

SUPPLY OF COMMERCIAL DIESEL TO FOSKOR- RICHARDS BAY DIVISION

Tender no: **FTP /24/SM**
Revision¹: 0.1.n see legend at bottom of page

Cost Code:
Revised date: 13 MAY 2024

NAME	TITLE	Empl. No	SIGNATURE	DATE
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COMPILED – RECOMMENDATION

	Acting Warehouse Superintendent			
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APPROVAL TO PROCEED

Khetho Gumede	Divisional Lead- Procurement	501158		
Charles Mavuso	SHREQ Manager	504688		
Sam Mbuyazi	General Manager, Acid Division	500441		

¹ Revision Legend: **0.n** = Draft, **1**= Final version
Thus first draft = 0.1, second draft = 0.2, etc, and final approved = 1.0
Should the final be revised for whatever reason the revision would be 1.1 etc.

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Section A: INVITE AND TENDER INSTRUCTIONS

A.1 Invitation to tender

A.1.1 Tenderers are invited to submit a tender in accordance with this Tender Document.

The Works consists of the **Supply of commercial diesel to Foskor – Richardsbay Division.**

The tender Instructions are to be found in **Section A.**

The Contract Works Forms of Tender is stipulated in **Section B.**

The detailed Scope of Work and Specifications are to be found in **Section C.**

The Conditions of Contract are stipulated by **Foskor (Pty) Ltd, Procurement Department.**

A.1.2 At the time of tendering, any queries and/or doubts within the scope, specifications or drawings shall be referred to:

Designation	Buyer: Divisional Buyer
For the attention of	Silindile Mkhwanazi
Telephone	035 902 3235
Fax	035 797 3941
Cell no	
Email	SilindileM@foskor.co.za

A.2 Return of Tender Documents

A.2.1 One copy of this document, duly completed and signed by the Tenderer, shall be delivered in a plain sealed envelope, distinctly marked as follows:

TENDER		
Tender No.	FTP /24/SM	The Manager Procurement
Contract Title:	Supply of commercial diesel to Fokor- Richards Bay Division	FOSKOR LIMITED
Closing Date & Time:		21 John Ross Parkway
		Richards Bay

A.2.2 Tenders shall be placed in the **Tender Box at Foskor Richards Bay Main Administration Reception** no later than **12h00 noon** on the closing date.

A.2.3 A tender sent by fax shall not be accepted.

- In case of Tenderers not being local, and not being in a position to hand deliver tender documents to the above-mentioned location, Tenderers may use an approved document courier for the purpose of delivering the tender document to Foskor (Pty) Ltd. This would be subject to auditable proof of dispatch from the Courier Company (including time and date of dispatch).

- Such proof shall be faxed and confirmed as addressed to Superintendent: Tenders and Contracts, FOSKOR (PTY) LTD, 21 John Ross Parkway, Richards Bay, facsimile number as indicated under item A.1.3 before the closing time and date of the tender.
- Foskop shall take no responsibility for lost courier documents – prior to opening of tenders - and onus rests on Tenderer to keep duplicate of Tender Submission.
- In this case the sealed envelope shall remain addressed as per paragraph A.2.1, and shall be placed in a sealed courier bag with the following street address delivery instructions:

FOSKOR (PTY) LIMITED - (TENDER BOX)
21 John Ross Parkway
Richards Bay
3900

- A.2.4 Tenders will not be opened in public and under no circumstances will the price(s) at which any Contract was awarded be divulged to any person.
- A.2.5 In the event that the Tenderer did not submit a tender or if his tender was unsuccessful, the Tenderer shall return the Enquiry Document and Drawings within **14 days** to the **Superintendent: Tenders and Contracts** .

A.3 Site Inspection

An official Site inspection shall be held at the **Foskop, Richards Bay** site in order for the Tenderer to fully acquaint himself with prevailing site and works conditions. In so doing you are to ensure that you fully understand the context and extent of the works (refer B.5 – Site Inspection Certificate).

Date of Site Visit

Time of Site Visit

Meeting Venue

From : To :

Report at Main Security Entrance

Please wear the following protective clothing:

Overalls (Acid Proof),
 Hard Hat
 Safety Shoes
 Safety Glasses
 Hearing protection
 Gloves

Yes

Yes

Yes

Yes

Yes

Yes

IMPORTANT

- Please note that a Safety Induction is **MANDATORY** and all Tenderers to allow for at least **30 minutes** before the Site Meeting start, to complete the induction.

A.4 Examination and Completion of Documents

- A.4.1 The Tenderer shall examine all documents forming part of the Tender and submit his tender accordingly. All drawings, addendums, annexures received with the Tender documents must be returned with your company stamp and/or signature, as a comprehensive part of your Tender Submission. Failure to do so may result in disqualification from tender.

