



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

REQUEST FOR BID

WP11403

APPOINTMENT OF A PROFESSIONAL SERVICE PROVIDER FOR THE FINALISATION OF THE BUSINESS CASE AND ESTABLISHMENT OF THE WATER REGULATOR

ISSUE DATE:

28 JANUARY 2022

CLOSING DATE AND TIME

02 MARCH 2022 at 11H00am

Due to the COVID 19 restrictions, there will be no briefing session.

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)

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)							
BID NUMBER:		WP11403		CLOSING DATE: 02 MARCH 2022		CLOSING TIME: 11H00AM	
DESCRIPTION		APPOINTMENT OF A PROFESSIONAL SERVICE PROVIDER FOR THE FINALISATION OF THE BUSINESS CASE AND ESTABLISHMENT OF THE WATER REGULATOR					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)							
TENDER BOX AT ZWAMADAKA BUILDING 157 FRANCIS BAARD STREET (FORMERLY SCHOEMAN STREET)							
PRETORIA, 0002							
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO				TECHNICAL ENQUIRIES MAY BE DIRECTED TO:			
CONTACT PERSON		Mr Conory Mgwen		CONTACT PERSON		Ms Sizani Moshidi	
TELEPHONE NUMBER		012 336 8578		TELEPHONE NUMBER		012 336 6614	
FACSIMILE NUMBER		N/A		FACSIMILE NUMBER		N/A	
E-MAIL ADDRESS		Mgwenac@dws.gov.za		E-MAIL ADDRESS		MoshidiS@dws.gov.za	
SUPPLIER INFORMATION							
NAME OF BIDDER							
POSTAL ADDRESS							
STREET ADDRESS							
TELEPHONE NUMBER		CODE			NUMBER		
CELLPHONE NUMBER							
FACSIMILE NUMBER		CODE			NUMBER		
E-MAIL ADDRESS							
VAT REGISTRATION NUMBER							
SUPPLIER COMPLIANCE STATUS		TAX COMPLIANCE SYSTEM PIN:			OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE		TICK APPLICABLE BOX]		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX]	
		<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) 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?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS							
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?						<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?						<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?						<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?						<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?						<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.							

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:
(Proof of authority must be submitted e.g., company resolution)

DATE:

PRICING SCHEDULE

(Professional Services)

**APPOINTMENT OF A PROFESSIONAL SERVICE PROVIDER FOR THE
FINALISATION OF THE BUSINESS CASE AND ESTABLISHMENT OF THE WATER
REGULATOR**NAME OF BIDDER:PROJECT NO: **WP11403**CLOSING TIME: **11:00 AM**CLOSING DATE: **02 MARCH 2022**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. PHASE ACCORDING TO WHICH THE PROJECT WILL BE
COMPLETED, COST PER PHASE AND MAN-DAYS TO BE
SPENT

..... R..... Days

..... R..... Days

..... R..... Days

- 3.1. Travel expense (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.....	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.

- 3.2. Other expenses, for examples accommodation (specify, e.g. 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 INCURED	RATE	QUANTITY
.....	R.....
.....	R.....
.....	R.....

TOTAL: R.....

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

.....

5. Estimated man-days for completion of project

.....

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

*YES/NO

7. If not firm price period, provide details of the basis on which
Adjustments will be applied for, for example consumer price index.

.....

.....

.....

.....

*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the:

Department: Department of Water and Sanitation

Contact Person: Conory Mgwena

Tel: 012 336 8578

[E-mail address: MgwenaC@dws.gov.za](mailto:MgwenaC@dws.gov.za)

ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:

Ms Sizani Moshidi

Tel: 012 336 6614

[E-mail address: MoshidiS@dws.gov.za](mailto:MoshidiS@dws.gov.za)

SBD 4

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.

"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.

