



## BID DOCUMENT

**BID: ERW202204/TNDR-002: BID FOR THE APPOINTMENT OF ATTORNEYS TO PROVIDE EKURHULENI WATER CARE COMPANY (ERWAT) WITH SUCH LEGAL SERVICES AS AND WHEN REQUIRED FOR THE PERIOD OF THIRTY SIX (36) MONTHS**

<b>COMPULSORY BRIEFING SESSION</b>	Not Applicable
<b>CLOSING DATE:</b>	Friday, 10 June 2022 at 12h00
<b>FULL NAME OF BIDDER</b>	
<b>CONTACT PERSON</b>	
<b>TEL NUMBER</b>	
<b>FAX NUMBER</b>	
<b>E-MAIL ADDRESS</b>	
<b>CENTRAL SUPPLIER DATABASE REG. NO</b>	M _____

**BIDDERS OFFER:** Please note that this is rates based tender. The contract is limited to Purchase orders issued within the available budget allocated for such on an as and when required basis.

ERWAT STAMP

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

INDEX		PAGE NO
ADVERTISEMENT		4 - 5
SECTION 1: ADMINISTRATIVE COMPLIANCE		6 – 7
MBD 1	INVITATION TO BID	8 – 10
MBD 2	TAX COMPLIANCE STATUS	11 – 12
MBD 3.3	PRICING SCHEDULE – PROFESSIONAL SERVICES	13 – 14
MBD 4	DECLARATION OF INTEREST	15 – 17
MBD 5	DECLARATION OF PROCUREMENT ABOVE R10 MILLION	18 - 19
MBD 6.1	PREFERENCE POINTS CLAIM	20 - 25
	PART A - SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE	26
	PART B - SWORN AFFIDAVIT – B-BBEE QUALIFYING SMALL ENTERPRISE	27
MBD 8	DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES	28 - 29
MBD 9	CERTIFICATE OF INDEPENDENT BID DETERMINATION	30 - 32
FORM A	MUNICIPAL SERVICES, RATES AND TAXES OR RENTAL AGREEMENT WITH LANDLORD Copy of Municipal Statement not older than 3 months before date of closing of bid OR Letter from landlord stating that you are renting from his/her property OR a Copy of Lease agreement and Contact details. Rates and taxes must not be in arrears for longer than 90 (ninety) days of date of closing of bid.	33
FORM B	NATIONAL TREASURY CENTRALISED SUPPLIER DATABASE	34
FORM C	AUTHORITY OF SIGNATORY	35 – 37
FORM D	FINANCIAL REFERENCES /BIDDER'S CREDIT RATING AND BANK DETAILS	38
FORM E	RECORD OF ADDENDA TO TENDER DOCUMENTS	39
FORM F	CERTIFICATE OF AUTHORITY FOR SIGNATORY TO AGREEMENT IN TERMS OF OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT NO 85 OF 1993)	40
FORM G	OCCUPATIONAL HEALTH AND SAFETY AGREEMENT	41
FORM H	CERTIFIED COPY OF ID DOCUMENTS OF OWNERS/MEMBERS/SHAREHOLDERS (SEE BIDDERS INFORMATION SECTION).	42
FORM I	CURRENT CERTIFICATE OF GOOD STANDING FROM COMPENSATION COMMISSIONER	43
FORM J	PROGRAMME OF WORKS	44
FORM K	EXPERTISE OF THE KEY PERSONNEL	45

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

<b>FORM L</b>	<b>LETTER OF INTENT TO SUBMIT THIRD PARTY LIABILITY INSURANCE AND ALL RISK CONTRACTORS INSURANCE TO COVER THIS CONTRACT</b>	<b>46</b>
<b>FORM M</b>	<b>COPY OF COMPANY REGISTRATION DOCUMENTS</b>	<b>47</b>
<b>FORM N</b>	<b>AUDITED FINANCIAL STATEMENTS FOR THE PAST THREE FINANCIAL YEARS ON CONTRACTS OVER R10 M VALUE</b>	<b>48</b>

	<b>SECTION 2 – SCOPE OF WORKS AND PRICING</b>	<b>49</b>
<b>2.1</b>	<b>SCOPE OF WORKS/SPECIFICATIONS</b>	<b>50 – 69</b>
<b>2.2</b>	<b>EVALUATION CRITERIA</b>	<b>70 – 73</b>
<b>2.3</b>	<b>PRICING SCHEDULE/BILL OF QUANTITIES</b>	<b>74</b>
<b>2.4</b>	<b>LIST OF IMPORTED ITEMS</b>	<b>75</b>
<b>2.5</b>	<b>ALTERNATIVES OFFERED</b>	<b>76</b>
<b>2.6</b>	<b>SITE INFORMATION</b>	<b>77</b>
<b>2.7</b>	<b>ANNEXURES (Materials, standard equipment and workmanship/Mechanical &amp; Electrical equipment/Surface and corrosion protection specs/OHS specs)</b>	<b>78 – 85</b>

	<b>SECTION 3 – CONTRACT DOCUMENTS</b>	<b>86</b>
<b>3.1</b>	<b>STANDARD CONDITIONS OF BIDDING</b>	<b>87</b>
<b>3.2</b>	<b>FORM OF OFFER AND ACCEPTANCE</b>	<b>88</b>
<b>3.3</b>	<b>SCHEDULE OF DEVIATIONS</b>	<b>89</b>
<b>3.4</b>	<b>MBD 7.2: CONTRACT FORM – PROFESSIONAL SERVICES</b>	
	<b>PART A: TO BE COMPLETED BY THE BIDDER</b>	<b>90</b>
	<b>PART B: TO BE COMPLETED BY EKURHULENI WATER COMPANY</b>	<b>91</b>
<b>3.5</b>	<b>OCCUPATIONAL HEALTH AND SAFETY AGREEMENT IN TERMS OF THE OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT NO 85 OF 1993)</b>	<b>92 – 94</b>
<b>3.6</b>	<b>PERFORMANCE MANAGEMENT SYSTEM: DRAFT PMS</b>	<b>95</b>
<b>3.7</b>	<b>INDEMNITY FORM</b>	<b>96</b>
<b>3.8</b>	<b>SPECIAL CONDITIONS OF CONTRACT</b>	<b>97</b>
<b>3.9</b>	<b>GENERAL CONDITIONS OF CONTRACT</b>	<b>98 - 110</b>

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



## 1.1 BID NOTICE: ADVERTISEMENT

Bid Description	Contact Person	Expiry date for raising queries/clarification communication	Closing Date & Time
BID: <b>ERW202204/TNDR-002</b> : BID FOR THE APPOINTMENT OF ATTORNEYS TO PROVIDE EKURHULENI WATER CARE COMPANY (ERWAT) WITH SUCH LEGAL SERVICES AS AND WHEN REQUIRED FOR THE PERIOD OF THIRTY-SIX (36) MONTHS	Zimasa Socikwa/ Lerato Motshabela – 011 929 7118/7132	Friday, 10 <sup>th</sup> June 2022 at 12h00	Friday, 10 June 2022 at 12h00

BID documents may be purchased at ERWAT Head Office, Hartebeestfontein Office Park, R25 (Bapsfontein/ Bronkhorstspuit), Kempton Park at a non-refundable fee of **R250** including VAT per BID document during office hours from 08h00 -13h00 and 14h00 -16h00 weekdays.

During the COVID 19 lockdown period, where no briefing sessions will be conducted due to the social distancing provision, Bidders will be allowed to request additional information relating to the scope of works. Bidders are requested to submit any queries or clarification, to [publictenders@erwat.co.za](mailto:publictenders@erwat.co.za) and cc Ms Z Socikwa at [zimasa.socikwa@erwat.co.za](mailto:zimasa.socikwa@erwat.co.za) and Ms L Motshabela at [lerato.motshebla@erwat.co.za](mailto:lerato.motshebla@erwat.co.za) All queries must be submitted 10 days prior to closing date of tender as set out above. No queries after this date will be considered or addressed. Please note that all queries raised with responses, will be e-mailed to all the bidders who have purchased a tender document for this bid.

er

Bidders are encouraged to collect bidding documents well in advance to allow them sufficient time to peruse the scope so that any queries can be dealt with timeously. In the event that changes may be required to the scope based on queries raised, an addendum to this effect will be mailed to all bidders who purchased a tender document. Kindly contact Mr Nkosinathi Nhlapo via e-mail: [publictenders@erwat.co.za](mailto:publictenders@erwat.co.za) for access to the bid document. Bids may be purchased from the SCM unit during 10:00 and 14:00 weekdays. No fees are payable for bid documents mailed to the prospective bidders. Kindly note that in the event that a tender document is e-mailed, the bidder accepts the responsibility to print all the pages and documents relating to the tender, to complete such comprehensively and submit the full document with supporting documents in the tender boxes as set out below. Failure to submit the full document will render your bid invalid and non-compliant and will not be accepted or considered for evaluation.

All tender documents must be submitted on the official forms – (**not to be re-typed**). Bid documents completed in ink must be placed in a sealed envelope clearly marked: BID **ERW202204/TNDR-002**: and must be placed in the correct Tender Box situated at ERWAT Head Office, Hartebeestfontein Office Park, R25 (Bapsfontein/ Bronkhorstspuit), Kempton Park, not later than **Friday, 10 June 2022 at 12h00** at which hour and date the BIDS will be opened in public. BIDS shall remain valid for the period of days as indicated in the bid document from date of closing.

All SCM related Enquiries shall be addressed to: Mr Nkosinathi Nhlapo at 011 929 7115 or [publictenders@erwat.co.za](mailto:publictenders@erwat.co.za). All Technical Enquiries shall be addressed to: Ms. Zimasa Socikwa at 011 929 7118 or [zimasa.socikwa@erwat.co.za](mailto:zimasa.socikwa@erwat.co.za). Kindly CC the other party in all correspondence.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

Bids will be evaluated in terms of ERWAT' Supply Chain Management Policy, the MFMA SCM Regulations, the Preferential Procurement Policy Framework Act and its Regulations, 2017, the General Condition of Contract (GCC) and, if applicable, any other special conditions of contract.

**NB: NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE (as defined in Regulation 44 of the Local Government: Municipal Supply Chain Management Regulations).**

ERWAT accepts no responsibility for bidders accessing the tender notices from other sites/sources other than the newspapers used, its website ([www.erwat.co.za/procurement](http://www.erwat.co.za/procurement)) and the National Treasury's e-tender portal ([www.etenders.gov.za](http://www.etenders.gov.za)).

**05 May 2022**

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*



# SECTION 1: ADMINISTRATIVE COMPLIANCE

## LIST OF RETURNABLE DOCUMENTS

1. Failure to fully complete and sign the relevant returnable documents shall render such a Tender offer unresponsive.
2. Bidders shall note that their signatures appended to each returnable form represents a declaration that they vouch for the accuracy and correctness of the information provided, including the information provided by candidates proposed for the specified key positions.
3. Notwithstanding any check or audit conducted by or on behalf of the Employer, the information provided in the returnable documents is accepted in good faith and as justification for entering into a contract with a Bidder. If subsequently any information is found to be incorrect such discovery shall be taken as wilful misrepresentation by that Bidder to induce the contract. In such event the Employer has the discretionary right to terminate the contract.
4. **The Bidder must complete and sign the following returnable Schedules:**

**Failure to comply with these requirements may render the tender liable for disqualification.**

	Please ensure that the following supporting documents are attached to your Bid Document. Failure to submit the below mentioned documents will result in disqualification of your bid.	To be completed by the Bidder: Please fill in Yes or No if proof and/or documents are attached	For Office Use Only Verified by SCM Official: Please fill in Yes or No if proof and/or document is attached
<b>MBD 1</b>	INVITATION TO BID		
<b>MBD 2</b>	TAX CLEARANCE REQUIREMENTS		
<b>MBD 3.3</b>	PRICING STRUCTURE: PROFESIONAL SERVICES		
<b>MBD 4</b>	DECLARATION OF INTEREST		
<b>MBD 5</b>	DECLARATION OF PROCUREMENT ABOVE R10 MILLION		
<b>MBD 6.1</b>	PREFERENCE SCHEDULE		
<b>MBD 7.2</b>	CONTRACT FORM: PURCHASE OF PROFESIONAL SERVICES		
	PART 1: TO BE COMPLETED BY THE BIDDER		
	PART 2: TO BE COMPLETED BY ERWAT (THE EMPLOYER)		

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

<b>MBD 8</b>	DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES		
<b>MBD 9</b>	CERTIFICATE OF INDEPENDENT BID DETERMINATION		
<b>FORM A</b>	MUNICIPAL SERVICES, RATES AND TAXES OR RENTAL AGREEMENT WITH LANDLORD: Copy of Municipal Statement not older than 3 months before date of closing of bid OR Letter from landlord stating that you are renting from his/her property OR a Copy of Lease agreement and Contact details. Rates and taxes must not be in arrears for longer than 90 (ninety) days of date of closing of bid.		
<b>FORM B</b>	NATIONAL TREASURY CENTRALISED SUPPLIER DATABASE		
<b>FORM C</b>	AUTHORITY OF SIGNATORY		
<b>FORM D</b>	FINANCIAL REFERENCES /BIDDER'S CREDIT RATING AND BANK DETAILS		
<b>FORM E</b>	RECORD OF ADDENDA TO TENDER DOCUMENTS		
<b>FORM F</b>	CERTIFICATE OF AUTHORITY FOR SIGNATORY TO AGREEMENT IN TERMS OF OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT NO 85 OF 1993)		
<b>FORM G</b>	OCCUPATIONAL HEALTH AND SAFETY AGREEMENT		
<b>FORM H</b>	Certified Copy of ID documents of owners/members/shareholders (see Bidders Information Section).		
<b>FORM I</b>	Current Certificate of Good Standing from Compensation Commissioner		
<b>FORM J</b>	Program of Works/Services		
<b>FORM K</b>	Expertise of the Key Personnel		
<b>FORM L</b>	SANS/SABS/ISO Certification or TQM certification or other certificates required in terms of the regulatory authority as set out in the special conditions of contract		
<b>FORM M</b>	Letter of intent to submit Third Party Liability Insurance and All risk contractors insurance to cover this contract		
<b>FORM N</b>	Copy of Company Registration Documents		
<b>FORM O</b>	Audited Financial Statements for the past three financial years on contracts over R10 m value		

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

MBD 1

### INVITATION TO BID

**YOU ARE HEREBY INVITED TO SUBMIT AN OFFER FOR BID ERW202204/TNDR-002: FOR THE APPOINTMENT OF ATTORNEYS TO PROVIDE EKURHULENI WATER CARE COMPANY (ERWAT) WITH SUCH LEGAL SERVICES AS AND WHEN REQUIRED FOR THE PERIOD OF THIRTY-SIX MONTHS**

**CLOSING DATE: Friday, 10 June 2022 at 12h00**

The successful bidder will be required to fill in and sign a written Contract Form (MBD7).

Completed Tender documents with attached documents, if any, must be completed in Ink and submitted in a sealed envelope and clearly marked **ERW202204/TNDR-002:** to be placed in Tender Box at ERWAT Head Office, Hartebeestfontein Office Park, R25 (Bapsfontein / Bronkhorstspuit), Kempton Park.

**Bidders should ensure that bids are in the tender box at the closing time and date, including couriered documents. Any late documents will not be accepted for consideration.**

The box is generally open during office hours: 07:00 – 17:00 Mondays to Fridays.

