



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

REQUEST FOR BID

WP11305

BROAD-BASED BLACK ECONOMIC EMPOWERMENT AUDIT FOR THE DEPARTMENT OF WATER AND SANITATION, NINE REGIONAL OFFICES, CONSTRUCTION OFFICES AND FOUR CLUSTERS

ISSUE DATE:

15 NOVEMBER 2019

CLOSING DATE AND TIME

19 DECEMBER 2019 at 11H00

Compulsory Briefing Session

Date: 4 December 2019
Venue: Department of Water and Sanitation
173 Francis Baard Street (formerly Schoeman str)
Emanzini Building
Pretoria
0001
Boardroom G18
Time: 10:00 am

SUBMIT TENDER DOCUMENT

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

OR

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

TENDERER: (Company address and stamp)

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DWS

PROJECT NO: **WP11305** CLOSING DATES: **19 DECEMBER 2019** TIME: **11:00**

BROAD-BASED BLACK ECONOMIC EMPOWERMENT AUDIT FOR THE DEPARTMENT OF WATER AND SANITATION, NINE REGIONAL OFFICES, CONSTRUCTION OFFICES AND FOUR CLUSTERS

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

PROJECT DOCUMENTS MAY BE POSTED TO: **Private Bag x313, Pretoria, 0001**

OR

DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)
157 Francis Baard Street (Formerly Schoeman), Pretoria, 0002 at the Reception, Zwamadaka Building

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)

NOTE: Please submit original and a copy of the quotation.

THIS PROJECT 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 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.....

(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? YES or NO

[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: Department of Water and Sanitation

Contact Person: Zelda Phiri

Tel: 012 336 7954

E-mail address: phiriz@dws.gov.za

ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:

Contact person: Patrick Nemabubuni

Telephone Number: 012 336 7679

E-mail : NemabubuniP@dws.gov.za

PRICING SCHEDULE

**BROAD-BASED BLACK ECONOMIC EMPOWERMENT AUDIT FOR THE
DEPARTMENT OF WATER AND SANITATION, NINE REGIONAL OFFICES,
CONSTRUCTION OFFICES AND FOUR CLUSTERS**

NAME OF BIDDER:PROJECT NO: WP11305

CLOSING TIME: 11:00 AM

CLOSING DATE: 19 DECEMBER 2019

OFFER TO BE VALID FOR 120 DAYS FROM THE CLOSING DATE OF BID.

ITEM DESCRIPTION BID PRICE IN RSA CURRENCY (ALL APPLICABLE TAXES INCLUDED)

1. The accompanying information must be used for the formulation
Of proposals.
2. Bidders are required to indicate a ceiling price based on the total
Estimated time for completion of all phases and including all
Expenses inclusive of all applicable taxes for the project.

R.....

3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND
RATES APPLICABLE (CERTIFIED INVOICES MUST BE
RENDERED IN TERMS HEREOF)

4. PERSON AND POSITION	HOURLY RATE	DAILY RATE
_____	R_____	R_____
_____	R_____	R_____
_____	R_____	R_____

5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE
COMPLETED, COST PER PHASE AND MAN-DAYS TO BE
SPENT

_____	R_____	_____ days
_____	R_____	_____ days
_____	R_____	_____ days

- 5.1 Travel expenses (specify, for example rate/km and total km, class
Of air travel, etc). Only actual costs are recoverable. Proof of the
Expenses incurred must accompany certified invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED AMOUNT	RATE	QUANTITY
.....	R.....
.....	R.....
.....	R.....

TOTAL: R.....

"all applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

- 5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY
.....	R.....
.....	R.....
.....	R.....

TOTAL: R.....

6. Period required for commencement with project after Acceptance of bid

.....

7. Estimated man-days for completion of project

.....

8. Are the rates quoted firm for the full period of contract?

*YES/NO

9. If not firm for the full period, provide details of the basis on which

Adjustments will be applied for, for example consumer price index.

.....

.....

