



**BID NUMBER: ERW2309/08**

**DESCRIPTION: RE-TENDER FOR THE APPOINTMENT OF A PANEL TO PROVIDE LEGAL SERVICES TO ERWAT AS AND WHEN REQUIRED FOR A FIXED TERM PERIOD.**

**PUBLISH DATE: TUESDAY, 16 JANUARY 2024**

**NAME OF BIDDING COMPANY:** \_\_\_\_\_

**CSD NUMBER:** MAAA \_\_\_\_\_

**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>RAISE YOUR VOICE AND TAKE ACTION AGAINST CORRUPTION AND FRAUD</b>	
<b>ANONYMOUS REPORTING</b>	
<b>FRAUD AND ETHICS HOTLINE :</b>	
<b>0800-204-860</b>	
<b>Website :</b>	<a href="http://www.thehotline.co.za">www.thehotline.co.za</a>
<b>e-mail :</b>	erwat@thehotline.co.za
<b>Fax :</b>	0867 261 681
<b>SMS :</b>	30916
<b>Address :</b>	P O Box 10512, Centurion, 0046
<b>App Stores :</b>	Vuvuzela Hotline



**PART A  
INVITATION TO BID**

You are hereby invited to bid for requirements of ERWAT	
Bid Number	ERW2309/08: RE-TENDER FOR THE APPOINTMENT OF A PANEL TO PROVIDE LEGAL SERVICES TO ERWAT AS AND WHEN REQUIRED FOR A FIXED TERM PERIOD
Compulsory virtual briefing session date and time. Bidders will be required to register for the briefing session in advance	<b>Friday, 02<sup>nd</sup> February 2024 at 11h30 – Registration Required Zoom Link :</b> <a href="https://erwatza.zoom.us/join/jtYtdOqhgz0uHtVlgn00odcTQgCD3JX9oviE">https://erwatza.zoom.us/join/jtYtdOqhgz0uHtVlgn00odcTQgCD3JX9oviE</a>
<b>Closing date</b>	<b>Thursday, 22 February 2024</b>
Closing time and venue	<b>12H00</b> at ERWAT Head Office, R25 Bapsfontein Road, Norkem Park
The successful bidder will be required to fill in and sign a written contract form (MBD7).	

Bidder Information	
Name of Bidding Company	
Company physical address	
Company postal address	
Contact details	Company Representative (Name):
	Telephone:
	Cell phone:
	E-mail address:
National Treasury Central Supplier Database number: (Compulsory)	MAAA
CIDB Grading CRS number	
Vat registration number	
Tax Compliance status	TCS Pin:
Are you the accredited representative in South Africa for the goods/ services/ works offered? If yes, attach proof from the agency your company is accredited to represent	
Total number of items offered	
<b>This is a rate based tender and therefore no totals will be applicable in the pricing schedule and orders will only be generated on an as and when required basis according to the rates.</b>	
SCM related enquiries:	Ms Chantel Kearns E-mail: <a href="mailto:Chantel.Kearns@erwat.co.za">Chantel.Kearns@erwat.co.za</a> Tel: 011 929 7000
Technical enquiries	Ms Zimasa Socikwa/ Ms Lerato Motshabela e-mail: <a href="mailto:Zimasa.Socikwa@erwat.co.za">Zimasa.Socikwa@erwat.co.za</a> Tel: 011 929 7000

**PART B**

## TERMS AND CONDITIONS FOR BIDDING

<b>1. BID SUBMISSION:</b>
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED– (NOT TO BE RE-TYPED)</b>
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
<b>3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>
3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.</b>

NB: Failure to provide any of the above particulars will result in your bid being disqualified.

Name& Surname of Representative: \_\_\_\_\_

Signature Of Bidder: \_\_\_\_\_

Capacity Under Which This Bid Is Signed: \_\_\_\_\_

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

## NOTICE TO BIDDERS

### 1. **VERY IMPORTANT NOTICE ON DISQUALIFICATIONS:**

A bid not complying with the peremptory requirements stated hereunder will be regarded as not being an "Acceptable bid", and as such will be rejected.

"Acceptable bid" means any bid which, in all respects, complies with the conditions of bid and specifications as set out in the bid documents.

To ensure that your bid is not exposed to invalidation, documents are to be completed in accordance with the conditions and bid rules contained in the bid documents. The lowest or any bid will not necessarily be accepted, and ERWAT reserves the right not to consider any bid not or a bid not comprehensively completed as well as the right to accept a bid in whole or part. ERWAT reserves the right to appoint more than one bid for this contract.