"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 / Peral 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:

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) & \text{Or} & P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \end{array}$$

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:

- 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 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 least 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-
- abused the institution's supply chain management system;
 - committed fraud or any other improper conduct in relation to such system; or
 - 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
APPOINTMENT OF A PROFESSIONAL SERVICE PROVIDER
FOR THE FINALISATION OF THE BUSINESS CASE AND
ESTABLISHMENT OF THE WATER REGULATOR**

Contents

1.	Background	3
1.1	Problem statement	5
1.2	Anticipated Outcomes	6
2.	Project Scope	6
2.1	Project Inception	6
2.2	Review, Update and Finalise Business Case	6
2.3	Development of Regulator's enabling legislation	7
2.4	Human Resources: Transitional Plan	8
2.5	Development of regulatory tools to support the Water Regulator	9
3.	Communication and Reporting	10
4.	List of Deliverables	11
5.	Required Skills	12
6.	Project Timelines	13
7.	Methodology	14
7.1	Project Governance	14
7.2	Project Time Frames	14
8.	Guideline for The Preparation of Project Proposals	14
9.	Evaluation Criteria	14
10.	Conditions	17
11.	Briefing Session and Enquiries	18

1. Background

The 1997 White Paper indicated that water must be valued as an economic resource, the costs incurred to make the resource available to users and the methods used to cover those costs. In pursuit of the objectives of water management, it is widely agreed that the setting of the appropriate price for a natural resource such as water can be an effective mechanism to achieve its efficient and productive use. The White Paper states that government will move systematically to achieve realistic water pricing within a reasonable time frame.

Part 1 of Chapter 5 of the NWA mandates that the Minister may from time to time, after public consultation, set a pricing policy which may differentiate among geographical areas, categories of water users or individual water users.

The mandate of DWS to regulate water and sanitation services is given in Section 155(7) of the Constitution. The Cabinet- approved Strategic Framework for Water Services (SFWS) 2003 mandates DWS, as the national water services regulator, to regulate water supply and sanitation services authorities in terms of economic regulation. This includes review of the appropriateness of investment decisions of water services providers and tariffs and review of the efficiency of water service provision.

The SFWS 2003 also mandates DWS to undertake the direct economic regulation of water boards and regional water services providers, with a view to protecting consumer and public interests. This economic regulation may extend to the approval of business plans and the approval of tariffs, considering any existing contracts as well as the approved pricing policy.

DWS as the National Regulator has developed a National Water Services Regulation Strategy (NWSRS) which outlines the functions it must undertake to fulfil its mandate. The NWSRS Economic Regulation Chapter was taken into consideration in the development of the regulator model options analysis and considered relevant to be extended to water resources side of business to achieve a value chain approach. In 2018 the Department approached the State Law Advisor on whether the Minister may regulate the provision of water and sanitation services (full water value chain) as provided in the Constitution and that monitoring of compliance with norms and standards in terms of the Act does not constitute an infringement of the powers and functions of local government. The setting of norms and standards does not violate the powers of local government to adopt a tariff policy in respect of potable water supply systems.

The department undertook a process of policy review in 2013 that resulted in the cabinet approving National Water Policy Review 2013 Policy position. One of the game changers for this Policy 2013 was the inclusion of a policy position that deals with the economic regulation within the entire value chain of Water and Sanitation. The position approved is discussed below.

Policy Positions

Economic regulation will be applied throughout the water value chain.

Scope and functions of economic regulation will encompass the setting of the rules to control, monitor, enforce and/or change tariffs/charges; tariff/charge determination structures and service standards for the water sector whilst recognising and supporting government policy and broader social, environmental and economic imperatives and the function of technical regulation of water infrastructure.

To avoid any conflict of interest, real or perceived, raw water tariffs will be determined annually by DWS, in consultation with National Treasury.

During the financial years 2017/18 and 2018/19 a business case for the establishment of an economic regulator for the water and sanitation sector was developed, approved by the Minister for consultation, presented to the Portfolio Committee and consulted to all the relevant sector stakeholders. Several comments were received from the consultation sessions.

Following the consultation, the sector requested that the regulator functions be expanded to regulate the full water sector. The business case was updated with suggested comments. The establishment of the independent regulator was put on hold since the FY 2019/2020

In 2021/22 the team was allocated resources under Operation Vulindlela to update the Business Case up to level that it can be submitted for Minister approval to repeat the consultation process with 2017 comments on the establishment of a full regulator taken onboard.