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, 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, shareholder², 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.

¹"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.

²"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 YES / NO
presently employed by the state?

- 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.

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

2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid? If so, furnish particulars. **YES/NO**

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

2.11 Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract? **YES/NO**

2.11.1 If so, furnish particulars:

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

Full Name	Identity Number	Personal Income Tax Reference Number	Employee Number / Persal Number

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

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

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, 2017.

1. GENERAL CONDITIONS

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

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included)

a) The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable.

1.2 Points for this bid shall be awarded for:

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

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

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

1.4 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor 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

- (a) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **"B-BBEE status level of contributor"** means the B-BBEE status of an entity in terms

of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

- (c) **“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 goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“Functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
 - 1) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

80/20

or

90/10

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

P_{\min} = Price of lowest acceptable bid

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 In terms of Regulation 6 (2) and 7 (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-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5. BID DECLARATION

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

6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

- 6.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)
(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

- 7.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

- 7.1.1 If yes, indicate:

- What percentage of the contract will be subcontracted.....%
- The name of the sub-contractor.....
- The B-BBEE status level of the sub-contractor.....
- Whether the sub-contractor is an EME or QSE

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

Partnership/Joint Venture / Consortium

One person business/sole propriety

Close corporation

Company

(Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

8.6 COMPANY CLASSIFICATION

Manufacturer

Supplier

Professional service provider

Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

8.7 Total number of years the company/firm has been in business:.....

8.8 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 contributor indicated in paragraphs 1.4 and 6.1 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 paragraphs 1.4 and 6.1, 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 contributor 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) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audialterampartem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution.

WITNESSES

- 1.
- 2.

.....
SIGNATURE(S) OF BIDDERS(S)

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	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	+	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <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 <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 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:

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of 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 consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;

- (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

³ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

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

GOVERNMENT PROCUREMENT GENERAL CONDITIONS OF CONTRACT

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 compile 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.**

TABLE OF CLAUSES

- 1. Definitions**
- 2. Application**
- 3. General**
- 4. Standards**
- 5. Use of contract documents and information; inspection**
- 6. Patent rights**
- 7. Performance security**
- 8. Inspections, tests and analysis**
- 9. Packing**
- 10. Delivery and documents**
- 11. Insurance**
- 12. Transportation**
- 13. Incidental services**
- 14. Spare parts**
- 15. Warranty**
- 16. Payment**
- 17. Prices**
- 18. Contract amendments**
- 19. Assignment**
- 20. Subcontracts**
- 21. Delays in the supplier's performance**
- 22. Penalties**
- 23. Termination for default**
- 24. Dumping and countervailing duties**
- 25. Force Majeure**
- 26. Termination for insolvency**
- 27. Settlement of disputes**
- 28. Limitation of liability**
- 29. Governing language**
- 30. Applicable law**
- 31. Notices**
- 32. Taxes and duties**
- 33. National Industrial Participation Programme (NIPP)**
- 34. Prohibition of restrictive practices**

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

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 organization acting on behalf of the Department.
- 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 8 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 fulfilment 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 cancelling 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 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 antidumping 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 wilful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) The supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
 - (b) The aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing language

- 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that 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 GCC (revised July 2010)

35. SPECIAL CONDITIONS OF CONTRACT

- 35.1 The State reserves the right to verify and authenticate all the information supplied in this document by the bidder.
- 35.2 The Bid must be strictly in accordance with the conditions and specifications contained herein.
- 35.3 If it is found that any information has been tampered with during the evaluation process and/or after the Bid/Contract has been awarded that any false information has been provided, the State reserves the right to take the necessary action as it deems fit, including but not limited to the institution of criminal proceedings.
- 35.4 Failure to sign all relevant places shall invalidate your bid (**SBD1, SBD 3.1, SBD 4, SBD 6.1 or 6.2, SBD 8, SBD 9 and SCC**)
- 35.5 All queries should be sent to the relevant person via email state above. No query will be responded to if sent 3 days before the closing date.