### 2. **A BID WILL BE REJECTED:**

- If bidders are not compliant with all applicable legislative requirements, as per CSD. National Treasury in partnership with the Provincial Treasury have developed municipalities and municipal entities with a Central Supplier Database (CSD) for the registration of prospective suppliers in line with Section 14(1) (b) of the Municipal Supply Chain Management Regulations (MSCMR). (Tax compliance will be dealt with in terms of MFMA Circular No. 90)
- Non-compliance with the Value Added Tax Act, 1991; i.e. In terms of this Act, it is mandatory for any business to register for VAT if the income earned in any consecutive twelve (12) month period exceeds or is likely to exceed R 1 million. NB: Bidder/s failing to comply with this provision of the Value Added Tax Act, 1991 WILL NOT BE CONSIDERED, therefore rejected.
- Non-compliance with the Municipal Supply Chain Management Regulations, 2005; i.e. All sections affecting the evaluation of the bid must be indicated on the bid document and must be submitted and completed in full. All bidder's information must be accurate and correct.
- In the event of a failure to complete and sign in full the schedule of quantities as required.
- In the event of there being scratching out, writing over or painting out rates or information, affecting the evaluation of the bid, without the authorised person initialling next to the amended rates or information. However, in cases where the total amount (aggregated) has not been affected, the bid will still be acceptable.
- In the event of the use of correction fluid (e.g., tippex), any erasable ink, or any erasable writing instrument (e.g., pencil). Bid documents to be completed in ink.
- If the Bid has not been properly signed by a person having the authority to do so. (Refer to Declaration).
- Where the recommended bidder is not tax compliant, the bidder should be notified of their non-compliant status and the bidder will be requested to submit to the municipal entity, within 7 working days. The bidder will be rejected if they fail to provide proof of tax compliance status within the 7 working days after recommendation.
- If the bidder attempts to influence or has in fact influenced the evaluation and/or awarding of the contract.
- If the bid has either been submitted in the wrong bid box or after the relevant closing date and time.
- If any municipal rates and taxes or municipal service charges owed by the bidder or any of its directors/members to the municipality or municipal entity, or to any other municipality or municipal

entity, are in arrears for more than three months (unless if the bidder has attached proof of the payment arrangement of the arrears to the bid document as at the closing date of the submission of bids).

- If any bidder who during the last five years has failed to perform satisfactorily on a previous contract with the municipality, municipal entity or any other organ of state after written notice was given to that bidder that performance was unsatisfactory.
- The accounting officer must ensure that irrespective of the procurement process followed, no award may be given to a person –
  - who is in the service of the state, or;
  - if that person is not a natural person, of which any director, manager, shareholder or stakeholder, is a person in the service of the state; or; who is an advisor or consultant contracted with the municipality in respect of contract that would cause a conflict of interest.
- If the bidder is not registered in the required CIDB contractor grading designation (category) or higher, if required in this bid documentation. (only applicable to construction projects)
- If the bidder or any of its directors is listed on the Register of Bid Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector.
- If more than one (1) company quotes and the Director/s are the same Person/s and the companies fail to disclose this in the MBD4; the bids will be rejected as a result of Anti-Competitive Behaviour.
- **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).**
- If the bidder has failed to submit ALL required documents as specified on the bid document.
- Bidders should note that the following documents are deemed to form part of the tender to be completed as far as possible by the bidders. ERWAT reserves the right to contact bidders during the BEC stage to clarify information relating the following forms below:
  - MBD 1 - General Declaration
  - MBD 3.3 – Pricing schedule (professional services)
  - MBD 4 - Declaration of Interest
  - MBD 6.1 – Preference points claim form in terms of the Preferential Procurement Regulations 2022
  - MBD 7.2 - Contract Form: Rendering of Services
  - MBD 8 - Declaration of bidder's past supply chain management practices
  - MBD 9 - Certificate of Independent Bid Determination
- If any pages have been removed from the bid document, and have therefore not been submitted, or a copy of the original bid document has been submitted (all signatures to be original on each page).
- If the bidder fails to achieve the minimum score in terms of the functionality evaluation (where applicable).
- ERWAT reserves the right to request any part of the returnable schedule to be submitted in an electronic format.

### **3. EVALUATION PROCESS AND CRITERIA**

All bids will be evaluated in the following three phases:

#### **3.1 *Phase I: Initial screening process***

In terms of National Treasury Instruction No. 4A of 2016/2017 regarding the National Central Supplier Database (CSD), all bidders must register on the CSD to provide the following information to be verified through the CSD:

- a) Business registration, including details of directorship and membership;
- b) Bank Account holder information;
- c) In the service of the State status;
- d) Identity number;
- e) Tender default and restriction status;
- f) Any additional and supplementary verification information communicated by National Treasury.
- g) An administrative evaluation will be carried out on all the bids received based on the under mentioned documentation:
- h) Proof of company Central Supplier Database Registration (CSD).
- i) Submission of a valid SARS pin to validate Tax compliance status;
- j) Valid rates and taxes account not older than 3 months and not in arrears for more than 90 days. The rates and taxes accounts of a bidder as an entity must be in the name of the company. In the event that the bidding entity is renting the premises, a signed valid lease agreement must be submitted. The rates and taxes of a sole proprietor must be in the name of the individual bidder.
- k) Fully completed and signed MBD forms.
- l) In case of Joint Venture, Consortium, Trust, or Partnership a Valid Tax Clearance Certificate and/or SARS issued pin code (which will be verified) for both companies must be submitted.
- m) In case of Joint Venture, Consortium, Trust, or Partnership, a signed teaming agreement must be submitted.
- n) In case of Joint Venture, Consortium, Trust, or Partnership a Consolidated Central Supplier Database Registration (CSD) is required.