The assistance from OV is bridging and timebound and the Chief Directorate: Economic and Social Regulation realised the need to appoint a Professional Service Provider (PSP), to update the final draft of the business case based on the comments it will receive when it goes out again for public comment. Assistance is also required with certain elements of the establishment of the regulator.

Creating Public Entities (PEs) at the National Sphere of Government

Entities are established, merged, unbundled, rescheduled or disestablished by National or Provincial Departments through the broad process for the creation of national PEs. Cabinet also approved that guidelines be developed to elucidate provision in the Public Finance Management Act, 1999 (PFMA) and the Treasury Regulations issued in terms of the PFMA as well as on staff transfers between the Public Service and PEs which led to the Public Services Act, 1994 (PSA). The National Treasury in guiding departments in this process published the Guide for Creating, Merging, Unbundling, Rescheduling and Disestablishment of Government Entities (January 2018). It is expected that the PSPs have experience in this process set out in the above-mentioned guide to assist the Department establishing the Water Regulator as set out in the guide.

Business Needs Analysis

The NWSRS and Economic Regulator Model Options Report states that the objective of economic regulation is to ensure that the services provided to consumers by water services providers are appropriate, effective, efficient, and sustainable. The provision of water services in SA is seen as a both a social and economic service. The social component gives effect to the Bill of Rights. Beyond water necessary to meet basic needs, water can be regarded as an economic service because efficient and reliable provision of the service is essential to support economic activity and economic growth.

In 2010 several Key Outcomes were defined by government. One of these (Outcome 6) was the creation of “an Independent Water Regulator to implement price regulation”. The target year to have the Regulator in place was 2014.

In 2012, the Department initiated a project called Pricing Economic and Regulation Reform, which focused on three strategic issues namely:

- (a) Review of the Pricing Strategy.
- (b) Development of Funding Model for water infrastructure; and
- (c) Establishment of an Economic Regulator for the water sector focussing on the entire water value chain.

The National Development Plan (NDP) mandates that Economic Regulators need to be established for all trading services. To date the economic regulator models report is in place which supports the establishment of an Independent Economic Regulator.

The Department however decided to establish an internal Regulator in 2014 to build capacity before going independent. During the financial years 2017/18 and 2018/19 a business case for the establishment of an economic regulator for the water and sanitation sector was developed, approved by the Minister for consultation, presented to the Portfolio Committee and consulted to all the relevant sector stakeholders.

Several comments were received from the consultation sessions, indicating support from the sector stakeholders; however, there were areas that needed further investigation and clarity. When developing the final draft of the business case, the Chief Directorate: Economic and Social Regulation realised the need to appoint a Professional Service Provider (PSP), to update the final draft of the business case and proceed with the establishment of the regulator.

The nature and scope of work is highly intensive and requires a combination of high-level business and technical skills that is not available within the Department and can only be sourced through a PSP. The implementation of this project requires a multi-disciplinary team consisting of specialists with skills and competencies, indicated in section 4 of this document.

This document provides the details of the project scope, deliverables, methodology and the evaluation criteria to be used in the appointment of the PSP.

1.1 Problem statement

The Water and sanitation sector like other network industries, by virtue of its functionality and social impact; require regulation to ensure universal access and affordability of essential services; but function as natural monopolies. This is due to high fixed costs and the average cost of service provisions decreases with the number of users of the network. It is thus difficult to create meaningful competition or to encourage multiple market entrants in these sectors. This requires effective economic regulation to protect both customers and service providers. Further challenges observed includes:

- Significant inefficiencies in provisions of infrastructure and related services
- Poor value for money in investments (and disappointing outcomes)
- Lack of transparency with respect to finances and technical performance
- Poor compliance with service standards and regulatory requirements
- Weak governance
- Lack of cost-recovery (under-pricing)
- No robust transparent method for setting prices
- Lack of pricing certainty

DWS currently simultaneously fulfils three roles as regulator, support, and enabler and at times these roles are potentially conflicting and poses a threat to transparency and equity that are amongst the hall marks of good governance.

The Human and financial resources assigned to regulation within the Department is subject to regulation vagaries and competition from a multitude of other functions the Department must fulfil. The legislation, regulations, and policy that the regulator will have to apply are already well defined.