- 35.6 If you are not a registered supplier with the Department of Water and Sanitation, please complete the supplier registration forms and banking details, supplier registration forms are available at Departmental website, www.dwa.gov.za
- 35.7 Bidders/ Individuals that are directors or members in more than one company bidding for this tender and do not openly declare their interests will be disqualified
- 35.8 The DWS reserves the right to not make an award on any of the responses to this Bid.
- 35.9 The DWS reserves the right to award only parts of this bid and re-bid for other parts.
- 35.10 All bid documents should be hand delivered and deposited in to the Tender Box, if sent via post, Envelope or package, the envelope must be clearly marked to avoid your submission been mixed with normal letters sent to the Department.
- 35.11 Only signed, original documents will be accepted.

36. ACCEPTANCE OF TERMS AND SPECIAL CONDITIONS

The above terms of the bid and all Annexure have been read, understood and accepted.

For and on behalf of the Bidder:

Signature of Bidder:

Date:

Bidder's Name & Surname:

Designation

Witness Name & Surname:

Date

Signature:

Address (Physical):



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

This template must be completed by the bidder

TENDER NUMBER		
SERVICE /PROJECT DESCRIPTION		
NAME OF BIDDER		
TENDER AMOUNT		
BBBEE LEVEL		
COMPANY'S COMPOSITION OF EXISTANCE		
	% OWNERSHIP	TOTAL NUMBER
WOMEN		
PEOPLE WITH DISABILITIES		
BLACK MALES		
YOUTH		
PARTICIPATION IN PROJECT IMPLEMENTATION		
	TOTAL NUMBER	LEVEL OF PARTICIPATION (eg Project Management, Technical, Administrative)
WOMEN		
PEOPLE WITH DISABILITIES		
BLACK MALES		
YOUTH		

Please note that this information is for reporting purposes only, and will not prejudice the company in anyway nor will it be considered as an evaluation tool.

Name:.....

Position:.....

Signature:.....Date:.....



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

TERMS OF REFERENCE FOR BROAD-BASED BLACK ECONOMIC EMPOWERMENT AUDIT FOR THE DEPARTMENT OF WATER AND SANITATION, NINE REGIONAL OFFICES, CONSTRUCTION OFFICES AND FOUR CLUSTERS

1. BACKGROUND INFORMATION

- 1.1** Section 13G(1) of the B-BBEE Amendment Act states that: "All Spheres of government; Public Entities and Organ of States **must** report on their compliance with Broad-Based Black Economic Empowerment (B-BBEE) in their audited Annual Financial Statements and Annual Reports required under the Public Finance Management Act 1999 (Act No 1 of 1999)". Therefore, B-BBEE reporting is a legislative mandate which must be complied with every financial year and the report must be submitted to the B-BBEE Advisory Council which is led by the President of the Republic of South Africa and is led by the Department of Trade and Industry as the secretariat.
- 1.2** The audit should be conducted by a Rating Agency accredited by a B-BBEE Verification Professional Regulator as defined in Section 1(a) of the B-BBEE Act 53 of 2003, as amended by Act 46 of 2013. The B-BBEE Audit for the Department of Water and Sanitation will be done in terms of Phase 2 of the Generic Codes of Good Practice gazette No. 38766 (the Codes) which came into effect 1 May 2015. In terms of the Codes, all spheres of government must be audited in the following B-BBEE empowerment indicators: Management Control 20 points; Skills Development 25 points; Enterprise and Supplier Development 50 points; and Socio-Economic Development 5 points.
- 1.3** It is in view of the above that Honorable Minister of the Department of Water and Sanitation, through the departmental Supply Chain Management processes, would like to secure the services of an accredited Rating Agency accredited by a B-BBEE Verification Professional Regulator appointed by the Minister of Trade and Industry, in this case, the South African National Accreditation System (SANAS).