**FAILURE TO ADHERE TO THE CONDITION WILL LEAD TO THE BID BEING INVALIDATED.**

#### **3.2 *Phase II: Functionality evaluation as per attached Terms of Reference:***

- a) Bids will be evaluated strictly according to the bid evaluation criteria stipulated in the terms of reference.
- b) Bidders must, as part of their bid documents, submit supportive documentation for all technical requirements as indicated hereunder. The panel responsible for scoring the respective bids will evaluate and score all bids based on their submissions and the information provided.
- c) Bidders will not rate themselves but need to ensure that all information is supplied as required. The Bid Evaluation Committee (BEC) will evaluate and score all responsive bids and will verify all documents submitted by the bidders.
- d) The panel members will individually evaluate the responses received against the following criteria as set out below:
  - (i) Evaluation Criteria as stipulated in the tender document
- e) Any proposal not meeting a minimum score on functionality proposal will be disqualified and the financial proposal will not be considered.

#### **3.3 *Phase III: Price/Financial stage and Specific goals:***

- a) Price/ Financial proposals must be submitted in South African Rand.
- b) Evidence required to claim for specific goals will include, but not limited to CK document, Full CSD report, ID documents of company owners, MKVA force number, Municipal account/ lease agreement and Proof of disability issued by medical doctor. Kindly refer to the MBD 6.1 document for specific goals.

- c) ERWAT reserves the right to verify the documents submitted as evidence.
- d) ERWAT reserves the right to negotiate rates submitted by bidders.

#### **4. LEGISLATIVE AND REGULATORY FRAMEWORK**

This bid and all contracts emanating there from will be subject to the General Conditions of Contract issued in accordance with of the Treasury Regulations 16A published in terms of the Municipal Finance Management Act (ACT 56 OF 2003).

The Special Conditions of Contract are supplementary to that of the General Conditions of Contract.

In the event of any contradiction between the GCC or any other applicable contractual agreement, the Municipal Financial Management Act and its applicable regulations will take precedence.

#### **5. JOINT VENTURES, TRUSTS OR CONSORTIUM**

A trust, consortium or joint venture, will be able to claim for points for their specific goals provided that the entity submits a valid signed agreement.

Bidders must submit concrete proof of the existence of joint ventures and/or consortium arrangements. National Treasury will accept signed agreements as acceptable proof of the existence of a joint venture and/or consortium arrangement.

The joint venture and/or consortium agreements must clearly set out the roles and responsibilities of the Lead Partner and the joint venture and/or consortium party. The agreement must also clearly identify the Lead Partner, with the power of attorney to bind the other party/parties in respect of matters pertaining to the joint venture and/or consortium arrangement.

#### **6. TAX COMPLIANCE STATUS**

The designated ERWAT official(s) will verify the tax compliance status prior to the finalisation of the award of the bid or price quotation.

Where the recommended bidder is not tax compliant, the bidder will be notified of their non-compliant status and the bidder will be requested to submit to the municipal entity, within 7 working days, written proof from SARS of their tax compliance status or proof from SARS that they have made an arrangement to meet their outstanding tax obligations.

The proof of tax compliance status submitted by the bidder to the municipal entity will be verified via the CSD or e-Filing. The accounting officer will reject a bid submitted by the bidder if such a bidder fails to provide proof of tax compliance status within the timeframe stated above.

Where a supplier does not submit a tax compliance status PIN but provides a CSD number, ERWAT will utilise the CSD number via its website [www.csd.gov.za](http://www.csd.gov.za) to access the supplier records and verify tax compliance status. A printed screen view at the time of verification will be attached to the suppliers' records for audit purposes.

Where goods and services are procured from foreign suppliers with tax obligations in South Africa, proof of tax compliance status will be obtained from the supplier.

Foreign suppliers with neither South African tax obligations nor history of doing business in South Africa must complete a pre-award questionnaire on the MBD 1 for their tax obligation categorisation. Where a recommendation for award of a bid has been made to a bidder who is a foreign supplier and who completed the pre-award questionnaire on the MBD 1, ERWAT will submit a copy of the completed MBD 1 received from the bidder to SARS on the following email address: [GovernmentInstitute@sars.gov.za](mailto:GovernmentInstitute@sars.gov.za). SARS will issue a letter to the procuring entity confirming whether or not the foreign supplier has tax obligations in South Africa.

