisation (NEMA): ○ Undertake EIA screening to confirm applicable listed activities and determine the required environmental authorisation route (included). ○ Implement the Basic Assessment (BA) process as the base case, in accordance with NEMA and the EIA Regulations, through to Environmental Authorisation/Record of Decision (EA/ROD). ○ Where screening confirms that a full Scoping & EIA is required, the Service Provider shall proceed only on written instruction by the Municipality/PSC and in accordance with the separately priced alternative scenario in the Pricing Schedule. ○ Compile and maintain an Interested and Affected Parties (I&AP) register. ○ Implement public participation in accordance with the EIA Regulations, including notices, availability of reports for comment, and receipt/recording of comments. ○ Prepare the required environmental report(s) (BA Report or, where applicable and instructed, Scoping	• Proof of SPLUMA application submission. • Proof of advertisement and public participation engagements for both SPLUMA and NEMA processes. • MPT decision notice. • Environmental Authorisation/ROD.
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			Report and EIA Report), including mitigation measures and the EMPr where required. ○ Submit the application and reports to the competent authority and manage the administrative process, including responses to comments and requests for information. ○ Liaise with the competent authority (KZN Department of Economic Development, Tourism & Environmental Affairs) and relevant commenting authorities throughout the process. ○ Track the application to a final Environmental Authorisation/Record of Decision and submit the approval and conditions to the Municipality/PSC. • Stakeholder engagement minimum requirements: ○ Traditional Authority engagement (Majozi Traditional Council): - The Service Provider shall convene a minimum of one (1) engagement session with the Majozi Traditional Council/Traditional Authority. - The Municipality's designated official shall accompany the Service Provider and facilitate the session. ○ Ingonyama Trust Board (ITB) consultation (where applicable): - Where any portion of the study area or proposed development interfaces with Ingonyama Trust-administered land, the Service Provider shall prepare the required ITB consultation pack and formally submit and engage the ITB at the statutory submission stage. ○ Public meetings: - SPLUMA: minimum one (1) public meeting and one (1) technical stakeholder workshop. - NEMA: minimum one (1) public participation meeting during the prescribed comment period, where required by the EIA.	
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			- Meetings may be combined where legally permissible, but compliance records must be maintained for both processes. - o Venues and community mobilisation: - The Municipality will assist in organising suitable venues near Solomon-Linda. The Service Provider shall coordinate the engagement logistics, meeting setup (PA, seating, signage) and all required documentation. - The Service Provider shall prepare the notices, adverts and mobilisation materials; the Municipality will assist with local mobilisation through Ward Councillor/Traditional Council channels. - The Service Provider shall compile minutes, attendance registers and a photo record for each engagement session.	
4.	Site Survey and Registration	Support Surveyor-General and Deeds Office processes required for implementation readiness.	• Undertake a cadastral site survey, including boundary pegging and preparation of the required survey diagrams and/or General Plan. • Submit the survey diagrams/General Plan to the Surveyor-General for approval and manage the approval process. • Prepare and lodge the required registration documentation with the Deeds Office, as applicable upon Surveyor-General approval. • Coordinate with the Municipal appointed conveyancers to support final registration. Note: Conveyancers will be appointed separately by the Municipality; this appointment excludes conveyancing/legal fees.	• Proof of submission on behalf of the Municipality to SG Office. • Approved SG diagrams/general plan (or proof of submission and queries resolved).
5.	Close-Out	Consolidate approvals, conditions, compliance obligations and handover.	• Prepare Close-Out Report consolidating: - o All statutory approvals (SPLUMA decision, Environmental Authorisation, SG approvals, Deeds Office registration). - o Conditions of approval and compliance obligations. - o Outstanding risks, mitigations, and monitoring requirements.	• Close-Out Report. • Handover workshop minutes and attendance register.

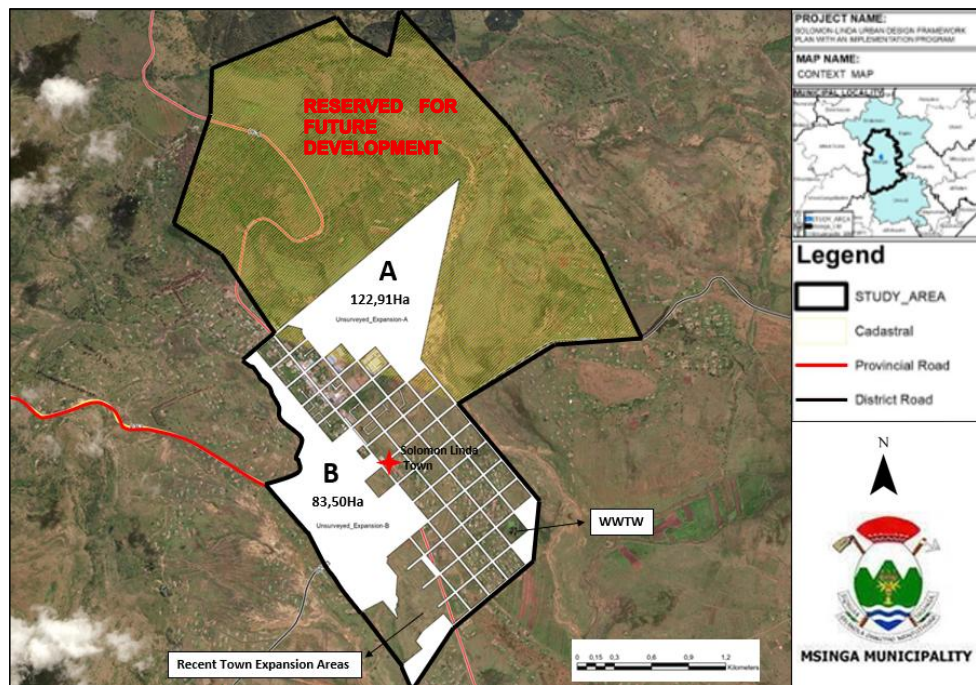
			○ Recommendations for implementation/next steps. • Conduct a handover meeting/workshop with the Municipality/PSC and key stakeholders. • Submit all final documentation in both digital and hard-copy formats (drawings, reports, approvals) for adoption by the Council.	• Council Resolution.
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2.7 STUDY AREA CONTEXT

