



**DEPARTMENT OF WATER AND SANITATION  
REPUBLIC OF SOUTH AFRICA**

DUE AT 11:00 ON

**[06 AUGUST 2015]**

(CLOSING DATE)

**[WP1059-WTE]**

**APPOINTMENT OF SERVICE PROVIDERS  
FOR VALIDATION AND VERIFICATION OF  
EXISTING LAWFUL WATER USES WITHIN  
MULTIPLE QUATERNARY CATCHMENT.**

SUBMIT TENDER DOCUMENT

TO

POSTAL ADDRESS:  
DIRECTOR-GENERAL: WATER & SANITATION  
PRIVATE BAG X 313  
PRETORIA,0001

OR

**TO BE DEPOSIT IN:**  
THE TENDER BOX AT THE ENTRANCE  
OF ZWAMADAKA BUILDING  
157 FRANCIS BAARD STREET  
(FORMERLY SCHOEMAN STREET)  
PRETORIA,0002

**TENDERER:** (Company address and stamp)

**COMPILED BY:**  
**DEPARTMENT OF WATER AND SANITATION:**

# INVITATION TO BID

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

BID NUMBER: ..... CLOSING DATE: ..... CLOSING TIME: 11:00

DESCRIPTION.....

**The successful bidder will be required to fill in and sign a written Contract Form (SBD 7).**

BID DOCUMENTS MAY BE POSTED TO:  
**POSTAL ADDRESS: DIRECTOR-GENERAL: WATER AND SANITATION  
PRIVATE BAG X 313  
PRETORIA,0001**

OR

DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)  
**THE TENDER BOX AT THE ENTRANCE  
OF ZWAMADAKA BUILDING  
157 SCHOEMAN STREET  
PRETORIA,0002**

**Bidders should ensure that bids are delivered timeously to the correct address. If the bid is late, it will not be accepted for consideration.**

The bid box is generally open 24 hours a day, 7 days a week.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

**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.....

E-MAIL ADDRESS .....

VAT REGISTRATION NUMBER .....

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN SUBMITTED? (SBD 2) YES or NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (SBD 6.1) YES or NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA).....

A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS); OR.....

A REGISTERED AUDITOR .....

[TICK APPLICABLE BOX]

**(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE)**

ARE YOU THE ACCREDITED REPRESENTATIVE  
IN SOUTH AFRICA FOR THE GOODS / SERVICES / WORKS OFFERED?  
NO

YES or

[IF YES ENCLOSE PROOF]

SIGNATURE OF BIDDER .....

DATE .....

CAPACITY UNDER WHICH THIS BID IS SIGNED .....

TOTAL BID PRICE..... TOTAL NUMBER OF ITEMS OFFERED .....

**ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:**

**Department:** SUPPLY CHAIN MANAGEMENT WTE

**Contact Person:** JULIA/ANELE/EDWARD

**Tel:** 012 336 7780/7432/6941

**Fax:** 012 336 6963

**E-mail address:** DiraneJ@dwa.gov.za/NdamaseA@dwa.gov.za/NwamafelaE@dwa.gov.za

**ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:**

**Contact Person:** Skosana Siphos

**Tel:** 012 336 7677/7531

**Fax:** 0828085947

**E-mail address:** SkosanaM@dwa.gov.za



### Application for a Tax Clearance Certificate

#### Purpose

Select the applicable option  Tenders  Good standing

If "Good standing", please state the purpose of this application

Empty text box for purpose of application

#### Particulars of applicant

|                                                               |   |                                      |   |
|---------------------------------------------------------------|---|--------------------------------------|---|
| Name/Legal name<br>(Initials & Surname<br>or registered name) |   |                                      |   |
| Trading name<br>(if applicable)                               |   |                                      |   |
| ID/Passport no                                                |   | Company/Close Corp.<br>registered no |   |
| Income Tax ref no                                             |   | PAYE ref no                          | 7 |
| VAT registration no                                           | 4 | SDL ref no                           | L |
| Customs code                                                  |   | UIF ref no                           | U |
| Telephone no                                                  |   | Fax no                               |   |
| E-mail address                                                |   |                                      |   |
| Physical address                                              |   |                                      |   |
| Postal address                                                |   |                                      |   |

#### Particulars of representative (Public Officer/Trustee/Partner)

|                  |  |                   |  |
|------------------|--|-------------------|--|
| Surname          |  |                   |  |
| First names      |  |                   |  |
| ID/Passport no   |  | Income Tax ref no |  |
| Telephone no     |  | Fax no            |  |
| E-mail address   |  |                   |  |
| Physical address |  |                   |  |

**Particulars of tender (If applicable)**

Tender number

Estimated Tender amount R

Expected duration of the tender  year(s)

**Particulars of the 3 largest contracts previously awarded**

| Date started | Date finalised | Principal | Contact person | Telephone number | Amount |
|--------------|----------------|-----------|----------------|------------------|--------|
|              |                |           |                |                  |        |
|              |                |           |                |                  |        |
|              |                |           |                |                  |        |

**Audit**

Are you currently aware of any Audit investigation against you/the company?  YES  NO  
If "YES" provide details

**Appointment of representative/agent (Power of Attorney)**

I the undersigned confirm that I require a Tax Clearance Certificate in respect of  Tenders or  Goodstanding.

I hereby authorise and instruct  to apply to and receive from SARS the applicable Tax Clearance Certificate on my/our behalf.

--  
Signature of representative/agent Date  
Name of representative/agent

**Declaration**

I declare that the information furnished in this application as well as any supporting documents is true and correct in every respect.

--  
Signature of applicant/Public Officer Date  
Name of applicant/Public Officer

**Notes:**

- It is a serious offence to make a false declaration.
- Section 75 of the Income Tax Act, 1962, states: Any person who
  - fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or
  - without just cause shown by him, refuses or neglects to:
    - furnish, produce or make available any information, documents or things;
    - reply to or answer truly and fully, any questions put to him ...As and when required in terms of this Act ... shall be guilty of an offence ...
- SARS will, under no circumstances, issue a Tax Clearance Certificate unless this form is completed in full.**
- Your Tax Clearance Certificate will only be issued on presentation of your South African Identity Document or Passport (Foreigners only) as applicable.

## SBD 4

## DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state<sup>1</sup>, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes an advertised competitive bid, a limited bid, a proposal or written price quotation). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

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

2.2 Identity Number:.....

2.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>, member):  
.....

2.4 Registration number of company, enterprise, close corporation, partnership agreement or trust:  
.....

2.5 Tax Reference Number: .....

2.6 VAT Registration Number: .....

- 2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / PERSAL numbers must be indicated in paragraph 3 below.