***N.B.: Bidders must ensure that they submit the full bidding document with all the pages, all requested information completed and signed, including all supporting documents in the areas provided.***

***All bids must be submitted on the official forms – (not to be re-typed). Failure to complete the document in full may result in disqualification.***

***Bids completed in pencil, re-typed or where correction tape/fluid is used will be regarded as invalid bids.***

THIS BID IS SUBJECT TO THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

THIS BID WILL BE EVALUATED AND ADJUDICATED ACCORDING TO THE FOLLOWING CRITERIA:

1. Relevant specifications and technical proposals
2. Value for money
3. Capability to execute the contract
4. PPPFA & related regulations (including BBBEE)
5. Standard conditions of bidding
6. Special conditions of contract
7. General conditions of contract
8. Supporting documents where required

**NB: NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE (see definition on MBD 4 attached)**

**THE FOLLOWING PARTICULARS MUST BE FURNISHED  
(FAILURE TO DO SO SHALL RESULT IN YOUR BID BEING DISQUALIFIED)**

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



***In the case of a Joint Venture – This page is to be completed and submitted in respect of each partner***

NAME OF ENTERPRISE							
PHYSICAL ADDRESS:							
POSTAL ADDRESS:							
CONTACT PERSON							
TEL NO: _____		CELL NO: _____					
FAX NO: _____		EMAIL: _____					
COMPANY REGISTRATION NUMBER:							
VAT NUMBER:				TAX REF NUMBER:			
CENTRALISED SUPPLIER DATABASE (CSD) NUMBER:				MAAA _____			
ERWAT VENDOR NUMBER (NOT COMPULSORY):							
BIDDERS OFFER: Please note that this is rates based tender. The contract is limited to Purchase orders issued within the available budget allocated for such on an as and when required basis.							
TOTAL NUMBER OF ITEMS OFFERED							
* PREFERENCE POINTS CLAIMED AS PER FORM MBD 6.1		B-BBEE RATING [LEVEL ____ ]		VALID B-BBEE CERTIFICATE ATTACHED		Yes	No
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS/SERVICES/WORKS OFFERED?				Yes	No		
DISABLED [ ____%]		WOMEN [ ____%]		YOUTH [ ____%]			

***\*IF YES, WHO WAS THE CERTIFICATE ISSUED BY?***

A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN NATIONAL ACCREDITATION SYSTEM (SANAS) ☐

A REGISTERED AUDITOR ☐

A SWORN AFFIDAVIT ☐

*(tick applicable block)*

**(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE OR SWORN AFFIDAVIT (SEE MBD6.1) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE)**

**ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS/ SERVICES/ WORKS OFFERED?**

YES		NO	
-----	--	----	--

--

Contractor

--

Witness 1

--

Witness 2

--

Employer

--

Witness 1

--

Witness 2

NAME AND SURNAME: \_\_\_\_\_

SIGNATURE OF BIDDER: \_\_\_\_\_

CAPACITY UNDER WHICH THIS BID IS SIGNED: \_\_\_\_\_

DATE: \_\_\_\_\_

---

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

**SUPPLY CHAIN BIDDING PROCEDURES:**

CONTACT PERSON: Phumzile Mdlalose

CONTACT DETAILS: (TEL) 011 929 7000 E-MAIL: [publictenders@erwat.co.za](mailto:publictenders@erwat.co.za)

**TECHNICAL QUERIES MAY BE DIRECTED TO:**

CONTACT PERSON: Zimasa Socikwa/ Lerato Motshabela

CONTACT DETAILS: (TEL) 011 929 7118/7132

E-MAIL: [zimasa.socikwa@erwat.co.za](mailto:zimasa.socikwa@erwat.co.za)  
[lerato.motshabela@erwat.co.za](mailto:lerato.motshabela@erwat.co.za)

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

MBD 2

### **TAX CLEARANCE CERTIFICATE REQUIREMENTS**

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

#### **NEED A TAX CLEARANCE? GO ONLINE**

- Electronically request your Tax Compliance Status which will include a unique PIN which you can provide to any third party (if requested) to enable them to verify your tax compliance status online via e-Filing.
- Request a TCC via e-filing which will give you the option to print the TCC.
- Or request a TCC at a SARS branch where a SARS agent will be able to print or e-mail the TCC to you.
- To register for e-filing go to: [www.sarsefiling.co.za](http://www.sarsefiling.co.za)

A tax compliant status is a holistic view of your tax compliance level across all your registered tax types.

#### **Is your tax compliance status green?**

- Ensure all tax returns are submitted
- No outstanding debt owed to SARS
- SARS has been notified of any change of residential or business address
- Your business is registered for all required tax types e.g. PAYE, VAT, income tax.

Check your tax compliance status by logging onto your e-filing profile and viewing your "my compliance Profile" and rectify any non-compliance.

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

### **THIRD PARTY AUTHORISATION TO VIEW BIDDER TCS:**

To assist with the evaluation process of your bid we require your consent to check your SARS tax compliance via e-filing. Kindly complete the table below authorising ERWAT to check TCC for tender purposes only.

<b>TCS Details</b>	
<b>Tax payer name</b>	
<b>Trading Name</b>	
<b>Purpose of request</b>	TENDER
<b>Request Reference number</b>	
<b>PIN</b>	
<b>PIN EXPIRY DATE</b>	

**Note: Bidders may attach their Tax compliance status printout to the bidding document.**

I, \_\_\_\_\_ in my capacity as \_\_\_\_\_ duly appointed as authorised signatory holder, hereby grant **ERWAT** permission to check the TCC status of \_\_\_\_\_ and it is duly understood that the search is for tender purposes only.

\_\_\_\_\_  
**NAME AND SURNAME**

\_\_\_\_\_  
**DESIGNATION**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**SIGNATURE**

**FOR ERWAT OFFICE USE ONLY:**  
**VERIFIED** ☐ YES / ☐ NO

\_\_\_\_\_  
*Contractor*

\_\_\_\_\_  
*Witness 1*

\_\_\_\_\_  
*Witness 2*

\_\_\_\_\_  
*Employer*

\_\_\_\_\_  
*Witness 1*

\_\_\_\_\_  
*Witness 2*

**MBD 3.3**

**PRICING SCHEDULE**

**(Professional Services)**

Name of Bidder \_\_\_\_\_  
Closing Time: **12:00**

Bid number: **ERW202204/TNDR-002**  
Closing Date: **Friday, 10 June 2022**

**OFFER TO BE VALID FOR 120 (ONE HUNDRED AND TWENTY) DAYS FROM THE CLOSING DATE OF BID**

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 VAT*** for the project.
3. Persons who will be involved in the project and rates applicable (certified invoices must be rendered in terms hereof)

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

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

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

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

\_\_\_\_\_

Contractor

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

\_\_\_\_\_

Employer

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
_____	_____	_____	R_____
_____	_____	_____	R_____
_____	_____	_____	R_____
_____	_____	_____	R_____

- 5.2 Other expenses, for example 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 INCURRED	RATE	QUANTITY	AMOUNT
_____	_____	_____	R_____
_____	_____	_____	R_____
_____	_____	_____	R_____
_____	_____	_____	R_____

6. Period required for commencement with project after acceptance of bid \_\_\_\_\_
7. Estimated man-days for completion of project \_\_\_\_\_
8. Are the rates quoted firm for the full period of contract? \_\_\_\_\_
9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contractor

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

\_\_\_\_\_

Employer

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

**MBD 4**

**DECLARATION OF INTEREST**

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

4.1 Full Name of bidder or his or her representative:

\_\_\_\_\_

4.2 Identity Number:

--	--	--	--	--	--	--	--	--	--	--	--	--	--

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

\_\_\_\_\_

4.4 Company Registration Number: \_\_\_\_\_

4.5 Tax Reference Number: \_\_\_\_\_

4.6 VAT Registration Number: \_\_\_\_\_

4.7 The names of all directors / trustees / shareholder's members, their individual identity numbers and state employee numbers must be indicated in paragraph 5 below.

4.8 Are you presently in the service of the state?  
If so, furnish particulars.

**YES / NO**

\_\_\_\_\_  
\_\_\_\_\_

4.9 Have you been in the service of the state for the past twelve months?

**YES / NO**

If so, furnish particulars.

\_\_\_\_\_  
\_\_\_\_\_

4.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid?

--

Contractor

--

Witness 1

--

Witness 2

--

Employer

--

Witness 1

--

Witness 2

**YES / NO**

If so, furnish particulars.

---

---

- 4.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid?

**YES / NO**

If so, furnish particulars.

---

---

- 4.12 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state?

**YES / NO**

If so, furnish particulars.

---

---

- 4.13 Are any spouse, child or parent of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state?

**YES / NO**

If so, furnish particulars.

---

---

- 4.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract.

**YES / NO**

If so, furnish particulars.

---

---

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*



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

FULL NAME	IDENTITY NUMBER	STATE EMPLOYEE NUMBER

**1 MSCM Regulations: “in the service of the state” means to be –**

- (a) A member of –
  - any municipal council/entity;
  - any provincial legislature; or
  - the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the public Finance Management Act, 1999 (Act No 1 of 1999);
- (e) an executive member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

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

**CERTIFICATION**

I, THE UNDERSIGNED (NAME) \_\_\_\_\_  
 CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS CORRECT.

I ACCEPT THAT THE STATE MAY ACT AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

\_\_\_\_\_  
 SIGNATURE

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
 POSITION

\_\_\_\_\_  
 NAME OF BIDDER

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**MBD 5**

**DECLARATION FOR PROCUREMENT ABOVE R10 MILLION (ALL APPLICABLE TAXES INCLUDED)**

For all procurement expected to exceed R10 million (all applicable taxes included), bidders must complete the following questionnaire:

**\* Delete if not applicable**

1 Are you by law required to prepare annual financial statements for auditing? **\*YES/NO**

1.1 If yes, submit audited annual financial statements for the past three years or since the date of establishment if established during the past three years.

---

---

2 Do you have any outstanding undisputed commitments for municipal services towards any municipality for more than three months or any other service provider in respect of which payment is overdue for more than 30 days?

**\*YES/NO**

2.1 If no, this serves to certify that the bidder has no undisputed commitments for municipal services towards any municipality for more than three months or other service provider in respect of which payment is overdue for more than 30 days.

2.2 If yes, provide particulars.

---

---

---

---

3 Has any contract been awarded to you by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract?

**\*YES/ NO**

3.1 If yes, furnish particulars

---

---

2 Will any portion of goods or services be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality / municipal entity is expected to be transferred out of the Republic?

**\*YES / NO**

2.1 If yes, furnish particulars

---

---

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**CERTIFICATION**

I, THE UNDERSIGNED (NAME) \_\_\_\_\_

CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS CORRECT.

I ACCEPT THAT THE STATE MAY ACT AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
POSITION

\_\_\_\_\_  
NAME OF BIDDER

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

**MBD 6.1**

**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 below R50 000 000 (all applicable taxes included).
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 As it is not clear what the value of the contract will be, the 80/20 or 90/10 system will be utilised. The final points will be determined based on the recommended bidders price. As this is a rates based tender, the budget allocated for this and the accumulated line items will be utilised for the score.

1.3 Preference points for this bid shall be awarded for:

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

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

<b>POINTS</b>		
<b>PRICE</b>	80	90
<b>B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	20	10
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>	<b>100</b>

1.5 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.

1.6 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;

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

- (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:
  - i. B-BBEE Status level certificate issued by an authorized body or person;
  - ii. A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - iii. 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 80/90 points is allocated for price on the following basis:

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

Where:

$P_s$  = Points scored for comparative price of bid under consideration  
 $P_t$  = Comparative price of bid under consideration  
 $P_{\min}$  = Comparative price of lowest acceptable bid

### 4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

- 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 (80/20 system)	Number of points (90/10 system)	Kindly tick the applicable level and points
1	20	10	
2	18	8	
3	14	6	
4	12	5	
5	8	4	
6	6	3	
7	4	2	
8	2	1	
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 CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1**

- 6.1 B-BBEE Status Level of Contribution: = (maximum of 20 or 10 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**

**Bidders must note the following with regards to sub-contracting:**

- a) The sub-contracting must be to a separate legal entity.
- b) A legal person or unincorporated body of persons cannot sub-contract to themselves.
- c) A joint venture, consortium or unincorporated body of person may not sub-contract to a member of that joint-venture, consortium or unincorporated body of persons.

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

YES		NO	
-----	--	----	--

(Tick applicable box)

- 7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted \_\_\_\_\_ %?
- ii) The name of the sub-contractor \_\_\_\_\_

--

Contractor

--

Witness 1

--

Witness 2

--

Employer

--

Witness 1

--

Witness 2

iii) The B-BBEE status level of the sub-contractor \_\_\_\_\_

iv) Whether the sub-contractor is an EME or QSE  
(Tick applicable box)

YES		NO	
-----	--	----	--

**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 MUNICIPAL INFORMATION**

Municipality where business is situated: \_\_\_\_\_

Registered Account Number: \_\_\_\_\_

Stand Number: \_\_\_\_\_

8.8 Total number of years the company/firm has been in business: \_\_\_\_\_

8.9 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:

\_\_\_\_\_

Contractor

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

\_\_\_\_\_

Employer

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

- 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 *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

**WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

**DATE:** \_\_\_\_\_

<p>_____</p> <p><b>SIGNATURE(S) OF BIDDER(S)</b></p> <p><b>ADDRESS:</b> _____</p> <p>_____</p> <p>_____</p>
---

--

Contractor

--

Witness 1

--

Witness 2

--

Employer

--

Witness 1

--

Witness 2



**NB – BIDDERS MUST TAKE NOTE THAT ERWAT ONLY  
ACCEPTS THE FOLLOWING FORMATS OF SWORN  
AFFIDAVIT FOR EME's OR QSE's WHERE YOUR ANNUAL  
TURNOVER IS LESS THAN R10 MILLION.**

**NO SWORN AFFIDAVITS WILL BE ACCEPTED WHERE A  
BEE CERTIFICATE HAS BEEN ISSUED TO A BIDDER.**

**WHERE A BEE CERTIFICATE AND SWORN AFFIDAVIT HAS  
BEEN ATTACHED, THE ORIGINAL OR CERTIFIED BEE  
CERTIFICATE WILL TAKE PRESENCE AND POINTS  
WILL BE AWARDED BASED ON THE CERTIFICATE ONLY.**

**PLEASE NOTE THAT THE FORM IS COMPLETED ONLY  
ONCE ANNUALLY, AS THE CERTIFICATE IS VALID FOR A  
PERIOD OF ONE YEAR FROM DATE OF SIGNATURE OF  
AFFIDAVIT.**

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

**PART A - SWORN AFFIDAVIT: B-BBEE EXEMPTED MICRO ENTERPRISE**

I, the undersigned,

<b>Full name &amp; Surname</b>	
<b>Identity number</b>	

Hereby declare under oath as follows:

1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I am a member / director / owner of the following enterprise and am duly authorised to act on its behalf:

<b>Enterprise Name</b>	
<b>Trading Name</b>	
<b>Registration Number</b>	
<b>Enterprise Address</b>	

3. I hereby declare under oath that:
  - The enterprise is \_\_\_\_\_% black owned;
  - The enterprise is \_\_\_\_\_% black woman owned;
  - Based on the management accounts and other information available on the \_\_\_\_\_ financial year, the income did not exceed R10,000,000.00 (ten million rands);
  - Please confirm on the table below the B-BBEE level contributor, **by ticking the applicable box.**

100% black owned	<b>Level One</b> (135% B-BBEE procurement recognition)	
More than 51% black owned	<b>Level Two</b> (125% B-BBEE procurement recognition)	
Less than 51% black owned	<b>Level Four</b> (100% B-BBEE procurement recognition)	

4. The entity is an empowering supplier in terms of **the dti** Codes of Good Practice.
5. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
6. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

**Deponent Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Commissioner of Oaths Signature & Stamp:** \_\_\_\_\_

**COMMISSIONER OF OATHS STAMP**

--

Contractor

--

Witness 1

--

Witness 2

--

Employer

--

Witness 1

--

Witness 2

**PART B - SWORN AFFIDAVIT: B-BBEE QUALIFYING SMALL ENTERPRISE**

I, the undersigned,

<b>Full name &amp; Surname</b>	
<b>Identity number</b>	

Hereby declare under oath as follows:

- The contents of this statement are to the best of my knowledge a true reflection of the facts.
- I am a member / director / owner of the following enterprise and am duly authorised to act on its behalf:

<b>Enterprise Name</b>	
<b>Trading Name</b>	
<b>Registration Number</b>	
<b>Enterprise Address</b>	

- I hereby declare under oath that:
  - The enterprise is \_\_\_\_\_ % black owned;
  - The enterprise is \_\_\_\_\_ % black woman owned;
  - Based on the management accounts and other information available on the \_\_\_\_\_ financial year, the income did not exceed R50,000,000.00 (Fifty Million Rands);
  - The entity is an Empowering Supplier in terms of Clause 3.3 (a) or (b) or (c) or (d) or as amended 3.3 (e) **(select one)** \_\_\_\_\_ of the DTI Codes of Good Practice.
  - Please confirm on the table below the B-BBEE level contributor, **by ticking the applicable box.**

100% black owned	<b>Level One</b> (135% B-BBEE procurement recognition)	
More than 51% black owned	<b>Level Two</b> (125% B-BBEE procurement recognition)	
(a) At least 25% of cost of sales, (excluding labour costs and depreciation) must be procurement from local producers or suppliers in South Africa; for the services industry include labour costs but capped at 15%.	(b) Job Creation – 50% of jobs created are for black people, provided that the number of black employees in the immediate prior verified B-BBEE measurement is maintained	
(c) At least 25% transformation of raw material / beneficiation which include local manufacturing, production and /or assembly, and/ or packaging	(d) At least 12 days per annum of productivity deployed in assisting QSE and EME beneficiaries to increase their operation or financial capacity	
(e) At least 85% of labour costs should be paid to South African employees by service industry entities.		