Tender in accordance with this format and submit documents as specified below.

- A.4.2 The Sections of this document shall not be separated in any way nor shall any pages be detached therefrom.
- A.4.3 The Tenderers submission is to include all Financial and Contractual detail and be signed (by authorized person) and/or company-stamped together with tender submission.
- A.4.3.1 Cost Breakdown of the Works as per the Cost Schedule
- A.4.3.2 Initial Project Program of Works, Work Methodology, and Cash Flow (structured similarly to payment terms)
- A.4.3.3 Schedule of Similar Contracts Undertaken

A.5 Contract Documents Priority

The eventual Contract shall comprise the documents as stated in this tender document, your Tender submission by which you agree and the Foskor (Pty) Ltd Terms and Conditions, which shall be interpreted in accordance with the order of priority stated in the said Conditions.

A.6 Alterations by Tenderer

- A.6.1 Should the Tenderer propose any departures or modifications from the Conditions of Contract, Specifications, or to qualify his tender in any way, he/she shall set out his/her proposals clearly in the covering letter attached to this Tender with reference to the particular section of the document, failing which the tender will be deemed to be unqualified. Any proposed technical departures from Foskor (Pty) Ltd.'s Requirements or Specifications shall only be considered if submitted in writing together with a detailed motivation for such departures.
- A.6.2 The Tenderer shall include in respect of each proposed alteration the following:
- a) Reason for proposed exception.
 - b) Suggested re-wording.
 - c) Any effect on the tender price.
 - c) Any effect on the execution of the scope of supply.
 - d) Any effect on Foskor's overall program objectives.

If any of the above information is not supplied, the Tender may be regarded as non-compliant.

A.7 General

- A.7.1 Foskor (Pty) Ltd reserves the right to adjust arithmetical or obvious errors in the Tender. Such adjustments made by Foskor (Pty) Ltd will be communicated to the Tenderer prior to the acceptance of his Tender.
- A.7.2 The Tenderer (whether his Tender is accepted or not) shall treat the details of the Tender as private and confidential and no copies shall be made thereof without the permission of Foskor (Pty) Ltd.
- A.7.3 Foskor (Pty) Ltd is not bound to accept the lowest or any other Tender it may receive, nor to assign a reason for the rejection or acceptance of any Tender, and Foskor (Pty) Ltd has the right, after Tenders are opened, and before a Contract is awarded, to enter into negotiations and discussions with one or more Tenderers short-listed on a price, programme or technical basis, with a view to the clarification, improvement or amendment of any particular Tender.
- A.7.4 All Tenderers tender at their own risk and Foskor (Pty) Ltd is not bound to accept any Tender and under no circumstances whatsoever will be responsible for any costs incurred by any Tenderer in compiling or submitting the tender.
- A.7.5 Furthermore, Foskor reserves the right to accept only a part of the Tender, with due communication and agreement of the Tenderer.
- A.7.6 The Tenderer is required to submit a 'bona fide' Tender, intended to be competitive and not to fix or adjust the amount of the Tender by or under or in accordance with any agreement or arrangement with any third party. The Tenderer is also obliged to ensure that it has not and will not at any time before the hour and date for the lodging of this Tender do any of the following acts:
- a) Communicate to any person the amount or approximate amount of the proposed Tender except where the disclosure, in confidence, of the amount of this Tender was necessary for the preparation of the Tender.
 - b) Enter into any agreement or arrangement with any third party that shall disqualify from or that Foskor shall refrain from using.
 - c) Commit any act or omission that would be contrary to the Maintenance and Promotion of Competition Act 96 of 1979 and notices and regulations published in terms of that Act,

Section B: FORMS OF TENDER TO BE SUBMITTED

B.1 Schedule of Rates or Summary of Bill of Quantities (Not applicable for this tender)

From Bill of Quantities – if applicable or → qty x rate = ZAR

1.0 SUB TOTALS:

1.00 Preliminary & General

1.01 Design and Manufacturing

1.02 Installation and Commissioning

Sub Totals Sum (Excluding VAT)

Add: VAT

15%

Total Tender Sum (Including VAT)

B1.1 In the event of their being any obvious errors of pricing, extensions or additions in the priced Cost Schedule attached, we agree to their being corrected, and the contract amount altered accordingly.

B1.2 We further undertake that this tender cannot be withdrawn or retracted for **90** (ninety) days from the closing date.

B1.3 Notwithstanding that, this tender is submitted by invitation, it is clearly understood and agreed that there is no obligation upon FOSKOR to accept the lowest or any tender.