Some international practice has shown that effective regulation works best where there is the political will for economic regulation, and where regulators are independent in terms of funding and objective

decision making based on its mandate, publicly accountable, and transparent, and where they have sufficient institutional and human capacity. This requires the development of integrated water and sanitation regulation and streamlined institutional arrangements both at the national level and across the spheres of government.

Economic regulation does not exist in isolation of other regulatory functions/domains in the water sector, and there are overlaps and interdependencies with other key regulatory domains such as technical, environmental, and social regulation. Economic regulation must be strongly linked to social regulation.

Current contractual challenges between Water Service Authorities and Water Service Providers include ineffective or no provision for mediation and arbitration, being outdated or non-existent despite Section 19 contractual regulations. The provisions around contract management, contractual disputes and consequences around breaches need to be strengthened.

1.2 Anticipated Outcomes

It is anticipated that the establishment of an independent regulator will:

- Protect the interests of consumers (with respect to the prices, continuity, and quality of services), promote efficiency and economy by the sector institutions and entities.
- Provide priority attention to the expansion of services to those not yet served
- Provide highly developed mechanisms for citizen participation and complaint channelling mechanisms
- Ensure objective regulation, monitoring and enforcement of compliance to legislation and regulations developed by the line department
- Ensure a close cooperation between all spheres of government to ensure effective regulation of the sector institutions and entities
- Stimulate the development and growth of the water sector through systematic investment through the value chain.
- Promote the preservation of water resources and provision of water service through implementation and enforcement of sound water sector policy

2. Project Scope

2.1 Project Inception

During inception the PSP team will meet with the Project Team to clarify aspects in the proposal if need be and to firm up timeframes and communication lines. The PSP team will prepare an Inception Report confirming their understanding of the scope of work, methodology, timelines, and budget. This report should be submitted within a month after signing the contract.

Deliverable: Inception report within one month from date of contract

2.2 Review, Update and Finalise Business Case

The PSP will be required to review the latest draft Business case, and to provide any necessary updates to address any gaps identified. The business case must be in line with National Treasury requirements and templates, (see NT guide Annexure D as referenced under section 4) with the following details:

- Strategic assessment of the services to be provided by the regulator (scope)
- Feasibility study, which provides for qualitative reasons and benefits
- Objectives, functions, and powers of the regulator (legislative competencies)
- Governance issues (organisation issues including type, structure, and relationships with responsible department; Human Resource Management (see Section 2.4 below)
- Costing Study including recommendation on funding model and principles around funding of Regulator

- Minimum service standards for core services/objectives
- Reporting
- "To be" Operating Model of the business of the new entity.
- Functional and organisational design issues (redefinition and alignment of job descriptions). Current human capacity versus future capacity requirements must be mapped out clearly (see item 2.4 below).
- Human resource management systems in particular proper management of personnel records (leave, implications on pension and how this will be managed, existing skills development plans and performance management).
- Financial and operational viability model for the new entity, including evaluation of options for funding of the regulator, and recommendations.
- Strategic plan and 3year budget projection (Treasury Regulation 30)
- Service delivery options (Business plan)
- Legal issues relating to the establishment. ((1) Confirmation of the focus of the regulator in terms of regulating WSAs and or WSP and the contractual agreement WSPs have with WSAs (regulating via regulations or contracts). (2) Any potential conflict between the functions of the regulator and other Departments or entities. (3) Authorisation mechanism and interaction/timing with other required parallel authorisations (4) The introduction of a regulator licensing system. (5) Legal Review of Water Service and National Water Acts to eliminate conflicts with the powers of the Minister and to avoid situations where a regulated entity must answer to two authorities at any point. The Service Provider will be required to engage with existing Regulators to learn from their best practices. This item will overlap and feed into Item 2.3 below.

The draft will be circulated to key stakeholders for comment which need to be taken into consideration before a final draft is submitted for approval.

The business case must inform the Socio-Economic impact study. In this regard a cross functional team will be formed internally that include Legal Services to develop a Bill based on technical content developed by the PSP (See 2.3 below), once drafted the appointed Service Provider will review.