Where goods and services are procured from foreign suppliers with no tax obligation in South Africa, there is no need to request proof of tax compliance status.

Where goods and services are imported, all custom related taxes shall be applied as prescribed by SARS.

**7. VALUE ADDED TAX**

All bid prices must be inclusive of 15% Value-Added Tax where applicable.

**8. CLIENT BASE**

ERWAT reserves the right to contact references during the evaluation and adjudication process to obtain information. In the event that a bidder is found to have submitted falsified documents during the bid evaluation/award phase the bidder will be disqualified and will not be considered for any further tenders submitted.

**9. LEGAL IMPLICATIONS**

Successful service providers will enter into a service level agreement with ERWAT. In the event that the provisions contradict each other between the tender document and service level agreement, the tender document will take precedence.

**10. COMMUNICATION**

ERWAT may communicate with bidders for, among others, where bid clarity is sought, to obtain information or to extend the validity period. Any communication either by facsimile, letter or electronic mail or any other form of correspondence to any ERWAT official, department or representative of a testing institution or a person acting in an advisory capacity for ERWAT in respect of this bid, between the closing date and the award of the bid by the bidder is strictly prohibited.

**11. ATTENDANCE OF ERWAT BRIEFING SESSIONS**

Bidders must take note of the provisions for site/briefing sessions as advertised in the media, ERWAT website and or on the e-tender portal.

In the event that a compulsory briefing session will be conducted, bidders must attend the session either on site or via zoom platform as indicated in the bid document and advertisement. Bidders will be given a link on the advert and tender document to register prior to the briefing session. On the day of the briefing session, bidders must log onto the link to attend. The zoom platform keeps record of bidders registered and in attendance.

Documents will only be accepted from bidders whose names appear on the attendance register. Failure to attend the compulsory briefing sessions whose names do not appear on the register, will render the bidder's submission invalid and will not be considered for evaluation.

**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.**

Bidders are encouraged to collect bidding documents before the briefing session to allow them sufficient time to peruse the scope so that any queries can be dealt with at the briefing session. Bidders will be allowed 10 days from the date of the compulsory briefing session to direct further queries to the SCM department per e-mail. An addendum will be sent to the attending bidders with clarity on questions raised during these 10 days. A copy of the minutes and attendance register will be attached thereto for ease reference.

**12. LATE BIDS**

Bids received at the address indicated in the bid documents, after the closing date and time, will not be accepted for consideration and where applicable, be returned unopened to the bidder.

**13. COUNTER CONDITIONS**



Bidders' attention is drawn to the fact that amendments to any of the Special Conditions by bidders will result in such bids being disqualified.

#### **14. PROHIBITION OF RESTRICTIVE PRACTICES**

- a) In terms of section 4(1) 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:
- directly or indirectly fixing a purchase or selling price or any other trading condition;
  - dividing markets by allocating customers, suppliers, territories or specific types of goods or services; or
  - collusive bidding.
- b) If a bidder(s) or contractor(s), in the judgment of the purchaser, has/have engaged in any of the restrictive practices referred to above, the purchaser may, without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered or terminate the contract in whole or in part and refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

#### **15. FRONTING**

ERWAT supports the spirit of broad based black economic empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent and legally compliant manner. Against this background ERWAT condemns any form of fronting.

ERWAT, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting issued by the Department of Trade and Industry, established during such enquiry/investigation, the onus will be on the bidder/contractor to prove that fronting does not exist. Failure to do so within a period of 14 days from date of notification may invalidate the bid/contract and may also result in the restriction of the bidder/contractor to conduct business with the public sector for a period not exceeding ten years, in addition to any other remedies the National Treasury may have against the bidder/contractor concerned.

#### **16. PRESENTATION, PLANT, EQUIPMENT, SITE OR WORKSHOP INSPECTIONS**

ERWAT may require presentations/interviews from short-listed bidders as part of the bid process. ERWAT reserves the right to inspect the bidders premises, workshop or plant and equipment during the bid evaluation phase at a predetermined date and time.

#### **17. ERWAT GENERAL NOTES**

**ERWAT reserves the right to award the bid to one or more than one bidder.**

- The number of bidders that will be appointed and the allocation of activities or items per bidder will be at ERWATs discretion.
- The lowest bidding price will not necessarily be accepted and ERWAT reserves the right to determine market related rate to be offered to the successful bidders.
- The rates of the highest scoring bidder subject to market evaluation (market related rate) will be offered to the second, third and fourth highest scoring bidders (where applicable).

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

- Attend site induction training before any work can be undertaken.
- Request and receive all the relevant work permits/access control and authorizations have to be obtained before any work can be undertaken after approval of the Safety and Health Plan.
- The relevant requirement with regards to the Occupational Health and safety act has to be complied with, with particular reference to the safety file in accordance with the relevant commodity and scope of work items covered by this document taking into consideration that the most current regulation will always take precedence.
- **ERWAT** reserves the right to hold the service provider responsible for any equipment /infrastructure belonging to ERWAT that may be damaged due to service provider's negligence or poor service.