B1.4 The tendered prices are fixed and firm for the duration of the contract, and unless otherwise agreed to in writing a 10% retention (held for 18 months, unless otherwise specified) shall be deducted on all payments made for the Liability Period as defined in B.2. This clause also refers to 'Handover' as specified in **B 2.1**

B1.5 Unless or until a formal agreement is prepared and signed, this tender, shall serve as your written acceptance and constitute a binding contract between FOSKOR and Yourself.

Amount In Words:

Signed aton.....

Signature
For and on behalf of the Tenderer(duly authorized)

.....
Company Stamp

B.2 Initial Project Programme of Works, Work Methodology and Cash Flow

(This is a workable schedule and the Contractor is in no way obligated to these dates. An obligatory final programme will only be required once the tender is awarded)

Commencement Date (Guide: 6 weeks from tender close date)

Within 48 hours from receipt of Purchase order.

Completion of Works/ Final Handover (Guide: Project duration)

3 years

TO BE SUBMITTED WITH THIS TENDER

The Tenderer shall submit with this Tender:

- 1 Wholesale Trading Licence Certificate
- 2 MSDS
- 3 Reference Letter (Similar Contract Undertaken)
- 4 ISO ratings
- 5 BBBEE Certificate
- 6 Company Registration
- 7 Letter of Good Letter
- 8 VAT Notice of Registration
- 9 Tax Clearance Certificate and other relevant documents

OTHER IMPORTANT NOTES

- **'Defects Liability Period'** shall be that period in force for Foskop to call upon the Contractor/Consultant to rectify at no cost to Foskop (Pty) Ltd any defects of workmanship, quality or practice; and shall remain in force **in parallel with the Retention Period** and any other duration agreed to.
- The Tenderer is to list and motivate any deviations in terms of Project Program and/or time allowed and this is subject to approval by the Foskop (Pty) Ltd Engineer.
- It would be expected, in the event of critical work and/or work behind programme/schedule, should such be attributable to the Contractor, to make up the time and work and complete the work at no cost to Foskop (Pty) Ltd.
- The Tenderer shall within **7 (seven)** days of contract award submit a final detailed work methodology and programme, and the final work methodology shall be verified and approved by Foskop (Pty) Ltd.
- The Tenderer is welcome to propose alternatives work methodology or approach to work, that may be of mutual benefit. This would be submitted in the form of an Alternative (clearly marked), however the Tenderer is **still to submit a tender in the form specified** in this tender.

[illegible]

B.3 Schedule of Key Personnel on the Project

The Tenderer shall:

1. Complete schedule B.6.1 below concerning the Key Personnel on the project, indicating also if the person is employed by the Tenderer, a sub-contractor or temporary employed person.
2. Submit a project organogram showing the relationships and authority.

Key Personnel	Name and Surname	Full/Part Time on site, off-site?	Employed, Sub- Contractor or Temp?	Years Related Experience
Project Manager / Owner				
Site Manager/ Contracts Manager				
Quality Assurance and Control				
Document Control and Accounts				
Safety Officer				

These persons shall not be substituted without prior consultation with and approval from Foskor (Pty) Ltd.

Failure to submit this information at the time of tender could lead to disqualification of the tender.

B.4 Schedule of Similar Contract Undertaken

Please provide a list of work done on contract of which the Scope of Works that are similar to the one described in this document (or attach references).

[illegible]

Section C: SCOPE OF WORKS

C.1. Background and Service Required

2 About Foskor (Pty) Ltd

The Foskor Group is a well-established South African group of companies. The Group has grown from a single phosphate mining operation 72 years ago to become one of the world's largest, most dynamic phosphate and phosphoric acid producers.

The Group consists of two main production facilities:

- **Foskor Richards Bay** - which is in the Kwa-Zulu Natal Province of South Africa in the coastal city of Richards Bay, an area known for its huge industrial development and harbour export facilities. This production facility is used to produce phosphoric acid and phosphate-based fertilizers and as an added business activity also sells low volumes of sulphuric acid to the local South African market.
- **Foskor Phalaborwa** - located in the Northern Province (Limpopo) of South Africa in the town of Phalaborwa, an area known for its large phosphate and copper reserves. This production facility is used for the mining and beneficiation of phosphate rock and recovers low concentrates of copper minerals as an added secondary business activity.

3 Service Requirements

The successful contractor will be required to supply Diesel to the Foskor Richards Bay Division which shall be a quality, standard Sulphur grade (50 ppm) distillate fuel refined for powering all types of medium and high-speed diesel engines as fitted to cars, trucks, buses, tractors, earthmoving equipment, and locomotives to SABS 342 -2002 - DIESEL

Foskor reserves the right to award this contract to one contractor or to split the contract as it may deem necessary to provide for emerging empowerment contractors.

