



## BID DOCUMENT

### BID ERW202202/TNDR-006: RE-TENDER FOR THE APPOINTMENT OF A SERVICE PROVIDER TO MANAGE, MONITOR AND REPORT ON ERWAT ETHICSHOTLINE FOR A PERIOD OF 36 MONTHS

<b>COMPULSORY BRIEFING SESSION</b>	None
<b>CLOSING DATE</b>	Friday, 17th 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

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Contractor

Witness 1

Witness 2

Employer

Witness 1

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Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



## 1.1 BID NOTICE: ADVERTISEMENT

Bid Description	Contact Person	Compulsory Briefing Session Date	Closing Date & Time
<b>BID ERW202202/TNDR-006: RE-TENDER FOR THE APPOINTMENT OF A SERVICE PROVIDER TO MANAGE, MONITOR AND REPORT ON ERWAT ETHICS HOTLINE FOR A PERIOD OF 36 MONTHS</b>	Isaac Makhuvele Tshidi Moholeng 0119297111/7086	None	Friday, 17th June 2022 at 12h00

BID documents may be purchased at ERWAT Head Office, Hartbeestfontein 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.

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 ERW202202/TNDR-006** : and must be placed in the correct Tender Box situated at ERWAT Head Office, Hartbeestfontein Office Park, R25 (Bapsfontein/ Bronkhorstspuit), Kempton Park, not later than **12h00 on FRIDAY, 17TH JUNE 2022** 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 Enquiries shall be addressed to: Ms Phumzile Mdlalose at 011 929 7000 or [publictenders@erwat.co.za](mailto:publictenders@erwat.co.za). All Technical Enquiries shall be addressed to: Mr Isaac Makhuvele or Ms Tshidi Moholeng at 011 929 7111/7086 or [tshidi.moholeng@erwat.co.za](mailto:tshidi.moholeng@erwat.co.za) or [Isaac.makhuvele@erwat.co.za](mailto:Isaac.makhuvele@erwat.co.za)**

*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)).

**13 MAY 2022** (date of advert in media and website)

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 3.1</b>	PRICING STRUCTURE: FIRM PRICES		
<b>MBD 4</b>	DECLARATION OF INTEREST		
<b>MBD 6.1</b>	PREFERENCE SCHEDULE		
<b>MBD 7.1</b>	CONTRACT FORM: PURCHASE OF GOODS/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 SUPPLIERDATABASE		
<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 Allrisk 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 ERW202202/TNDR-006: RE-TENDER FOR THE APPOINTMENT OF A SERVICE PROVIDER TO MANAGE, MONITOR AND REPORT ON ERWAT ETHICS HOTLINE FOR A PERIOD OF 36 MONTHS AT EKURHULENI WATERCARE COMPANY**

**CLOSING DATE: Friday, 17th 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 **BID ERW202202/TNDR-006: RE-TENDER FOR THE APPOINTMENT OF A SERVICE PROVIDER TO MANAGE, MONITOR AND REPORT ON ERWAT ETHICS HOTLINE FOR A PERIOD OF 36 MONTHS**: 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)**

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Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

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

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

<b>NAME OF ENTERPRISE</b>							
<b>PHYSICAL ADDRESS:</b>							
<b>POSTAL ADDRESS:</b>							
<b>CONTACT PERSON</b>							
<b>TEL NO:</b> _____		<b>CELL NO:</b> _____					
<b>FAX NO:</b> _____		<b>EMAIL:</b> _____					
<b>COMPANY REGISTRATION NUMBER:</b>							
<b>VAT NUMBER:</b>		<b>TAX REF NUMBER:</b>					
<b>CENTRALISED SUPPLIER DATABASE (CSD) NUMBER:</b>			<b>MAAA</b> _____				
<b>CIDB REGISTRATION NUMBER</b>							
<b>CIDB GRADING</b>							
<b>ERWAT VENDOR NUMBER (NOT COMPULSORY):</b>							
<b>BIDDERS OFFER:</b> 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.							
<b>TOTAL NUMBER OF ITEMS OFFERED</b>							
<b>* PREFERENCE POINTS CLAIMED AS PER FORM MBD 6.1</b>		<b>B-BBEE RATING [LEVEL__]</b>	<b>VALID B-BBEE CERTIFICATE ATTACHED</b>		<b>Yes</b>		<b>No</b>
<b>ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS/SERVICES/WORKS OFFERED?</b>					<b>Yes</b>		<b>No</b>
<b>DISABLED [_____%]</b>		<b>WOMEN [_____%]</b>		<b>YOUTH [_____%]</b>			