<sup>1</sup>"State" means –

- (a) 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);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

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

2.7 Are you or any person connected with the bidder presently employed by the state? **YES / NO**

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member: .....

Name of state institution at which you or the person connected to the bidder is employed : .....

Position occupied in the state institution: .....

Any other particulars:  
.....  
.....  
.....

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? **YES / NO**

2.7.2.1 If yes, did you attach proof of such authority to the bid document? **YES / NO**

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

.....  
.....  
.....

2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? **YES / NO**

2.8.1 If so, furnish particulars:

.....  
.....  
.....

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

2.9.1 If so, furnish particulars.

.....





**4 DECLARATION**

I, THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.  
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME SHOULD THIS  
DECLARATION PROVE TO BE FALSE.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

November 2011

## PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2011

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011.**

### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to exceed R1 000 000 (all applicable taxes included) and therefore the 90/10 system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contribution.

1.3.1 The maximum points for this bid are allocated as follows:

|                                                          | POINTS     |
|----------------------------------------------------------|------------|
| 1.3.1.1 PRICE                                            | 90         |
| 1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION              | 10         |
| <b>Total points for Price and B-BBEE must not exceed</b> | <b>100</b> |

1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.5 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

### 2. DEFINITIONS

- 2.1 **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 2.2 **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 2.3 **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 2.4 **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- 2.5 **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.6 **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- 2.7 **“consortium or joint venture”** 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;
- 2.8 **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- 2.9 **“EME”** means any enterprise with an annual total revenue of R5 million or less .
- 2.10 **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 **“non-firm prices”** means all prices other than “firm” prices;
- 2.13 **“person”** includes a juristic person;
- 2.14 **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.16 **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- 2.17 **“trust”** means the arrangement through which the property of one person is made over or

bequeathed to a trustee to administer such property for the benefit of another person; and

- 2.18 “trustee” means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

### 3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

### 4. POINTS AWARDED FOR PRICE

#### 4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

#### 90/10

$$P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

$P_s$  = Points scored for comparative price of bid under consideration

$P_t$  = Comparative price of bid under consideration

$P_{\min}$  = Comparative price of lowest acceptable bid

### 5. Points awarded for B-BBEE Status Level of Contribution

- 5.1 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

| <b>B-BBEE Status Level of Contributor</b> | <b>Number of points (90/10 system)</b> | <b>Number of points (80/20 system)</b> |
|-------------------------------------------|----------------------------------------|----------------------------------------|
| 1                                         | 10                                     | 20                                     |
| 2                                         | 9                                      | 18                                     |
| 3                                         | 8                                      | 16                                     |
| 4                                         | 5                                      | 12                                     |
| 5                                         | 4                                      | 8                                      |
| 6                                         | 3                                      | 6                                      |
| 7                                         | 2                                      | 4                                      |
| 8                                         | 1                                      | 2                                      |
| Non-compliant contributor                 | 0                                      | 0                                      |

- 5.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.
- 5.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

## 6. BID DECLARATION

6.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

**7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1**

7.1 B-BBEE Status Level of Contribution: ..... = .....(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA).

**8 SUB-CONTRACTING**

8.1 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)

8.1.1 If yes, indicate:

- (i) what percentage of the contract will be subcontracted? .....%
- (ii) the name of the sub-contractor? .....
- (iii) the B-BBEE status level of the sub-contractor? .....
- (iv) whether the sub-contractor is an EME? YES / NO (delete which is not applicable)

**9 DECLARATION WITH REGARD TO COMPANY/FIRM**

9.1 Name of company/firm .....

9.2 VAT registration number : .....

9.3 Company registration number .....

9.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....  
.....  
.....

9.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional service provider
- Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

9.7 Total number of years the company/firm has been in business? .....

9.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we 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 paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- (iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding 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) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, 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

**WITNESSES:**

1. ....

|                                                      |
|------------------------------------------------------|
| <p>.....</p> <p><b>SIGNATURE(S) OF BIDDER(S)</b></p> |
|------------------------------------------------------|

2. ....

DATE:.....

ADDRESS:.....

.....

.....

## DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions 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 disregarded if that bidder, or any of its directors have-
  - a. abused the institution's supply chain management system;
  - b. committed fraud or any other improper conduct in relation to such system; or
  - c. failed to perform on any previous contract.
- 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   | <p>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?<br/> <b>(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).</b></p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</p> | Yes<br><input type="checkbox"/> | No<br><input type="checkbox"/> |
| 4.1.1 | If so, furnish particulars:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                 |                                |
| 4.2   | <p>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)?<br/> <b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b></p>                                                                                                                                                                                                                                                                           | Yes<br><input type="checkbox"/> | No<br><input type="checkbox"/> |
| 4.2.1 | If so, furnish particulars:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                 |                                |
| 4.3   | <p>Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Yes<br><input type="checkbox"/> | No<br><input type="checkbox"/> |
| 4.3.1 | If so, furnish particulars:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                 |                                |



|       |                                                                                                                                                                   |                                 |                                |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|--------------------------------|
| 4.4   | Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract? | Yes<br><input type="checkbox"/> | No<br><input type="checkbox"/> |
| 4.4.1 | If so, furnish particulars:                                                                                                                                       |                                 |                                |

**SBD 8**

**CERTIFICATION**

**I, THE UNDERSIGNED (FULL NAME).....  
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION  
FORM IS 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**

Js365bW

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Standard Bidding Document (SBD) must form part of all bids<sup>1</sup> 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).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
  - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
  - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD 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 (SBD 9) must be completed and submitted with the bid:

<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.

<sup>2</sup> 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 Institution)

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

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 consortium<sup>3</sup> 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.

<sup>3</sup> 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.

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**

Js914w 2

**THE NATIONAL TREASURY**

**Republic of South Africa**



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**GOVERNMENT PROCUREMENT:  
GENERAL CONDITIONS OF CONTRACT**

**July 2010**

# **GOVERNMENT PROCUREMENT**

## **GENERAL CONDITIONS OF CONTRACT July 2010**

### **NOTES**

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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## 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 any thing 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 supplies 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 supplies 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 ancillary 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 “Written” or “in writing” means handwritten 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, 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 supplies, 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 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

**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.

**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 in SCC.

**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 supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 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 supplies 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 supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies 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 supplies may on or after delivery be inspected, tested or

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies 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 supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies 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 23 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 and 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, specified in SCC, and in any subsequent instructions ordered by the purchaser.

**10. Delivery and documents**

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

**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 in the SCC.

**12. Transportation**

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

**13. Incidental services**

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (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 in SCC, 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 in SCC.

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 in SCC 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 in SCC, 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 in SCC.
- 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 in SCC.
- 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 in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 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 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 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 supplies are required, or the supplier's services are not readily available.