4 Product and Quantities

4.1 Refer to Annexure A, for the usage report of the last two years.

4.2 Foskor Richards Bay in no way guarantees the exact quantities indicated against each item, quantities may vary in accordance with Foskor's requirements.

4.3 Foskor have 3 underground storage tanks with the capacity of **Tank 1** maximum of 10 000lts,

Tank 2 maximum of 10 000lts and **Tank 3** maximum of 15 000lts.

5 Insurance and Indemnity

- 5.1 It shall be expected on the successful contractor to accept full responsibility for all loads being conveyed.

6 Delivery

- 6.1 Goods must be delivered to Foskor Richards Bay Warehouse Receiving Department.
- 6.2 Personal protective equipment will be a requirement when making a delivery to the Foskor Richards Bay Plant.

7 Price Basis

- 7.1 Unit Price: The Diesel Wholesale Price (WSP) issued by the Department of Energy, of South Africa every first Wednesday of the month under Zone 5a – Richards Bay will be applicable from the date issued till the next revision.
- 7.2 The attached Price Schedule (Annexure A) must be completed and submitted with the tender documents.

8. Legal Requirements

- 8.1 Tenderer shall submit documentary proof that they comply with the requirements of the National Road Traffic Act, 1996 and the SABS 0231 code of practice “Transportation of Dangerous Goods – Operational Requirements for Road Vehicles”.
- 8.2 It will be the responsibility of the successful contractor to ensure that all legal requirements pertaining to transport are complied with and the vehicles are always road worthy.
- 8.3 Contractor vehicles will be inspected randomly on Foskor premises, and it is expected that these vehicles will comply with all regulations. Foskor reserves the right to refuse entry to our premises if vehicles are deemed to be non-compliant.

9 Award Process

- 9.1 It will be at the total discretion of Foskor (Pty) Ltd, Richards Bay Division, whether any contract will be placed because of this tender.
- 9.2 Contracts may be awarded to single or multiple contractors. If the tender is based on certain volumes, or contains price breaks, this should be clearly stated, and the parameters indicated.
- 9.3 Tenders will be evaluated by a cross-functional evaluation team whose primary function will be to draw up a short list of potential Contractors.
- 9.4 Thereafter a final evaluation will be done, and a recommendation made to the Divisional Procurement Committee who will make the final approval/rejection of the recommendation.
- 9.5 All Contractors who submitted a proposal will be informed in writing of the outcome of the tender process.

10 Duration

It is Foskor's intention to enter into a contract with the successful contractor for a period of at least three (3) years, but Foskor reserves the right to amend this term according to its requirements.

11 Tender Costs

All costs incurred in the preparation and presentation of a tender will be absorbed by the prospective Contractor. If modifications or additions to the tender become necessary, prospective Contractors will be notified in writing. All supporting materials submitted with the proposals will become the property of Foskor unless otherwise requested by the Vendor at the time of submission.

12 Company Rating

Indicate your company ISO rating or any other accreditation that you may have.

13 Contract commencement date:

01 of October 2024

Other Information

Usage for the period of 2 years.

Annexture A

Delivery Date	Branch/ Plant	Quantity	Trans UoM
27 12 2023	30001	15000	LT
21 12 2023	30001	14955	LT
12 12 2023	30001	14902	LT
27 11 2023	30001	14861	LT
13 11 2023	30001	14942	LT
26 10 2023	30001	14926	LT
20 10 2023	30001	14990	LT
02 10 2023	30001	14996	LT
14 09 2023	30001	14985	LT
22 08 2023	30001	14468	LT
16 08 2023	30001	14998	LT
01 08 2023	30001	14868	LT
13 07 2023	30001	14903	LT
22 06 2023	30001	14993	LT
07 06 2023	30001	7001	LT
05 06 2023	30001	7998	LT
15 05 2023	30001	14931	LT
21 04 2023	30001	15000	LT
11 04 2023	30001	14988	LT
24 03 2023	30001	14994	LT
23 03 2023	30001	15002	LT
16 03 2023	30001	10000	LT
16 03 2023	30001	4989	LT
06 03 2023	30001	15002	LT
28 02 2023	30001	10000	LT
28 02 2023	30001	4989	LT
21 02 2023	30001	10000	LT
21 02 2023	30001	10000	LT
20 02 2023	30001	10000	LT
02 02 2023	30001	14908	LT
02 02 2023	30001	14908	LT
16 01 2023	30001	14958	LT
13 01 2023	30001	14725	LT
21 12 2022	30001	15000	LT
19 12 2022	30001	14919	LT