## **18. PENALTIES – DELIVERY**

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

## **19. PAYMENTS**

- (a) All payments will be discussed and agreed upon on the SLA.
- (b) Standard payment terms are 30 Days from receipt of valid invoice/tax invoice and statement.

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

All invoices/tax invoices and statements must comply with the **VAT Act No 89 of 1991** before payment can be effected. Any penalties incurred by ERWAT from SARS in relation to any VAT issues in connection with the invoice will be for the account of the service provider.

## **20. DISCLAIMER – WITHOUT PREJUDICE**

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

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

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

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

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

## **21. CONFIDENTIALITY**

**Over and above the provisions of the general conditions the following will apply.** In the process of representing the ERWAT in any matter the Bidder will have access to sensitive and confidential information. All information accessed, obtained or collected by Bidder and/or its employees must at all

times be kept confidential and not be disclosed to any other person without the prior and written authorisation of the ERWAT.

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

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

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

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

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

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

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

## **23. EXTRACTION OF AND DESTROYING OF DATA**

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

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

## **24. CONTACT DETAILS**

ERWAT Supply Chain Management  
Hartebeestfontein Office Park  
Bapsfontein/ Bronkhorstspuit Road  
Norkem Park

For SCM/ general enquiries:

E-mail: [Chnatel.Kearns@erwat.co.za](mailto:Chnatel.Kearns@erwat.co.za)  
Tel: 011 929 7000

For technical enquiries:

E-mail: [Zimasa.Socikwa@erwat.co.za](mailto:Zimasa.Socikwa@erwat.co.za)  
Tel: 011 929 7000



**EKURHULENI WATER CARE COMPANY**

**PUBLISH DATE: TUESDAY, 16<sup>TH</sup> JANUARY 2024**

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**TERMS OF REFERENCE/SCOPE OF WORKS**

**ERW2309/08: RE-TENDER FOR THE APPOINTMENT OF A PANEL TO PROVIDE LEGAL SERVICES TO ERWAT AS AND WHEN REQUIRED FOR A FIXED TERM PERIOD**

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## **SCOPE OF WORKS: ERW2309/08: RE-TENDER FOR THE APPOINTMENT OF A PANEL TO PROVIDE LEGAL SERVICES TO ERWAT AS AND WHEN REQUIRED FOR A FIXED TERM PERIOD**

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### **1. INTRODUCTION**

Ekurhuleni Water Care Company (ERWAT) would like to invite registered, qualified, and competent legal service providers to submit an offer to be considered for inclusion on its panel of attorneys, as 'preferred service providers' for a period of thirty-six (36) months. Preferred service providers imply that the selected firms are a pool, not necessarily the only contracted service provider. The panel of attorneys will be required to provide legal services to Ekurhuleni Water Care Company (ERWAT), on an "as-and-when required" rotational basis. Details of the rotation process will be finalised in service level agreement (SLA).

However, briefs may be allocated depending on the relevant circumstances of the matter inter alia, based on previous involvement in a matter, relevant experience, availability, business urgency, nature and complexity of the matter, and the firm's location.

The appointment is for a maximum period of thirty-six (36) months limited to three (3) financial periods as determined by the Municipal Finance Management Act (MFMA), on an as and when required basis.

### **2. BACKGROUND**

- 2.1 The scope of work for this tender covers the rendering of legal services which are not available in-house, on an "as-and-when required".

ERWAT as a legal municipal entity operates within a legal framework governed by a number of legislative requirements. The major requirements include but is not limited to the following:

- The Constitution of the republic of South Africa
- Municipal Systems Act
- Municipal Structures Act
- Municipal Finance management act
- Companies Act
- National Water Act
- National Environmental Management Act
- Occupational Health and Safety Act
- Labour relations Act
- Disaster Management Act

### **2.2 GENERAL REQUIREMENTS**

1. Due to the fact that from an ethical perspective as well as from a possible conflict of interest perspective attorneys who are appointed will be required not to accept any instructions from any party against the ERWAT irrespective of the nature thereof. For this reason, as well as affording the attorneys to receive at least a reasonable number of instructions from which to earn an income it will not be possible to accommodate every attorney.
2. The service level agreement (SLA) will include a requirement to ensure that possible conflicts of interest can be avoided.
3. All successful bidders, directors and legal practitioners must do a declaration in a form of an affidavit to ensure that no legal services will be rendered to ERWAT by any one that serve in any political party office or is a public representative of any political party, if there is a potential conflict of interest.