21.5 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 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies 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 judgment 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 intended penalty as not objected against and may impose it on the supplier.

- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, 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 Accounting Officer / Authority 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. Anti-dumping 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 contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies 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 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 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.

**28. Limitation of liability**

28.1 Except in cases of criminal negligence or willful 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 in SCC.
- 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 the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** 34.1 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 (or bid rigging).
- 34.2 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 the Competition Act No. 89 of 1998.

- 34.3 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.

Js General Conditions of Contract (revised July 2010)



**water & sanitation**

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Department:  
Water and Sanitation  
REPUBLIC OF SOUTH AFRICA

**TERMS OF REFERENCE (ToR):  
VERIFICATION AND VALIDATION OF WATER USE  
(JULY 2015)**

**BID NO.WP1059**

**TERMS OF REFERENCE FOR THE APPOINTMENT OF SERVICE PROVIDERS FOR VALIDATION AND VERIFICATION OF EXISTING LAWFUL WATER USES IN TERMS OF THE NATIONAL WATER ACT, 1998 (ACT NO 36 OF 1998) WITHIN THE NINE WATER MANAGEMENT AREAS OF SOUTH AFRICA**

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## 1. BACKGROUND

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The Department of Water and Sanitation (DWS) is a custodian of country's water resources and, consequently, it is responsible for ensuring that water resources are protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner in accordance with its constitutional mandate

While significant progress has been made towards ensuring that all South Africans have access to clean and safe drinking water, the country still faces considerable inequities with respect to the use of water for productive economic purposes. These inequities are reflected both in the disproportionate allocation and use of water and also, in many cases, a lack of the resources to use water in the most beneficial manner. In addition, much still has to be done to ensure that all South Africans can participate equitably in water resources management. The Validation and Verification of Water Use projects is aimed at confirming the lawfulness and extent (how much) of water use. Critically, such projects contribute to confirming the amount of water available for social and economic development needs.

The enactment and the implementation of the National Water Act, 1998 (Act 36 of 1998) (NWA) gave recognition of the water uses that were authorised by the previous pieces of legislation. In terms of section 34 of the Act, a person or that person's successor in title, who has an existing lawful use authorised by or under any law which was in force two years immediately before the date of commencement of the NWA, could continue with such use under the same terms and conditions attaching to such use until the use is replaced by a licence in terms of the NWA. This in actual fact means that the status quo of the majority of the country's scarce water resources is being exercised by a few and remains unchanged. The Validation and Verification therefore seek to scientifically and legally provide information that will assist the department to rectify this situation.

In terms of regulation 3(b) of Regulations 1352 dated 12 November 1999, a person who uses water as contemplated in section 21 of the NWA must, when called upon by the responsible authority do so, register water use. All water users instructed to register have the statutory obligation to do so. The registration of water use was requested by several notices in various Provincial Operations published in the Government Gazette and thereafter followed up by the National extension notice no 334 published in Government Gazette Number 22201 dated 06April 2001.

The registration process required that all water uses, despite the legal status thereof, had to be registered.

It is clearly stated on all Registration Certificates that the registration is not an acknowledgement of any entitlement to use water by the registered water users. The main reasons for registration of all water uses after the implementation of the NWA include the following:

- To have a comprehensive database of all water users that would enable the Department to manage the water resources of South Africa efficiently by amongst others, fulfilling the need of knowing where and what water is being used for. This enables the Department to deliver on the mandate of the National Water Act which strives to promote the optimal beneficial use of water in the public interest.
- To enable the Department to have and administer appropriate charge for water use. In terms of Section 59 (2) of the NWA any person registered or holding a license to use water must pay all charges imposed under section 57 in respect of that water use.



The water use registration information as submitted by users was captured on the Department's Water Authorisation and Registration Management System (WARMS) Database. The unverified registration information is presently used as a basis for managing the water resource and for billing users for water resource management charges. Since there was no formal verification of the correctness of registration information supplied by the water user during registration period, no confirmation could therefore be given on the lawfulness of the registered water use. The registered water use is therefore subject to verification under section 35 of the NWA.

## 2. OBJECTIVE OF THIS STUDY

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The objective of the projects is to identify users per WMA:

- who have registered their water use entitlements correctly (correct registration);
- who have registered uses to which they are not entitled (over registration and / or unlawful use);
- who have omitted to register uses to which they are entitled (under registration and terminated use); and
- who have not registered their use at all (failure to register).

The project will complete the process of Existing Lawful Water Use determinations per WMA. This task should be done for each of the Water Management Areas listed under Table 1. The PSP's may tender on one or more contracts and/or studies but must indicate each study cost separately, or the for the project in its totality.

## 3. PURPOSE OF THIS TERMS OF REFERENCE

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The purpose of this Terms of Reference is to provide a framework for the functions and responsibilities of the Professional Service Provider (PSP) undertaking all aspects of the Study. The PSP therefore must provide the diverse skills and expertise required to undertake this study.

## 4. GENERAL INFORMATION

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### 4.1 Client and Study Name

The Department of Water and Sanitation will act as the Client for the proposed project.

The assignment shall be called: "Validation and Verification of existing lawful water uses in terms of the National Water Act, 1998 (Act No 36 Of 1998) within the nine Water Management Areas (WMAs) of South Africa" *indicate select area(s) as per Table 1 and figure 1 herein*.

**Table 1: Water Management Areas**

| CMA                        | WMA                         | Number of Properties | Validated Properties | Verified Properties |
|----------------------------|-----------------------------|----------------------|----------------------|---------------------|
| Limpopo CMA1               | Limpopo WMA1*               | 2541                 | 2541                 | 1016                |
|                            | Crocodile West-Marico WMA3* | 5459                 | 5439                 | 1435                |
| Olifants CMA2              | Levubu / Letaba WMA2*       | 2700                 | 2133                 | 481                 |
|                            | Olifants WMA5               | 7000                 | 0                    | 0                   |
| Inkomati – Usuthu CMA3     | Inkomati WMA4*              | 4182                 | 4182                 | 0                   |
|                            | Usuthu WMA6                 | 2984                 | 0                    | 0                   |
| Pongola – Mzimkhulu CMA4   | Mvoti-Mzimkhulu WMA11       | 7149                 | 0                    | 0                   |
|                            | Thukela WMA7                | 3123                 | 0                    | 0                   |
| Vaal CMA5                  | Upper Vaal WMA3*            | 6228                 | 6228                 | 3975                |
|                            | Middle Vaal WMA 9*          | 3046                 | 3046                 | 657                 |
|                            | Lower Vaal WMA10*           | 2092                 | 2084                 | 313                 |
| Orange CMA6                | Upper Orange WMA 13*        | 5465                 | 5465                 | 3830                |
|                            | Lower Orange WMA14          | 6565                 | 0                    | 0                   |
| Mzimvubu – Tsitsikama CMA7 | Fish-Tsitsikama WMA15       | 7411                 | 1146                 | 71                  |
|                            | Mzimvubu - Keiskama WMA 12  | 4480                 | 0                    | 4480                |
| Breede – Gouritz CMA8      | Breede WMA18*               | 5093                 | 5093                 | 1427                |
|                            | Gouritz WMA16               | 4841                 | 0                    | 0                   |
| Berg – Olifants CMA9       | Berg WMA19                  | 3312                 | 0                    | 0                   |
|                            | Olifants-Doorn WMA17        | 2294                 | 0                    | 0                   |
| <b>Totals</b>              |                             | <b>85965</b>         | <b>37357</b>         | <b>17685</b>        |

\*In these WMAs, the number of properties has been determined through the validation process (whereas properties without asterisks are based on WARMS registration and therefore subject to change when validation is done).