05 12 2022	30001	15005	LT
22 11 2022	30001	15000	LT
09 11 2022	30001	14994	LT
01 11 2022	30001	15742	LT
15 10 2022	30001	15000	LT
13 10 2022	30001	15006	LT
04 10 2022	30001	10990	LT
17 09 2022	30001	14943	LT
12 09 2022	30001	14656	LT
29 08 2022	30001	15003	LT
25 08 2022	30001	15001	LT
25 08 2022	30001	15000	LT
22 08 2022	30001	15000	LT
19 08 2022	30001	14997	LT
15 08 2022	30001	14984	LT
13 08 2022	30001	12232	LT
02 08 2022	30001	14857	LT
29 07 2022	30001	10081	LT
27 07 2022	30001	15001	LT
11 07 2022	30001	15000	LT
09 07 2022	30001	15000	LT
05 07 2022	30001	8977	LT
24 06 2022	30001	14791	LT
22 06 2022	30001	20000	LT
22 06 2022	30001	19901	LT
21 06 2022	30001	30.04	LT
18 06 2022	30001	11995	LT
18 06 2022	30001	9992	LT
14 06 2022	30001	15000	LT
13 06 2022	30001	14962	LT
07 06 2022	30001	14992	LT
07 06 2022	30001	15000	LT
05 06 2022	30001	15000	LT
02 06 2022	30001	14998	LT
30 05 2022	30001	12997	LT
22 05 2022	30001	14694	LT
06 05 2022	30001	12690	LT
25 04 2022	30001	15000	LT
31 03 2022	30001	15000	LT
09 03 2022	30001	14731	LT
24 02 2022	30001	15001	LT
09 02 2022	30001	14930	LT
24 01 2022	30001	14998	LT
		1072270.04	LTS

- The amount of litres as the above usage for the previous 2 years was estimated at 1 072 270 litres.
- With an average of 44 677 litres per month to be delivered but not limited to the statistics given

Annexure B

PRICING SCHEDULE

Unit Price: The Diesel Wholesale Price (WSP) issued by the Department of Energy, of South Africa every first Wednesday of the month under Zone 5a – Richards Bay will be applicable from the date issued till the next revision.

1. Please complete the mandatory fields below:

Rebate	
BBBEE Level	
% Black Ownership	
Tender validity (days)	
Brand name	
Delivery lead time (days)	
Mode of delivery	
Location of Depot	
Payment terms	
Normal lead time	
Emergency lead time	
Bulk supply requirement: 15 000L per order	

1C.7.1 Tender Deliverables

The following documentation shall be returned by all Tenderers together with their offers:

- Wholesale Trading Licence Certificate
- MSDS
- Reference Letter (Similar Contract Undertaken)
- ISO ratings
- VAT Notice of Registration
- Organogram
- Letter of Good Standing
- BBBEE Certificate
- Company Registration Documents

C.7.2 Site Conditions

Not Applicable.

C.7.3 Services which are known to exist on the site

Not Applicable.

C.7.3.1 Foskor Supplied Services

Foskor (Pty) Ltd shall be responsible for:		Applicable:
1	Supply a copy of the relevant Foskor Procedure Specification(s).	refer C.3
2	Supply a copy of reference drawings if required.	refer C.6
4	Provide access to electricity connection points Any connection and consumption will be monitored by Tenderer and verified by Foskor on defined intervals (usually at the beginning and end of contract)	N/A
5	Provide access to potable water Connection and consumption would need to be monitored by Successful Tenderer (Contractor) and verified by Foskor on intervals (usually at the beginning and end of contract) defined by Foskor	N/A
6	Provide a suitable area for site establishment for Successful Tenderer (Contractor). - Successful Tenderer to formally in writing motivate, request and define the area and services it deems necessary for site establishment. - Foskor will at its own discretion (if request is approved) allocate a site establishment area, however Foskor can should it deem necessary retract or re-define its approval by giving reasonable notice to the successful Tenderer	N/A
7	Provide access to ablutions facilities. (not change rooms) - Successful Tenderer (Contractor)'s workers to be fully dressed in required PPE when coming on site. - The successful Tenderer to ensure that its workers/subcontractors/ supplier that are making use of facilities, do so in an orderly and well-mannered way. - Successful Tenderer is not allowed to make use of Foskor's change room or tearoom facilities unless agreed to in writing. - The successful Tenderer might be called on to assist with the maintenance and cleaning of ablutions, should Foskor at its discretion be of the opinion that it be necessary. Cost associated with such cannot be claimed from Foskor (Pty) Ltd.	N/A
8	Assist in issuing of work clearances and HIRA certificates.	N/A

C.7.3.2 Successful Tenderer (Contractor) Responsibilities

The successful Tenderer (Contractor) shall be responsible for (inter alia):		Applicable:
1	Supply of Commercial Diesel to Foskor Richards Bay Division	YES
2	Ensuring that all acceptance approvals as per the Quality Control Policy (QCP) are received before work is finally handed over.	N/A

Note that concerning above:

- No claims towards losses will be accommodated.