***\*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)*


<small>Contractor</small>	<small>Witness 1</small>	<small>Witness 2</small>	<small>Employer</small>	<small>Witness 1</small>	<small>Witness 2</small>



**(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	
-----	--	----	--

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

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

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

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

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**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: Tshidi Moholeng/ Isaac Makhuvele

CONTACT DETAILS: (TEL) 011 929 7111 E-MAIL: [tshidi.moholeng@erwat.co.za](mailto:tshidi.moholeng@erwat.co.za)

CONTACT DETAILS: (TEL) 011 929 7086 E-MAIL: [isaac.makhuvele@erwat.co.za](mailto:isaac.makhuvele@erwat.co.za)

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Contractor

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Witness 1

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Witness 2

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Employer

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Witness 1

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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 complianceProfile” and rectify any non-compliance.

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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 3.1

**PRICING SCHEDULE – FIRM PRICES**  
**(PURCHASES)**

**NOTE:** **ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED**

**NAME OF BIDDER:** \_\_\_\_\_

**BID ERW202202/TNDR-006:**

**CLOSING DATE: FRIDAY, 17<sup>TH</sup> JUNE 2022 AT 12:00**

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

- 
- REQUIRED BY: **EKURHULENI WATER CARE COMPANY**
  - AT: **RISK SECTION**
  - BRAND AND MODEL \_\_\_\_\_ **OFFERED**
  - COUNTRY OF ORIGIN \_\_\_\_\_
  - DOES THE OFFER COMPLY WITH ALL SPECIFICATIONS? **YES/NO\***
  - IF NOT TO SPECIFICATION, INDICATE DEVIATION(S) AND SUBMIT FULL TECHNICAL DETAIL AND DRAWINGS ON DEVIATIONS  
\_\_\_\_\_  
\_\_\_\_\_
  - DELIVERY PERIOD: \_\_\_\_\_ DAYS/WEEKS/MONTHS
  - DELIVERY BASIS: \_\_\_\_\_ FIRM/NOT FIRM

Bid prices must be fixed and firm for the first 12 months of the bid contract where after the CPI indices will apply based on the average figures at the time of the anniversary of this bid.

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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 favoritism, 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?

**YES / NO**

If so, furnish particulars.

\_\_\_\_\_

\_\_\_\_\_

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

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*Contractor*

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*Witness 1*

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*Witness 2*

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*Employer*

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*Witness 1*

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*Witness 2*

and or adjudication of this bid?If

**YES / NO**

so, furnish particulars.

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- 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.

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- 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.

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- 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.

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- 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.

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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 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 The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and 80/20 preference point system shall be applicable to this tender.
- 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>	<b>80</b>
<b>B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	<b>20</b>
<b>Total points for Price and B-BBEE must not exceed</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 PREFERENCE POINT SYSTEMS**

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

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

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

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

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

- 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)	Kindly tick the applicable level and points
1	20	
2	18	
3	14	
4	12	
5	8	
6	6	
7	4	
8	2	
Non-compliant contributor	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:**

- The sub-contracting must be to a separate legal entity.
- A legal person or unincorporated body of persons cannot sub-contract to themselves.
- 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 \_\_\_\_\_ %?

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Contractor

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Witness 1

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Witness 2

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Employer

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Witness 1

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Witness 2

ii) The name of the sub-contractor \_\_\_\_\_

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

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

YES		NO	
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## 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**

- Y Partnership/Joint Venture / Consortium  
Y One-person business/sole propriety  
Y Close corporation  
Y Company  
Y (Pty) Limited  
[TICK APPLICABLE BOX]

### 8.5 **DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

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

### 8.6 **COMPANY CLASSIFICATION**

- Y Manufacturer  
Y Supplier  
Y Professional service provider  
Y 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: \_\_\_\_\_

\_\_\_\_\_

Contractor

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

\_\_\_\_\_

Employer

\_\_\_\_\_

Witness 1

\_\_\_\_\_

Witness 2

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:

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

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Witness 1

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Witness 2

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Employer

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Witness 1

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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 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.**

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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% blackowned	<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**

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Contractor

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Witness 1

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Witness 2

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Employer

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Witness 1

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

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>	Yes <input type="checkbox"/>	No <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>	Yes <input type="checkbox"/>	No <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:

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*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