Figure 1: Water Management Areas (CMA / Proto)

#### 4.2 Compulsory Briefing Session

Prospective bidders are to attend a compulsory briefing session before submission of bids. Failure to attend this session will result to a disqualification of the bid.

## 5. INSTITUTIONAL ARRANGEMENTS

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### 5.1 Study approach and structure

The study will be carried out under the guidance of a Study Management Committee (SMC) and can comprise out of representatives from the CMAs, Proto CMAs and the National Office of the Department of Water and Sanitation. The Study Managers appointed by the Department will chair the SMC. The PSP appointed for this study will report technical and administrative progress to the SMC through the Study Managers. The PSP shall nominate a Study Leader representing the PSP in the execution of the Study and in liaison with the Client.

### 5.2 Study management

#### 5.2.1 Study managers

The PSP will assist the Client in administering and managing all the necessary work to comply with this brief. Together the Study Manager (DWS) and the Study Leader (PSP) will form the Study Management Team (SMT). If the need arises the Study Management Team can be extended to incorporate more members of the Study Management Committee.

#### 5.2.2 Liaison and supervision

The Client will be responsible for the general liaison and supervision of the studies and the entire project. Sub-consultants and/or co-consultants that may be required to render specialist services will be appointed by and directly responsible to the PSP. The PSP will attend progress meetings with the Client in "*to be determined area*" at intervals specified by the Study Manager (not more frequently than monthly) to report on study progress and expenditure against the programme and also disseminate any supplementary brief directives. Meetings of the Study Management Team will be held in "*to be determined area*" from time to time, as the need arises, to resolve specific problems associated with the study management and co-ordination. The SMT meetings will be convened at the discretion of the Study Manager, usually upon request of the Study Leader.

## 6. SCOPE OF SERVICES TO BE PROVIDED BY THE PSP

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### 6.1 General

The services to be provided by the PSP must be in accordance with these terms of reference.

The study shall be undertaken in a phased manner as follows:

Phase 1: Study Planning and Process Initiation

Phase 2: Study Implementation

Phase 3: Study Termination

## **6.2 Phase 1: Study Planning and process initiation**

The primary purpose of this phase is to plan the study and to compile an Inception Report. During the Inception Phase the selected service providers are expected to familiarise themselves with the registration process and the Water Authorisation and Registration Management System (WARMS), particularly with respect to the priority areas in terms of this assignment. In order to do this, the PSPs will have access to all databases held by the Department of Water and Sanitation. During the Inception phase of the project, the service providers will also be expected to familiarise themselves with the "Guide to verifying the extent of existing lawful water use" that is available from the DWS. After the inception phase the PSP must review the assignment to establish whether the ToR are still relevant, or if additional tasks have been identified that will add value to the study. This will allow the client the opportunity to take the necessary steps in order to meet these additional tasks. It is critical for the PSPs to familiarise themselves with the extent of work done in previous validation and verification studies, systems developed and available data. The PSPs are also expected to ascertain whether suitable capacity exists in DWS to carry out the components of the study to be performed by DWS.

The Client must approve the Inception Report before the contract for professional services is entered into and the implementation phase (Phase 2) commences. The Client may, at his discretion, terminate the study at this point if the Study Plan reflected in the Inception Report does not give the Client a reasonable assurance that the objectives of the study will be achieved within the time and budget allocations set for it. The PSPs shall compile and submit to the Client an Inception Report containing *inter alia* the Study Plan and deliver a presentation thereon to the Study Manager or Project Manager as determined by the Department.

The requirements for the tasks in **Phase 1** are set out hereunder:

- Prepare preliminary plans (a Study Plan to be documented in the Inception Report) to serve as a basis for a detailed description of the various tasks that must be undertaken and deliverables produced in order to achieve the objectives of the assignment.
- Derive a consolidated module budget and schedule using the work plans developed in the sequence above. The consolidated schedule must be based on the individual schedules of the various activities that make up this Study.
- Develop a precise description of all study status reports and indicate when they are to be delivered.

The Study Plan must include but not be confined to the following elements:

**Overview** - A detailed statement of the objectives and scope of the assignment.

**General Approach** - The strategy and managerial approach to be followed to achieve the objectives of the assignment.

**Contractual Aspects** - A description of all the reporting requirements, client supplied information, liaison arrangements with various role players (stakeholders), study review procedures, expected technical deliverables, their specifications and delivery schedule. This section shall contain milestones, the overall work breakdown structure and linear responsibility charts.

**Resources** - A clear description of the personnel, financial and other resources required for the assignment. Availability of specialist skills during the duration of the study must be highlighted. A study budget must be formulated by study activity or work module. The financial control procedures must be described.

**Evaluation methods** - a brief description of the procedure to be followed in monitoring, collecting, storing and evaluating the study history must be provided.

**Deliverables** - a description of all deliverables must be provided, as well as the cost per deliverable.

### **6.3 Phase 2: Study implementation**

This phase will only commence once the Inception Report is approved by the Client and the PSP is formally instructed to proceed with the assignment. The Inception Report shall form the basis upon which the final contract between the Client and the PSP will be drawn and entered into.

In this phase the following aspects have to be addressed (according to the approach and philosophy proposed in the Inception Report).

#### **6.3.1 Validate existing water use in the selected catchments.**

The purpose of validating water use on a property is to make a preliminary determination of existing lawful water use and this provisional validation finding informs the process of verification of water use on that property. Validation of (current) water use is also important in water resource management especially in Compliance Monitoring and Enforcement. Validation constitute internal processes and procedures ("behind the scene") used by the Department for the determination of land use and calculation of abstraction, storage and Stream Flow Reduction Activity (SFRA) volumes during the qualifying period.