The study area of the project is Solomon-Linda Town and is described as Erf 10 000 and the adjacent expansion areas earmarked for future development. The town is located within uMsinga Local Municipality (Ward 18) in uMzinyathi District Municipality. Solomon-Linda is the only Municipality's proclaimed town accommodating a concentration of commercial, civic and residential activities and providing services to surrounding rural settlements.

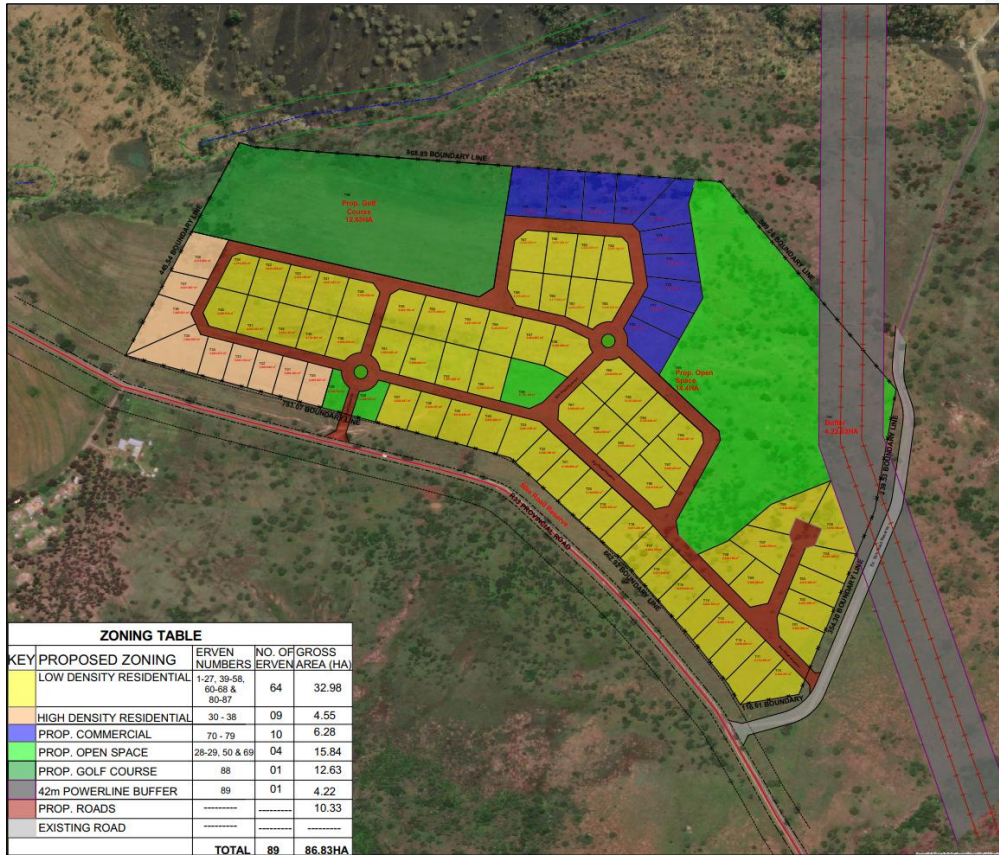
The spatial extent of the study area and context is shown in **Map 1** below. The draft town planning layout(s) informing this continuation appointment are provided in **Figure 1** and **Figure 2** below. These layout(s) are issued for tendering and statutory engagement purposes and remains subject to refinement based on the specialist studies, statutory processes, and stakeholder inputs required under the outstanding scope.

MAP 1: STUDY AREA CONTEXT



[illegible]

FIGURE 2: DRAFT TOWN PLANNING LAYOUT FOR THE PROPOSED RESIDENTIAL ESTATE



PROJECT NAME:
SOLMON INDIA URBAN DESIGN FRAMEWORK
PLAN WITH AN IMPLEMENTATION PROGRAM

MAP NAME:
DRAFT SUBDIVISION LAYOUT

MUNICIPAL LOCALITY:

STANDARD INFORMATION:
-Residential
-Commercial
-Open Space
-Golf Course

LEGEND:
STUDY AREA
POWERLINE BUFFER
EXISTING POWERLINE
RESIDENTIAL ESTATE
OPEN SPACE
GOLF COURSE
PROP. ROADS
EXISTING ROAD