4. This declaration must be done by means of an affidavit, one per person stating that they do not serve in any political party office or is a public representative of any political party.
5. Because of the above clause only a limited number of attorneys will be appointed in respect of each specialised field of legal service. ERWAT therefore reserves the right in its sole discretion to only appoint a single or limited number of attorneys/attorney firms per specialised field of legal service or any grouping of such fields as it may deem fit.
6. Because of the fact that there are specialised fields of legal services, ERWAT reserves the sole discretionary right to, in cases of pressing need or other reasonable justification and in terms of ERWAT's system of delegations, appoint attorneys outside the appointed number of attorneys when the expertise and experience in a specific field of law is required or there is other reasonable justification to ensure that the best interest of ERWAT is served.
7. This section, scope of work, is specific to this tender and if any of these provisions are in conflict with any general tender terms herein, the provisions of this section A shall prevail to the extent that the conflict may exist.
8. It is a specific condition of this tender that no person who serves in any political party office or who is a public representative of any political party may render legal services.
9. Where a specific qualification is required for the performance of legal services in a specific area of the law the proof of such qualifications must also be submitted Certified copies will be accepted provided ERWAT can insist on having the original submitted for verification purposes.  
If at any time for the duration of this contract an attorney is removed from the roll of attorneys, the appointment of such an attorney will also be terminated and all instructions held by that attorney will be cancelled and recalled.
10. An attorney or firm/company may not accept an instruction to do any legal work for ERWAT if he/she/it does not have the in-house capacity to do so and will have to outsource the work to meet the requirements or prescribed standard, service, or outcome.\

### **2.3 END OF CONTRACT PERIOD:**

Should your bid be successful, all cases in your possession at the end of the three-year term, must be continued with and finalised in terms of your bid and contractual obligations at the rates applicable at that time.

### **2.4 KEY PERSONNEL**

- a. The tenderer shall indicate on Schedule 1K to ERWAT the key staff personnel that will be allocated to ERWAT for the duration of the contract, and who shall be deemed to be the duly authorised person(s) to attend to any issue concerning the Bid.
- b. Should the Tenderer's Key Personnel be changed at any time during the course of the contract, the tenderer shall be obliged to give ERWAT written notice of any such change. Such change must still conform to the original provisions of the scope of work subject to the written approval of the designated ERWAT representative(s).
- c. ERWAT will require conformation that the key personnel listed in Schedule 1K is on the practising roll from the relevant regional office of the Legal Practice Council during the services level agreement (SLA)

### **3. CATEGORIES OF LEGAL SERVICES REQUIRED**

The following services required as set out hereafter do not constitute every type of service that may be required from the appointed legal panel:

### **3.1 CONVEYANCING AND NOTARIAL SERVICES AND OTHER PROPERTY RELATED SERVICES**

#### **3.1.1 Conveyancing**

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

### **3.2 COMMERCIAL LAW AND CONTRACTS (INCLUDING DEBT COLLECTION)**

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

### **3.3 TOWN PLANNING**

- 3.3.1 Attendance to Town Planning matters on behalf of ERWAT in terms of applicable legislation as and when necessary.
- 3.3.2 Institute legal action in the High Court in respect of contraventions of the Town Planning Scheme / SPLUMA.
  - 3.3.2.1 Upon receipt of instructions, accompanied by background and supporting information, e.g. notices, town planning scheme, inspection reports, etc., the attorney to:-
  - 3.3.2.2 Do Company/Deeds search if necessary.
  - 3.3.2.3 Carry out inspection in loco, if necessary.
  - 3.3.2.4 Deliver final notice to property owner and/or registered owner/s.
  - 3.3.2.5 Correspond with property owner/offender, including negotiating with a view to seizing/re-locating activities to suitable premises and drafting of settlement agreement to be made Order of Court.



- 3.3.2.6 In the event of the matter not being solved as aforesaid, reserve the services of Counsel in conjunction with ERWAT.
  - 3.3.2.7 Draft and serve papers on defending party within 30 days from the date of the attorney's notice to the registered owner/s.
  - 3.3.2.8 Finalise the application and recover costs from defending party in accordance with order granted by Court.
  - 3.3.3 Representing ERWAT at hearings of Development Tribunals, Townships Board and any other tribunal relating to town planning matters
    - 3.3.3.1 Instructions will be accompanied by the relevant application, comments, reports and objections where applicable.
    - 3.3.3.2 Attorney to study documentation and determine necessity for consultation or supplementary documentation timely in preparation of the hearing.
    - 3.3.3.3 Prepare Heads of Argument/Motivation.
    - 3.3.3.4 Advise ERWAT of legal requirements to be complied with or administrative actions to be finalised prior to the hearing.
    - 3.3.3.5 In the event of defective process followed, advise ERWAT on corrective steps to be taken.
    - 3.3.3.6 Advise ERWAT on further actions to be taken in finalising the matter.
    - 3.3.3.7 The attorney needs to co-ordinate with the sheriff and ERWAT as well as its contractor, to ensure that all arrangements are in place for the actual execution of order.
- NOTE: Monthly progress meetings will be held and invoices to be submitted on a monthly basis.