2. THE OBJECTIVES OF DWS B-BBEE AUDIT

- 2.1** For the Department of Water and Sanitation to comply with Section 13G (1) of the B-BBEE Amendment Act which states that: "All Spheres of government; Public Entities and Organ of States **must** report on their compliance with Broad-Based Black Economic Empowerment (B-BBEE) in their audited Annual Financial Statements and Annual Reports required under the Public Finance Management Act 1999 (Act No 1 of 1999)".
- 2.2** To enable the Minister of Water and Sanitation to report on the implementation of BBBEE to the Minister of Trade and Industry through the B-BBEE Commission that resides in the Department of Trade and Industry and the Auditor General as part of the Audited Financial Statements and Annual Reports.

3. TERMS OF REFERENCE (TORs) OF THE STUDY

3.1 The scope

- a) B-BBEE Audit for the Department of Water and Sanitation, including its regional offices – i.e. all nine DWS provincial offices, construction offices and four clusters.
- b) A detailed verification on the four elements used to measure the B-BBEE compliance level using the B-BBEE Codes of Good Practice gazette 06 May 2015 and applying the Specialized Generic Codes (the Specialized Codes).
- c) As outlined in the Specialized Codes, B-BBEE Empowerment Elements or Indicators to be verified includes: Management Control; Skills Development; Enterprise and Supplier Development; and Socio-Economic Development.
- d) Submission of the initial report to the component responsible for transformation in the Department of Water and Sanitation – i.e. Chief Directorate Transformation and Policy Coordination.

3.2 List of addresses for Areas to be visited

Provincial/Cluster/Construction Office	Address / Location	Telephone
1. Head Office	185 Francis Baard Street; Pretoria; 0001	(012) 336 7500
2. Limpopo	Azmo Place; 49 Joubert Street; Polokwane; 0700	(015) 290 1200

Provincial/Cluster/Construction Office	Address / Location	Telephone
3. Mpumalanga	Prorom Building; c/o Brown and Paul Kruger Streets; Nelspruit, 1200	(013) 759 7300
4. Free State	Bloem Plaza; 2 nd Floor; c/o Charlotte Maxeke and East Burger Streets; Bloemfontein; 9300	(051) 405 9000
5. North West	Cnr Dr.JamesMoroka Drive and Sekame Road; Mega City Complex; Unit 99 Sekame Street; Mmabatho; 2735	(018) 387 9500
6. Northern Cape	28 Central Road; Beaconsfield; Kimberly; 8301	(053) 830 8800 / 7600
7. Eastern Cape	2 Hargreaves Ave; King Williams Town; 5600	(043) 604 5400
8. Kwa Zulu Natal	Southern Life Building, 9 th floor, 88 Joe Slovo Street; Durban, 4000	(031) 336 2700
9. Western Cape	52 Voortreker Road; Spectrum Building; Bellville; 7530	(021) 941 6000
10. Gauteng	285 Bothongo Plaza East; Pretoria; 0001	(012) 392 1300
Cluster Office	Address / Location	Telephone
1. Southern Operations	50 Heugh Road; Lion Roars Office; Park Building; Walmer; Port Elizabeth; 6070	(041) 508 9702
2. Eastern Operations	Midmar Dam; Howick; 3290	(033) 239 1201
3. Northern Operations	Hartbeespoort Dam; Old Rustenburg Road; 0216	(012) 200 9000
4. Central Operations	267 Praetor Forum Building; LilianNgoyi (Van der Walt Street); 0002	(012) 741 7302

Provincial/Cluster/Construction Office	Address / Location	Telephone
Construction Office	Address / Location	Telephone
1. Construction East	Grootdraai Dam; Standerton	(017) 720 1603 (060) 980 5847
2. Construction West	Potchefstroom	(018) 294 9500 (082) 654 8685
3. Construction South	Paarl	(021) 872 0597 (082) 807 6617
4. Construction North	Tzaneen Dam	(015) 307 3788 (082) 897 5046
5. Construction Central	Jan Kempdorp	(053) 456 0508 (082) 804 9888
6. Construction Head Office	185 Francis Baard Street; Pretoria; 0001	(012) 336 7694