- I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
- The sworn affidavit will be valid for a period of 12 months from the date signed by Commissioner.

**Deponent Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Commissioner of Oaths Signature & Stamp:** \_\_\_\_\_

**COMMISSIONER OF OATHS STAMP**

<div></div> <i>Contractor</i>	<div></div> <i>Witness 1</i>	<div></div> <i>Witness 2</i>	<div></div> <i>Employer</i>	<div></div> <i>Witness 1</i>	<div></div> <i>Witness 2</i>
----------------------------------	---------------------------------	---------------------------------	--------------------------------	---------------------------------	---------------------------------

**MBD 8**

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

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

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(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).</p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
4.2.1	If so, furnish particulars:		

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

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

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

**MBD 9**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

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

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

### **CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

#### **ERW202204/TNDR-002**

in response to the invitation for the bid made by: **EKURHULENI WATER CARE COMPANY (ERWAT)**

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

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

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

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**

\_\_\_\_\_  
*Contractor*

\_\_\_\_\_  
*Witness 1*

\_\_\_\_\_  
*Witness 2*

\_\_\_\_\_  
*Employer*

\_\_\_\_\_  
*Witness 1*

\_\_\_\_\_  
*Witness 2*



**FORM A**

**MUNICIPAL SERVICES, RATES AND TAXES CLEARANCE CERTIFICATE FOR SUPPLY CHAIN MANAGEMENT PURPOSE**

The purpose of this form is to obtain prove that municipal services, rates and taxes of the service provider are **not more than three months in arrears** with the relevant municipality / landlord in the municipal area where the service provider conduct his / her business. Kindly attach the latest municipal rates and taxes account not older than 3 months from date of advertising of bid.

**Where bidders are not owners of a property and cannot submit a copy of the municipal account, the following must be completed together with a Rental/lease agreement:**

<b>( TO BE COMPLETED BY THE LANDLORD)</b>		
Name of the Landlord:		
Property Physical Address:		
<b>Please tick below</b>		
Rental:	in arrears for more than 3 months	
Municipal services:	in arrears for more than 3 months	
<div style="height: 100px; border: 1px solid black; margin-top: 10px;"></div>		
Landlord Signature:		
<div style="height: 150px; border: 1px solid black; margin-top: 10px;"></div>		

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

**FORM B**

**CONFIRMATION OF REGISTRATION ON NATIONAL TREASURY CENTRALISED SUPPLIER DATABASE**

CONFIRMATION OF CSD VENDOR INFORMATION		
1	VENDOR NAME	
2	CSD APPROVED NUMBER	M_____
3	COMPANY REG NUMBER	
4	COMPANY TAX NUMBER	
5	COMPANY VAT NUMBER	
6	COMPANY BEE LEVEL	
7	CONTACT PERSON	
8	OFFICE TEL. NUMBER	
9	OFFICE FAX NUMBER	
10	E-MAIL ADDRESS	
11	CELL NUMBER	

I, \_\_\_\_\_ in my capacity as \_\_\_\_\_ being the authorized signatory, hereby declare that the above information is true and correct.

\_\_\_\_\_  
AUTHORISED SIGNATORY DESIGNATION

\_\_\_\_\_  
NAME AND SURNAME

\_\_\_\_\_  
RESOLUTION DATE: AUTHORISED SIGNATORY APPOINTMENT

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

FORM C

**AUTHORITY OF SIGNATORY TO SIGN BIDS**

The bid shall be signed by a person duly authorised thereto and the following is applicable:

**Company:** A resolution by its board of directors authorising a director or other official of the company to sign the documents on behalf of the company.

**Close Corporation:** A resolution by its members authorising a member or other official of the corporation to sign the documents on each member's behalf.

**Partnership:** All the partners shall sign the documents unless one partner or a group of partners has been authorised to sign on behalf of each partner, in which case proof of such authorisation shall be included in the bid.

**Joint Venture:** Should two or more firms jointly submit a bid, the bid shall be accompanied by the document of establishment of the joint venture, duly registered and authenticated by a notary public or other official deputed to witness sworn statements, which defines the conditions under which the joint venture will function, the period of duration, the persons authorised to represent the Joint Venture and who are obligated thereby, the participation of the several firms forming the joint venture, and well as any other information necessary to permit a full appraisal of its functioning.

**One Man Concern:** This shall be clearly stated and all documents shall be signed accordingly.

---

Details of person responsible for Bid Document process:

Name : .....

Contact number : .....

Office address : .....

Signatories for close corporations and companies shall confirm their authority by attaching to this form a **duly signed and dated original or certified copy on the Company Letterhead** of the relevant resolution of their members or their board of directors, as the case may be.

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**PRO-FORMA FOR COMPANIES AND CLOSE CORPORATIONS:**

"By resolution of the board of directors passed on *(date)* \_\_\_\_\_

Prof./Dr/Mr/Ms \_\_\_\_\_

has been duly authorized to sign all documents in connection with the Bid Document for Contract Number  
\_\_\_\_\_ and any Contract which may arise there from on

behalf of \_\_\_\_\_  
(BLOCK CAPTIALS)

SIGNED ON BEHALF OF THE COMPANY \_\_\_\_\_

IN HIS CAPACITY AS \_\_\_\_\_

DATE \_\_\_\_\_

FULL NAMES OF SIGNATORY \_\_\_\_\_

**AS WITNESSES:** 1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
*Contractor*

\_\_\_\_\_  
*Witness 1*

\_\_\_\_\_  
*Witness 2*

\_\_\_\_\_  
*Employer*

\_\_\_\_\_  
*Witness 1*

\_\_\_\_\_  
*Witness 2*

**PRO-FORMA FOR JOINT VENTURES:  
Certificate of Authority for Joint Ventures**

We, the undersigned, are submitting this Bid Document offer in Joint Venture and hereby authorise Mr/Ms \_\_\_\_\_, authorised signatory of the company \_\_\_\_\_, acting in the capacity of lead partner, to sign all documents in connection with the Bid Document offer an any contract resulting from it on our behalf.

NAME OF FIRM	ADDRESS	DULY AUTHORISED SIGNATORY
		Signature: .....  Name: .....  Designation: .....
		Signature: .....  Name: .....  Designation: .....
		Signature: .....  Name: .....  Designation: .....
		Signature: .....  Name: .....  Designation: .....

**N.B.: THE DULY SIGNED AND DATED ORIGINAL OR CERTIFIED COPY OF AUTHORITY OF SIGNATORY ON COMPANY LETTERHEAD SHOULD BE INCLUDED IN THE RETURNABLE DOCUMENTS PACK.**

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Witness 1

\_\_\_\_\_  
Witness 2

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Witness 1

\_\_\_\_\_  
Witness 2

**FORM D**

**FINANCIAL REFERENCES/ BIDDERS' S CREDIT RATING AND DETAILS OF BIDDERS BANKING INFORMATION**

**Notes to Bidder:**

1. The Bidder shall attach to this form a letter from the bank confirming the bank account and details. Failure to provide the required letter with the Bid Document submission shall render the Bidder's offer unresponsive.
2. The Bidder's banking details as they appear below shall be completed.
3. In the event that the Bidder is a joint venture enterprise, details of all the members of the joint venture shall be similarly provided and attached to this form.

<b>BANK NAME:</b>									
<b>ACCOUNT NAME:</b> (e.g. ABC Civil Construction cc)									
<b>ACCOUNT TYPE:</b> (e.g. Savings, Cheque etc)									
<b>ACCOUNT NO:</b>									
<b>ADDRESS OF BANK:</b>									
<b>CONTACT PERSON:</b>									
<b>TEL. NO. OF BANK / CONTACT:</b>									
How long has this account been in existence:	<table border="1"> <tr> <td>0-6 months</td> <td></td> </tr> <tr> <td>7-12 months</td> <td></td> </tr> <tr> <td>13-24 months</td> <td></td> </tr> <tr> <td>More than 24 months</td> <td></td> </tr> </table> <p>(Tick which is appropriate)</p>	0-6 months		7-12 months		13-24 months		More than 24 months	
0-6 months									
7-12 months									
13-24 months									
More than 24 months									

**Signature on behalf of Bidder**

**N.B.: ORIGINAL LETTER FROM BANK OR BANK STATEMENT (NOT OLDER THAN THREE MONTHS) SHOULD BE INCLUDED IN THE RETURNABLE DOCUMENTS PACK.**

--

Contractor

--

Witness 1

--

Witness 2

--

Employer

--

Witness 1

--

Witness 2

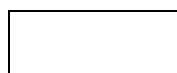
**FORM E**

**RECORD OF ADDENDA TO BID DOCUMENTS**

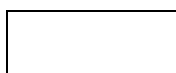
We confirm that the following communication received from the Employer before the submission of this BID DOCUMENT offer, amending the BID DOCUMENT documents, have been taken into account in this BID DOCUMENT offer:

	<b>Date</b>	<b>Title of Details</b>

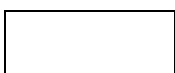
\_\_\_\_\_  
**SIGNATURE ON BEHALF OF BIDDER**



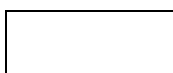
*Contractor*



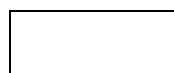
*Witness 1*



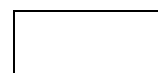
*Witness 2*



*Employer*



*Witness 1*



*Witness 2*

**FORM F**

**CERTIFICATE OF AUTHORITY FOR SIGNATORY TO AGREEMENT IN TERMS OF THE  
OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT NO 85 OF 1993)**

The signatory for the company that is the Contractor in terms of the above-mentioned Contract and the Mandatory in terms of the above-mentioned Act shall confirm his or her authority thereto by attaching to this page a duly signed and dated copy of the relevant resolution of the board of directors.

By resolution of the board of directors passed at a meeting held on \_\_\_\_\_ 20 \_\_\_\_\_,

Mr//Ms \_\_\_\_\_ whose signature

appears below, has been duly authorised to sign the AGREEMENT IN TERMS OF THE

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT 85 OF 1993) on behalf of \_\_\_\_\_

**SIGNED ON BEHALF OF THE COMPANY :** \_\_\_\_\_

**IN HIS/HER CAPACITY AS** : \_\_\_\_\_

**DATE** : \_\_\_\_\_

**SIGNATURE OF SIGNATORY** : \_\_\_\_\_

**WITNESS:** \_\_\_\_\_ **WITNESS:** \_\_\_\_\_

**NAME (in capitals):** \_\_\_\_\_ **NAME:** \_\_\_\_\_

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



**FORM G**

**OCCUPATIONAL HEALTH AND SAFETY AGREEMENT /PLAN (WHERE APPLICABLE)**

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

**FORM H**

**CERTIFIED COPY OF ID DOCUMENT/S OF OWNERS/MEMBERS/SHAREHOLDERS**

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

**FORM I**

**CURRENT CERTIFICATE OF GOOD STANDING FROM COMPENSATION COMMISSIONER**

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

**FORM J**

**PROGRAMME OF WORKS**

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

**FORM K**

**EXPERTISE OF THE KEY PERSONNEL**

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

**FORM L**

**LETTER OF INTENT TO SUBMIT THIRD PARTY LIABILITY INSURANCE AND ALL RISK  
CONTRACTORS INSURANCE TO COVER THIS CONTRACT**

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

**FORM M**

**COPY OF COMPANY REGISTRATION DOCUMENTS**

1. **For Closed Corporations**

CK1 or CK2 or CK9 as applicable (Founding Statement).

2. **For Companies:**

- A letter from the auditors confirming shareholding percentages or
- A copy of the Certificate of Incorporation
- Certified Copies of the ID's of the Directors and
- The shareholders' register.

3. **For Joint Venture Agreements**

- Copy of the Joint Venture Agreement between all the parties,
- As well as the documents in MBD 1, MBD 6.1, Form C and Form D of each Joint Venture member.

4. **For Partnership**

- Certified Copies of the ID's of the partners

5. **One-person Business / Sole trader/Sole Proprietor**

- Certified Copy of ID

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**FORM N**

**AUDITED FINANCIAL STATEMENTS FOR THE PAST THREE YEARS FOR BIDS WHERE THE  
THRESHOLD EXCEEDS R10 MILLIION**

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*





## **SECTION 2 – SCOPE OF WORKS AND PRICING**

DESCRIPTION		BIDDER TO CONFIRM THAT ALL PAGES COMPLETED & SIGNED: YES/NO	FOR OFFICE USE ONLY VERIFIED BY SCM OFFICIAL: YES/NO
2.1	SCOPE OF WORKS/SPECIFICATIONS		
2.2	EVALUATION CRITERIA		
2.3	PRICING SCHEDULE/BILL OF QUANTITIES		
2.4	LIST OF IMPORTED ITEMS		
2.5	ALTERNATIVES OFFERED		
2.6	SITE INFORMATION		
2.7	ANNEXURES (Materials, standard equipment and workmanship/Mechanical & Electrical equipment/Surface and corrosion protection specs/OHS specs)		

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

## **2.1 SCOPE OF WORKS**

### **2.1.1 INTRODUCTION**

Ekurhuleni Water Care Company (ERWAT) would like to invite registered, qualified and competent legal service providers to send proposals to be considered for inclusion on its panel of attorneys, as 'preferred service providers' for a period of thirty-six (36) months. Preferred service providers imply that the selected firms are a pool, not necessarily the only contracted service provider. The panel of attorneys will be required to provide specialised legal services to Ekurhuleni Water Care Company (ERWAT), on an "as-and-when required" and rotational basis commencing with the highest to the lowest scoring successful tenderers

However, briefs may be allocated depending on the relevant circumstances of the matter inter alia, based on previous involvement in a matter, relevant experience, availability, business urgency, nature and complexity of the matter, and the firm's location. It is the objective of this Bid to identify no more than 4 (four) specialists per specific area of specialisation whose services may be utilised by the ERWAT. ERWAT will not be liable for additional fees levied in terms corresponding attorneys that will be utilised as part of this bid.

Please note further that a position on the panel is no guarantee that the Tenderer will receive briefs from the ERWAT.

### **2.1.2 BACKGROUND**

The scope of work for this tender covers the rendering of specialised services which are not available in-house, on an "as-and-when required" and rotational basis commencing with the highest to the lowest scoring successful tenderers

In terms of the Municipal Finance Management Act 23 of 2003 (MFMA) and the Supply Chain Management Policy adopted under the Act a Municipal Entity is obliged to follow a competitive bidding process to appoint a supplier of services. Paragraph 36 of the SCM Policy allows a Municipal Entity to dispense with the formal bidding process inter alia in circumstances where it would be impossible or impractical to do so.

The nature of legal services is such that it cannot be predicted what type of legal service will be required or exactly when such services will be required. This makes it impractical, if not impossible, to call for bids and or quotations every time when the need for a specific type of legal service is required.

In order to overcome this problem, call for proposals is put out in an open and transparent manner to afford all attorneys an equal opportunity to perform legal services for ERWAT. From this process ERWAT will appoint attorneys to perform specific legal services for ERWAT on an as and when required basis.