IMPORTANT NOTES:
ALL AREAS AND DIMENSIONS ARE APPROXIMATE AND THEY ARE SUBJECT TO FINAL SURVEY

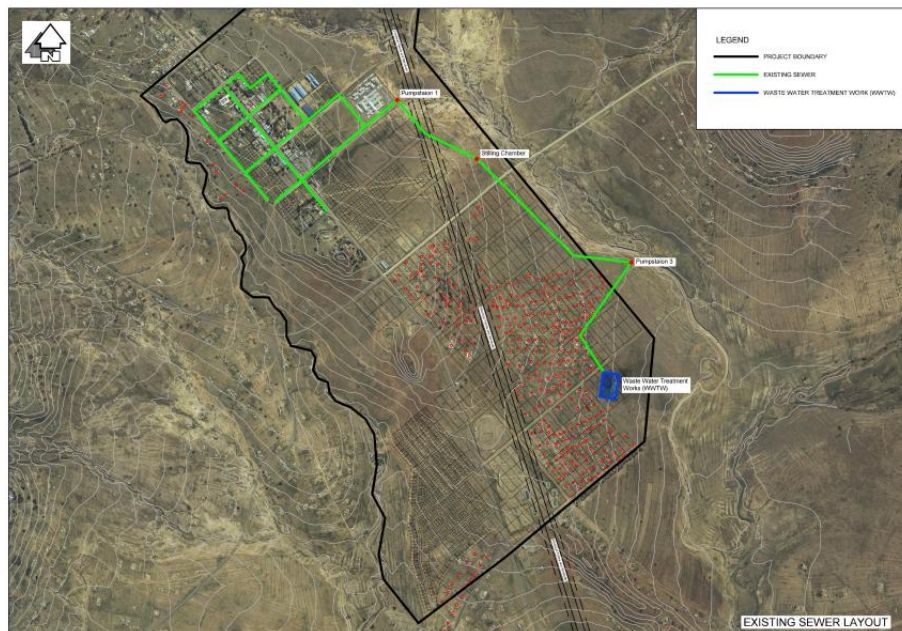
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This data is for information purposes only. No liability shall devolve upon the local authority or its officials through the use thereof.

FIGURE 3: EXISTING WASTE WATER TREATMENT WORKS (WWTW)



Solomon-Linda's existing sewer reticulation network services the CBD and conveys flows through a combination of gravity sewers and pump stations to the existing wastewater treatment facility/oxidation pond system located on the eastern side of the town. The existing sewer alignment and the location of the WWTW are shown in **Figure 3**. The oxidation pond system has an estimated capacity of approximately 1 Ml/day and is reported to be operating at approximately 75% utilisation at the time of assessment. On the basis of the available baseline information, there is a preliminary indication that the existing WWTW capacity may be insufficient to accommodate the projected effluent demand associated with the proposed township development and that upgrades may be required (potentially up to approximately 3 Ml/day), subject to confirmation.

Accordingly, the adequacy of the sewer network and WWTW capacity, compliance status, upgrade requirements, and long-term servicing options must be confirmed and quantified through the Detailed Bulk Infrastructure Assessment to be undertaken under Phase 2 of this continuation appointment. The assessment must provide clear recommendations, including preferred servicing options, indicative upgrade requirements, and implications for the UDF layout, phasing and implementation programme, to inform the final UDF outputs and statutory submissions.

2.7.1 EXISTING DEVELOPMENT PROPOSAL AND LANDOWNERSHIP

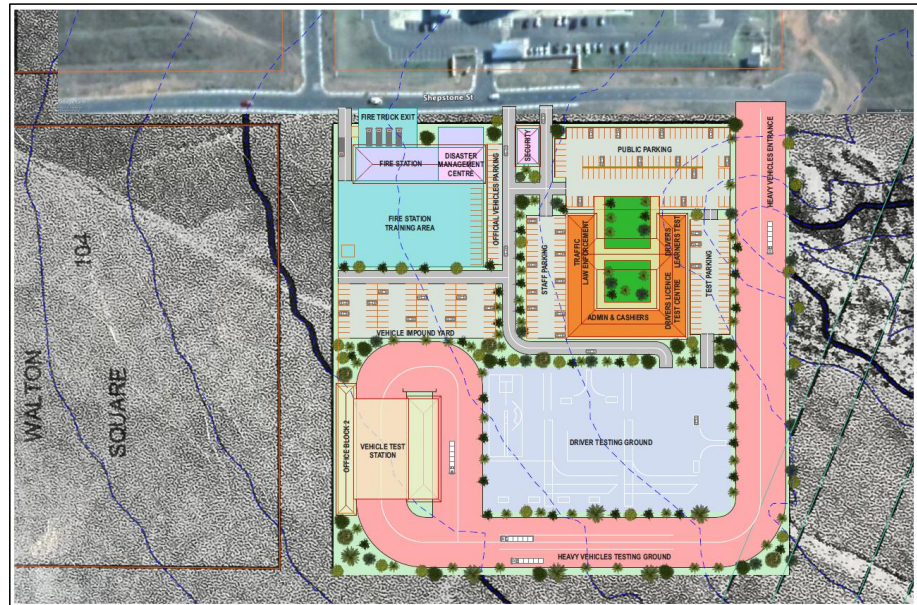
The Solomon-Linda UDF continuation appointment must take cognisance of existing and/or planned development initiatives within and adjacent to the study area that may influence spatial structuring, access, infrastructure feasibility, and the safeguarding of environmentally sensitive areas and land required for future public purposes. Where such proposals are confirmed, the Service Provider must assess alignment with the draft town planning layout and incorporate them appropriately into the refined UDF outputs.