#### **3.4 PROSECUTION OF CONTRAVENTION OF NATIONAL BUILDING REGULATIONS AND BUILDING STANDARDS ACT, 1977**

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

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

### **3.5 PROCUREMENT/ TENDERS/BIDS AND RELATED CONTRACTS**

3.5.1 Advise and represent ERWAT in respect of litigation relating to tenders/bids and contracts.

3.5.2 In the event of intended legal action by ERWAT, the attorney to:-

3.5.2.1 Study the instruction, bid/contract documentation, policy, delegated authority and applicable legislation forming framework for the bid/contract.

3.5.2.2 Advise ERWAT on preferred action for relief, e.g. in terms of arbitration as provided for or civil litigation.

3.5.2.3 Advise ERWAT on prospects of success in litigating or instituting arbitration proceedings.

3.5.2.4 Advise ERWAT on alternative course of action to obtain the required relief.

3.5.2.5 Advise ERWAT on appropriate relief in the event of the relief sought by ERWAT not being attainable/appropriate.

3.5.2.6 Advise ERWAT on joinder of parties as defendant/applicant in the claim.

3.5.2.7 Negotiate with contracting parties with a view to possible settlement arrangements after having received a mandate from ERWAT to do so.

3.5.2.8 Reserve services of Counsel in consultation with ERWAT and draft papers to commence action.

3.5.2.9 Finalise the claim/action commenced with.

3.5.2.10 Advise ERWAT on contractual measures to be taken to prevent recurrence of the situation that gave rise to the claim/application.

3.5.3 In the event of claims/legal action brought against ERWAT by contracting party (parties) the attorney to:-

3.5.3.1 Study the instruction, claim/application received, bid/contract documentation, policy, delegated authority and applicable legislation forming framework for the bid/contract and consult with responsible staff members and other parties if necessary.

3.5.3.2 Negotiate with claimant/applicant attorney to defuse the situation and in consultation with ERWAT consider alternatives to litigation in order to settle the case and avoid possible unnecessary litigation and costs.

3.5.3.3 Advise ERWAT on prospects of success should the case be defended.

3.5.3.4 Advise ERWAT on joinder of other parties as defendant in the claim.

3.5.3.5 Reserve services of Counsel in consultation with ERWAT and draft papers in reply/seeking further particulars.

3.5.3.6 Finalise the claim/action commenced with.

3.5.3.7 Advise ERWAT on contractual measures to be taken to prevent recurrence of the situation that gave rise to the claim/application.

### **3.6 LABOUR LAW**

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

3.6.1.1 Appointments as presiding and presenting officers in disciplinary enquiries and disciplinary appeals.

3.6.1.2 Opinions and advice on processes.

3.6.1.3 Appear on behalf of ERWAT in all employment related forums such as CCMA, SALGBC, Labour Court and High Court.

3.6.1.4 Representing ERWAT in the Labour Court and High Court in applications such as reviews and interlocutory applications, interdicts as well as opposing such applications or in trials; and

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

3.6.1.6 Handling of strikes.

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

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

### **3.7 CONSTRUCTION LAW**

3.7.1. The services required here includes all matters relating to building construction, engineering, and all related construction fields within the government sphere.

3.7.2. The services here should be in line with this body of law (Construction law), rules, and regulations that govern the planning, design, and construction of infrastructure and buildings or structures.

3.7.3. Services required or offered here should include, representing ERWAT in any disputes, mediation, and arbitration processes within the construction industry; the following, but not limited to:

3.7.1.3. Drafting, reviewing, interpreting, advisory work and enforcing contracts, including JBCC, FIDIC, NEC and GCC Agreements.

3.7.1.4. Consultancy services and advisory services on any contractual claims, including time delay analysis claims.

3.7.1.5. Representing ERWAT in any disputes, mediation, and arbitration processes within the construction industry.

## 3.8 GENERAL LEGAL SERVICES

### 3.8.1 Intellectual Property

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

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

### 3.8.2 Information Technology

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

### 3.8.3 Access to Information and Administrative Justice

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

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

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

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

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

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

### 3.8.4 The rendering of such other legal services not specified elsewhere such as:

3.8.4.1 Legal opinions related to all aspects involving local government

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

3.8.4.3 In general any kind of legal service not specified elsewhere (Probity services and Debt Collection, etc).

**Note: The categories listed above are the indication of the services required but not limited to.**

## **SCHEDULE 1K**

Prospective Bidders should indicate in the SCHEDULE as set out hereafter if they have capacity and the names of key personnel in respect of the listed categories. Bidders may submit an offer for more than one category. The key personnel may be listed against more than one category provided they meet the criteria for selected category. **Bidders must submit a CV for all key personnel listed.**

Where no specific enrolment is applicable to the table below, the mandatory requirement will be enrolment as an Attorney or Advocate as applicable. Where a specific enrolment is required for example Conveyancing supporting documentation must be submitted. Admission as Advocate or Attorney will be applicable for multiple fields of specialisation.