The intention of this task is to compare, for each use, the water use with that which actually took place in 1996 and subsequent to this date. Unregistered water uses are also identified and validated, and in the event an unregistered water use took place lawfully during the qualifying period, it is also taken through the verification process. To do this the PSP will have to make use of tools for validation of water use.

- WARMS registration information
- Chief Surveyor General cadastral data
- Topo-cadastral maps
- Arial photography

- Remotely sensed data
- Dam Safety Data for dam modelling
- Field survey information ( historical & new)
- Crop survey information
- Direct contact with the water user ( phone, fax, email & field visits)

As indicated above, this work must also identify actual water use that took place in the period 1 October 1996 to 30 September 1999. Particular care must also be taken to identify and include possible water use (outside of Schedule 1 use) by the rural poor. PSPs must also include water used by bulk water suppliers, industrial use, irrigation use and commercial forestry areas.

During this phase of the project the validation and verification processes will be undertaken, using various technologies available, to establish the extent (how much) and nature (for what purpose and where) of water uses and the lawfulness of these uses. This includes Existing Lawful Water Use (ELU), as described in sections 32 of the NWA, as well as current water use. **The PSP will support the DWS with the finalisation of the Existing Lawful Water Use determinations to completion.**

The major tasks in this phase of the project must include the following:

#### **Validation of existing Water Use in each “contracted area as per Table 1”**

This information should be captured in a GIS database that clearly indicates:

- correctly registered water use;
- under registered water use;
- over registered water use;
- unregistered water use;
- water use patterns;
- the source of the water;

Water users should also be consulted and the public participation process is necessary to ensure co-operation of the stakeholder towards availing information required for the validation and verification of actual water use in all the WMAs.

This information must be captured in an alpha-numeric database that clearly indicates per property and per water use volumes (Figure 4: Irrigation volume analysis may serve as a guideline in determination of the annual weighted average volume) and a true/false field:

- accurate registered water use ; (field 1 = yes/no, field 2 = volume-taking, field 2a = water use patterns, field 2b = crop type, field 2c = crop factor, field 2d = irrigation method, field 3= points of abstraction, field 3a = control measures to record annual use, field 4 = volume-storage, field 5 = impeding and diversion infrastructure, field 6 = SFRA)
- under registered water use;
- over registered water use;
- unregistered water use;
- the source (this is taking) of the water. Separate table fields => field1=fromwhere (river,fountain as on form),field2=latitude (decimal degrees, field3=longitude (decimal degrees), field4=surveyor-general cadastral code [sg-code], field5=identifier/name for source

- Inter-basin transfers between study area(s) and other neighbouring quaternaries
- Boundaries of original riparian properties
- Per property indication of water court cases
- Per property indication of water tribunal cases
- Per property indication of licences allocated, applied for, rejected
- Per property indication of full and/or partial cancellation / surrenderment of water use (proof of evidence)
- Lawful allocation to original property in areas of government water control and all subdivisions / consolidations subsequent to promulgated dates of regulation
- Original water use registration data as per onset of study
- WARMS Register or Customer number
- Water efficiency measures applied per use
- All correspondence to and from users in terms of conditions of section 35 must be captured as proof of evidence on any potential appeal to the Water Tribunal

Secondly the data in the database must be easily exportable to enable import into GIS application.

The spatial database must show the following:

- Property boundaries as per original deeds diagram (free from SG)
- Points for takings (using same name/identifier as above), total volume per point
- Boundaries of cultivated areas digitised per field (each field named/numbered)
- Boundaries for storage area (i.e. at FSC level of fetch of dam)
- Dam Safety Classification of storage works
- Confirmation of dam safety registration as per chapter 12 of the Act
- Calculated volume of singular storage works per property
- Dam design plans and actual surveyed dam volumes upon verification of potential transgressions
- Boundaries for SFRA areas
- Mountain catchment boundaries
- Protected areas, reserves (private/national)
- Impedance and diversion works (temporary and permanent)
- Town allotment areas
- State owned land
- Wetlands

Hard copies of the all source documents must be placed on a water user's file and supplied to the client at the end of contract. All documents and correspondence with each water user are the property of the client, the Department of Water and Sanitation.

The previous water related legislation determines the mechanisms to allocate or obtain rights to water. Only a minority of the rights under previous legislation are supported by or contained in documents, such as special Water Court verdicts applicable to certain areas, schemes or water resources, notices in the Government Gazettes, schedules for government water schemes, schedules for irrigation districts, water court orders, deeds of sale, deeds of servitudes and written permissions from the Minister of Water and Sanitation. The majority of the rights are based on the riparian principles as contained in the Water Act, No 54 of 1956. The PSP must illustrate the ability to determine water use authorisations based inter alia on the water rights as prescribed by in section 9, 9B, 10 and 52 the Water Act No 54 of 1956, where required.

There are numerous proclamations dealing with specific water schemes, works or areas. These also have to be taken into consideration to determine the entitlements.

The PSP must obtain and study all the relevant water legislation, relevant Water Court decisions and related documents required for dealing with the ambiguities of this assignment.

The contracted study area(s) may include Government Water Control Areas (GWCA) and Government Water Schemes and the rest is previously uncontrolled areas. This necessitates a detailed knowledge of the Water Act, 54 of 1956. It is here where the inputs from experienced team members with the necessary background will be vital. In the case of a GWCA, water use on the date of proclamation needs to be established for each property as it existed on that date. A typical problem occurs where a property falling within a GWCA had a certain "water right" on a specific date (date of proclamation of GWCA). Since then the property was subdivided into different portions and some even consolidated with another properties. A timeline and the effect on water use authorisations must be drawn up to verify the veracity of water use on an identified property. Experienced team members with this type of knowledge are vital to this assignment.

The outputs of the study must also summarise the current water allocation practices in the catchment with respect to:

- Government Water Schemes;
- Government Water Control Areas;
- other Proclamations and Government Notices forbidding the development of further storage or irrigation in the controlled, restricted or prohibited areas;
- entitlements under Section 9B and 9B 1c of the Water Act, 1956; (this can also be on the spatial/GIS database)
- entitlements under Section 9C of the Water Act, 1956; (chapter 12 of the Act) (available records from DWS spatially)
- Actual permitted use in terms of section 62, and/or scheduled irrigation use in terms of section 63 and/or section 88 of the Water Act, 1956.
- permits, and
- Section 33 applications for declaration of existing water use under the National Water Act, 1998.(also on spatial)
- General Authorisations (surface and groundwater) granted in terms of the National Water Act, 1998 and all revised / amended authorisation (1999, 2004, 2010, etc) (historic and current).
- Exemption under Section 21 of the Water Act, 1956
- Permits under Section 22 of the Water Act, 1956
- Any relevant legislative instrument that authorised water use

The following subtasks are envisaged:

#### Remote Sensing

- collate the relevant remote sensing data (data can be obtained from the DWS);
- standardise and classify the imagery to identify water use;
- analyse the coverage for the years 1996 to 1998;
- analyse the current coverage's; and cultivated areas



- reporting

#### Collate data into GIS

- collate and review WARMS data in of the Department of Water and Sanitation where necessary;
- build GIS database per cadastral property (if necessary for irrigated lands only) including WARMS and remotely sensed data;

#### Modelling

- determine the most suitable methodology in consultation with relevant stakeholders.;
- determine and collate the data required;
- model water use per property using SAPWAT and/or similar models determined after discussion with Department of Agriculture;
- include water volumes into the GIS database; and
- model dam volumes
- provide and package the data for the systems yield models

#### Stakeholder Consultation

- conduct stakeholder information sessions;
- conduct stakeholder consultation sessions

Install GIS database in the selected CMA / Proto CMA Office of the Department of Water and Sanitation.