3.3 B-BBEE Audit Verification Timeframes

No	Activity	Timeframe
1.	Engagement and Planning Process – Head Office and nine regions, construction offices and four clusters which are Gauteng, North West, Free State, Kwa Zulu Natal, Western Cape, Eastern Cape, Northern Cape, Mpumalanga and Limpopo – see the attached addresses for regions and clusters.	15 Working Days
2.	Collection of B-BBEE Evidences – Head Office and nine regions, construction offices and four clusters which are Gauteng, North West, Free State, Kwa Zulu Natal, Western Cape, Eastern Cape, Northern Cape, Mpumalanga and Limpopo – see the attached addresses for regions and clusters.	20 Working Days
3.	Analysis of B-BBEE Evidences – Head Office and nine regions, construction offices and their four clusters which are Gauteng, North West, Free State, Kwa Zulu Natal, Western Cape, Eastern Cape, Northern Cape, Mpumalanga and Limpopo – see the attached addresses for regions and clusters.	10 Working Days

No	Activity	Timeframe
4.	On-site B-BBEE Verification – Head Office and nine regions, construction offices and four clusters which are Gauteng, North West, Free State, Kwa Zulu Natal, Western Cape, Eastern Cape, Northern Cape, Mpumalanga and Limpopo – see the attached addresses for regions and clusters.	30 Working Days
5.	Review and Reporting.	10 Working Days

3.4 B-BBEE Audit Verification Team

The B-BBEE Verification Team must consist of the following expertise:

No	Designation in the Company	Experience in the B-BBEE Verification Industry
1.	Technical Signatory	Minimum of five (5) years
2.	Senior Verification Analysts	Minimum of three (3) years
3.	Junior Verification Analysts	Minimum of two (2) years
4.	B-BBEE Administrative Officers	Minimum of two (2) years

3.5 THE BUDGET

The estimated funds for the B-BBEE audit of the department, together with its regions, construction offices and clusters, are budgeted for within the Branch Chief Operations Officer.

3.6 EXPECTED OUTCOMES

- a) B-BBEE Audit Certificate for the Department of Water and Sanitation includes its regional offices– i.e. all nine DWS provincial offices, construction offices and clusters.
- b) A detailed verification report on the four elements used to measure the B-BBEE compliance level using the B-BBEE Codes of Good Practice gazette 06 May 2015 and applying the Specialised Generic Codes (the Specialised Codes).

4. EVALUATION CRITERIA

Department of Water and Sanitation will evaluate the bid in terms of the Preferential Procurement Regulations 2017. A copy of the Preferential Procurement Regulations 2017 can be downloaded from www.treasury.gov.za. In accordance with the Preferential Procurement Regulations 2017, submissions will be adjudicated on 80/20 points system and the evaluation criteria. A four phase evaluation criteria will be considered in evaluating the bid.

PHASE 1: Prequalification criteria

PHASE 2: Administrative and Mandatory compliance

PHASE 3: Functional/ technical evaluation criteria

PHASE 4: Points awarded for B-BBEE Status Level of Contribution

PHASE 1: PREQUALIFICATION CRITERIA

1. Only bidders who are an EME or QSE Enterprises will be considered for this bid.

NB: Bidders who do not qualify with the prequalification criteria will be disqualified and not considered for phase 2.

PHASE 2: ADMINISTRATIVE AND MANDATORY REQUIREMENTS

2.1 Administrative requirements

Bidders are required to comply with the following listed below; Indicate "Yes" or "No" with a tick or cross.