- ii. All items that the Successful Tenderer will bring to Foskop (Pty) Ltd, will be subjected to review and approval by Foskop (Pty) Ltd and shall conform to Foskop procedures.

C.7.4 Certification by Recognized Bodies

Only Tenderers registered with the relevant Wholesale License Certification issued by the Department of Minerals and Energy

C.7.5 Requirement for the termination, diversion, or maintenance of existing services

Only Applies if/where electrical conductors, pipe conduits, electrical transmitters, ducting or ventilation services are affected. Unless identified as part of the scope, the Contractor must immediately bring to Foskop's attention any previously unspecified or obstructing services existing in his area of work and without terminating/diverting/hindering such services.

C.7.6 Nominated Sub-Tenderers

Should the tenderer anticipate using Subcontractors for any part of the scope, these must be specified below.

The following Sub-Tenderers are nominated:

Contractor	Concerning Works	Contact

C.7.7 Invoicing and Payment

Payment will be made by Foskop (Pty) Ltd, after approval (with consideration for the construction, completion and defects corrections of the Works) by the Foskop (Pty) Ltd's Project Representative (i.e. Engineer, Project Supervisor) of the submitted Payment Certificate to the Tenderer within **30 (thirty)** days from the date of the Tenderers approved invoice.

The invoice shall be approved in accordance with the provisions of Foskop (Pty) Ltd.'s terms and conditions.

The invoice submitted is to be in a format acceptable to the Foskop (Pty) Ltd's Project Representative and need to contain the following minimum information:

- Company details, registration no and VAT registration no,
- Purchase Order no & Date of Invoice,
- Copy of Purchase Order,
- Detail description of work done to date,
- Value of the current claim and work done (excl. VAT),
- VAT charged.

C.7.8 Standing Time

Standing time is defined as a period of time measured in hours, when the Contractor's normal operational cycle is affected by causes caused by Foskop (Pty) Ltd and results in normal stoppage or major disruption to the regular progress of the Works.

Payment to the Contractor for standing time will be certified only where, in Foskop (Pty) Ltd's opinion, the delay was clearly beyond the reasonable control of the Contractor and the Contractor further took all reasonable measures to avoid or reduce such delay and such delay imposed direct costs to the Contractor.

C.7.9 Progress of Works

Should Foskop (Pty) Ltd at any time be of the opinion that the rate of progress of the Works or any part thereof is too slow to ensure the completion of the Works or any part thereof by the Completion Date, Foskop (Pty) Ltd shall so notify the Contractor in writing, with specific reference to this Clause, and the Contractor shall thereupon, subject to the approval of Foskop (Pty) Ltd take such steps as are necessary to expedite progress so as to complete the Works or the said part thereof by the Due Completion Date.

C.7.10 Penalty

If the Contractor, by the Due Completion Date, fails to complete the Works to the extent which entitles him to receive a Certificate of Practical Completion, the Contractor shall be liable to Foskop (Pty) Ltd for an amount of **0.1% for every Calendar Day that the works is late or such portion of the contract price as is associated with that part of the Works.**

The imposing of such penalty shall not relieve the Contractor from the obligation to complete the Works or from his obligations and liabilities under the Contract.

C.7.11 Claims: Extension of Time for Completion, Additional Payments or Compensation

C.7.11.1 Claims Procedure

The following provisions shall apply:

- i. Claims are to be submitted in writing within **7 days** after the circumstances, event, act or omission giving rise to such claim has arisen or occurred to the Foskop (Pty) Ltd Project Representative
- ii. Submit **written notice** to the Foskop (Pty) Ltd Project Representative of the intention to claim within **7 days** after the circumstances, event, act or omission giving rise to such claim has arisen or occurred. The Notice and subsequent claim to set out:
 - a. Particulars of the circumstance, event, act or omission giving rise to the claim concerned;
 - b. Provisions of the portion of the contract on which he intends to make the claim;
 - c. Length of extension of time, if any, claimed and the basis of calculation thereof, and
 - d. The Price Adjustment, if any, claimed and the basis of calculation thereof.
- iii. If the Contractor cannot reasonably comply with any of the provision above within the said period 14 days, he shall:
 - a. Notify the Foskop (Pty) Ltd Project Representative in writing of his intention to make the claim and comply with such requirements as he reasonably can;

- b. Deliver additional information in writing that is reasonably required by Foskop (Pty) Ltd; and
 - c. Comply as soon as practical with such requirements as described above in this clause, within a time agreed to by the Foskop (Pty) Ltd Project Representative.
- iv. In the event of failure to comply to any of the provisions, the claim would not be accommodated and Foskop (Pty) Ltd would be discharged of all liability in connection with the claim.