For planning purposes, land ownership within the study area (Erf 10 000) comprises multiple stakeholders' including the Department of Human settlements, uMzinga Local Municipality, and private/other rights-holders.

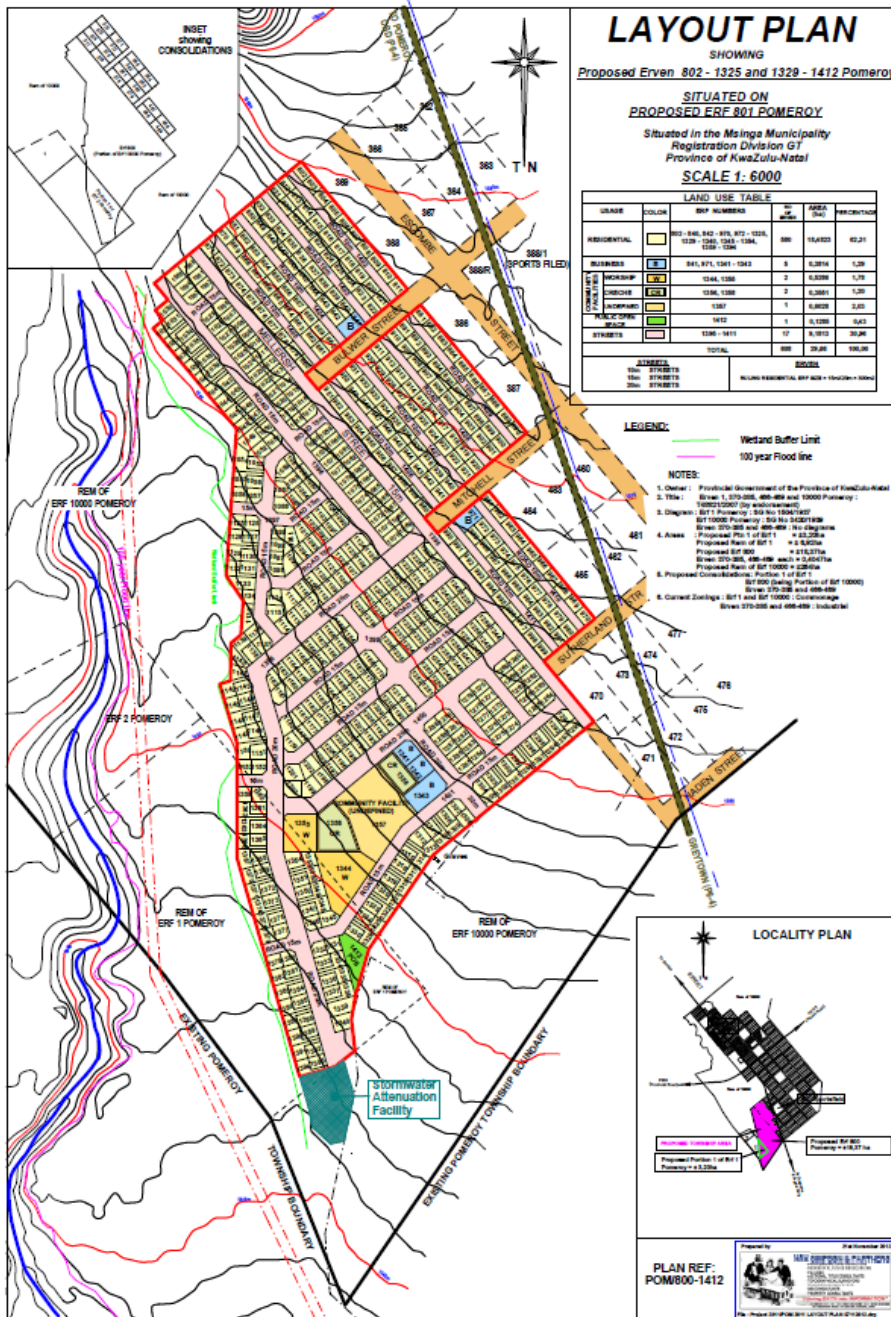
The baseline land status information for Erf 10 000 and adjacent areas earmarked for future development will be provided in **Annexure A**. The Municipality notes that land tenure within and adjacent to the study area may include municipal land, land held/managed by the Department of Human Settlements or other state custodians, private ownership, and areas under Ingonyama Trust/Traditional Authority administration. Registration pathways and approval requirements differ by tenure type. The Service Provider must progress Phase 4 activities based on the verified baseline land status provided and must flag any tenure-related approval requirements (including where Ingonyama Trust processes apply) to the Municipality/PSC during Phase 1 mobilisation.

During Phase 1 of the project, the Service Provider shall review and validate the baseline land status prepared in during the prior appointment for purposes of statutory submissions and alignment of the refined town planning layout. Any material gaps or inconsistencies identified must be reported to the Municipality/PSC with recommendations; additional verification work may only be undertaken if specifically instructed in writing by the Municipality.