It is the objective of this call for proposals to identify attorneys within specific fields of competency and qualification, for specific areas of the law as well as specific types of legal services, whose services can be utilised for such areas of legal services as they may be duly qualified for and have adequate experience in. Due to the fact that from an ethical perspective as well as from a possible conflict of interest perspective attorneys who are appointed will be required not to accept any instructions from any party against the ERWAT irrespective of the nature thereof. For this reason, as well as affording the attorneys to receive at least a reasonable number of instructions from which to earn an income it will not be possible to accommodate every attorney.

Because of clause the above clause only a limited number of attorneys will be appointed in respect of each specialised field of legal service. ERWAT therefore reserves the right in its sole discretion to only appoint a single or limited number of attorneys/ attorney firms per specialised field of legal service or any grouping of such fields as it may deem fit.

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

Because of the fact that there are specialised fields of legal services, ERWAT reserves the sole discretionary right to, in cases of pressing need or other reasonable justification and in terms of ERWAT's system of delegations, appoint attorneys outside the appointed number of attorneys when the expertise and experience in a specific field of law is required or there is other reasonable justification to ensure that the best interest of ERWAT is served.

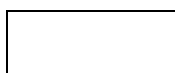
This section, scope of work, is specific to this tender and if any of these provisions are in conflict with any general tender terms herein, the provisions of this section A shall prevail to the extent that the conflict may exist.

It is a specific condition of this tender that no person who serves in any political party office or who is a public representative of any political party may render legal services.

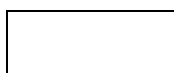
### 2.1.3 **GENERAL REQUIREMENTS**

- 2.1.3.1 To be considered for any one or more of the specific fields of law any attorney/ firm of attorneys who submit a bid must at the minimum be an admitted attorney of the High Court in terms of the applicable legislation and be duly registered to practice with the Law Society. Proof of admittance must therefore be submitted in respect of each attorney within the firm that submits this bid. Certified copies will be accepted provided ERWAT can insist on having the original submitted for verification purposes. **Failure to submit the required proof with the bid documents will result in the rejection of such bid irrespective whether such attorneys are indeed registered.**
- 2.1.3.2 Proof of the issue of a Certificate of Insurance issued by the Attorneys Insurance Fidelity Fund for the present year must be submitted. **Failure to submit the required proof with your bid documents will result in the rejection of such bid.**
- 2.1.3.3 Proof of the issue of a Certificate of Insurance issued by the Attorneys Insurance Fidelity Fund must also be submitted for every year that this contract is valid. Such proof must be submitted before 31 March of each calendar year in respect of that calendar year. Certified copies will be accepted provided ERWAT can insist on having the original submitted for verification purposes. **Failure to submit the required proof timeously will lead to immediate cancellation of the appointment of attorneys and the recall of any instruction already with such an attorney in the absolute discretion of the ERWAT.**
- 2.1.3.4 All where a specific qualification is required for the performance of legal services in a specific area of the law the proof of such qualifications must also be submitted. (E.g. Conveyancing, Notary). Certified copies will be accepted provided ERWAT can insist on having the original submitted for verification purposes. **Failure to submit the required proof with the bid documents will result in the rejection of such bid for that specific field of service.**
- 2.1.3.5 Where a specific qualification is required for the performance of legal services in a specific area of the law the proof of such qualifications must also be submitted. (E.g. Conveyancing, Notary). Certified copies will be accepted provided ERWAT can insist on having the original submitted for verification purposes. **Failure to submit the required proof with the bid documents will result in the rejection of such bid for that specific field of service.**
- 2.1.3.6 If at any time for the duration of this contract an attorney is removed from the roll of attorneys the appointment of such an attorney will also be terminated and all instructions held by that attorney will be cancelled and recalled.
- 2.1.3.7 An attorney/s must be able to and have experience in conducting litigation and providing legal opinions in any and all the fields in which he/she/they is/are appointed.

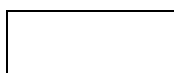
---



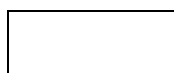
Contractor



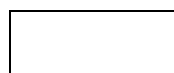
Witness 1



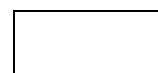
Witness 2



Employer



Witness 1



Witness 2

- 2.1.3.8 After evaluation of bids, the ERWAT may in its sole discretion compile a shortlist of potential qualifying bidders for purposes of conducting interviews and/or further actions to determine suitability in meeting the required standards and/or criteria.
- 2.1.3.9 An attorney/s must be able to and have experience in conducting litigation and providing legal opinions in any and all the fields in which he/she/they is/are appointed.
- 2.1.3.10 An attorney or firm/company may not accept an instruction to do any legal work for ERWAT if he/she/it does not have the in-house capacity to do so and will have to outsource the work to meet the requirements or prescribed standard, service or outcome.
- 2.1.3.11 After evaluation of bids, ERWAT may in its sole discretion compile a shortlist of potential qualifying bidders for purposes of conducting interviews and/or further actions to determine suitability in meeting the required standards and/or criteria.
- 2.1.3.12 **End of contract period:** Should your bid be successful, all cases in your possession at the end of the three-year term, must be continued with and finalised in terms of your bid and contractual obligations at the rates applicable at that time

### KEY PERSONNEL

- a. The Tenderer's Key Personnel shall, unless the Tenderer indicates to the contrary, be the Lead Attorney per area of specialisation whom the Tenderer shall indicate on Schedule 1K: List of Areas of Specialisation, and who shall be the duly authorised person(s) to attend to any issue concerning the Bid.
- b. The Municipal Entity's Key Personnel shall be detailed according to their designation within the Municipal Entity as Senior Legal Advisors, as appointed from time to time, and in relation to a specific matter, and shall be that Senior Legal Advisor who has issued the brief to the Tenderer (referred to herein as "the Municipal Entity's Key Personnel"). The Tenderer shall be advised of the contact details of the Municipal Entity's Key Personnel upon the issue of the brief.
- c. Should the Tenderer's Key Personnel be changed at any time during the course of the Panel, the Tenderer shall be obliged to give the Municipal Entity written notice of any such change. Provided that the Municipal Entity may, upon reasonable grounds, object to the appointment of the Tenderer's Key Personnel.
- d. Written notice of any change to the details of the Municipal Entity's Key Personnel shall be delivered to the Tenderer's Key Personnel at its *domicilium*. The Tenderer may not object to the appointment of the Municipal Entity's Key Personnel.
- e. The Tenderer shall be required to submit all requirements to consult with municipal officials or obtain municipal records to the Municipal Entity's Key Personnel, failing which no fees may be levied for any attendances in connection therewith.

### 3. NATURE OF SERVICES REQUIRED

Although ERWAT is aware of the fact that, given its particular circumstances, there may be a combination of fields in a specific matter, it requires experts in the following fields of expertise with a certain minimum required level of experience. The following services required as set out hereafter do not constitute every type of service that may be required from the appointed legal panel:

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

### 3.1 Conveyancing and Notarial and other Property Related Services

#### 3.1.1 Conveyancing

- 3.1.1.1 Transfer of properties alienated / acquired by ERWAT including but not limited to housing transfers;
- 3.1.1.2 Registration, acquisition and cancellation of servitudes;
- 3.1.1.3 Opening of township register and all processes related thereto;
- 3.1.1.4. Cancellation / registration of mortgage bonds;
- 3.1.1.5 Drafting of Powers of Attorney;
- 3.1.1.6 Excision of holdings;
- 3.1.1.7 Conversion from leasehold to freehold;
- 3.1.1.8 All other conveyancing work not listed above.

#### 3.1.2 Notarial Practice

- 3.1.2.1 Registration and cancellation of notarial tie agreements, notarial deed servitudes and notarial leases, and
- 3.1.2.2 All other notarial work not listed / covered above.

#### 3.1.3 Expropriations

- 3.1.3.1 Expropriation of property on behalf of ERWAT in terms of applicable legislation and when necessary, to attend to expropriation, Arbitrations or Litigation.
- 3.1.3.2 Appearance in the Compensation Court/High Court on behalf of ERWAT.

Note: Conveyancing / Notarial practices / Expropriations; quarterly progress report to be submitted to ERWAT

#### 3.1.4 Valuations, Rates And Taxes

- 3.1.4.1 The attorney should have a proper understanding of the Local Government: Municipal Property Rates Act 6 of 2004 and its regulations. The attorney should understand the basis for the valuation of land and rights in land, the basis for the levying of rates and where applicable, the rebates allowable and the requirements relating to the (municipal) valuer.
- 3.1.4.2 The attorney should also be familiar with the review and appeal processes allowed for in the legislation. Attorneys must be able to represent ERWAT at the Valuation Appeal Board, where necessary. The prescription periods and other legislation with regard to the recovery of rates are also important
- 3.1.4.3 The legality of other rates, taxes and surcharges imposed by ERWAT needs to be addressed.

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

### 3.1.5 Mining And Mineral Laws

- 3.1.5.1 The attorney should have a proper understanding of mining and mineral laws in general, and also legislation of particular importance to ERWAT, not only limited to developmental aspects, but also the general obligations of the local authority, in particular as a municipal service provider and the custodian of municipal infrastructure and the protection of such services and infrastructure against mining operations.
- 3.1.5.2 The attorney should be able to advise ERWAT on the obligations and minimum standards to be complied with by ERWAT in the various respects, and the obligations of any of its service providers in this regard. ERWAT also needs to be advised on the actions to be taken by transgressors and all litigation relating to mining aspects.

### 3.1.6 Environmental Law and Water Laws

- 3.1.6.1 The attorney should have a proper understanding of environmental law and the water laws in general, and also legislation of particular importance to ERWAT, not only limited to town-planning and developmental aspects, but also the general obligations of the local authority, in particular as water service provider and the custodian of waste disposal sites.
- 3.1.6.2 The attorney should be able to advise ERWAT on the obligations and minimum standards to be complied with by ERWAT in the various respects, and the obligations of any of its service providers in this regard. ERWAT also needs to be advised on the actions to be taken by or against transgressors and all litigation relating to environmental aspects.

### 3.1.7 Evictions

- 3.1.7.1 The attorney should have a proper understanding of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998, and the Extension of Security of Tenure act 62 of 1997 and also be familiar with the latest and all precedents in this regard, focusing on both the rights of the unlawful occupiers as well as those of ERWAT. In this regard, the provisions of the Bill of Rights, the Housing Act, 1997 as well as the Gauteng Housing Act, 1998 should be taken into account, as well as the Housing Code.
- 3.1.7.2 Where relief sought against ERWAT, the attorney should consider whether the correct legal process was followed, whether the applicant is entitled to the relief sought and also whether ERWAT is obliged to provide the relief sought.
- 3.1.7.3 In the event of applications brought by ERWAT, the attorney needs to be able to determine whether the information available will satisfy the court, whether the grounds for eviction is justifiable and whether all requirements have been met, in terms of both the PIE act or ESTA as well as the Housing Code. Where required, the attorney has to make the necessary arrangements with the sheriff for the service of the application as well as the order, and if required, obtain an order for substitutional service. The order should also be phrased in such a manner that it will cover all the requirements for the actual removal process.
- 3.1.7.4 The attorney needs to co-ordinate with the sheriff and ERWAT as well as its contractor, to ensure that all arrangements are in place for the actual eviction. The attorney must ensure that proper returns of service are obtained subsequent to the eviction.

3.1.8 The attorney/s may be required to provide legal opinions or litigate on matters category.

3.1.9 The attorney/s may be required to submit quarterly or other reports.

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

### 3.2 Commercial Law and Contracts

- 3.2.1 ERWAT has a multi-disciplined administration that deals with the rendering of services and the core functions of ERWAT. In order to execute these functions it becomes necessary for ERWAT to enter into commercial contracts with other parties. These contracts would arise out of the various disciplines dealt with by the departments of ERWAT.
- 3.2.2 The Bidder is required to draw or examine commercial contracts on behalf of ERWAT, if required.
- 3.2.3 The Bidder may be required to negotiate on contract terms.
- 3.2.4 The attorney/s may be required to provide legal opinions or litigate on matters in this category.
- 3.2.5 The attorney/s may be required to submit quarterly or other reports.

### 3.3 Town Planning

- 3.3.1 Attendance to Town Planning matters on behalf of ERWAT in terms of applicable legislation as and when necessary.
- 3.3.2 Institute legal action in the High Court in respect of contraventions of the Town Planning Scheme / SPLUMA.
  - 3.3.2.1 Upon receipt of instructions, accompanied by background and supporting information, e.g. notices, town planning scheme, inspection reports, etc., the attorney to:-
    - 3.3.2.2 Do Company/Deeds search if necessary.
    - 3.3.2.3 Carry out inspection in loco, if necessary.
    - 3.3.2.4 Deliver final notice to property owner and/or registered owner/s.
    - 3.3.2.5 Correspond with property owner/offender, including negotiating with a view to seizing/re-locating activities to suitable premises and drafting of settlement agreement to be made Order of Court.
    - 3.3.2.6 In the event of the matter not being solved as aforesaid, reserve the services of Counsel in conjunction with ERWAT.
    - 3.3.2.7 Draft and serve papers on defending party within 30 days from the date of the attorney's notice to the registered owner/s.
    - 3.3.2.8 Finalise the application and recover costs from defending party in accordance with order granted by Court.
- 3.3.3 Representing ERWAT at hearings of Development Tribunals, Townships Board and any other tribunal relating to town planning matters
  - 3.3.3.1 Instructions will be accompanied by the relevant application, comments, reports and objections where applicable.
  - 3.3.3.2 Attorney to study documentation and determine necessity for consultation or supplementary documentation timely in preparation of the hearing.
  - 3.3.3.3 Prepare Heads of Argument/Motivation.

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

- 3.3.3.4 Advise ERWAT of legal requirements to be complied with or administrative actions to be finalised prior to the hearing.
- 3.3.3.5 In the event of defective process followed, advise ERWAT on corrective steps to be taken.
- 3.3.3.6 Advise ERWAT on further actions to be taken in finalising the matter.
- 3.3.3.7 The attorney needs to co-ordinate with the sheriff and ERWAT as well as its contractor, to ensure that all arrangements are in place for the actual execution of order.

NOTE: Monthly progress meetings will be held and invoices to be submitted on a monthly basis.

### **3.4 Prosecution of Contravention of National Building Regulations and Building Standards Act, 1977**

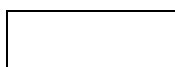
- 3.4.1 Institute legal action in the Magistrates/Municipal Court/High Court in respect of the contravention of the National Building Regulations and Building Standards Act, 1977
- 3.4.2 Instructions to prosecute will be accompanied by notices sent to registered owner/s, affidavits by inspector, inspection reports and other relevant supporting information.
- 3.4.3 Attorney to study instruction and notices sent in terms of the Act and in the event of prospects of successful prosecution not being positive, advise ERWAT of alternative or corrective steps to be taken.
- 3.4.4 Company/Deeds search to be performed by attorney if necessary
- 3.4.5 Final notice to be sent to offender by attorney.
- 3.4.6 The case should be handed to the Prosecutor at the Magistrate's/Municipal Court / High Court within 30 days from the date of receipt of the instruction from ERWAT to prosecute.
- 3.4.7 The attorney needs to co-ordinate with the sheriff and ERWAT as well as its contractor, to ensure that all arrangements are in place for the actual execution of order.

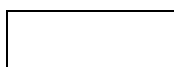
Note: Monthly progress meetings will be held and invoices to be submitted on a monthly basis.

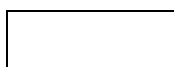
### **3.5 Tenders/Bids and Contracts**

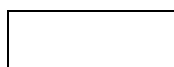
- 3.5.1 Advise and represent ERWAT in respect of litigation relating to tenders/bids and contracts.
- 3.5.2 In the event of intended legal action by ERWAT, the attorney to:-
  - 3.5.2.1 Study the instruction, bid/contract documentation, policy, delegated authority and applicable legislation forming framework for the bid/contract.
  - 3.5.2.2 Advise ERWAT on preferred action for relief, e.g. in terms of arbitration as provided for or civil litigation.
  - 3.5.2.3 Advise ERWAT on prospects of success in litigating or instituting arbitration proceedings.