No	Criteria	Yes	No
1.	Registration with Central Supplier Database (CSD) as per National Treasury SCM Instruction 4 of 2016/17. Attach proof of print out as proof of registration or supplier number.		
2.	Tax compliant with SARS (to be verified through CSD and SARS)		
3.	Complete, sign and submit SBD 1, SBD 3.1, SBD 4, SBD 6.1, SBD 8 and SBD 9		

2.2 Mandatory requirements

Please note that all bidders must comply with the following mandatory compliance by providing the relevant documents. **Failure to submit any of the documents listed below will render your bid non-responsive and will be disqualified.**

Indicate "Yes" or "No" with a tick or cross.

No	Criteria	Yes	No
1.	Compulsory Briefing Session attendance (attach briefing session certificate)		
2.	Attach a certified copy of a certificate indicating that the Service Provider is registered with the B-BBEE Verification Professional Regulator appointed by the Minister of Trade and Industry.		
3.	Attach a certified copy of a BBBEE Status Level verification certificate.		

PHASE 3: FUNCTIONAL/TECHNICAL EVALUATION

The bidder is expected to achieve a minimum required score of 60% for functionality in order to qualify for further evaluation. Bids that do not meet the minimum required score will be disqualified. The Functional/Technical criteria are:

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

Functionality evaluation will be based on the following criteria:

Criteria & Guideline	Scoring Guide	Points Value	Weight	Bidder's Score
1. Approach Detailed project plan on implementation of a project on the following: a) Implementation plan explaining how the project will be managed, who will be managing the project, how long it will take to start a project after an order is received, activities of the project team leader and the verification team.	Detailed Project Management Plan with the following details:		20	
	a) Clear and SMART Gant Chart		5	
	b) Clear Timeframes		5	
	c) Team Leader's Activities		5	
	d) Team members Activities		5	
			(12)	
2. Proven years of experience of the Verification Agency (Company). The Verification Agency should demonstrate traceable experience in B-BBEE Act; Codes of Goods Practice and Project Management.	Bidders must provide reference letters of similar projects/works completed by the company/Verification Agency. Points will be allocated per reference letter.	5	40	
	a) 5 similar projects done by the B-BBEE Verification Agency with 5 contactable references.	4	(24)	
	b) 4 similar projects done by the B-BBEE Verification Agency with 4 contactable references.			
	c) 3 similar projects done by the B-BBEE Verification Agency with 3 contactable references.			
	d) 2 similar projects done by the B-BBEE Verification Agency with 2 contactable references.			
	e) 1 similar project done by the B-BBEE Verification Agency with 1 contactable			

Criteria & Guideline	Scoring Guide	Points Value	Weight	Bidder's Score
	reference.			
3. Qualifications and experience of key personnel	Relevant qualifications and experience of proposed project team leaders and their project team members. The project team and the team leader should demonstrate knowledge of B-BBEE Auditing and Project Management (<i>Attach certified copies of academic qualifications and proof of registration with the South African National Accreditation System (SANAS) and also attach copies of their Curriculum Vitae</i>)	5	(24)	
	a) Technical Signatory: Chartered Accountant/Master Degree relevant to business e.g., MBA and Post-Graduate Certificate in B-BBEE Management Development Programme obtained at UNISA or Wits University and proof of registration with SANAS. Experience: a minimum of five years of experience in the B-BBEE verification industry.			
	b) Senior Verification Analysts: Honours Degree relevant to auditing e.g. B com in Accounting/Economics/Business Management and a Post-Graduate Certificate in B-BBEE Management Development Programme obtained at UNISA or Wits University. Experience: a minimum of three years of experience in the B-BBEE verification industry.	4		
	c) Junior Verification Analysts: Degree relevant to auditing e.g. B com in Accounting and Economics and a Post-Graduate Certificate in B-BBEE Management Development Programme obtained at UNISA or Wits University. Experience: a minimum of two years of experience in the B-BBEE verification industry.	3		

Criteria & Guideline	Scoring Guide	Points Value	Weight	Bidder's Score
	d) B-BBEE Verification Analysts: National Diploma relevant to auditing e.g. Accounting, Economics & Business Management. Experience: a minimum of one year of experience in the B-BBEE verification industry.	2		
TOTAL			Min: (60) Max : 100	