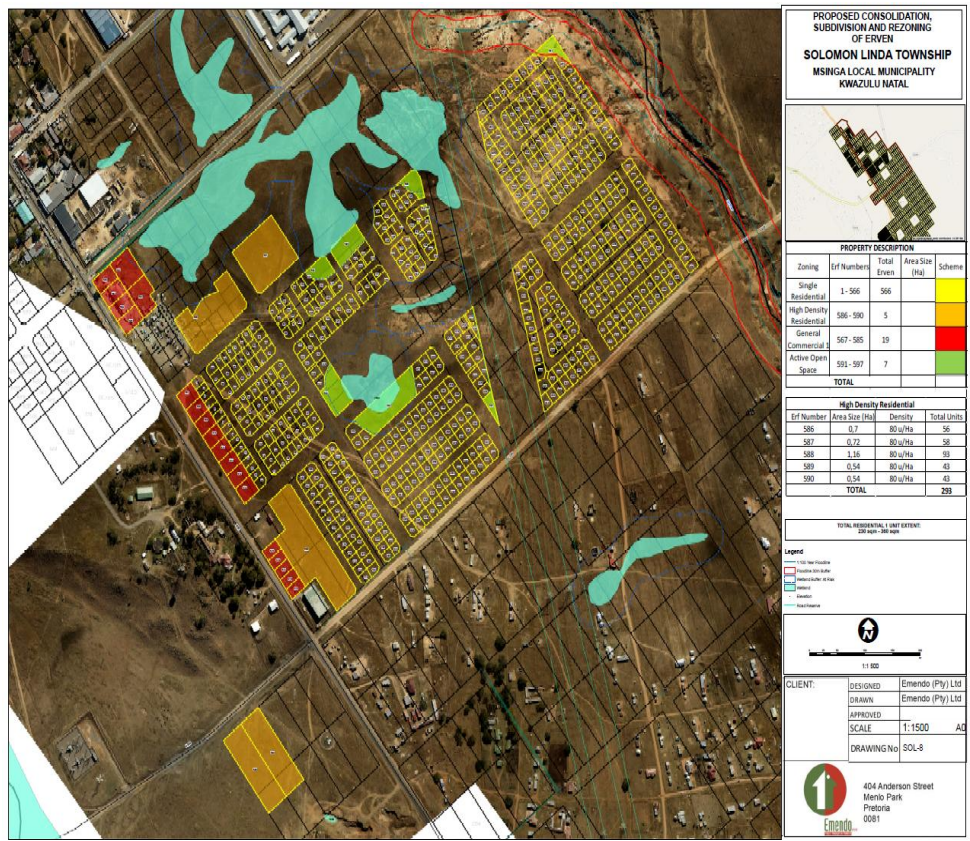
MAP 2: PROPOSED TRAFFIC TESTING STATION AND SATELLITE OFFICES BY COMMUNITY SERVICES



MAP 3: SOLOMON LINDA HOUSING PROJECT BY HUMAN SETTLEMENT



MAP 4: DRAFT SOLOMON LINDA GENERAL PLAN AMENDMENTS BY HUMAN SETTLEMENT & UMSINGA MUNICIPALITY



3. PROPOSAL STRUCTURE

Please ensure all items listed below are clearly marked in the proposal document for ease of reference. Proposal document must include but not be limited to the following:

- 1) **Company Profile**
 - a. Urban Design & Related Experience
- 2) **Curriculum Vitae of Project Team**
 - a. A Zulu speaking project leader
- 3) **Capacity and References**
 - a. Relevant Professional References
 - b. Relevant Project Team Skills
- 4) **Methodology**
- 5) **Quality assurance and risk management approach.**
- 6) **Project plan, milestones & time frame**

Service Providers will be required to **submit a CV and Company Profile** indicating previous experience and samples of urban design proposals/design frameworks with at least three contactable references listed for similar work completed and it will be advantageous if the project involves tribal authorities' land.

4. EVALUATION

The evaluation of the functional proposal will be on the basis of their responsiveness to each section. The point system indicated below will be applied. The following criteria will be used to calculate points for the functionality of bidders should ensure that they submit all in order to be pre-evaluated on the criteria mentioned below:

****Note: Please indicate the page reference in your bid for proof of each criterion, and your pricing schedule will not be considered if the table below is not completed** (please refer to table 1 below).

NO.	FIRST STAGE FUNCTIONALITY POINTS	POINTS	BIDDERS' ASSESSMENT	PAGE NUMBER
1.	Relevant or Similar Experience	A least three Urban Design or Related Project Work (appointment letters)	30	
2.	References	Relevant Professional References as per above (3 contactable references – points awarded per good reference)	15	
3.	Capacity	Relevant Skills of Project Team i.e., (CVs with qualification submitted.	20	
4.	Approach and methodology	Project Plan submitted	35	
TOTAL POINTS		100		

The points awarded for price and functionality will be determined on the following basis:

TABLE 1: CRITERIA FUNCTIONALITY TABLE

CRITERION	FIRST STAGE FUNCTIONALITY POINTS	INSTALLATION DESCRIPTION	MAXIMUM POINTS
CRITERION 01	A maximum of 30 points will be awarded at the sole discretion of the Municipality based on the information provided in relation to feasibility studies and will be awarded as follows:	1. Urban Design Principles, Proposals, Frameworks delivered (Past experience). 2. Points will only be awarded for relevant experience in urban design proposals which is related to this quote.	0 – 1 projects = 10 Points 2 – 3 projects = 20 Points > 3 projects = 30 Points
CRITERION 02	A maximum of 15 points will be awarded at the sole discretion of the Municipality based on the information provided and as follows: 1) Reference check points: 3 Random references from those provided in terms of criterion 1 will be contacted.	1. Company profile & company's registration documents; 2. Detailed list of information containing names of previous clients, description of work performed and the duration of the work. 3. The name, telephone contact and e-mail address of a referee in relation to each project claimed.	Points will be allocated on the following basis, per reference: Negative = 0 points Positive = 5 points
CRITERION 03	A maximum of 20 points will be awarded at the sole discretion of the Municipality based on the information provided and as follows:	1. A Zulu speaking project leader	Identified project team members and qualifications = 5 points
		2. CVs submitted for team members with Urban Design or related professional qualifications.	Identified project team members and qualifications = 10 points