The Department of Water and Sanitation prefers to use a free and open source GIS application for basic use

The application must read and also write data in shape file format as the Department of Water and Sanitation has standardised on this format and the majority of other governmental departments as well.

- Train departmental staff in its application; and
- Install the database on the departments system.

### **6.3.2 Verify the lawfulness of the water use**

This work must assess, for each water use, the lawfulness of the use in terms of Sections 32-35 of the National Water Act. The lawfulness of existing use is determined by provisions in the Water Act of 1956 and a series of amendments to this Act over the years, as well as water use authorised by any other law. This includes Water Court Orders, DWS policy, Ministerial decisions, etc.

The process of verifying the lawfulness of existing water use in the catchments will therefore be informed by the "Guide to verifying the extent of existing lawful water use", which has explored these complexities and provided a series of process diagrams, to guide the verification process. This work must include assessment of the lawfulness of

both registered and/or any un-registered, under and/or over registered water use in terms of present day and October 1996.

This information must be captured in the GIS database clearly indicating the lawfulness of the water use in both periods. In consultation with the DWS, this information must be placed on the water users mirror WARMS file, and must be communicated to the water user. Copies of all correspondence sent and received must be kept on the hardcopy files as well.

The following subtasks are envisaged:

- familiarisation with the Guide to Determining the Lawfulness of Existing Water Use;
- identification of the level of determination required for different areas;
- verification of the lawfulness [1996] and current of water use in these areas; and
- consultation with water users. [Please note that all amendments must be agreed/signed for by the water users. In cases of new uses the official WARMS forms must be completed. In cases of small changes the amendments can be made on confirmation reports but each amended page must be signed and dated by the client]

### **6.3.3 Outline the current water use patterns in the catchment**

The intent of this output is to provide a summary of the water use in the catchment by sector, and gender and race. This must also indicate the comparisons between the registered water use, the lawfulness of this use, as well as under/over registrations and failures to register.

### **6.3.4 Skills Transfer and Capacity Building.**

It is important that this capacity to execute validation and verification processes is built in the personnel of the Department and of the CMA / Proto CMA. Service providers must therefore outline their plans to help entrench the skills required to undertake the work outlined herein to the DWS personnel.

Draft a Simplified Guideline Manual on the steps and procedures followed in this validation/ verification study, with flow diagrams. [The DWS verification guideline document can be used as baseline information.]

### **6.3.5 Study Management**

One of the key factors for achieving the objectives of such studies on budget and on time is the study management expertise and experience that the PSP is able to command. It must therefore be noted, that great emphasis would be put on this aspect during tender evaluation, and during the execution of the work thereafter.

The PSP will be responsible for the detailed planning, monitoring and controlling of the activities carried out under this assignment. The PSP must therefore have a Study Leader with proven study management skills and experience on the team.

The study management function entails performing a variety of activities that are described hereunder:

a) **Monitoring**

The PSP's Study Leader shall collect, record and report information concerning all aspects of the assignment that the SMC wishes to know. In order to achieve this, the PSP must design a performance monitoring and information gathering system based on the key performance indicators for the study. The monitoring system must concentrate primarily on measuring various facets of output rather than intensity of activity. The PSP must indicate the type of information that will have to be collected in order to evaluate progress against the set of goals stated in the Study Plan.

b) **Study Control**

The PSP must indicate, based on the monitoring system, the basic structure of the process of control for performance, time and cost. The structure must indicate at what points in the module, what is to be controlled, how it will be measured, how much deviation from the work plan will be tolerated before remedial action is taken and what kinds of management interventions should be used.

c) **Day to day co-ordination of all activities**

In order to achieve the study management objectives, the PSP shall be responsible for day to day monitoring and co-ordination of all the activities undertaken under this assignment. This involves the following:

monitoring progress on each of the tasks being executed against baseline;

reviewing actual outcome against the planned outcome and taking corrective action in time;

analysing the impact of deviations from the original Study Plan and/or budget and assessing what must be done, at what cost and when to get back on course. (The PSP shall be required to prepare a revised inception report if these deviations are significant.);

giving advice on any changes to the process and programme that need to be made to avoid delaying the progress;

controlling costs and performing quality audits of the various tasks;

co-ordinating the flow of data and information between the PSP and the Client; and

providing guidance and direction to the task teams, integrating the findings and making recommendations to the Client.

To achieve the above the PSP shall prepare periodic [monthly] progress and financial reports and submit these to the Client in a format prescribed by the Client. Progress meetings with the Client will be held at the intervals specified by the Study Manager (not more frequently than monthly).

## **COMPULSORY INFORMATION SESSION**

After completion of the study a compulsory information and/or "wrap-up" workshop session will be held at the client's office of the Department of Water and Sanitation or designated CMA / Proto CMA, as per SBD 1 form.

### **6.4 Phase 3: Study termination**

Upon finishing the study the PSP must compile a Final Report. In this report the PSP must summarise the theoretical assumptions made during conceptual design as well as unit rates applied in the costing analysis.

Prioritisation of all options must be clearly presented and a summary and recommendations provided.

The report must be concise and written in an intelligible manner.

#### **6.4.1 Units**

All units used throughout the study as well as paper sizes shall be in accordance with the SI system.

#### **6.4.2 Data Capturing**

Any data collected in the process of the study shall be captured into the DWS systems or presented in the official WARMS application forms format for capturing by the DWS.

Spatial information must be compiled using DWS Geomatics / Business Information standards and saved into the DWS spatial databases.

Access or installation of the quoted systems for the PSP can be arranged through the Study Manager.

Lastly, the work proposed in these Terms of Reference should provide the basis for implementing of the compulsory licensing. However, the assessment must make use of data that are currently available, and must include data obtained from stakeholders. Service providers should nevertheless indicate gaps in the existing data, and must make recommendations in this regard.