The will be submitted together with the draft enabling legislation and Socio Economic Impact Assessment Report (see 2.3 below) classification and listing of the intended PE in terms of the PFMA for recommendation by Minister and submitted to the Minister of Public Services Administration and Minister of Finance for their assessment and consent in writing to establish the PE.

Deliverable:

Updated Draft Business Case compliant to PFMA requirements

Comments register

Business case updated based on consultation.

2.3 Development of Regulator's enabling legislation

To give effect to the Department's policy position on Economic Regulation the PSP will be required to draft the technical content for the enabling legislation to enable the establishment of the Regulator as informed by the Business Case (guidelines for the drafting of a PE-enabling Bill are set out in Annexure H of the above mentioned NT Guide. The technical content will be provided to the Department's Legal Services for the drafting of the Bill.

This process will also involve the identification of any further provisions of either or both the National Water Act and the Water Services Act that need further amendment to ensure that there are no contradictions and where necessary to enable the Regulator in terms of agreed powers and functions.

It will be expected that the PSP team will be involved in engagements with both the Departments Legal Services and the State Law Advisor to obtain their comments and inputs and to make the necessary updates to the draft Bill prior to engagement of the relevant Portfolio Committee with the consent from MPSA and MoF for discussion and request to Cabinet to introduce a Bill in Parliament of establishing the PE

After tabling of the Bill in Parliament it is anticipated that several public engagements with key stakeholders and the citizens will be required during the public comment period. The PSP will be required to facilitate such meetings and maintain a comments register. Upon closing of the commenting period, the final draft will be prepared for further cabinet processes.

Deliverables:

Draft technical content for enabling legislation

Final draft bill post consultation

Consultation plan

10 public and or key stakeholder meetings

Comments and response Register

2.4 Human Resources: Transitional Plan

1. The PSP will be required to recommend what will be the best way to staff or resource the Regulator (informed by case studies/literature) and develop a road map (Business case implementation plan) to pave a way for the transitional structure for the implementation of the independent regulator pending the enactment of the Regulator's Act. This needs to be in line with guidance provided under section 6 of NT Guide and advised by processes followed by Catchment Management Agency establishment.

In preparation for the establishment of the Regulator the PSP will be required to develop a detailed transitional plan. This process will include engagement with HR from the Department, organised labour; a skills audit of existing staff, a training plan for upskilling existing staff, development of a change management plan which will include an estimation of timelines to come into effect once the Regulator Act is in place).

Conduct training on regulatory tools developed under item 2.5 below.

Deliverables

Recommendations on how to staff and resource the Regulator.

Road Map with post establishment organogram with number of employees per grade, related salary bands and nature of employment, budget, business model and draft business plan

Consultation (informed by recommendations): Preliminary discussions with HR and labour with signoff of transitional plan

Job specifications (including level and remuneration packages) for CEO and Chief Financial Officer positions

Job Specifications for board members

The following deliverables need to be included in the methodology and costed in the proposal, but the Department based on the consultation outcome may opt not to execute (i.e. there may be a scenario where current staff will not migrate to the Regulator)

- Change management strategy with Staff and recruitment and or migration plan (informed by consultation and skills audit)
- Details of the conditions of service that employees will qualify for and the cost of providing these conditions

- Skills audit
- Training plan based on results of skills audit and regulatory tools developed under item 2.5 below)

All the above will be included in the Business Case (see item 2.2 above)

2.5 Development of regulatory tools to support the Water Regulator

The regulatory function is currently housed in the department and several tools have been developed inhouse. Further tools have been identified to be developed for the support of the water Regulator to fulfil its mandate as part of this project, they are:

- (1) Licencing tools with conditions including tariff and provisions for non-adherence
- (2) Develop models to conduct socio-economic impact assessments of the raw water tariffs developed through the implementation of the pricing strategy and Bulk Potable and Municipal Tariffs developed in compliance to the published norms and standards. Develop water infrastructure investment analysis model to assist the Regulator to evaluate the capital expenditure programmes of regulated institutions
- (3) Revise guidelines for tariff determination of Bulk Water Service Providers (BWSPs) (currently tailored only to Water Boards) involved in the provision of potable bulk water to WSAs (Private BWSP and WSAs acting as BWSP)
- (4) Develop a raw water pricing methodology for the emerging economic sectors (Re-use, hydropower, solar, hydraulic fracturing, acid mine drainage and other sectors)
- (5) Develop proforma WSP contracts to support WSAs engaging private sector and other BWSPs (other than Water boards) WSPs delivering water services within their jurisdiction.
- (6) Develop model raw water contracts.
- (7) Develop Standard Operating Procedures to facilitate consistency, predictability, and credibility of regulatory processes:
 - a. Identify critical regulatory processes
 - b. Develop standard operating procedures for prioritised regulatory processes utilising regulatory best practices.