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

I, the undersigned, in submitting the accompanying bid:

#### **BID ERW202202/TNDR-006: RE-TENDER FOR THE APPOINTMENT OF A SERVICE PROVIDER TO MANAGE, MONITOR AND REPORT ON ERWAT ETHICS HOTLINE FOR A PERIOD OF 36 MONTHS**

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

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Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

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.
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 \_\_\_\_\_

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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 municipalrates 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:**

**( TO BE COMPLETED BY THE LANDLORD)**

Name of the Landlord:

Property Physical Address:

**Please tick below**

**Yes**

**No**

Rental: in arrears for more than 3 months

Municipal services: in arrears for more than 3 months

Landlord Signature:

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

**Landlord's business stamp here (where applicable)**

*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 fromon

behalf of \_\_\_\_\_

(BLOCK CAPTIALS)

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

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

DATE \_\_\_\_\_

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

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

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

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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 and 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> (Tick which is appropriate)	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)**

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*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

**FORM H**

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

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*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

**FORM I**

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

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*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

**FORM J**

**PROGRAMME OF WORKS**

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*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*



**FORM K**

**EXPERTISE OF THE KEY PERSONNEL**

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*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**

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*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

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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	INTRODUCTION & BACKGROUND		
2.2	MANDATORY REQUIREMENTS		
2.3	SCOPE OF WORKS/SPECIFICATIONS		
2.4	PRICING SCHEDULE/BILL OF QUANTITIES		
2.5	ALTERNATIVES OFFERED		
2.6	SITE INFORMATION		

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

## **2.1 TECHNICAL SPECIFICATION**

### **BID ERW202202/TNDR-006: RE-TENDER FOR THE APPOINTMENT OF A SERVICE PROVIDER TO MANAGE, MONITOR AND REPORT ON ERWAT ETHICS HOTLINE FOR A PERIOD OF 36 MONTHS**

#### **2.1.1 INTRODUCTION**

ERWAT requires the assistance of an independent service provider with experience in audit and forensic investigations to assist with the management, monitoring and reporting on the entity's Ethics (whistle blowing) system for a period of 36 months.

#### **2.1.2 BACKGROUND**

ERWAT is committed to conducting business and all of its affairs within the principles of good governance. Top Management has a zero tolerance stance towards fraud and corruption. The organisation endeavor to comply with applicable legislation. ERWAT considers Fraud Risk Management an integral part of its Enterprise-Wide Risk Management system.

ERWAT has a Fraud Risk Management Program and plan to respond to vulnerability of business fraud risk. Management ensures that there are adequate controls to detect and prevent where possible instances of fraud and corruption or any other undesirable conduct.

ERWAT has an existing Ethics Hotline manned by external service provider. The Entity wishes to retain the existing toll free phone number for continuity. The successful bidder will be required to process the transfer of ownership of the current line to ERWAT. The cost of transferring the ownership of the current toll free phone number to ERWAT, must be included as part of total cost for the project. The successful bidder will also be expected to provide necessary training and awareness workshops, the rates of which must be included in as part of total cost.

## **2.2 MANDATORY REQUIREMENTS**

2.2.1 The Bidders are required to have a minimum of one of the following persons in permanent employment as detailed below:

- 2.2.1.1 Bidders must submit a certificate of at least one person from their team who is certified as an Ethics Officer or;
- 2.2.1.2 Bidders must submit a certificate of at least one person from their team who is certified as a Fraud Examiner (ACFE) Association for Certified Fraud Examiners.

2.2.2 Bidders are required to submit a company certification as a Safe Reporting Service Provider E01.1.1 (Safeline-EX), confirming that they are a certified external whistle blowing service provider.

## **2.3 DETAILED SCOPE OF WORKS**

#### **2.3.1 BIDDERS CAPACITY**

- a) The bidder will be required to take over and manage the current Ethics Hotline Number.
- b) The Ethics Hotline Number must remain the same.
- c) The ownership of the hotline number must be transferred to ERWAT at the beginning of the contract term and will remain ERWAT's property on termination of the contract.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

- d) Bidders are to provide an Ethics hotline service that allows people to phone in and report incidents of fraud, corruption or any unethical behaviour 24 hours throughout the year (24/7).
- e) The system must allow complaints to be logged via an anonymous e-mail facility, fax, post, dedicated call centre number and SMS call back system.