Commented [th1]: The evaluation criteria: The ToR is silent on how price will be evaluated relative to functionality (e.g., 90/10 or 80/20 PPPFA split). This is a legal requirement under the PPPFA and must be stated.

Commented [th2R1]: Get advise from SCM in terms of wording and correctness

CRITERION	FIRST STAGE FUNCTIONALITY POINTS	INSTALLATION DESCRIPTION	MAXIMUM POINTS
		3. Demonstrate sufficient management and staff capacity to adequately implement the proposed project (link to project methodology e.g., provide a project specific role for team members)	Roles of each member aligned to project methodology = 5 Points
CRITERION 04	A maximum of 35 points will be awarded at the sole discretion of the Municipality based on the information provided and as follows:	1) Methodology: Credible methodology linked to project objectives. 2) Timeframe: Timeframe linked to project deliverables and a Gannt chart. 3) Budget: Budget allocated per project phase in project plan 4) Deliverables: Clear deliverables linked to each project phase as per the project plan and linked to scope of services required.	Points will be allocated for the submission of the item in each sub-criterion as follows: ▪ Yes – 10 Points ▪ No – 0 Points

5. PRICING SCHEDULE

The following pricing schedule applies:

PHASES	DESCRIPTION	BUDGET (%)	Months
PHASE 01	Compilation of an Inception Report Undertake pre-planning and planning activities to obtain development rights for the project.	5%	2
PHASE 02	Specialist Studies to Inform SPLUMA and NEMA - Detailed Bulk Infrastructure Assessment; - Terrestrial Biodiversity Assessment; - Flood line Delineation; - Detailed Geohydrological Assessment; - Detailed Geotechnical Assessment; - Stormwater Management Plan; - Heritage Impact Assessment; - Air Quality Monitoring; - Topographical Survey.	30%	4
PHASE 03	Statutory Planning (Town Planning and EIA) and Stakeholder Engagement - Prepare and lodge SPLUMA motivation, application pack and submission drawings. - Implement SPLUMA statutory public participation and manage responses. - NEMA Environmental Authorisation (INCLUDED – Base Case): Screening and route determination and Basic Assessment (BA) process to Environmental Authorisation/ROD, including compliant public participation and report submissions. - NEMA Environmental Authorisation (NOT INCLUDED – Alternative): If the competent authority requires Scoping & EIA, provide a separate price and programme for the Scoping & EIA process to Environmental Authorisation/ROD; proceed only on written instruction by the Municipality/PSC. - Liaise with authorities/MPT, respond to requests for information, and track to decision/authorisation. Note: Bidders must price and programme both NEMA scenarios (BA and Scoping & EIA). The Municipality will proceed on the BA base case; Scoping & EIA will be activated only if confirmed by the competent authority and instructed in writing.	35%	7

PHASE 04	Surveyor-General and Deeds Registration Support ▪ Undertake the Cadastral Survey; ▪ Submit to Surveyor-General and manage approval process; ▪ Prepare and lodge Deeds Office documentation; ▪ Coordinate with appointed conveyancers to support registration. Note: Phase 04 pricing must be based on the baseline land status provided by the Municipality. Where additional tenure-specific approvals are required (e.g., Ingonyama Trust Board processes or unclear state custodianship), bidders must state assumptions and provide a separate conditional price and programme, to be activated only on written instruction by the Municipality/PSC.	25%	6
Phase 05	Close-out ▪ Compile final close-out report with all statutory approvals and conditions of approvals; ▪ Conduct handover workshop; ▪ Submit final digital and hardcopy deliverables.	5%	1
SUBTOTAL		100%	20 MONTHS

6. EXTENSION OF TIME / FORCE MAJEURE

6.1 Definition of Delay Events

For purposes of this Agreement, "Delay Events" shall mean any delay, suspension, or failure in obtaining approvals, consents, permits, authorisations, or decisions from any competent statutory authority (including national, provincial, or municipal bodies or regulatory entities) which are necessary for the execution of the Services, provided that such delay is not caused by any act, omission, negligence, or default of the Service Provider.

6.2 Notification Requirement

Where a Delay Event occurs or is reasonably anticipated, the Service Provider shall notify the Municipality in writing within seven (7) calendar days of becoming aware thereof, providing:

- (a) full details of the nature and cause of the delay;
- (b) the affected deliverables and critical path activities; and
- (c) documentary evidence of all submissions, applications, correspondence, and follow-ups with the relevant authority.

6.3 Mitigation Obligation

The Service Provider shall at all times use reasonable and diligent efforts to mitigate the impact of any Delay Event, including actively engaging the relevant authority, ensuring completeness of submissions, and implementing alternative sequencing or methodologies where practicable to reduce delay impacts.