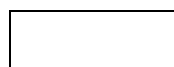
---

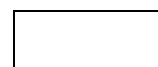
  
Contractor

  
Witness 1

  
Witness 2

  
Employer

  
Witness 1

  
Witness 2

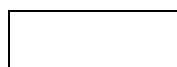


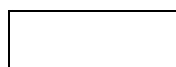
- 3.5.2.4 Advise ERWAT on alternative course of action to obtain the required relief.
- 3.5.2.5 Advise ERWAT on appropriate relief in the event of the relief sought by ERWAT not being attainable/appropriate.
- 3.5.2.6 Advise ERWAT on joinder of parties as defendant/applicant in the claim.
- 3.5.2.7 Negotiate with contracting parties with a view to possible settlement arrangements after having received a mandate from ERWAT to do so.
- 3.5.2.8 Reserve services of Counsel in consultation with ERWAT and draft papers to commence action.
- 3.5.2.9 Finalise the claim/action commenced with.
- 3.5.2.10 Advise ERWAT on contractual measures to be taken to prevent recurrence of the situation that gave rise to the claim/application.
- 3.5.3 In the event of claims/legal action brought against ERWAT by contracting party (paries) the attorney to:-
  - 3.5.3.1 Study the instruction, claim/application received, bid/contract documentation, policy, delegated authority and applicable legislation forming framework for the bid/contract and consult with responsible staff members and other parties if necessary.
  - 3.5.3.2 Negotiate with claimant/applicant attorney to defuse the situation and in consultation with ERWAT consider alternatives to litigation in order to settle the case and avoid possible unnecessary litigation and costs.
  - 3.5.3.3 Advise ERWAT on prospects of success should the case be defended.
  - 3.5.3.4 Advise ERWAT on joinder of other parties as defendant in the claim.
  - 3.5.3.5 Reserve services of Counsel in consultation with ERWAT and draft papers in reply/seeking further particulars.
  - 3.5.3.6 Finalise the claim/action commenced with.
  - 3.5.3.7 Advise ERWAT on contractual measures to be taken to prevent recurrence of the situation that gave rise to the claim/application.

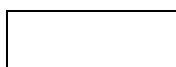
### 3.6 Labour

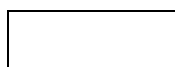
3.6.1. All Labour related matters, including but not limited to:

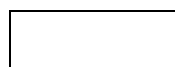
- 3.6.1.1 Appointments as presiding and presenting officers in disciplinary enquiries and disciplinary appeals;
- 3.6.1.2 Opinions and advice on processes.
- 3.6.1.3 Appear on behalf of ERWAT in all employment related forums such as CCMA, SALGBC, Labour Court and High Court.
- 3.6.1.4 Representing ERWAT in the Labour Court and High Court in applications such as reviews and interlocutory applications, interdicts as well as opposing such applications or in trials; and

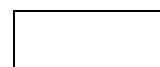
  
Contractor

  
Witness 1

  
Witness 2

  
Employer

  
Witness 1

  
Witness 2

3.6.1.5 Advise on breach of contract and other related disputes that arise out of the employment relationship.

3.6.1.6 Handling of strikes.

3.6.2 The attorney/s may be required to provide legal opinions or litigate on matters in this category.

3.6.3 The attorney/s may be required to submit quarterly or other reports

### **3.7 General Legal Services**

#### **3.7.1 Intellectual Property**

3.7.1.1 To identify the inherent intellectual property of ERWAT and to advise on the protection thereof and remedies where it has been infringe upon, either by employees or third parties. To also address the unlawful and /or unauthorised use of the logo and other symbols of ERWAT, or to address alleged infringements on the intellectual property of others.

3.7.1.2 To attend to any other action or litigation relating to intellectual and confidential property, regardless whether the claim is delictual or contractual in nature.

#### **3.7.2 Information Technology**

To clarify the rights of ERWAT and that of service providers with regard to hardware and software and licences acquired by ERWAT in order to protect the interest of ERWAT, and to advise ERWAT on the correct use of computer evidence in litigation.

#### **3.7.3 Access to Information and Administrative Justice**

3.7.3.1 The attorney should have a proper understanding of the Promotion of Access to Information Act, 2000, as well as the regulations issued in terms thereof. Precedents should be applied in a specific instance, to determine whether ERWAT is obliged to provide the information requested, taking into account the nature of the documents required as well as the rights of any third parties affected by the request.

3.7.3.2 The possibility of resolving the issue without litigation should be considered, and where possible, interaction with the attorney of the applicant is required.

3.7.3.3 The attorney is required to consider the effect that the provision of the information would have on ERWAT, and also advise on possible further actions that may, in his/her opinion, result once the information has been provided.

3.7.3.4 The attorney should have a proper understanding of the Promotion of Administrative Justice Act, 2000, as well as the regulations issued in terms thereof. Precedents should be applied in a specific instance in order to comment on the administrative fairness or legality of ERWAT actions and decisions. The attorney also needs to have a good understanding of the internal processes of ERWAT, as well as the structures of ERWAT.

3.7.3.5 The appeal process as prescribed in the Local Government: Municipal Systems Act, 2000 should be understood, as well as all other internal remedies provided for in the various pieces of legislation relating to local government, in order to determine whether a specific process follow in applicable under the circumstances.

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

3.7.3.6 The attorney should be able to distinguish between an appeal and review process to determine the appropriate action to be taken in any given circumstances.

**3.7.4 The rendering of such legal services not specified elsewhere such as:**

3.7.4.1 Legal opinions related to all aspects involving local government

3.7.4.2 Drafting and vetting By-laws, policies and procedures for legal compliance

3.7.4.3 In general any kind of legal service not specified elsewhere.

Note: Quarterly reports to be submitted to ERWAT

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

## LISTING OF INTEREST IN FIELD/S OF LAW:

Prospective Bidders should indicate in the SCHEDULE as set out hereafter if they have experience in respect of all or some of the fields of law, and if they are appointed, if they can be used in all or only specific fields of law.

FIELD(S) OF LAW	YES	NO
1. Conveyancing, notarial practice and other property related services;		
1.1 Conveyancing		
1.2 Notarial Practice		
1.3 Expropriations		
1.4 Valuation, rates and taxes		
1.5 Mining and Mineral Laws		
1.6 Environmental Law and Water Laws		
1.7 Evictions		
2. Commercial Law and Contracts;		
3. Construction Law		
4. Town Planning		
5. National Building Regulations and Building Standards Act, 1977;		
6. Procurement / Tenders / Bids and related contracts;		
7. Labour Law;		
8. General legal services, including relevant Municipal Law, etc		
8.1 Intellectual property		
8.2 Information communication technology		
8.3 Access to information and administrative justice		
	(Mark 'X')	

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

## REFERENCES

A list of five companies/local authorities together with contactable references for whom legal work has been done on a regular basis in the past 3 to 5 years, must be provided, with the most recent served company/local authority being mentioned first with a sequence being followed and specifying the nature of all work done, where applicable.

The Bidder must complete the table as set out hereafter and outline the experience in the relevant field of law as indicated above.

### EXPERIENCE IN RELEVANT FIELD OF LAW AND REFERENCES

TYPE OF FIELD OF LAW	EXPERIENCE (PER FIELD )	REFERENCES PERTAINING TO WHERE EXPERIENCE WAS OBTAINED	
		Name	Tel. No:
1. Conveyancing, notarial practice and other property related services;			
1.1 Conveyancing			
1.2 Notarial Practice			
1.3 Expropriations			
1.4 Valuation, rates and taxes			
1.5 Mining and Mineral Laws			
1.6 Environmental Law			
1.7 Evictions			
2. Commercial Law and Contracts			
3. Town Planning			
4. National Building Regulations and Building Standards Act, 1977;			
5. Procurement / Tenders / Bids and related contracts;			
6. Labour Law;			
7. General legal services, including relevant Municipal Law, etc			
7.1 Intellectual property			
7.2 (ICT) Information Communication Technology			
7.3 Access to information and administrative justice			

**Note:** If space provided in the abovementioned column is insufficient, kindly attach an addendum and refers us to.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

## 2.1 **EVALUATION CRITERIA**

### 2.2.1 **EVALUATION**

#### 2.2.1.1 **TECHNICAL / FUNCTIONALITY EVALUATION**

Potential service providers will have to achieve a minimum score of 70 out of **100** for their functional section before their financial proposals and B-BBEE status are evaluated.

This is required so that there is a level of comfort that the potential service provider can deliver the project with the required professionalism and quality.

#### 2.2.1.2 **SCORING PROCESS**

The bidding documents will have two sections to it i.e. a functional section (clearly marked and attached to the bidding documents) and the bidding documents that contains the conditions of contract, scope of works and pricing schedule.

The functional section should detail how the service provider will deliver the required services and the team that will be used to do it. The functional section should therefore have the following elements included in it:

Understanding of the services required – maximum of 4 pages, to show that potential service providers understand what the services are aiming to achieve, the key challenges and risks involved in its delivery that would need to be addressed.

Approach to legal services (methodology) –clearly indicate how the service provider is intending to render the services. A project implementation plan (possibly including a Gantt bar chart) should therefore be developed, clearly linked to the services outputs and activities, their timing and interrelationships. Anticipated timeframes for these services should be given. The firm will score high in this category if the proposed methodology complies with the legislative requirements in respect to rendering legal services and if the service provider provides the most comprehensive and most valuable methodology.

Transfer of knowledge – the proposal should clearly demonstrate how the service provider is intending to transfer knowledge or provide training to ERWAT personnel in the legal service department.

Capability, Track Record and Appropriateness of Key staff members –clearly indicate who the key staff members will be assigned to ERWAT, the outputs and activities the individual staff members would be used to render these services. Their involvement in the legal process should be clearly indicated in terms of previous legal services they have been involved with (CVs of the proposed staff members should be attached as annexure to the proposal clearly indicating their experience and expertise) and the alignment of their experience and expertise to what services they will be involved in.

The company should have rendered a minimum of 1 year legal services in the local government sector within the relevant field or category. Clearly indicate past legal services, contracts, providing detailed contact details for reputable reference (contact name, company details, contact number, description and term, contact numbers, etc.)

The qualifications of the staff member/s tasked to render legal services should include but not limited to:

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

- Relevant post graduate degree or equivalent thereof
- Experience related to the legal services
- Report writing skills and administrative support competency
- The service provider should clearly demonstrate in terms of their ability to logically structure and write service related documentation.

### 2.2.1.3 RELEVANT CRITERIA

#### 1.1 QUALIFICATIONS

Name and Identity Number of attorney/ partner	Additional qualifications within this specific field of law (attach certified copy of qualification certificate)

**IMPORTANT NOTE:** Failure to submit certified copies of proof of additional qualifications within this specific field of law will result in disregard of such qualifications.

#### 1.2 Proof of operation for a minimum of 1 year within the specified field of law.

Bidder must submit proof of actual period practising in the field of law marked under the “**listing of interest in field/s of law**” section on page 61-62.

#### 1.3 Demonstrated skills, experience in and exposure to the specific field of law as supported by the list of references.

##### Previous experience

Provide the following information on **relevant** previous experience (**indicate specifically** projects of similar or larger size and/or which is similar with regard to type of work.

Description	Value (R, VAT excluded)	Year(s) executed	Reference		
			Name	Organisation	Tel no

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

Description	Value (R, VAT excluded)	Year(s) executed	Reference		
			Name	Organisation	Tel no

#### 1.4 Staffing profile

Provide information on the permanent staff that you have available to execute this specific field of law (attach a separate list if the space provided is insufficient)

Name and Surname	Position in organisation	Qualifications	Experience	HDI status (Y/N)

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



Name and Surname	Position in organisation	Qualifications	Experience	HDI status (Y/N)

### 1.5 Evaluation criteria table

The score for the Technical / Functionality Evaluation will be calculated in accordance with the table below:

CRITERION	CRITERION DETAILS	POINTS	SCORE
<b>Senior counsel: Knowledge and Expertise</b>  The bidder must show experience of not less than 10 (ten) years (post admission) of the Senior counsel (SL) in each service category the bidder is bidding for.  10 years = 10 points > 10 years = 20 points	Returnable table (a) indicating Senior Counsel(s) experience, expertise and competence of not less than 10 (ten) years (post admission) in each service category the bidder is bidding for and admission as an attorney.	<b>15</b>	
<b>Lead Attorney: Knowledge and Expertise</b>  The bidder must show experience, of not less than 5 (five) years (post admission) of the lead attorneys (LA) in each service category the bidder is bidding for.  1- 2 years = 5 points 3 - 5 years = 10 points 6 - 10 years = 15 points > 10 years = 20 points	Returnable table (a) indicating lead attorneys(s) experience, expertise and competence of not less than 5 (five) years (post admission) in each service category the bidder is bidding for and admission as an attorney.	<b>20</b>	
<b>Lead Attorney/ Senior Staff Rights of appearance in Court</b>  <ul style="list-style-type: none"> <li>Rights of appearance in both High and Magistrate Court = 10 points</li> <li>Rights of appearance in only Magistrate Court = 5 points</li> </ul>	Returnable table (a) indicating lead attorneys(s) right of appearance in both the High and Magistrates' Court.	<b>10</b>	
<b>Project Team: Knowledge and expertise (Other Key personnel)</b> The bidder must demonstrate experience of other key personnel in the current bidders employ in the service category the bidder is bidding for including ability to conduct research.	Returnable table (b) indicating lawyers making up the project team under each service category the bidder is bidding for demonstrating in relation to the s elected service category the lawyers':- <ul style="list-style-type: none"> <li>experience (including years), expertise and competencies;</li> </ul>	<b>20</b>	

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

CRITERION	CRITERION DETAILS	POINTS	SCORE
1- 2 years = 5 points 3 - 5 years = 10 points 6 - 10 years = 15 points > 10 years = 20 points	<ul style="list-style-type: none"> <li>ability to conduct research and types of researches conducted;</li> <li>position/designation; and</li> <li>Indication of admission as attorney.</li> </ul>		
<b>Project Team Qualification</b>  The bidder must include qualifications of the project team in each service category the bidder is bidding for:  Relevant NQF 9/10 Qualification = 20 Relevant NQF 7/8 Qualification = 10	Returnable table indicating project team qualifications and competence the service category the bidder is bidding for and admission of an attorney.	<b>20</b>	
<b>Experience in Municipal Government</b>  The bidder must demonstrate experience in the Municipal Government for each service category the bidding for:  1- 2 years = 5 points 3 - 5 years = 10 points > 5 years = 15 points	Returnable table (#) indicating experience in executing work for municipal entities for each service category the bidder is bidding for.	<b>15</b>	
<b>TOTAL</b>	<b>Bidder must score a minimum of 70 points to be considered for further evaluation</b>	<b>100</b>	

### **ERWAT GENERAL NOTES:**

**ERWAT reserves the right to award the bid to one or more than one bidder (split between the districts)**

Appointed bidders and their personnel will be required to but not limited to:

- Request and receive all the relevant work permits/access control and authorizations have to be obtained before any work can be undertaken after approval of the Safety and Health Plan.
- The relevant requirement with regards to the Occupational Health and safety act has to be complied with, with particular reference to the safety file in accordance with the relevant commodity and scope of work items covered by this document taking into consideration that the most current regulation will always take precedence.
- Submit proof that all the required equipment, tools, consumables, etc. required to perform the work as per the Contract shall be provided by the Contractor.

**ERWAT** reserves the right to hold the Contractor responsible for any equipment /infrastructure belonging to ERWAT that may be damaged due to Contractor's negligence or poor workmanship.

### **PENALTIES**

The Contractor will be penalised in terms of Clause 22 of the National Treasury General Conditions of Contract attached hereto in Section 3.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

The Municipal Manager/ Accounting Officer must act in terms of the Preferential Procurement Policy Regulations 2001, its regulations and amendments, against the person awarded the contract upon detecting that a preference in terms of the Preferential Procurement Policy has been obtained on a fraudulent basis, or any specified goals are not attained in the performance of the contract.

### **CONTRACT DOCUMENT**

The contract document to be used for this tender will be the ERWAT standard SLA (Service Level Agreement) which will be the binding contract between ERWAT and the successful bidder. Reference will be made to the successful bidder's tender document.