### 2.3.2 **SAFE DISSEMINATION OF INFORMATION**

- (a) In order to maintain the integrity of the information and hotline system, the smooth dissemination of reports to designated persons as identified on a monthly basis.
- (b) The reports must be transferred in a format that is tamper proof, as to ensure the credibility of the reports for investigations and submission in a court of law.
- (c) An electronic system (secured by username and password and/or other means) needs to be established to ensure secure transmission of reports.

### 2.3.3 **HOTLINE RESPONSE LANGUAGE**

- (a) In order to give access to a wide range of potential whistle blowers, it is important that callers are encouraged and allowed to supply information in the language in which they are most comfortable.
- (b) To this effect, it is essential that whistle-blowers can express themselves in any of the eleven (11) official languages.

### 2.3.4 **INCIDENTS REPORTS**

- (a) ERWAT shall have a designated contact person for the bidder to liaise with as and when the need arises and for reporting of all incidents on all the activities.
- (b) The bidder shall contact the designated person as soon as possible for reports requiring immediate attention.
- (c) The successful bidder may be required to share reports with the City of Ekurhuleni's Forensic department.
- (d) The bidder must:
  - (i) Have the ability to handle reports with speed, accuracy and confidentiality.
  - (ii) Provide a website for submission of voluminous and anonymous reports.
  - (iii) The reports to be submitted to ERWAT/ City of Ekurhuleni should in a tamperproof manner (password or encrypted).
- (e) Management reports
  - (i) The bidder shall submit monthly reports providing feedback on the amount of calls received, nature of incidents reported and the place of the incident.
  - (ii) All reports must be submitted within 5 (five) days after the last day of the month.
  - (iii) A report must be generated even if there were no call made to hotline in that particular month.
  - (iv) The bidder shall submit quarterly reports giving call volumes and trends on concerns reported. The bidder shall report within 10 (ten) days after the last day of the quarter.
  - (v) Forensic investigation reports where applicable and agreed;
  - (vi) Regular reports to South African Police Services (SAPS) where applicable

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

### 2.3.5 **TERMINATION OF SERVICE**

- (a) At the end of the contract period, the bidder shall surrender all gathered information in an agreed format, and transfer the telephone number to the next service provider.
- (b) Bidders will be required to assist the new service provider during the handover process at termination of this contract, thus all information, data, any other related services must be available in an accessible and readable format to ERWAT.

### 2.3.6 **KEY EXPERTISE REQUIRED**

- (a) The project requires the services of contractor possessing practical and technical competencies in ethics line and Investigations;
- (b) Understanding of the Standards of Professional Practice in Internal Auditing (SPPIA) and that of Institute of Certified Fraud Examiners;
- (c) Understanding of the International Internal Auditing Standards (IIA);
- (d) Understanding of applicable relevant standards around ethics line and investigations;
- (e) Personnel assigned to this project must have:
  - i. Extensive experience in ethics line and conducting investigations engagements in the public sector;
  - ii. A good understanding of references to governance and fraud risk management ;
  - iii. Project management skills and experience;
    - High levels of communication, interpersonal and analytical skills;
    - The ability to work under pressure; and
    - Attention to detail and deadlines

### 2.3.7 **TRAINING AND AWARENESS**

The successful bidder will be required:

- (a) Facilitate the Antifraud and Ethics Awareness campaigns
- (b) Provide awareness material:
  - i. A3 Poster (Full colour, matt, dpi & laminated)
  - ii. A4 (Full colour, matt, dpi & laminated)
- (c) Executive Pull-up banners (Concept and design of pull up banners with logos of all stakeholder, Colour: Full colour printing, Fabric : Flat PVC, Size: 2000 x 850 mm)

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Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

## 2.4 PRICING SCHEDULE

### PRICING INSTRUCTIONS:

**Failure to complete in the price schedule in full will result in automatic disqualification.**

Bidders must price for the line items as set out below. This is a rates based tender and therefore no quantities, sub totals and 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.

Bidders should note that the quantity stipulated in the table below is indicative and ERWAT reserves the right to increase/decrease the quantity as the need arises.

Evaluation for price scoring will be done by calculating the line items in the table below to an indicative sum to determine the highest scoring bidder as provided for in the PPPFA Regulation 2017.

Bidders should note that the indicative values should not be construed as a total or sub-total in any way and does not limit the award to this value. Purchase orders may be issued at the rates on an as and when required basis to not exceed the available budget for such throughout the contract period.

ERWAT reserves the right to procure any of the services listed below from an alternative supplier if the prices are deemed not to be market related.