6.4 Extension of Time

Any extension of time arising from a Delay Event shall:

- (a) be limited strictly to the period of demonstrable delay attributable to the relevant authority;
- (b) be subject to written verification and approval by the Municipality; and
- (c) not be deemed automatic or self-executing.

6.5 Exclusion of Cost Escalation

Unless expressly agreed in writing by the Municipality, no Delay Event shall entitle the Service Provider to any additional payment, adjustment of the Contract Price, escalation of fees, standby costs, or compensation of any nature whatsoever.

6.6 No Open-Ended Extensions

Extensions of time granted in terms of this clause shall be:

- (a) clearly defined with revised milestone dates;
- (b) subject to periodic review by the Municipality; and
- (c) limited to what is reasonably necessary to accommodate the verified Delay Event.

6.7 Records and Audit Trail

The Service Provider shall maintain full and accurate records of all actions taken in relation to securing statutory approvals, and such records shall be made available to the Municipality upon request for verification and audit purposes.

6.8 Municipality's Discretion and Protection

The Municipality reserves the right to:

- (a) verify the validity and extent of any claimed Delay Event;
- (b) reduce or reject any claimed extension where reasonable mitigation has not been demonstrated; and

(c) take such steps as may be necessary to protect project timelines and public interest, including reassignment or termination where delays become materially prejudicial.

7. CONTACT DETAILS OF THE BIDDER / TENDERER

UMSINGA MUNICIPALITY SUPPLIER NUMBER	:	
CSD SUPPLIER NUMBER	:	
CSD UNIQUE REGISTRATION REFERENCE NUMBER	:	
THE NAME OF THE TENDERER	:	
THE NAME OF THE CONTACT PERSON	:	
THE ADDRESS OF THE TENDERER	:	
TELEPHONE	:	
FACSIMILE	:	
ADDRESS (PHYSICAL)	:	
E-MAIL	:	
SIGNATURE	:	
DATE	:	

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
- 3 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

3.1 Full Name of bidder or his or her representative:.....

3.2 Identity Number:

3.3 Position occupied in the Company (director, trustee, shareholder²):.....

3.4 Company Registration Number:

3.5 Tax Reference Number:.....

3.6 VAT Registration Number:

3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

3.8 Are you presently in the service of the state? **YES / NO**

3.8.1 If yes, furnish particulars.

¹MSCM Regulations: "in the service of the state" means to be –

(a) a member of –

- (i) any municipal council;
- (ii) any provincial legislature; or
- (iii) the national Assembly or the national Council of provinces;

(b) a member of the board of directors of any municipal entity;

(c) an official of any municipality or municipal entity;

(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);

(e) a member of the accounting authority of any national or provincial public entity; or

(f) an employee of Parliament or a provincial legislature.

² Shareholder" means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 Have you been in the service of the state for the past twelve months?**YES / NO**

3.9.1 If yes, furnish particulars.....

3.10 Do you have any relationship (family, friend, other) with persons
in the service of the state and who may be involved with
the evaluation and or adjudication of this bid? **YES / NO**

3.10.1 If yes, furnish particulars.
.....
.....

3.11 Are you, aware of any relationship (family, friend, other) between
any other bidder and any persons in the service of the state who
may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.11.1 If yes, furnish particulars
.....
.....

3.12 Are any of the company's directors, trustees, managers,
principle shareholders or stakeholders in service of the state? **YES / NO**

3.12.1 If yes, furnish particulars.
.....
.....

3.13 Are any spouse, child or parent of the company's directors
trustees, managers, principle shareholders or stakeholders
in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars.
.....
.....

3.14 Do you or any of the directors, trustees, managers,
principle shareholders, or stakeholders of this company
have any interest in any other related companies or
business whether or not they are bidding for this contract. **YES / NO**

3.14.1 If yes, furnish particulars:
.....
.....

4. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	State Employee Number

.....
Signature

.....
Date

.....
Capacity

.....
Name of Bidder

MBD 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**

(delete whichever is not applicable for this tender).

- a) The applicable preference point system for this tender is the 90/10 preference point system.
- b) The applicable preference point system for this tender is the 80/20 preference point system.
- c) Either the 90/10 or 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 OR 90/10 PREFERENCE POINT SYSTEMS

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

$$Ps = 80 \left(1 - \frac{Pt - Pmin}{Pmin} \right) \quad \text{or} \quad Ps = 90 \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

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 or 90 points is allocated for price on the following basis:

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \\ \mathbf{Ps = 80 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)} & \mathbf{or} & \mathbf{Ps = 90 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)} \end{array}$$

Where

- Ps = Points scored for price of tender under consideration
Pt = Price of tender under consideration
Pmax = 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 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 or 90/10 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 or 90/10 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 both the 90/10 and 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 either the 90/10 or 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 (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Race (Black people) (CSD Fully report)		05		
Gender (Black Women) (CSD Fully Report)		10		
Enterprises located in Msinga municipal area		2.5		
Enterprises located in KZN		2.5		

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 propriety
 - ☐ 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.

.....
SIGNATURE(S) OF TENDERER(S)

SURNAME AND NAME:

DATE:

ADDRESS:

.....

.....

.....

.....