Deliverables:

- (1) Licencing tools with conditions including tariff and provisions for non-adherence
- (2) Financial Models for conducting socio-economic impact assessments of the approved tariffs across the value chain to benchmark affordability and willingness to pay
- (3) Water infrastructure investment analysis model
- (4) Revised Guidelines: Tariff determination of Bulk Water Service Providers (BWSPs) (other than Water Boards) involved in the provision of potable bulk water to WSAs
- (5) Pricing methodology for the emerging economic sectors in raw water use (Reuse, hydropower, solar, hydraulic fracturing, acid mine drainage and other sectors)
- (6) Proforma WSP contracts to support WSAs engaging private sector and other BWSPs (other than Water boards) WSPs delivering water services within their jurisdiction.
- (7) Model raw water contracts.
- (8) Standard Operating Procedures for prioritised regulatory processes
- (9) Train regulatory officials (identified under item 2.4) on use of these tools

3. Communication and Reporting

The appointed PSP shall develop a communication strategy for the Water Regulator which will include support to DWS with roadshows and communication to the sector on the role, power and functions of the Water Regulator. The PSP shall identify the content and frequency of information required by the sector.

The appointed PSP shall also develop a framework for the Water Regulator's Annual Report and assist with drafting the first report in Year 3.

Transfer of Skills

The Department's policy requires that the use of PSP must benefit the human resources within the department itself. Hence the PSP will be expected to work in close cooperation with the Project Manager and other DWS officials as part of the transfer of skills. Further to this, the PSP must in the proposal take this requirement into consideration when developing its proposal.

The appointed PSPS shall produce at least the following project management outputs:

- **Monthly progress reports** and meetings required to properly inform the Client shall be compiled by the PSP and should document:
 - The progress of work against the agreed programme in the inception report
 - Milestones and deliverables (items)
 - Actual expenditure against cash flow estimates
 - Significant findings and outcomes thereof
 - Corrective actions taken in respect of work programme and
 - Cash flow estimates.
- Ensure that a complete record or proceedings of the project meetings is maintained and appropriately documented.
- **Close out report at end of project**

Deliverables:

- (1) Communication Strategy –Content and Road Shows as per strategy
- (2) Framework for Water Regulator's Annual Report and first draft
- (3) Skills transfer plan
- (4) Monthly progress reports and meetings
- (5) Close out Report

4. List of Deliverables

Item	Deliverable(s)
2.1	Inception Report
2.2	Updated Draft Business case Comments register Business case updated based on consultation.
2.3	Draft technical content for enabling legislation Final draft bill post consultation Consultation plan 10 public and or key stakeholder meetings Comments and response Register
2.4	<p>Recommendations on how to staff and resource the Regulator Road Map with post establishment organogram with number of employees per grade, related salary bands and nature of employment, budget, business model and draft business plan Consultation (informed by recommendations): Preliminary discussions with HR and labour with signoff of transitional plan Job specifications (including level and remuneration packages) for CEO and Chief Financial Officer positions Job Specifications for board members</p> <p><i>The following deliverables need to be included in the methodology and costed in the proposal, but the Department based on the consultation outcome may opt not to execute (i.e. there may be a scenario where current staff will not migrate to the Regulator)</i></p> <ul style="list-style-type: none"> • Change management strategy with Staff and recruitment and or migration plan (informed by consultation and skills audit) • Details of the conditions of service that employees will qualify for and the cost of providing these conditions • Skills audit • Training plan based on results of skills audit and regulatory tools developed under item 2.5 below)
2.5	<p>(1) Licencing tools with conditions including tariff and provisions for non-adherence (2) Financial Models for conducting socio-economic impact assessments of the approved tariffs across the value chain to benchmark affordability and willingness to pay (3) Water infrastructure investment analysis model (4) Revised Guidelines: Tariff determination of Bulk Water Service Providers (BWSPs) (other than Water Boards) involved in the provision of potable bulk water to WSAs (5) Pricing methodology for the emerging economic sectors in raw water use (Reuse, hydropower, solar, hydraulic fracturing, acid mine drainage and other sectors) (6) Proforma WSP contracts to support WSAs engaging private sector and other BWSPs (other than Water boards) WSPs delivering water services within their jurisdiction. (7) Model raw water contracts. (8) Standard Operating Procedures for prioritised regulatory processes (9) Train regulatory officials (identified under item 2.4) on use of these tools</p>
PM	<p>(1) Communication Strategy –Content and Road Shows as per strategy (2) Framework for Water Regulator’s Annual Report and first draft (3) Skills transfer plan (4) Monthly progress reports and meetings (5) Close out Report</p>