C.7.11.2 Extension of Time for Completion

The whole works shall be completed within the time agreed upon.

If any circumstances of any kind whatsoever may occur and as such, fairly entitle the Contractor to any extension of time for the completion of the works or portion thereof, then the Foskop (Pty) Ltd Project Representative will consider a claim duly submitted.

C.7.12 Cancellation of the Contract by Foskop (Pty) Ltd

If:

- (a)
 - (i) The estate of the Contractor shall be sequestered (provisionally or finally), or
 - (ii) The Contractor shall publish a notice of surrender of his estate as insolvent, or
 - (iii) The Contractor, being a company or a close corporation, shall go into liquidation (provisionally or finally), or
 - (iv) The Contractor shall assign the Contract without the consent in writing of Foskop (Pty) Ltd having first been obtained, or
 - (v) The Contractor shall enter into a compromise with the general body of his creditors, or
 - (vi) The Contractor shall have an execution levied on his goods, or
- (b) the Foskop (Pty) Ltd Project Representative shall certify in writing to Foskop (Pty) Ltd, and to the Contractor/Consultant, with specific reference to this Clause, that in his opinion the Contractor/Consultant:
 - (i) has abandoned or repudiated the Contract, or
 - (ii) has, without reasonable excuse, failed to commence the Works in terms of the time allowed and agreed to, or
 - (iii) has suspended the progress of the Works without due cause, or
 - (iv) has failed to proceed with the Works with due diligence, or
 - (vi) is not executing the Works in accordance with the Contract, or
 - (vii) has, without the approval of the Foskop (Pty) Ltd Project Representative, subcontracted any part of the Contract, or
 - (viii) has failed to provide the Surety ship, Professional Indemnity within the time stipulated and for 14 days after receiving a written notice from the Foskop (Pty) Ltd Project Representative, referring specifically to the default concerned and to this Clause, failed to remedy the default,

(c) Foskor (Pty) Ltd may, by written notice to the Contractor, terminate the Contract and withhold

any payments due until further notice.

C.7.13 Urgent remedial work

All designs changes or remedial action must be communicated to the Foskor Engineer or the authorized Foskor Designate. Approval of such must be sought and received as early as not to impose undue costs and delays. Should there however be remedial work necessary, the Contractor shall, upon approval from the Foskor Engineer/Designate, effect these with care, accuracy and speed, so as not to impose undue extension of time and /or cost.

If any work as done by Foskor (Pty) Ltd is work which the Contractor was liable to do at his own expense under the Contract, all costs incurred by Foskor (Pty) Ltd in so doing shall be determined by Foskor (Pty) Ltd or its agent and shall on demand be paid by the Contractor to Foskor (Pty) Ltd.

C.8 Foskor Safety Documents to be submitted, Environmental and Site Management

C.8.1 SHREQ Requirements

The successful Tenderer will be required to comply and ensure continuous compliance with Foskor standards and national regulations:

- Compliance with COP6 (Contractor Management).
- Compliance and signing of Section 37(2) Agreement in terms of the OHS Act at the Foskor (Pty) Ltd Safety Department.
- Compliance with Legislation requirements which includes the OHS Act, NEMA (National Environment Management Act) and other relevant applicable Legislation.
- *Copy of requirements available from Foskor SHREQ Department.*

C.8.2 Environmental Management Specifications

In order to ensure that the construction works is designed for an environmentally sensitive area, strict compliance to the Environmental Management Plan (EMP) guidelines may be requested after appointment of the contractor.

The EMP shall be part of the terms of reference for all contractors/consultants, sub-contractors/consultants and suppliers.

A copy of the EMP requirements is available from Foskor (Pty) Ltd SHREQ department.

All MSDS's to be submitted to Foskor (Pty) Ltd.

Waste disposal needs to comply to Foskor (Pty) Ltd Waste Management Plan.

C.9 OHSA 1993 Health and Safety Specification

This specification covers the health and safety requirements to be met by the successful Tenderer (Contractor) to ensure a continued safe and healthy environment for all workers, employees and subcontractors/consultants and for all other persons entering the site of works.

This specification shall be read with the Occupational Health and Safety Act (Act No 85 and amendment Act No 181) 1993, and the corresponding Construction Regulations 2003, and all other safety codes and specifications referred to in the said Construction regulations.

C.9.1. Health and Safety Induction

The successful Tenderer (Contractor) shall ensure that all employees under his control, including the subcontractors/consultants and their employees, undergo a health and safety induction training course by a Foskor competent person before entering site.