### **PAYMENTS**

- (a) All payments will be discussed and agreed upon on the SLA.
- (b) Standard payment terms are 30 Days from receipt of valid invoice/tax invoice and statement.
- (c) The Tenderer shall be required to specify on the Pricing Schedule an hourly rate in respect of each person (or category, e.g. director, associate), inclusive of VAT, or in the event of the applicability of a tariff not related to hourly work (e.g. conveyancing matters, disbursements), the fee is to be expressed as a percentage above, below or equal to the applicable court tariff (party-party scale) (the fee may only fluctuate in accordance with changes to the tariff structure on the basis of the Tenderer's specified percentage annual reduction/increase) *[see point 4.2 below]*.
- (d) The Tenderer will be required to indicate on the Pricing Schedule their annual increase as a % whereof the first increase will be as from 1 July 2017 and annually thereafter until 30 November 2019.

ERWAT will not accept any responsibility for the payment of any invoices submitted by a successful bidder(s) if the relevant invoice does not reflect an official ERWAT order number.

### **DISCLAIMER – WITHOUT PREJUDICE**

While every effort is made to ensure that specifications are drafted in an unbiased manner to allow all potential suppliers to offer their goods or services as set in Regulation 27 of the MFMA Act - SCM Regulations, ERWAT assumes no liability or responsibility for the completeness, accuracy or usefulness of any of the information.

However, in the event that reference is made (intentional or non-intentional) to a particular trade mark, name, patent, design, type, specific origin or producer, ERWAT's intent is of such that there is no other sufficiently precise or intelligible way of describing the characteristics of the works/goods/services required, in which case the bidder must interpret such reference as indicative only and is thus required to offer such and or an equivalent.

Any reference to any of the above potential trade barriers must be seen to include the word "equivalent".

Bidders may submit alternative offers subject to such meeting all the minimum standards, specifications, technical data and or legislative provisions applicable to such.

ERWAT does however reserve the right to scrutinise any alternative offers but is under no obligation to accept or award on any alternative offer submitted.

### **CONFIDENTIALITY**

**Over and above the provisions of clause B34 of the general conditions the following will apply.** In the process of representing the ERWAT in any matter the Bidder will have access to sensitive and confidential information. All information accessed, obtained or collected by Bidder and/or its employees must at all times be kept confidential and not be disclosed to any other person without the prior and written authorisation of the ERWAT.

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

In addition, information may not be used for personal gain by the Bidder or the Bidder's business, any employee, sub-contractor or any agent of the Bidder or any other person, body or organisation, or family receiving the information or data through the Bidder, or any of their employees or agents.

Failure to observe these conditions will constitute a breach of contract, which could result in termination of this contract

The Tenderer will keep confidential and will not disclose to any person:–

- a) The details of this Agreement, the details of the negotiations leading to this Agreement, and the information handed over to it by the Municipal Entity during the course of negotiations, as well as the details of all the transactions or agreements contemplated in this Agreement; and
- b) All information relating to the business or the operations and affairs of the Municipal Entity, (hereinafter referred to as "Confidential Information").

The Tenderer agrees to keep all Confidential Information and to disclose it only after obtaining prior written approval of the Municipal Entity's Key Personnel, and then only to its officers, directors, employees, consultants and professional advisors, who:

- a) Have a need to know (and then only to the extent that each such person has a need to know);
- b) Are aware that the Confidential Information should be kept confidential;
- c) Are aware of the Tenderer's undertaking in relation to such information in terms of this Agreement; and
- d) Have been directed by the Tenderer to keep the confidential information confidential.

The Tenderer's obligations in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement does not extend to information that:

- a) Is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Tenderer or third party who disclosed such Confidential Information, but only to the extent that the Confidential Information has become public knowledge;
- b) Is required by the provisions of any law, statute or regulation or during any court proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed and subject to the provisions of this Agreement, the Tenderer has taken all reasonable steps to oppose or, prevent the disclosure of and to limit, as far as reasonably possible, the extent of such disclosure and has consulted with the Municipal Entity prior to making such disclosure; and
- c) Is disclosed to the Municipal Entity in terms of this Agreement but, at the time of such disclosure such information is known to be in lawful possession or control of that party and not subject to an obligation of confidentiality.

## KEY PERSONNEL

- a. The Tenderer's Key Personnel shall, unless the Tenderer indicates to the contrary, be the Lead Attorney per area of specialisation whom the Tenderer shall indicate on Schedule 1K: List of Areas of Specialisation, and who shall be the duly authorised person(s) to attend to any issue concerning the Bid.
- b. The Municipal Entity's Key Personnel shall be detailed according to their designation within the Municipal Entity as Senior Legal Advisors, as appointed from time to time, and in relation to a specific matter, and shall be that Senior Legal Advisor who has issued the brief to the Tenderer

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

(referred to herein as “the Municipal Entity’s Key Personnel”). The Tenderer shall be advised of the contact details of the Municipal Entity’s Key Personnel upon the issue of the brief.

- c. Should the Tenderer’s Key Personnel be changed at any time during the course of the Panel, the Tenderer shall be obliged to give the Municipal Entity written notice of any such change. Provided that the Municipal Entity may, upon reasonable grounds, object to the appointment of the Tenderer’s Key Personnel.
- d. Written notice of any change to the details of the Municipal Entity’s Key Personnel shall be delivered to the Tenderer’s Key Personnel at its *domicilium*. The Tenderer may not object to the appointment of the Municipal Entity’s Key Personnel.
- e. The Tenderer shall be required to submit all requirements to consult with municipal officials or obtain municipal records to the Municipal Entity’s Key Personnel, failing which no fees may be levied for any attendances in connection therewith.

### **PROMOTION OF ACCESS TO INFORMATION ACT, ACT 2 OF 2000**

Bidder will be required to fully comply with the requirements of the Access to Information Act, Act 2 of 2000.

In terms of the Promotion of Access to Information Act, Act 2 of 2000, ERWAT is obliged and compelled to provide certain information to the general public.

The Bidder as part of his/her function in collecting data on behalf of ERWAT will be required to comply with the provisions of the Promotion of Access to Information Act, Act 2 of 2000.

The extent where to a bidder will be obliged to supply or refuse the supply of information in terms of the Act will be determined in consultation with ERWAT.

### **EXTRACTION OF AND DESTROYING OF DATA**

Bidders are required to submit to ERWAT all data in a readable, accessible format at the end of their contract.

Bidders will be required to keep records of such data for a minimum period of 6 months where after such must be destroyed and proof thereof submitted to ERWAT.

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

## 2.2 PRICING SCHEDULE

### PRICING INSTRUCTIONS:

Bidders must price for the line items as set out below. This is a rates based tender and therefore no totals will be applicable in the pricing schedule and orders will only be generated on an as and when required basis according to the rates.

The successful bidder will be required to submit a quote for the works required prior to being issued an official order and will be limited to the rates as set out herein.

Bidders are required to price for all direct and indirect cost relating to the execution of the contract.

All fees must be in line with the provisions of the Law Society of south Africa and any other applicable legislation.

Bidders should note that the quantity stipulated in the table below is indicative and ERWAT reserves the right to increase the quantity as the need arises and does not constitute that an order will be given for such Unit Standard. Thus, the rate per unit standard per person will be approved and utilised during this contract.

The submission of a bid will be regarded as full acceptance by the bidder of the current applicable court party-party tariffs plus the surcharge the bidder may wish to include in this tender.

Any attorney/ bidder that is not willing to render services at the said rates should either not submit a bid or inform ERWAT in writing as no rates or fees above those set out herein will be considered after its approval.

In structuring the tariffs, the bidder should differentiate between seniority of practitioners and/or other staff, and may differentiate between litigious and non-litigious matters, as well as any other matter that may result in a reduction of fees. The bidder must also indicate a possible rebate on the relevant court tariffs (where applicable) and the annual % increase from 1 July 2013.

### SUPPLEMENTARY PRICING INSTRUCTIONS

- a. Proof of Advocate's fees and the instruction brief to the Advocate are to accompany all invoices.
- b. Sheriff's returns of service are to accompany all invoices.
- c. Invoices and/or statements of account for any courier costs are to accompany the Tenderer's invoices therefore EKURHULENIWATER CARE COMPANY shall not pay any deposits to cover fees.
- d. Tenderers who wish to apply to render services relating to **related matters**, must in addition to the above, note the following in relation to their fees for conveyancing and notarial work:
  - i. All fees to be levied must strictly be expressed as a percentage increase, reduction or equal to the Tariffs as applicable in the relevant court on a party-party scale;
  - ii. The Tenderer shall be exempted from submitting proof of the Deeds Office fees levied per matter. Provided that where there are any changes to the existing fees stipulated by Government Gazette, the Tenderer shall be obliged to submit a notification of the change together with a copy of the relevant Government Gazette to the Municipal Entity prior to levying any increased Deeds Office fees;
  - iii. The Tenderer shall be limited to levying fees in addition to the above mentioned tariff, to those as listed on the Pricing Schedule. No other fees may be levied, including fees and disbursements for correspondent attorneys.

Contractor

Witness 1

Witness 2

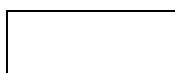
Employer

Witness 1

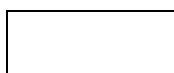
Witness 2

- e. The Tenderer shall be required to furnish to the Municipal Entity each one of the following on a monthly basis:
- b) A Statement of all matters being attended to by the Tenderer, furnishing the following information:
    - c) Name/description of matter;
    - d) Supply Chain Reference number;
    - e) Statement date;
    - f) Total Fees and disbursements levied for the preceding month (not itemised); and
  - g) An itemised Invoice per matter furnishing the following information:
    - h) Name/description of matter;
    - i) Supply Chain Reference number;
    - j) Invoice date;
    - k) Itemised description of all Fees levied for the preceding month including dates and time spent per attendance, a detailed description of the service rendered, the person who rendered the service with their applicable hourly rate as per the Pricing Schedule; and
    - l) Total disbursements levied for the preceding month (itemised), with proof attached.
  - a. The Municipal Entity shall be entitled upon the issue of the brief, and for the purposes of maintaining confidentiality especially in relation to sensitive matters, to require that instead of the requirements of clause 4.9 above, that the Tenderer shall submit the following on a monthly basis:
  - m) A Statement of all matters being attended to by the Tenderer, furnishing the following information:
    - n) Name/description of matter;
    - o) Supply Chain Reference number;
    - p) Statement date;
    - q) Total Fees and disbursements levied for the preceding month (not itemised); and
  - r) An Invoice per matter furnishing the following information:
    - s) Name/description of matter;
    - t) Supply Chain Reference number;
    - u) Invoice date;
    - v) Total Fees levied for the preceding month (not itemised);
    - w) Total disbursements levied for the preceding month (not itemised); and
  - x) Detailed Itemised Schedule per matter (marked confidential and only for the attention of the Municipal Entity's Key Personnel) furnishing the following information:
    - y) Name/description of matter;
    - z) Supply Chain Reference number:
      - aa) Invoice date;
      - bb) Itemised description of all Fees levied for the preceding month including dates and time spent per attendance, a detailed description of the service rendered, the person who rendered the service with their applicable hourly rate as per the Pricing Schedule; and
      - cc) Total disbursements levied for the preceding month (itemised), with proof attached.

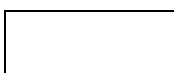
---



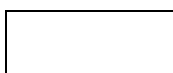
Contractor



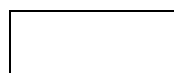
Witness 1



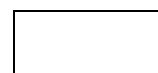
Witness 2



Employer



Witness 1



Witness 2

- dd) No other amounts for fees or disbursements other than reflected here may be claimed by a Tenderer.
- ee) The Tenderer shall not be permitted to deviate from the specified fees in its Bid submission For the duration of the appointment on the panel.

PRICING SCHEDULE: LABOUR LAW ETC.						
ITEM	DESCRIPTION	UOM	NORMAL HOURS Monday – Friday (08:00-17:00)  RATE (INCL VAT)	AFTER HOURS Monday –Friday (17:00 – 08:00)  RATE (INCLVAT)	SUNDAYS AND PUBLIC HOLIDAYS  RATE (INCL VAT)	REBATE OFFERED ON LEGISLATED FEES %
1	ADVOCATE	R/H	R	R	R	_____ %
2	SENIOR	R/H	R	R	R	_____ %
3	CLERK?	R/H	R	R	R	_____ %
4	SENIOR CLERK?	R/H	R	R	R	_____ %
5	ADNINISTRATOR	R/H	R	R	R	_____ %
6	RUNNER	R/H	R	R	R	_____ %
7	TRAVEL	R/KM	R	R	R	N/A

I, the undersigned, the authorised designated signatory, undertake to carry out the works in accordance with the conditions of contract, the specifications for the tender sum as indicated and within the time for completion as specified in the Contract.

BIDDER'S name: \_\_\_\_\_

BIDDER'S signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone number: \_\_\_\_\_

\_\_\_\_\_

Contractor

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

\_\_\_\_\_

Employer

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2



Fax Number: \_\_\_\_\_

Cellular number: \_\_\_\_\_

E Mail Address: \_\_\_\_\_

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

## 2.3 LIST OF IMPORTED ITEMS

Contractors to list all items which are not solely South African manufactured.

ITEM	DESCRIPTION	R VALUE	ROE
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

## 2.4 ALTERNATIVE OFFERS

If a bidder wishes to submit an alternative for any of the items in the schedule of quantities, the bidder must indicate on the pricing schedule and complete the form included in the bidding documents.

No alternative bid will be considered, unless an unqualified bid, strictly on the basis of the bid documents, is also submitted.

If subsequently required, the bidder shall submit fully detailed drawings and calculations of the alternative bid in the form set out by the Engineer, and the cost of checking calculations and drawings shall be for the bidder's account, if his bid is accepted.

Only ISO/SANS/SABS or items registered with the relevant regulatory authority will be considered.

Please note that ERWAT reserves the right to accept or not accept the alternative offered.

\_\_\_\_\_  
**SIGNATURE OF BIDDER**

\_\_\_\_\_  
**DATE**

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*



## 2.5 SITE INFORMATION

**R25 Bapsfontein Road, Kempton Park**

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

## 2.6 ANNEXURES

None.

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*



## **SECTION 3: THE CONTRACT**

DESCRIPTION		BIDDER TO CONFIRM THAT ALL PAGES COMPLETED & SIGNED: YES/NO	FOR OFFICE USE ONLY VERIFIED BY SCM OFFICIAL: YES/NO
3.1	STANDARD CONDITIONS OF BIDDING		
3.2	FORM OF OFFER AND ACCEPTANCE		
3.3	SCHEDULE OF DEVIATIONS		
3.4	MBD 7.1: CONTRACT FORM – GOODS/WORKS:		
	PART A: TO BE COMPLETED BY THE BIDDER		
	PART B: TO BE COMPLETED BY EKURHULENI WATER COMPANY		
3.5	OCCUPATIONAL HEALTH AND SAFETY AGREEMENT IN TERMS OF THE OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT NO 85 OF 1993)		
3.6	PERFORMANCE MANAGEMENT SYSTEM: DRAFT PMS		
3.7	INDEMNITY FORM		
3.8	SPECIAL CONDITIONS OF CONTRACT		
3.9	GENERAL CONDITIONS OF CONTRACT		

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

### 3.1 STANDARD CONDITIONS OF BIDDING

The Standard Conditions of Tender make several references to the Tender Data for details that apply specifically to this tender. The Tender Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the Standard Conditions of Tender.

Each item of data given below is cross-referenced to the clause in the Standard Conditions of Tender to which it mainly applies.