CONTRACT FORM - RENDERING OF SERVICES

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SERVICE PROVIDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SERVICE PROVIDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
 - (i) Bidding documents, viz
 - Invitation to bid;
 - Tax clearance certificate;
 - Pricing schedule(s);
 - Filled in task directive/proposal;
 - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
 - Declaration of interest;
 - Declaration of Bidder's past SCM practices;
 - Certificate of Independent Bid Determination;
 - Special Conditions of Contract;
 - (ii) General Conditions of Contract; and
 - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES

1

2

DATE:

CONTRACT FORM - RENDERING OF SERVICES

PART 2 (TO BE FILLED IN BY THE PURCHASER)

1. I..... in my capacity as..... accept your bid under reference numberdated.....for the rendering of services indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating service delivery instructions is forthcoming.
3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	SPECIFIC GOAL	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

4. I confirm that I am duly authorised to sign this contract.

SIGNED AT ON

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1

2

DATE:

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be rejected if that bidder, or any of its directors have:
 - a. abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
 - b. been convicted for fraud or corruption during the past five years;
 - c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.2.1	If so, furnish particulars:		

4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes ☐	No ☐
4.3.1	If so, furnish particulars:		
Item	Question	Yes	No
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes ☐	No ☐
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes ☐	No ☐
4.7.1	If so, furnish particulars:		

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME)
CERTIFY THAT THE INFORMATION FURNISHED ON THIS
DECLARATION FORM TRUE AND CORRECT.

I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION
MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE
FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Municipal Bidding Document (MBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - a. take all reasonable steps to prevent such abuse;
 - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Municipality / Municipal Entity)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:
(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

MBD 9

6. 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 consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. 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 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.

MBD 9

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

FORM OF OFFER

THE FOLLOWING PARTICULARS MUST BE FURNISHED

(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

NAME OF BIDDER.....

POSTAL ADDRESS.....

STREET ADDRESS.....

TELEPHONE NUMBER CODE.....NUMBER.....

CELLPHONE NUMBER

FACSIMILE NUMBER CODE NUMBER.....

VAT REGISTRATION NUMBER

HAS AN ORIGINAL VALID TAX CLEARANCE CERTIFICATE BEEN ATTACHED

YES/NO.....

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS/SERVICES

OFFERED BY YOU?YES/NO

IF YES ENCLOSE PROOF)

TOTAL BID PRICE R.....

(IN WORDS).....

.....

SIGNATURE OF BIDDER

DATE.....

CAPACITY UNDER WHICH THIS BID IS SIGNED

WITNESSES:

1. NAME.....

SIGNATURE.....
2. NAME.....

SIGNATURE.....

GENERAL CONDITIONS OF CONTRACT

1. Definitions

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

bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the goods covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillaries to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 "Supplier" means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.
- 1.26 "Tort" means in breach of contract.
- 1.27 "Turnkey" means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.
- 1.28 "Written" or "in writing" means hand-written in ink or any form of electronic or mechanical writing.

2. Application

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

3. General

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.

4. Standards

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

5. Use of contract documents and information inspection

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

6. Patent Rights

- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 6.2 When a supplier developed documentation / projects for the municipality / municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the municipality / municipal entity.

7. Performance security

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms: (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or (b) a cashier's or certified cheque.
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that goods to be produced or services to be rendered should at any stage be subject to inspections, tests and analyses, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or organization acting on behalf of the purchaser.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Goods and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods, which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.

9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

- 10.1 Delivery of the goods and arrangements for shipping and clearance obligations, shall be made by the supplier in accordance with the terms specified in the contract.

11. Insurance

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

12. Transportation

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

13. Incidental Services

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
 - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

- 14.1 As specified, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and;
 - (b) in the event of termination of production of the spare parts: (i) advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

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

16. Payment

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

17. Prices

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

18. Variation orders

18.1 In cases where the estimated value of the envisaged changes in purchase does not vary more than 15% of the total value of the original contract, the contractor may be instructed to deliver the goods or render the services as such. In cases of measurable quantities, the contractor may be approached to reduce the unit price, and such offers may be accepted provided that there is no escalation in price.

19. Assignment

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

20. Subcontracts

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the goods are required, or the supplier's services are not readily available.

21.4 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of penalties.

21.5 Upon any delay beyond the delivery period in the case of a goods contract, the purchaser shall, without cancelling the contract, be entitled to purchase goods of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required

to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2; (b) if the supplier fails to perform any other obligation(s) under the contract; or (c) if the supplier, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner, as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.
- 23.5 . Any restriction imposed on any person by the purchaser will, at the discretion of the purchaser, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and

with which enterprise or person the first-mentioned person, is or was in the opinion of the purchaser actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction. These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

23.7 . If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website

24. Antidumping and countervailing duties and rights

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

25. Force Majeure

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of

force majeure. 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

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

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Notwithstanding any reference to mediation and/or court proceedings herein, (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and (b) the purchaser shall pay the supplier any monies due the supplier for goods delivered and / or services rendered according to the prescripts of the contract.

28. Limitation of Liability

- 28.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6; (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and (b) the aggregate liability of the supplier to the purchaser, whether under

the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing language

- 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable law

- 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified.

31. Notices

- 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties

- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid SARS must have certified that the tax matters of the preferred bidder are in order.
- 32.4 No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.

33. Transfer of contracts

- 33.1 The contractor shall not abandon, transfer, cede assign or sublet a contract or part thereof without the written permission of the purchaser

34. Amendment of contracts

34.1 No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.

35. Prohibition of restrictive practices

35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding.

35.2 If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 Of 1998. 35.3 If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.