- a. The Contractor shall ensure all his/her personnel have attended the Safety Induction, by Foskor (Pty) Ltd before they enter site.
- b. The Contractor on entering site, must wear Foskor minimum required PPE at all times namely safety glasses, acid resistant overalls, safety harnesses (on heights), safety boots or steel cap gumboots, ear protection and **gas masks (Halfmask double filter – screw type with filter type A1B1E1K1 – North Safety Product or similar approved product) and goggles (Uvex ultravision – W1663459B – DIN CE 0196) preferably in a pouch.** Should a Contractor be found on site without the above-mentioned safety clothing, he will be removed from site and will not be allowed to return. FFP3 dust mask fitted with an exhalation valve must be used when working in dust in on the B&D Store.
- c. **Overalls must be Blue Sweet Orr overall (80% Ployester 20% Viscose Rayon Acid repellent) with Company names either on front of jacket or back OR Blue North Safety Acid/Flame overall (Flame retardant acid resistant anti-static ATPV 15.4CAL/CM2) with company names either on front of jacket or back and fluorescent reflective strips to be stitched onto sleeves and on the knees.**
- d. The Contractor shall demarcate the relevant work area. The Contractor shall supply and erect an appropriate name board with all relevant information and contact details at the work area.
- e. The job risk assessment shall be carried out at the start of each shift. This risk assessment shall cover all activities planned for the relevant shift. The risk assessment shall be submitted to Foskor (Pty) Ltd at the start of each day shift and each night shift.
- f. The Contractor must take safety precautions when working on site.
- g. The Contractor must remove all their equipment within 48 hours after project completion/closure.
- h. A complete safety file to be submitted to Foskor (Pty) Ltd Safety Department before any work commences.
- i. The Contactor's vehicle when entering the Plant must have rotating orange lights on at all times.
- j. **The Contractor and their employees must undergo a full medical at either Foskor (Pty) Ltd's Clinic or Caredoc Richards Bay or their approved by Foskor (Pty) Ltd. A full lung function test must be done. If a project is longer than twelve months, then a complete medical including lung function tests must be done again and thereafter the lung function test. Medical certificates are valid for one year only. For medical costs and bookings please contact Sister Larna Pieterse at Foskor (Pty) Ltd Clinic on 035 902 3287.**
- k. A once-off fee is also required for access cards from Foskor Security. Please contact the Foskor (Pty) Ltd Security Reception at 035 902 3267 for information.

- I. No access to elevated platforms, roof and scaffolding will be allowed during rainy days.

MANDATORY AS ENVISAGED BY SECTION 37(2) OF THE ACT

By the submission of a tender, any tenderer will, if awarded the contract to which this tender document relates, be deemed to be the mandatory as envisaged by Section 37 (2) of the Act.

As a mandatory the successful tenderer will be deemed to be the “principal contractor” and an employer in his/her/their own right with duties as prescribed in the Act and accordingly will be deemed to have agreed to be solely responsible for ensuring that in connection with the service to which this tender document relates, all work will be performed in accordance with the Act.

It is further noted that:-

- a) The Contractor shall comply with all Foskor Regulations and Safety Standards.
- b) The Contractor shall fully comply with the OHS Act (Act 85 of 1993).

IMPORTANT NOTE

The above is a summary of some of matters as defined in the Act. The successful Tenderer (Contractor) is required and advised in his own interest to make a careful study of the Act and the Construction regulations.

Ignorance of the Act and the Regulations will not be accepted in any proceedings, as valid reason if non-conformance to the Act and the Regulations are committed.

C.10. Applicable General Conditions of Contract

Unless expressly otherwise indicated, Foskor General Conditions of Contract and the FIDIC terms of Contract would apply, and is available from the Manager Procurement Foskor Richards Bay.

C.11. Quality Management

The successful Tenderer is to adhere to Foskor (Pty) Ltd's Quality Management System and specifications incorporated in this Tender Document.

To ensure that all installations are carried out in a controlled manner, the Contractor shall demonstrate this by means of the internal quality system, which shall include as a minimum a QCP for each piece of equipment. The QCP must be approved by Foskor before commencement of any work.

C.11.1 Quality Control:

- i. A detailed QCP (Quality Control Plan) shall be submitted within 3 days of contract award.
- ii. Quality of work must be monitored and controlled at a high level at all times.
- iii. At each hold and witness point all work shall be suspended until the specified inspection has been completed and the QCP updated and signed accordingly by Foskor (Pty) Ltd or its representative.
- iv. At each milestone, the designated Foskor (Pty) Ltd Quality Representative must approve the quality and standard of work being produced.
- v. It shall be the responsibility of the Successful Tenderer (Contractor) to give Foskor (Pty) Ltd timely notice of hold and witness points requiring their intervention.

Section D – Bill Of Quantity

Not Applicable.