Part No.	Content
1.2.1	<p><b><u>The Employer:</u></b></p> <p>EKURHULENI WATER Care Company (ERWAT) Hartebeestfontein Office Park R25 (Bapsfontein/Bronkhorstspuit Road) Kempton Park</p> <p>Hereby represented by: Ms Zimasa Socikwa/Ms Lerato Motshabela and all technical related queries can be directed to them at: Tel: 011 929 7118/7132 E-mail: <a href="mailto:Zimasa.socikwa@erwat.co.za">Zimasa.socikwa@erwat.co.za</a>/ <a href="mailto:lerato.motshabela@erwat.co.za">lerato.motshabela@erwat.co.za</a></p>
1.2.2	<p><b><u>Bid pricing:</u></b></p> <p>The tendered price must provide for items required, supply, delivery, installation, commissioning, direct and indirect costs applicable to the execution of the required works/goods/services as per the specifications and provided for in the pricing scheduled/Bill of Quantities.</p> <p>Bidders are required to check their calculations for arithmetical errors as the total Tender price, as submitted, will remain fixed.</p> <p>The Value Added Tax (Act 89 of 1991) as amended, is applicable.</p> <p>All prices quoted are to <b><u>INCLUDE</u></b> Value Added Tax (VAT), unless specifically stated to the contrary and all prices must be quoted in ZAR, i.e. the currency of the Republic of South Africa.</p> <p>Where the whole or a portion of the tendered price may be affected by rates of currencies or variations in the rate of exchange, the bidder shall, in terms of the tender requirements, state in his tender the amount in foreign currency to be paid or remitted abroad and the exchange rate applied in the conversion of this amount into South African currency in calculating the tender price.</p>

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

1.2.3	<p><b><u>Payment Terms:</u></b></p> <p>Payments will be effected within 30 days from receipt of a valid Invoice/Tax Invoice <b><u>and</u></b> Statement.</p> <p>All invoices/tax invoices and statements must comply with the <b>VAT Act No 89 of 1991</b> before payment can be effected.</p>
1.2.4	<p><b><u>Briefing/clarification/Site inspections/meetings:</u></b></p> <p>Before tendering, bidders should visit the site and acquaint themselves with all the local conditions, the accessibility of the site, the full extent and nature of the operations, the supply of and conditions affecting labour, carriage, carting, unloading, storage and safe custody of materials, workshop accommodation, the scaffolding, tackle and tools necessary for the execution of the contract generally.</p> <p>Bidders are required to thoroughly acquaint themselves with the nature and extent of the work to be done, and to make allowance for items obviously intended and necessary for the proper completion of the work although not specifically specified. Claims due to lack of knowledge will not be entertained.</p> <p>All uncertainties shall be cleared out with the end user department before the tender closing date.</p> <p>No individual should represent more than one bidder at the compulsory briefing session.</p> <p>At least one member of the JV must be present at the compulsory clarification meeting.</p> <p><i>Kindly note that the company representative that attends this session will be accepted as a person with the relevant technical expertise applicable to this bid.</i></p> <p>Non-completion in full of the fields required on the attendance register may lead to automatic disqualification.</p> <p><b><u>Please note:</u></b> Where a <b><u>clarification meeting is compulsory</u></b>, no bids will be accepted if the contractor has not attended this session and documents will only be accepted from contractors whose names appear on the attendance register.</p>
1.2.5	<p><b><u>Alterations to documents:</u></b></p> <p>No alterations, erasure or addition is to be made in the text of the Document or pricing schedule/BOQ, except to comply with instructions issued by the employer. All signatories to the Tender offer shall sign next to any alterations in such case.</p> <p>Any alteration, erasure or addition made will not be recognised and the original wording of the Document will prevail.</p> <p>Copies are not allowed, only original documents will be accepted.</p> <p>Bidders shall clarify any doubt about the meaning of any wording in the pricing schedule/bill of quantities <b><u>before</u></b> the Tender closing date.</p>

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



	The use of correction fluid/tape is strictly prohibited and will render your bid invalid.
1.2.6	<p><b><u>Technical Specification and standard of work/goods/services:</u></b></p> <p>The Standard Technical Specifications cover the general technical requirements w.r.t. works/goods/services. These specifications shall be read in conjunction with the rest of this contract in its entirety.</p> <p>All works/goods/services provided under this contract shall be new and unused, and the best of their respective kinds and shall comply with the requirements laid down in the latest editions of the relevant SANS, ISO, BS or other relevant regulatory authorities and standards and their amendments and with the requirements of this specification.</p>
1.2.7	<p><b><u>Factory Inspections and Tests:</u></b></p> <p>The Bidder shall advise the End user department in writing of any routine, type or specific tests or commissioning to be carried out on equipment during the course of manufacture in the manufacturer's factory or works or of any stage of completion in the manufacturing process which requires inspections in terms of the Contract and Specifications. The contractor will issue the required COC where applicable.</p> <p>The successful bidder will be required to dispatch goods from the factory at his own risk if the tests have not been witnessed and inspections not been carried out by and approval given by ERWAT for dispatch.</p> <p>ERWAT will only accept risk and responsibility of the works/goods/services on final completion/handover in accordance with the approved guarantee/warranty stipulation and includes insurance.</p>
1.2.8	<p><b><u>Existing Works and Service:</u></b></p> <p>The bidder is responsible for obtaining information regarding services and existing works, which may be affected by this bid.</p> <p>Before the Bidder commences with delivery of works/goods/services, they shall discuss with and have the approval of the end user department.</p> <p>The Bidder shall be held responsible for any damage, injury or accident caused as a result of his failure to take the necessary precautionary measures.</p> <p>Should the Bidder in any event be responsible for the interruption of services without approval, the contractor shall be held responsible for any claims that may arise in this regard.</p>
1.2.9	<p><b><u>Quality Assurance:</u></b></p> <p>The workmanship shall be of the highest grade and to the satisfaction of the end user department.</p> <p>It will be the full responsibility of the Bidder to undertake appropriate quality control and quality assurance measures during implementation/manufacturing of works/goods/services as well as on site. A quality control procedure shall be forwarded with the program to the end user department (applicable to technical works).</p>

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

	<p>Bidders are required to guarantee their products/works for not less than 1 year (12 months) on new goods and services</p> <p>Unless specified otherwise in the SCC the warranty/guarantee shall remain valid for a period of not less than 1 (one) year after the works/goods/services, or 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 of place of loading in the source country whichever period concludes earlier.</p> <p>No guarantee or warranty less than 6 months on refurbished goods will be considered.</p> <p>Bidders are required to indicate the relevant guarantee and or warrantee period offered on their products.</p> <p>Bidders must however submit the guarantees upon request from ERWAT to the end user department at any given time.</p>
1.2 .10	<p><b><u>Acknowledge Addenda:</u></b></p> <p>Acknowledge receipt of addenda to the proposal documents, which the employer may issue, and if necessary apply for an extension of the closing time stated in the Tender data, in order to take the addenda into account.</p> <p>All the Contractor's designs are in any event still subject to approval by the Engineer.</p>
1.2.11	<p><b><u>Submitting a Tender offer:</u></b></p> <p>No late, faxed, emailed or other form of Tender will be accepted.</p> <p>Completed Tender documents with attached documents, if any, must be submitted in Black ink in sealed envelope and clearly marked <b><u>with the bid number and full description</u></b>.</p>
1.2.12	<p><b><u>Proof for confirmation:</u></b></p> <p>It may be required from a contractor, before acceptance of this tender, to furnish proof to the satisfaction of the owner that the bidder is in a position to secure all the required resources complete this contract within the time provided for in the specification or the time indicated by the bidder.</p> <p>The bidder shall, when requested by the Employer to do so, submit the names of all management and supervisory staff that will be employed to supervise the Labour Intensive portion of the works together with satisfactory evidence that such staff members satisfy the eligibility requirements.</p>
1.2.13	<p><b><u>Seek clarification:</u></b></p> <p>Questions or queries must be submitted to the Employer at least 10 working days before the stipulated closing date and time of the Tender.</p> <p>However, ERWAT shall not be liable nor assume liability for failure of the bidder to receive response to any questions and / or queries raised by the bidder by the closing time.</p>

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

1.2.14	<p><b><u>Tender offer validity:</u></b></p> <p>Unless otherwise specified in the invitation to bid, this bid shall remain open for acceptance for a period OF <b><u>ONE HUNDRED AND TWENTY (120) CONSECUTIVE DAYS</u></b> from the date on which bids are due and during this period the Bidder shall agree not to withdraw his/her bid or impair or derogate from its effect;</p> <p>The written approval of this bid by ERWAT, by way of letter of acceptance, shall constitute a contract binding on both parties;</p> <p>Notwithstanding anything to the contrary in this agreement, the contract shall come into existence with effect from the signature date signed by both parties.</p>
1.2.15	<p><b><u>Opening of Tender documents:</u></b></p> <p>Bids are opened in public on closing date and time at ERWAT Head Office, Hartebeestfontein Office Park, R25 (Bapsfontein / Bronkhorstspuit), Kempton Park.</p>
1.2.16	<p><b><u>Patents:</u></b></p> <p>The Bidder shall pay all royalties and expenses and be liable for all claims in respect of the use of patent rights, trade marks or other protected rights and hereby indemnifies ERWAT against any claims arising there-from.</p> <p>All intellectual property rights including, without limitation, copyright, database rights, design and registered design rights, patents and trade mark rights, in the deliverables shall be owned by ERWAT.</p> <p>The contractor, bidder or service provider shall execute any documents to ensure vesting of such rights in the Entity (ERWAT). No trade mark, patent, design or other registration shall be made in the name of the contractor, bidder or service provider, its employees, directors and agents, in relation to any of the deliverables.</p>
1.2.17	<p><b><u>Registration with relevant regulatory authority:</u></b></p> <p>Bidders who are compelled to register with controlling authorities regarding their goods/services to be delivered/rendered, should ensure that their relevant registrations are in order prior to the closure of the bids.</p> <p>ERWAT may at any given time request bidders to submit proof thereof.</p>
1.2.18	<p><b><u>Penalties:</u></b></p> <p>Should the bidder fail to deliver any or all the goods or perform the services within the period specified in the contract or as concluded in the Service Level Agreement, ERWAT may, 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 until actual delivery of performance or as stipulated in Schedule 2.</p> <p>ERWAT may consider termination of the contract at it sees fit in terms of the General Conditions of Contract.</p>

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

1.2.19	<p><b><u>Increase/decrease in scope of work</u></b></p> <p>The Employer reserves the right to award the bid in part, split the bid or award in total. The Bidder will have no claim in this respect.</p> <p>Funds allocated to complete the works may be limited. The Employer thus reserves the right to reduce or add to the scope of work to suit the available budget, in which case the contractor will have no claim in this respect.</p>
1.2.20	<p><b><u>Inspection of plant, equipment and premises</u></b></p> <p>ERWAT may at any stage during the production or execution, or on completion, be subject to inspect the premises of the bidder or contractor at all reasonable hours for inspection of the bidders plant, equipment and premises prior to the bid being awarded. These inspections shall be carried out as follows:</p> <p>The HOD, designated supervisor or Technical Evaluation Committee will visit the premises upon a formal appointment to inspect all plant and equipment and other items deemed necessary prior to the issue of the bid to the bid adjudication committee.</p>
1.2.21	<p><b><u>Domicile &amp; South African Jurisdiction</u></b></p> <p>The laws of the Republic of South Africa shall be applicable to each Contract created by the acceptance of a Bid, and each Bidder shall indicate a place in the Republic and specify it in his Bid as his <i>domicilium citandi et executandi</i> where any legal process may be served on him.</p> <p>Each Bidder shall bind himself to accept the jurisdiction of the Courts of Law of the Republic of South Africa.</p> <p>The parties choose as their respective <i>domicilia citandi et executandi</i> the Following addresses:</p> <p><b>ERWAT</b></p> <p>ERWAT Head Office, Hartbeestfontein Office Park, R25 (Bapsfontein / Bronkhorstspuit), Kempton Park.</p> <p><b><i>The Contractor (physical address):</i></b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Change of these addresses will only be valid if the other party has been notified in writing.</p> <p>All notices between the parties concerned must be in writing.</p> <p>If a notice or document is delivered by hand, written proof of delivery must be obtained. If a document is delivered by official of ERWAT, a statement to that effect will be sufficient.</p> <p>If not delivered by hand, notices and documents will be sent by registered post.</p>

\_\_\_\_\_

Contractor

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

\_\_\_\_\_

Employer

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

1.2.30	<p><b><u>Bid Award</u></b></p> <p>Please note that even though a bid may be awarded and a successful bidder be approved to supply, deliver or render the applicable services to ERWAT, it is not a guarantee that orders will be placed on a regular basis and may only be required on an as and when required basis and will be valid on receipt of an official ERWAT order only.</p>
1.2.31	<p><b><u>Non-Awards</u></b></p> <p>Kindly note that bidders, who have submitted a tender, may visit the ERWAT website: <a href="http://www.ERWAT.co.za">www.ERWAT.co.za</a> to view the outcome of the relevant bid.</p> <p>In the event that no correspondence or communication is received from ERWAT within 120 consecutive days after the stipulated closing date and time of the Tender, the tender will be deemed to be unsuccessful.</p> <p>The unsuccessful bidder may on written request (in terms of the Access to Information Act) be given reason why their bid was unsuccessful.</p>
1.2.32	<p><b><u>Objections and complaints</u></b></p> <p>Persons may lodge a written objection or complaint to the Accounting Officer, where aggrieved by decisions or actions taken by the municipal entity in the implementation of its supply chain management system, within 14 (fourteen) days of the decision or action taken in terms of Regulation 49 of the Municipal Finance Management Act, Act 56 of 2003 – Supply Chain Management Regulations published under GenN 868 in GG 27636 of 30 May 2005 effective 1 July 2005.</p>
1.2.33	<p><b><u>EPWP requirements for labour intensive projects</u></b></p> <p>ERWAT supports labour intensive projects and other services relating to where physical labour is required.</p> <p>All service providers will be required to maximize the use of local unemployed labour on projects or when supplying or delivering services to ERWAT where applicable.</p> <p>All relevant questionnaires and reports are to be completed in full and submitted as part of this bid document.</p>

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

### **3.2 FORM OF OFFER AND ACCEPTANCE**

#### **OFFER**

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract in respect of the following works: **ERW202204/TNDR-002**:

The Bidder, identified in the Offer signature block below, has examined the documents listed in the Bid Document Data and addenda thereto as listed in the Bid Document Schedules, and by submitting this Offer has accepted the Conditions of Bid Document.

By the representative of the Bidder, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance, the Bidder offers to perform all of the obligations and liabilities of the Contractor under the Contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the Conditions of Contract identified in the Contract Data.

**THE OFFERED RATES FOR THE SERVICE, AS SET OUT IN THE PRICING SCHEDULE (THE PRICES INCLUSIVE OF VALUE ADDED TAX), IS HEREBY CONFIRMED FOR THE PERIOD OF THE CONTRACT PERIOD INCLUDING THE PROVISIONS FOR THE ANNUAL ESCALATIONS (WHERE APPLICABLE)**

This Offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document to the Bidder before the end of the period of validity stated in the Bid Document Data, whereupon the Bidder becomes the party named as the Contractor in the Conditions of Contract identified in the Contract Data.

Signature(s) \_\_\_\_\_

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

For the Bidder \_\_\_\_\_  
(Name and address of organisation)

Name & Signature of Witness: \_\_\_\_\_  
Name Date

\_\_\_\_\_

Contractor

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

\_\_\_\_\_

Employer

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

## **ACCEPTANCE**

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the Bidder's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the Conditions of Contract identified in the Contract Data. Acceptance of the Bidder's Offer shall form an agreement between the Employer and the Bidder upon the terms and conditions contained in this Agreement and in the Contract that is the subject of this Agreement.

And drawings and documents or parts thereof, which may be incorporated by reference into Parts 1 to 4 above. Deviations from and amendments to the documents listed in the Bid Document Data and any addenda thereto listed in the Bid Document Schedules as well as any changes to the terms of the Offer agreed by the Bidder and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Agreement. No amendments to or deviations from said documents are valid unless contained in this Schedule, which must be duly signed by the authorised representative(s) of both parties.

The Bidder shall within 7 days after receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the Conditions of Contract identified in the Contract Data at or just after the date this Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this Agreement.

Notwithstanding anything contained herein, this Agreement comes into effect on the date when the Bidder receives one fully completed signed copy of this SLA, including the Schedule of Deviations (if any). Unless the Bidder (now Contractor) within five days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this Agreement, this Agreement shall constitute a binding contract between the parties.