	Function	UNIT OF MEASURE	AMOUNT (VAT INCL)
1	Once-off Cost of transferring the ownership of toll-free number from the outgoing service provider to ERWAT and number activation fee	Sum	R
2	Once-off fee for drafting and redrafting of unique questionnaire	Sum	R
3	Monthly fee (including monthly statistical feedback on reports received and assessment)	Monthly	R
4	Training Workshops (Hourly session as and when required)	Per hour	R
5	A3 posters :Awareness Material (Full colour, matt, dpi & laminated)	Each	R
6	A4 posters :Awareness Material (Full colour, matt, dpi & laminated)	Each	R
7	<b>Pull up banner :Awareness Material</b>	each	R

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



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: \_\_\_\_\_

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

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

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

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*Contractor*

*Witness 1*

*Witness 2*

*Employer*

*Witness 1*

*Witness 2*

## 2.5 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



## 2.6 SITE INFORMATION

**R25 Bapsfontein Road, Kempton Park**

**GPS COORDINATES: S26° 01' 25.8 / E28° 17' 10.0)**

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*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		

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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 (Tshidi Moholeng) or Mr Isaac Makhuvele and all technical related queries can bedirected to them at:  Tel: 011 929 7111  E-mail:tshidi.moholeng@erwat.co.za or Isaac.makhuvele@erwat.co.za</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/Billof 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 <u>INCLUDE</u> 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 orvariations in the rate of exchange, the bidder shall, in terms of the tender requirements, statein his tender the amount in foreign currency to be paid or remitted abroad and the exchangerate 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>and</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. 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>

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

	<p>Bidders shall clarify any doubt about the meaning of any wording in the pricing schedule/billof quantities <b>before</b> the Tender closing date.</p> <p>The use of correction fluid/tape is strictly prohibited and will render your bid invalid.</p>
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 bestof their respective kinds and shall comply with the requirements laid down in the latest editionsof the relevant SANS, ISO, BS or other relevant regulatory authorities and standards and theiramendments and with the requirements of this specification.</p>
1.2.7	<p><b><u>Site Inspections and Tests:</u></b></p> <p>None</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 withand 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 ofhis 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 quality of services rendered 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> <p>Bidders are required to guarantee their services for not less than 1 year (12 months) on newgoods and services</p>

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

	<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 ten 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 therefrom.</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>The Contractor (physical address):</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. 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: **BID ERW202202/TNDR-006: RE-TENDER FOR THE APPOINTMENT OF A SERVICE PROVIDER TO MANAGE, MONITOR AND REPORT ON ERWAT ETHICS HOTLINE FOR A PERIOD OF 36 MONTHS**

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 GOODS, AS SET OUT IN THE PRICING SCHEDULE/BILL OF QUANTITIES (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.

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

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

period 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 **BID ERW202202/TNDR-006**: 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** \_\_\_\_\_

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

#### **WITNESSES**

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

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

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

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



MBD7.1

**CONTRACT FORM: PURCHASE OF GOODS/WORKS**

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

1. I \_\_\_\_\_ in my capacity as \_\_\_\_\_  
\_\_\_\_\_ accept your bid under reference number:

**BID ERW202202/TNDR-006:** dated \_\_\_\_\_ for the supply of goods/works indicated hereunder and/or further specified in the annexure(s).

2. An official order indicating delivery instructions is forthcoming.
3. I undertake to make payment for the goods/works delivered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice accompanied by the delivery note.

ITEM NO.	PRICE (ALL APPLICABLE TAXES INCLUDED)	BRAND	DELIVERY PERIOD	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 withspecial 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 andequipment in accordance with the Act.
- 5 The Mandatory is responsible for the compliance with the Act; the safety procedures and rules of theemployer 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 ofthe 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 priorwritten 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 ofLabour as well as to the Employer. The Employer will further be provided with copies of allwritten 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 hisemployees and/or his subcontractors.

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

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**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) \_\_\_\_\_

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*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 COMPANY

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

Name : MR. Kennedy Chihota

Designation : ACTING 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 approach 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. CONTRACT 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.

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Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

### 3.9 GENERAL CONDITIONS OF CONTRACT

THE NATIONAL TREASURY

Republic of South Africa



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GOVERNMENT PROCUREMENT:

GENERAL CONDITIONS OF CONTRACT

July 2010

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Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



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## **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 aprocurement 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 as 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 judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner, as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the 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 favorable 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.