5. Required Skills

It is required that the PSP team consists of individuals that have the following competencies and skills, to implement this project:

- Sound understanding of the water and sanitation sector in the context of Legislation, Policy, Institutional arrangements, and performance of state-owned entities.
- An understanding of the current government (National, Provincial and Local) structures legislation, policy, and objectives).
- Sound financial business acumen and ability to analyse financial performance, viability, sustainability and understanding of financial markets, credit rating and borrowings for state entities.
- Strong technical experience and engineering of infrastructure service delivery industries and water and sanitation services.
- Social Impact assessment and Stakeholder Engagement and Management skills and experience.
- Ability to conduct a comprehensive business case analysis, and development of a roadmap for the establishment of the new institution and manage the transition.
- Change management and communication skills.
- Extensive experience on human capital including development of organisational designs, job profiles, grading and matching and placing.
- Risk and Legal specialists to ensure compliance to all legislation and governance principles and drafting of Regulator Bill and necessary amendment provisions
- Exceptional project management skills.

The deliverables will be in line with the Departmental Annual Performance Plan over the MTEF period

[illegible]

7. Methodology

The Consultant will be required to develop a clear and detailed methodology on how each item of this project will be undertaken. The methodology must reflect the consultants understanding of the complexities of the water sector, the entire water value chain (Water resource and services), and the water sector institutions and entities' functions and mandate as well as relevant statutory requirements. The methodology must be based on a collaborative, evidence and participatory approach incorporating all relevant stakeholders.

7.1 Project Governance

The project will be managed by the Chief Director: Economic and Social Regulation together with her team on behalf of the client (DWS). The PSP will clearly indicate the Project leader for this project.

7.2 Project Time Frames

The duration of this project is 36 months from the date of the signing of the contract with the PSP.

8. Guideline for The Preparation of Project Proposals

The service provider must compile and submit a written proposal to the Department as follows:

- (a) Provide a detailed methodology reflecting a detailed understanding of the Terms of Reference for the project
- (b) A work breakdown structure containing a list of tasks needed to execute the project, as well as personnel, cost and time estimates associated with the individual
- (c) Proposed project schedule in a Gantt chart
- (d) Proposed project team, team leader and availability of the individual consultant team members for all phases of the project. Submission of Curriculum vitae of all persons whom the bidder proposes in executing the tasks as well as the valid tax clearance of each subcontracted companies
- (e) a reasonable cost estimate for the project including VAT in line with the DPSA PSP price guideline.

9. Evaluation Criteria

Department of Water and Sanitation will evaluate all proposals received in terms of the Preferential Procurement Policy Framework Act, Act. no 5 of 2000, with special reference to the Preferential Procurement Regulations published in 2017. A copy of the Preferential Procurement Regulations 2017 can be downloaded from www.treasury.gov.za. In accordance with the PPR, submissions will be adjudicated on 80/20 points system and the evaluation criteria. A three phase evaluation criteria will be considered in evaluating the bid.