Signature(s) \_\_\_\_\_

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

For the Bidder \_\_\_\_\_  
(Name and address of organisation)

Name & Signature of Witness: \_\_\_\_\_  
Name \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_

Contractor

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

\_\_\_\_\_

Employer

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

### 3.3 SCHEDULE OF DEVIATIONS

**Notes:**

1. The extent of deviations from the Bid documents issued by the Employer prior to the Bid Document closing date is limited to those permitted in terms of the Conditions of Bid Document.
2. A Bidder's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid becomes the subject of agreements reached during the process of Offer and Acceptance; the outcome of such agreement shall be recorded here.
3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the Bid documents and which it is agreed by the Parties becomes an obligation of the contract, shall also be recorded here.
4. Any change or addition to the Bid documents arising from the above agreements and recorded here shall also be incorporated into the final draft of the Contract.

1	<b>Subject:</b>	_____
	Details:	_____
2	<b>Subject:</b>	_____
	Details:	_____
3	<b>Subject:</b>	_____
	Details:	_____
4	<b>Subject:</b>	_____
	Details:	_____
5	<b>Subject:</b>	_____
	Details:	_____
6	<b>Subject:</b>	_____
	Details:	_____
7	<b>Subject:</b>	_____
	Details:	_____

By the duly authorised representatives signing this Schedule of Deviations, the Employer and the Bidder agree to and accept the foregoing Schedule of Deviations as the only deviations from and amendments to the documents listed in the Bid Document Data and addenda thereto as listed in the Bid Document Schedules, as well as any confirmation, clarification or change to the terms of the Offer agreed by the Bidder and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period

_____	_____	_____	_____	_____	_____
Contractor	Witness 1	Witness 2	Employer	Witness 1	Witness 2



between the issue of the Bid Document documents and the receipt by the Bidder of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this Agreement.

**FOR THE BIDDER:**

Signatures (s) \_\_\_\_\_

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

\_\_\_\_\_  
(Name and address of Organisation)

Witness: \_\_\_\_\_  
Name Signature

Date: \_\_\_\_\_

**FOR THE EMPLOYER**

Signatures (s) \_\_\_\_\_

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

\_\_\_\_\_  
(Name and address of Organisation)

Witness: \_\_\_\_\_  
Name Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Witness 1

\_\_\_\_\_  
Witness 2

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Witness 1

\_\_\_\_\_  
Witness 2

### 3.4 CONTRACT FORM: PURCHASE OF GOODS/WORKS

MBD7.1

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

#### PART 1 (TO BE FILLED IN BY THE BIDDER)

1. I hereby undertake to supply all or any of the goods and/or works described in the attached bidding documents to (name of institution) \_\_\_\_\_  
  
in accordance with the requirements and specifications stipulated in bid number **ERW202204/TNDR-002** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the purchaser during the validity period indicated and calculated from the closing time of bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, viz
    - Invitation to bid;
    - Pricing schedule(s);
    - Technical Specification(s);
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2017;
    - Declaration of interest;
    - Declaration of bidder's past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. It is noted that this is rates based tender. The contract is limited to Purchase orders issued within the available budget allocated for such on an as and when required basis.
5. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfilment of this contract.
6. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
7. I confirm that I am duly authorised to sign this contract.

**NAME (PRINT)** \_\_\_\_\_

**CAPACITY** \_\_\_\_\_

**SIGNATURE** \_\_\_\_\_

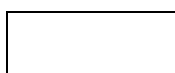
**NAME OF FIRM** \_\_\_\_\_

#### **WITNESSES**

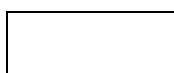
**1** \_\_\_\_\_

**2** \_\_\_\_\_

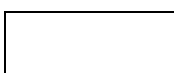
**DATE:** \_\_\_\_\_



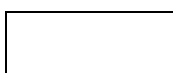
Contractor



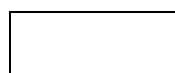
Witness 1



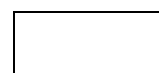
Witness 2



Employer



Witness 1



Witness 2

**MBD7.2**

**CONTRACT FORM: RENDERING OF SERVICES**

**PART 2 (TO BE FILLED IN BY THE ERWAT REPRESENTATIVE)**

1. I \_\_\_\_\_ in my capacity as \_\_\_\_\_ accept your bid under reference number: **ERW202204/TNDR-002** dated \_\_\_\_\_ for the rendering of services indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating service delivery instructions is forthcoming.
3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

ITEM NO.	DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)
	<i>Kindly refer to the pricing schedule*</i>				

***\* It is noted that this is rates based tender. The contract is limited to Purchase orders issued within the available budget allocated for such on an as and when required basis.***

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

**NAME (PRINT)** \_\_\_\_\_

**CAPACITY** \_\_\_\_\_

**SIGNATURE** \_\_\_\_\_

**NAME OF FIRM** \_\_\_\_\_

**DATE** \_\_\_\_\_

**WITNESSES**

1. \_\_\_\_\_

2. \_\_\_\_\_

**DATE:** \_\_\_\_\_

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

### **3.5 OCCUPATIONAL HEALTH AND SAFETY AGREEMENT IN TERMS OF THE OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT NO 85 OF 1993)**

THIS AGREEMENT IS made at \_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_.

Between EKURHULENI WATER CARE COMPANY (ERWAT) (hereinafter called "the Employer") of the one  
part, herein represented by \_\_\_\_\_

In his capacity as \_\_\_\_\_

and delegate of the Employer in terms of the Employer's standard powers of delegation pursuant to the  
provisions of Act No 7 of 1998, and

\_\_\_\_\_

(hereinafter called "the Mandatory") of the other part, herein represented by:

\_\_\_\_\_

in his capacity as \_\_\_\_\_

and being duly authorized by virtue of a resolution appended hereto as Annexure A;

WHEREAS the Employer requires certain works be constructed, viz DESCRIPTION: and has accepted a  
Bid by the Mandatory for the construction, completion and maintenance of such Works and whereas the  
Employer and the Mandatory have agreed to certain arrangements and procedures to be followed in order  
to ensure compliance by the Mandatory with the provisions of the Occupational Health and Safety Act,  
1993 (Act 85 of 1993).

#### **NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:**

- 1 The Mandatory shall execute the work in accordance with the Contract Documents pertaining to this Contract.
- 2 This Agreement shall hold good from its Commencement Date, which shall be the date of a written notice from the Employer or engineer requiring him to commence the execution of the Works, to either -
  - (a) the date of the Final Approval Certificate issued in terms of Clause 5.16 of the General Conditions of Contract 2010 (hereinafter referred to as "the GCC"), as contained in the Contract Documents pertaining to this Contract, or
  - (b) The date of termination of the Contract in terms of Clauses 9.1, 9.2, 9.3 of the GCC.

\_\_\_\_\_

Contractor

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

\_\_\_\_\_

Employer

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

- 3 The Mandatory declares himself to be conversant with the following:
- (a) All the requirements, regulations and standards of the Occupational Health and Safety Act (Act 85 of 1993), hereinafter referred to as "The Act", together with its amendments and with special reference to the following Sections of The Act:
    - (i) Section 8: General duties of Employers to their employees
    - (ii) Section 9: General duties of Employers and self-employed persons to persons other than employees
    - (iii) Section 37: Acts or omissions by employees or mandatories
    - (iv) Sub-section 37(2) relating to the purpose and meaning of this Agreement
  - (b) The procedures and safety rules of the Employer as pertaining to the Mandatory and to all his subcontractors.
- 4 In addition to the requirements of Clause 8.4 of the GCC (as amended by Special Condition of Contract) and all relevant requirements of the above-mentioned Volume, the Mandatory agrees to execute all the Works forming part of this Contract and to operate and utilize all machinery, Plant and equipment in accordance with the Act.
- 5 The Mandatory is responsible for the compliance with the Act; the safety procedures and rules of the employer by all his subcontractors, whether or not selected and/or approved by the Employer.
6. The Mandatory warrants that all his and his subcontractors' workmen are covered in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993), which cover, shall remain in force whilst any such workmen are present on site. A letter of good standing from the Compensation Commissioner to this effect must be produced to the Employer upon signature of the agreement.
7. The Mandatory undertakes to ensure that he and/or subcontractors and/or their respective employers will at all times comply with the following conditions:
- a) The Mandatory shall assume the responsibility in terms of Section 16.1 of the Act. The Mandatory shall not delegate any duty in terms of Section 16.2 of this Act without the prior written approval of the Employer. If the Mandatory obtains such approval and delegates any duty in terms of section 16.2 a copy of such written delegation shall immediately be forwarded to the Employer.
  - b) All incidents referred to in the Act shall be reported by the Mandatory to the Department of Labour as well as to the Employer. The Employer will further be provided with copies of all written documentation relating to any incident.
  - c) The Employer hereby obtains an interest in the issue of any formal enquiry conducted in terms of section 32 of the Act into any incident involving the Mandatory and/or his employees and/or his subcontractors.

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

In witness hereof the parties are to set their signatures hereon in the presence of the subscribing witnesses:

**SIGNED FOR AND ON BEHALF OF THE EMPLOYER :** \_\_\_\_\_

Witness 1 \_\_\_\_\_

Witness 2 \_\_\_\_\_

(Name) \_\_\_\_\_  
(Print)

(Name) \_\_\_\_\_  
(Print)

**SIGNED FOR AND ON BEHALF OF THE MANDATORY:** \_\_\_\_\_

Witness 1 \_\_\_\_\_

Witness 2 \_\_\_\_\_

(Name) \_\_\_\_\_  
(Print)

(Name) \_\_\_\_\_  
(Print)

---

*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

### **3.6 PERFORMANCE MANAGEMENT SYSTEM**

The Municipal Finance Management Act (No. 56 of 2003) Section 116 (2) (d) determines that a Municipality must enter into a Performance Management System (PMS) with all service providers.

A PMS will be concluded with the appointed bidder and the costing for this project will run during the **2021/2022, 2022/2023 and 2023/2024 financial budget years.**

---

#### **ACCEPTANCE OF PMS AGREEMENT**

**You are hereby requested to sign this document as acceptance of the agreement.**

#### **CONTRACTOR**

Signature : \_\_\_\_\_

Name : \_\_\_\_\_

Designation : \_\_\_\_\_

Date : \_\_\_\_\_

---

#### **EKURHULENI WATER CARE COMPANY**

Signature : \_\_\_\_\_

Name : **MR. K CHIHOTA**

Designation : **INTERIM MANAGING DIRECTOR**

Date : \_\_\_\_\_

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

### 3.7 ERWAT INDEMNITY

1. The Contractor hereby agrees to indemnify, hold harmless and defend ERWAT and their officers, employees, agents and representatives, from and against the following liabilities arising as a result of the execution of the work:
  - 1.1 Any liability with regard to claims by governmental authorities or others for non-compliance by Contractor of any Act of Parliament, law, ordinance, regulation or by-law made by a lawful authority provided that such compliance therewith was required for the execution of the Contract or at Law.
  - 1.2 Any liability arising from actual or alleged public or private nuisance arising out of negligent acts or omissions to act of Contractor or its Subcontractors, or of their employees.
  - 1.3 Any liability arising from loss or damage to Contractor and/or Subcontractor's equipment and their other property on site.
  - 1.4 Any liability arising from claims with regard to the death of/or injury or sickness or disease to Contractor's employees or the death of/or injury or sickness or disease to third parties.
  - 1.5 Any liability arising from any loss of/or damage to property belonging to a third party.
  - 1.6 Any liability arising from actual or asserted infringement or improper appropriation or use of patents, copyrights, proprietary information or know-how in respect of the work designed by/or under the responsibility of the Contractor.
  - 1.7 Any liability arising from the death or injury or loss or damage to property of third parties or ERWAT's property as a result of the negligent acts or omissions of contractors or its subcontractor's employees.
  - 1.8 Contractor shall indemnify ERWAT against all claims, proceedings, damages and costs of whatsoever nature arising out of contravention of environmental legislation.

I, \_\_\_\_\_ the undersigned (duly authorised to sign) hereby declare that I have read and understood the abovementioned and agree to all the above.

<b>COMPANY:</b>	
<b>ADDRESS:</b>	
<b>TEL:</b>	
<b>CELL:</b>	
<b>DATE:</b>	
<b>SIGNATURE:</b>	

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



### **3.8 SPECIAL CONDITIONS OF CONTRACT**

#### **1. ERWATS OBJECTIVES:**

The aim of this bid is to increase the service delivery level of the ERWAT to both its internal and external clients. This will be done by way of the following:

- Reduction in the number of quotation requests
- Improved turn-around times for obtaining purchase orders
- More focused approached to the Entity's core functions.

#### **2. CONTRACT PERIOD:**

The award will be for a period of Thirty-Six (36) months with a probation period of Twelve (12) months, whereby if your performance is not to the satisfaction of ERWAT, the contract will automatically lapse after the Twelve (12) months' probation.

#### **3. CONTRAT PRICE ADJUSTMENTS FOR LONG TERM CONTRACTS RUNNING OVER A ONE YEAR PERIOD (TERM CONTRACTS):**

The successful bidder(s) pricing will be adjusted annually on written request and must reach the SCM office one (1) month prior to the anniversary of the bid.

Price adjustments will be effective on date of anniversary of this bid. The Entity will not accept any requests for price adjustments other than the adjustments stated above.

Annual price adjustment is calculated on the average Reserve Bank CPI figures for the year at time of anniversary of this bid.

All fees must be in line with the provisions of the Law Society of south Africa and any other applicable legation.

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

### 3.9 GENERAL CONDITIONS OF CONTRACT

THE NATIONAL TREASURY

Republic of South Africa



---

GOVERNMENT PROCUREMENT:  
GENERAL CONDITIONS OF CONTRACT

July 2010

---

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

## 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 analyses
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental Services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Variation orders
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Anti-dumping and countervailing duties and rights
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. Transfer of contracts
34. Amendments of contracts
35. Prohibition of restrictive practices

## **GENERAL CONDITIONS OF CONTRACT**

### **1. Definitions**

The following terms shall be interpreted as indicated:

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

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

## **2. Application**

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

### **3. General**

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

### **4. Standards**

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

### **5. Use of contract documents and information inspection**

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

### **6. Patent Rights**

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

### **7. Performance security**

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

- a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents. Another form of acceptable to the purchaser; or
- b) a cashiers' or certified cheque.

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

## **8. Inspections, tests and analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that goods to be produced or services to be rendered should at any stage be subject to inspections, tests and analyses, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or organization acting on behalf of the purchaser.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Goods and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be ejected.
- 8.7 Any contract goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods, which do comply with the requirements of the contract. Failing such removal, the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.

## **9. Packing**

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, and in any subsequent instructions ordered by the purchaser.

**10. Delivery and documents**

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

**11. Insurance**

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

**12. Transportation**

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

**13. Incidental Services**

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

- (a) Performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) Furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) Performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) Training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

**14. Spare parts**

- 14.1 As specified, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
  - (i) advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and



- (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

## **15. Warranty**

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

## **16. Payment**

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon 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.

## **17. Prices**

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

## **18. Variation Orders**

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

**19. Assignment**

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

**20. Subcontracts**

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

**21. Delays in the supplier's performance**

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the goods are required, or the supplier's services are not readily available.
- 21.4 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of penalties.
- 21.5 Upon any delay beyond the delivery period in the case of a goods contract, the purchaser shall, without cancelling the contract, be entitled to purchase goods of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

**22. Penalties**

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

**23. Termination for default**

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;

- (a) if the supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner, as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.
- 23.5 Any restriction imposed on any person by the purchaser will, at the discretion of the purchaser, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the purchaser actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
  - (ii) the date of commencement of the restriction
  - (iii) the period of restriction; and
  - (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

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

## **24. Anti-dumping and countervailing duties and rights**

- 24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the supplier to the purchaser or the purchaser may deduct such amounts from

moneys (if any) which may otherwise be due to the supplier in regard to goods or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

**25. Force Majeure**

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

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

**26. Termination for insolvency**

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

**27. Settlement of Disputes**

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Notwithstanding any reference to mediation and/or court proceedings herein,

- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier for goods delivered and / or services rendered according to the prescripts of the contract.

**28. Limitation of Liability**

28.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6

- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

**29. Governing language**

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

**30. Applicable law**

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

**31. Notices**

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

**32. Taxes and duties**

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

**33. Transfer of contracts**

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

**34. Amendment of contracts**

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

**35. Prohibition of restrictive practices**

- 35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding.
- 35.2 If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may

refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 Of 1998.

- 35.3 If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.