PHASE 4: THE 80/20 PRINCIPLE BASED ON PRICE AND B-BBEE STATUS LEVEL CONTRIBUTOR

The 80/20 Preferential Procurement System will be used in evaluating these bids:

Evaluation element	Weighting (Points)
B-BBEE	20
PRICE	80
Total	100

In terms of Regulation 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-BBEE Status Level Contributor	Number of Points (80/20 Point System)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-Compliant Contributor	0

5. CONDITIONS:

- 5.1. The appointment of the service provider is subject to screening to verify the creditability of SANAS.
- 5.2. Only bidders who fully comply with the requirements indicated under technical/functional evaluation will be considered for further evaluation on Phase 4.
- 5.3. The Department will not be liable to any damage caused by the contractor, whatsoever.
- 5.4. The Department will not be held liable of injury of the contractors employees
- 5.5. Bidders are kindly requested to submit original documents only.
- 5.6. Bidders are required to submit a certified and valid B-BBEE Status Level Verification Certificates together with their bids, to substantiate their B-BBEE rating claims. In order to claim the B-BBEE Status Level of Contributor points, bidders must submit valid and Certified B-BBEE Status Level Verification Certificates issued by accredited Verification Agency/s by SANAS or Registered Auditor approved by Independent Regulatory Board of Auditor (IRBA), together with their bids to substantiate their B-BBEE rating claims.
- 5.7. A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid.
- 5.8. The Exempted Micro Enterprise must submit a letter from the Accounting Officer who is appointed in terms of Close Corporation Act. EMEs are allowed to submit a sworn affidavit obtainable from the Department of Trade and Industry website.
- 5.9. Fraudulent practices shall result in immediate disqualification.
- 5.10. It is a requirement that bidders who do business with government must comply to the relevant tax legislations and bidders are required to ensure that their Tax Matters are in order and up to date.
- 5.11. It is a requirement that your company must be registered in the online Central Supplier Database (CSD) managed by National Treasury: www.csd.gov.za. This is to ensure that your company credentials can be verified online by government departments intending to do business with your institution. Service Providers must provide us with the 11 digit code supplier number bearing the MAAA alphabets.
- 5.12. Bidders are requested to provide a clear agreement regarding joint ventures/consortia. The percentage involvement of each company in the joint venture agreement should be indicated on the agreement.
- 5.13. In the event of a Joint Venture being formed, note that all members of the joint venture should sign the contract / agreement and are jointly or severally liable for the entire assignment;
- 5.14. The Department of Water and Sanitation is not bound to select any of the service providers submitting proposals and therefore reserves the right not to award the bid.
- 5.15. The Department of Water and Sanitation will not be held responsible for any cost incurred by the bidder in the preparation and submission of the bids.
- 5.16. Traveling cost and time spent or incurred between home and office of the service providers and the Department of Water and Sanitation (Head Office) will not be for the account of the Department.
- 5.17. The Bidders must complete all the necessary information required in the bidding document.

please note that the successful bidder will be expected to sign a Service Level Agreement with the Department

6. DURATION

The duration of the project is 4 Months, effective from the date of approval.

7. COMPULSORY BRIEFING SESSIONS

Compulsory briefing sessions will be held as follows:

Venue : Department of Water and Sanitation, Head Office, Pretoria
173 Francis Baard street, Emanzini Building, Boardroom G18

Date : 4 December 2019

Time : 10:00 am

It is mandatory for prospective bidders to attend the session, failure to do so will invalidate their bids.

8. ENQUIRIES

8.1 FOR TECHNICAL INFORMATION

Contact Number : Patrick Nemabubuni

Telephone Number : 012 336 7679

E-mail : NemabubuniP@dws.gov.za

Department of Water and Sanitation

8.2 FOR SUPPLY CHAIN MANAGEMENT

Patrick Mabasa

Tel: (012) 336 7518

Email: MabasaP@dws.gov.za

Department of Water and Sanitation