Appendix B contains the process flow diagram for this work. Prospective PSP's should familiarise themselves with this diagram. The following section outlines the tasks required in more detail.

## **7. INFORMATION TO BE PROVIDED IN THE PROPOSAL BY THE PSP**

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### **7.1 Extent of proposals**

The text of the Proposal, including a Work Programme Schedule and a detailed Schedule of Resources versus Costs, should be to the point and not longer than 30 x A4 pages (excluding CVs) at a font-size of 11 and 1.5 line spacing.

### **7.2 Scope of work**

The Scope of Work must reveal the PSP's understanding of the Study. The proposed approach, methodology and models to be used during the Study must be outlined. The PSP is encouraged to use this Section in the Proposal to present innovative approaches or other special features of the PSP's response to the ToR.

### **7.3 Study team and summary of capacity, capability and experience**

The Proposal must present the Key Components of the Study Team in the form of an Organogram. The Proposal must also contain explicit information about the relevant capacity, capability and experience of Key Personnel, with particular reference to:

- experience in and knowledge of Geographical Information Systems;
- experience in and knowledge of present and past water legislation;
- experience and knowledge of crop water requirement and irrigation practices.
- experience in and knowledge of historical or current water resource investigations and/or management in the Study Area(s);
- the roles of individual Key Personnel in the study; and
- experience of working in multi-disciplinary teams in the water resources domain.
- Experience in the use of remote sensing images and analysis

### **7.4 CVs**

Abbreviated CVs of all Key Personnel included in the study team must form attachments to the Proposal. CVs must be presented in font-size 11 and 1.5 line spacing, and must not be longer than 2 pages.

### **7.5 Participation of HDIs and HDEs**

The participation of HDIs (historically disadvantaged individuals) in the Study is strongly recommended. Proposals must be explicit about the following:

- percentage HDI ownership of each participating firm in Associations or Joint Ventures formed for this study;
- the roles of HDIs in Key Personnel and Technical Support positions;
- the composition of HDEs that participate in Associations or Joint Ventures formed for this Project;
- the percentage ownership for Joint Ventures or Associations is calculated as a weighted average percentage based on the participation rate; and
- plans for Skills Transfer and Capacity Building within DWS. This must include plans to build the capacity in DWS staff in consultation with the designated Director.

### **7.6 Certification of association or of joint venture**

In the case of collaboration among different PSPs, a suitably worded letter shall accompany the proposal from each participating firm, confirming their participation in the Association or Joint Venture, signed by a Principal of each participating firm.

### **7.7 Tax clearance certificate**

No contract may be awarded to a person who **has** failed to submit an original Tax Clearance Certificate from the South African Revenue Service ("SARS") certifying the taxes of that person to be in order or that suitable arrangements have been made with SARS.

## 7.8 Work program

A detailed Work Program, broken down to individual tasks and indicating the contributions by all Study Personnel, shall be presented. The Work Program must indicate all Study landmarks and target dates for deliverables.

## 7.9 Study budget

The Study budget shall present the full resourcing (both professional fee [time-based] costs and disbursements) associated with each major component and each primary task in the Study, as well as the timing of the costs involved.

The resourcing must provide details of the employment of all Study personnel on a primary task basis. The hourly fee rates of all Study personnel must be stated. After a year and if the contract is still in place, CPI-related escalation of fees may be allowed for. The Study Budget must include VAT at 14%.

There must be no contingency allowance in the Study cost estimate. All approved cost increases will be handled as Variation Orders on the original cost estimate after approval by the Study Manager.

The Study Budget must provide a breakdown by Study team member of fees to be earned on the basis of the following categories: Black Male; Black Female; White Female; Disabled Person; White Male.

## 8. PROGRAM OF WORK

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This full study is expected to be completed within "12" months.

## 9. REPORTING REQUIREMENT

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The successful PSP will be reporting to the Study Management Committee who will be appointed by the Departmental Bid Adjudication Committee of the Department of Water and Sanitation ("the DWS").

The successful PSP will produce a monthly report before the 7<sup>th</sup> of each month and will meet with the Study Manager to report on progress on a monthly basis on dates confirmed with the successful PSP

## 10. PROPOSAL EVALUATION AND ADMINISTRATIVE DETAILS

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Project Costs provide fixed price quotation for the duration of the contract

- (a) Cost must be VAT inclusive and quoted in South African Rand
- (c) Costing should be aligned with the project activities / project phases

### 10.1. Transfer of Skills

It is important that this capacity to execute validation and verification processes is built in the personnel of the DWS and of the relevant CMA / Proto CMA. Service providers must therefore outline their plans to entrench the skills required to undertake the work outlined herein to the personnel members of the DWS, CMA and proto CMAs.

## 10.2. Qualification

The successful PSP team must at least consist of the following specialisation:

- (a) Degree in Hydrology,
- (b) Degree in Engineering,
- (c) Degree in Project Management and/or
- (d) Degree in Legal Studies/ Law

## 10.3. Company Experience

Companies are required to provide proof that they have facilitated / performed similar projects, and prove that such project/s was/were executed successfully as well as their contactable references.

## 10.4. Project Plan / Methodology

Service providers must indicate what procedure is to be used to execute the service in the project and this must be provided in a detailed project plan with final outputs and identified timeframes.

## 10.5. Infrastructure

It is expected of bidders to provide basic facilities, systems and capital equipment needed for effective and efficient delivery of service

## 11. EVALUATION CRITERIA LINKED TO NUMERIC VALUES

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- \* The table below will be applied in order to evaluate each bid
- \* A 3 phased evaluation criteria will be considered in evaluating the bid being:

### 11.1 Administrative, Functionality and Price and Preference points (90/10)

The applicable 90/10 preferential points system as set out in the Procurement Policy of the Department of Water and Sanitation will be used to evaluate individual tenders.

#### 11.1.1 PHASE 1: ADMINISTRATIVE COMPLIANCE

##### (a) SBD Forms:

- SBD 1
- SBD3.3 (Pricing Schedule) or Bill of Quantity
- SBD 4
- SBD 6.1 - Certified BBBEE Certificate (SANAS\ SANAS accredited Verifier agency)
- SBD 8
- SBD 9

(b) SBD 2, Request for a valid and original Tax Clearance Certificate must accompany the bid document on the date of closing.

(c) Failure to comply with the above requirements will invalidate your bid, except for the submission of a certified BBBEE Certificate.

**PHASE 2:** Functional criteria totalling out of 100 with a qualification threshold of 65% for further consideration on the second phase.