Phase 1: Administrative Compliance

Phase 2: Functional / Technical Evaluation

Phase 3 Points Awarded for Price and B-BBEE status level of contribution

Phase 1: Administrative Compliance

Bidders are required to comply with the following listed below:

No	Criteria	Yes	No
1	Companies must be registered with National Treasury's Central Supplier Database. Provide proof of print out from CSD.		
2	Tax compliant with SARS (to be verified through CSD and SARS).		
3	Complete, sign, submit SBD 1, SBD 3.2, SBD 4, SBD 6.1, SBD 8, SBD 9		
4	General Conditions of Contract (GCC)		

Phase 2: Functional /Technical Evaluation

The bidder is expected to achieve a minimum required score of **70%** for functionality 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

EVALUATION CRITERIA	GUIDELINE FOR CRITERIA APPLICATION	WEIGHT
METHODOLOGY	Approach and Methodology: The Consultant will be required to develop a clear and detailed methodology on how each item will be undertaken.	20
	Clear and Detailed description of Methodology, with clear provision of team involvement, and proposed timeframes to execute all 6 items 2.1-2.5, 3	
	Clear and Detailed description of Methodology, with clear provision of team involvement, and proposed timeframes to execute for at least 5 items	
	Clear and Detailed description of Methodology, with clear provision of team involvement, and proposed timeframes to execute for at least 4 items	
	Clear and Detailed description of Methodology, with clear provision of team involvement, and proposed timeframes to execute for 3 items or less	
	Basic Methodology provided	
	The methodology must reflect the following: <ol style="list-style-type: none"> 1. The consultants understanding of the complexities of the water sector. 2. Understanding of the entire water value chain (Water resource and services), and water board's and water Services Authority functions and mandate as well as relevant statutory requirements. 3. The methodology must be based on a collaborative and participatory approach incorporating all relevant stakeholders. 	15

EVALUATION CRITERIA	GUIDELINE FOR CRITERIA APPLICATION	WEIGHT
	<p>understanding of financial markets, credit rating and borrowings for state entities – (5)</p> <p>iv. Strong technical experience and engineering of infrastructure service delivery industries and water services. Stakeholder Engagement and Management skills and experience (5)</p> <p>v. Experience in establishing and dis-establishing businesses. Ability to conduct a comprehensive due diligence, roadmap for the establishment of the new business and manage the transition – (5)</p> <p>vi. Change management and communication skills. Extensive experience on human capital including development of organisational designs, job profiles, grading and matching and placing. Risk and Legal specialists to ensure compliance to all legislation and governance principles. Exceptional project management skills. (10)</p>	
TOTAL		100

Phase 4: Points Awarded for Price And B-BBEE Status Level Of Contribution

Points will be awarded to a bidder for attaining the B-BBEE Status Level of Contributor in accordance with the table below

B-BBEE Status Level of Contributor	Number of Points (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-Compliant contributor	0

NB: Only bidders who obtain at least 70 points under Functional/Technical evaluation will be considered for further evaluation

10. Conditions

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. Multiple Joint Venture arrangements (i.e. the same person(s) forming part of more than one proposal) will be allowed.

- A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid.
- Bidders are required to submit valid Tax clearance and valid B-BBEE Status Level Verification Certificates or certified copies thereof together with their bids, to substantiate their B-BBEE rating claims.

- The Department will reserve the right to appoint additional specialists to the contract if the necessary skills are not available within the successful bid (at no extra cost to the contract).
- Bidders are requested to provide separate financial and technical proposals.
- The DWS will become the owner of all documentation and the deliverables produced within the context of this tender. All information should be treated with confidentiality and may not be published, either during the currency of the agreement or thereafter without the prior consent of the department.

11. Briefing Session and Enquiries

- Due to the COVID restrictions on gatherings and to allow for maximum participation of the prospective service providers, the department will not be holding any formal briefing session.
- In order to attend to any specific questions to this Terms of References, service providers are required to submit their formal enquiries directly to the Project Manager and the SCM office.
- Service Providers will submit their questions and the department will respond to such questions and also upload all questions and answers on the departmental website www.dws.gov.za

For further Technical information please contact
Ms Sizani Moshidi
Chief Director: Economic and Social Regulation
(012) 336 6614
moshidiS@dws.gov.za

For Supply Chain Management please contact
Patrick Mabasa
(012) 336 7518
MabasaP@dws.gov.za