**11.1.2 Functional/technical/Evaluation**

**Table 1: Functionality Criteria**

Values: 1 Very Poor..... 2 Poor..... 3 Average..... 4 Good.... 5 Excellent

| <b>CRITERIA</b>                  | <b>WEIGHT</b> |
|----------------------------------|---------------|
| Qualification                    | 15            |
| Company Past Experience e        | 25            |
| Team Leader & Members Capability | 20            |
| Project Plan / Methodology       | 20            |
| Transfer of Skills               | 20            |
| <b>TOTAL</b>                     | <b>100</b>    |

**NB:** Only bidders who obtain at least 65% under technical evaluation will be considered for further evaluation



**11.1.3 PHASE 3: PRICE AND PREFERENCE**

The bid will be evaluated on 90/10 Principle based on price and BBBEE status level contributor.

Points will be awarded to a bidder for attaining the B-BBEE status level of contributor in accordance with the table below:

**Table 2: B-BBEE Contribution Points**

| B-BBEE Status Level of Contributor | Number of Points (90/10 system) |
|------------------------------------|---------------------------------|
| <b>1</b>                           | <b>10</b>                       |
| <b>2</b>                           | <b>9</b>                        |
| <b>3</b>                           | <b>8</b>                        |
| <b>4</b>                           | <b>5</b>                        |
| <b>5</b>                           | <b>4</b>                        |
| <b>6</b>                           | <b>3</b>                        |
| <b>7</b>                           | <b>2</b>                        |
| <b>8</b>                           | <b>1</b>                        |
| <b>Non-Compliant contributor</b>   | <b>0</b>                        |

**Other Conditions**

- \* Bidders are kindly requested to submit **three (3) tender** copies plus the original
- \* Bidders are further requested to provide separate copies of the financial and technical sections of the proposal

**Contact persons in DWS**

Name : Mr.MS Skosana/Vernon Blair  
 Telephone : 012 336 7677/012 3367807  
 Cellphone 0828085947/0828073552  
 Email : skosanam@dwa.gov.za/blairv@dws.gov.za

## **12. GLOSSARY OF ABBREVIATIONS**

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|      |                                       |
|------|---------------------------------------|
| CMS  | Catchment Management Strategy         |
| DWS  | Department of Water and Sanitation    |
| HDE  | Historically Disadvantaged Enterprise |
| HDI  | Historically Disadvantaged Individual |
| ISP  | Internal Strategic Perspective        |
| IAP  | Invasive Alien Plants                 |
| IFR  | In-stream Flow Requirements           |
| NWA  | National Water Act                    |
| NWRS | National Water Resources Strategy     |
| PSP  | Professional Service Provider         |
| SFR  | Stream flow Reductions                |
| SMC  | Study Management Committee            |
| SMT  | Study Management Team                 |
| ToR  | Terms of Reference                    |
| WMA  | Water Management Area                 |
| WRC  | Water Research Commission             |

Appendix A: Irrigation Volume Analysis

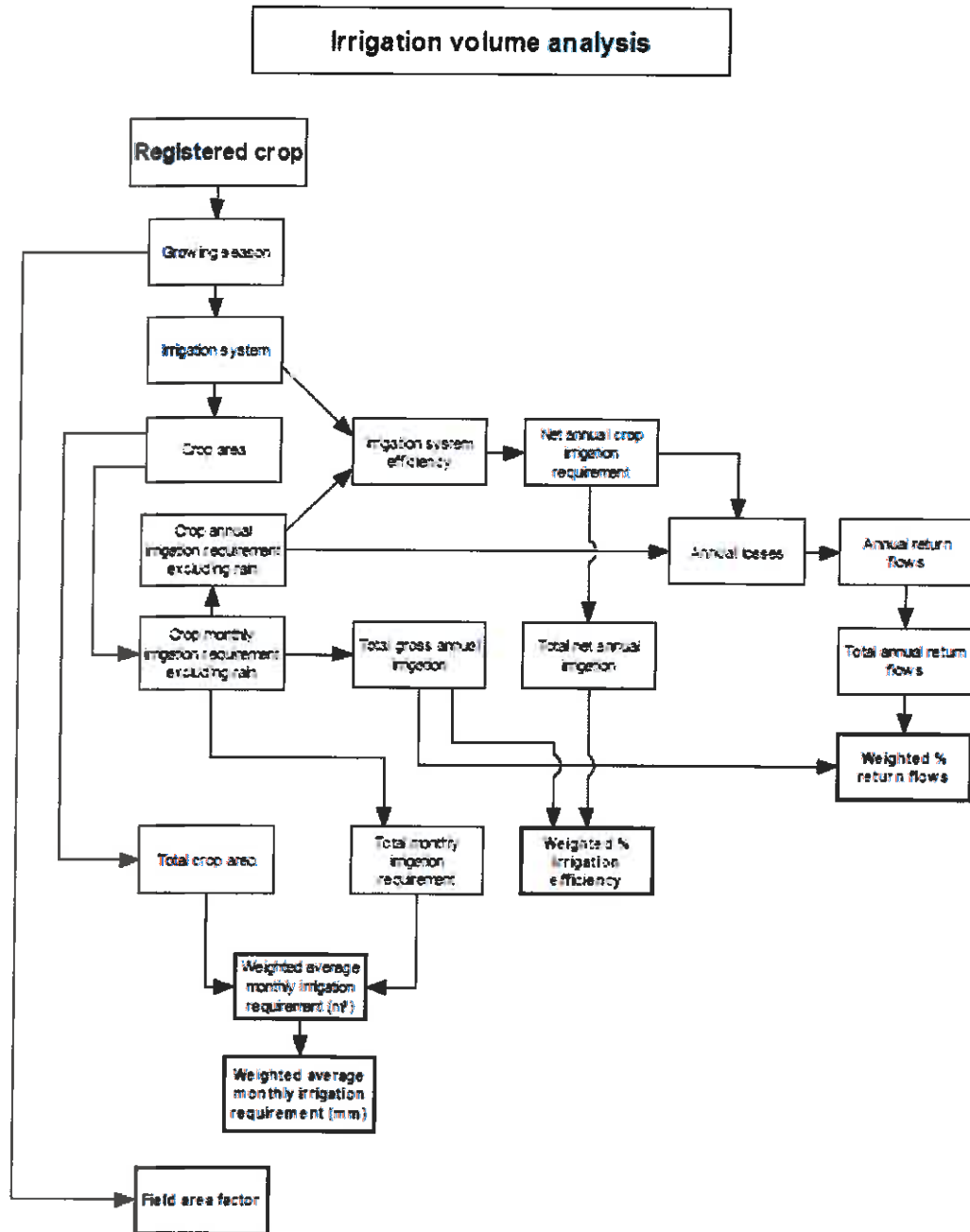


Figure 4: Irrigation volume analysis

**APPENDIX B: PROCESS FLOW DIAGRAM:  
Validation & Verification of Water Use**