The requirement for specialisation for example in Environmental Law relates to the use of the panel. If ERWAT needs to utilise a certain service, the request will be sent to the bidder's that have specified or selected (ticked) that criteria.

**The applicable mandatory requirements apply for all key personnel listed.**

### **SPECIALITY IN THAT FIELD OF LAW IS REQUIRED**

NO.	FIELD(S) OF LAW	YES	NO	LEAD ATTORNEY(NAME AND SURNAME)	ATTORNEY(NAME AND SURNAME)
1.	Conveyancing and notarial services and other property related services				
2.	Commercial law and contracts (including debt collection)				
3.	Town planning				
4.	Prosecution of contravention of national building regulations and building standards act, 1977				
5.	Procurement/ tenders/bids and related contracts				
6.	Labour Law				
7.	Construction law				
8.	General legal services				

#### **4. EVALUATION CRITERIA**

##### **4.1 MANDATORY REQUIREMENTS**

Bidders are required to submit all supporting documents in relation to **Table 1: Mandatory requirements** and complete the **Table 2 previous experience** in relation to Schedule 1K for each category selected.

The Tender will be evaluated based on **Table 1: Mandatory requirements** and **Table 2 previous experience**

Schedule 1K will not be considered in the evaluation but will be implemented as part of Service Level Agreement (SLA) in relation to categories selected by Bidder

**Failure to submit the required supporting documentation (valid registrations and certified qualifications) and complete previous experience tables per category selected will lead to disqualification.**

**TABLE 1: MANDATORY REQUIREMENTS BIDDER**

NO	CRITERIA	SUPPORTING EVIDENCE
1	Valid Fidelity Fund certificate	<b>One of the legal practitioners listed in schedule 1K must submit a valid Fidelity Fund certificate in terms of Legal Practice Act, Act No. 28 of 2014: It must be a valid certificate at the date of tender closing date. The submission must be a certified copy.</b>

##### **4.2 FUNCTIONALITY EVALUATION**

Potential service providers will have to achieve a minimum score of **80** out of **100** for their functional section before their financial proposals and B-BBEE status are evaluated.

The requirements in terms of the functionality table in relation to the certified proof of admittance / enrolment, will be acceptable for Lead Attorney and Attorney per field of law category Schedule 1K.

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

## 1. CONVEYANCING AND NOTARIAL SERVICES AND OTHER PROPERTY RELATED SERVICES

### MANDATORY REQUIREMENTS

**TABLE 1: MANDATORY REQUIREMENTS CONVEYANCING AND NOTARIAL SERVICES AND OTHER PROPERTY RELATED SERVICES**

NO	CRITERIA	SUPPORTING EVIDENCE
1	Legal practitioner enrolment for Lead Attorney	<b>Proof of enrollment as a legal practitioner in terms of Legal Practice Act, Act No. 28 of 2014: as a Conveyancer. The submission must be a certified copy.</b>

**Table 2 PREVIOUS EXPERIENCE CONVEYANCING**

Provide the following information on relevant previous experience in relation to applicable field of law category Schedule 1K. Bidders to indicate experience whereof at least **three (3)** must be within the past five (5) years in the table below. **ERWAT reserves the right to verify validity of references provided. Failure to submit three (3) contactable references will lead to disqualification**

Description	Value (R, VAT included)	Period	Reference					
			Full Name & Surname	Organisation	Office landline number	Cell phone number	e-mail address	Physical Address

**FUNCTIONALITY EVALUATION CONVEYANCING AND NOTARIAL SERVICES AND OTHER PROPERTY RELATED SERVICES**

No.	FIELD(S) OF LAW	REQUIREMENTS	REGISTRATION PERIOD Measured from first day of registration up to tender closing date	TOTAL POINTS 100
1.	Lead Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal Practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more up to 108 months) = 40 points (109 months or more) = 60 points	60
2.	Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more) = 40 points	40
<b>TOTAL</b>		<b>Bidder must score a minimum of <u>80 points</u> to be considered for further evaluation</b>		100





## 2. COMMERCIAL LAW AND CONTRACTS (INCLUDING DEBT COLLECTION)

### MANDATORY REQUIREMENTS

**TABLE 1: MANDATORY REQUIREMENTS COMMERCIAL LAW AND CONTRACTS (INCLUDING DEBT COLLECTION)**

NO	CRITERIA	SUPPORTING EVIDENCE
1	Legal practitioner enrolment for Lead Attorney	<b>Proof of enrollment as a legal practitioner in terms of Legal Practice Act, Act No. 28 of 2014 as an attorney. The submission must be a certified copy.</b>

**Table 2 PREVIOUS EXPERIENCE COMMERCIAL LAW AND CONTRACTS (INCLUDING DEBT COLLECTION)**

Provide the following information on relevant previous experience in relation to applicable field of law category Schedule 1K. Bidders to indicate experience whereof at least **three (3)** must be within the past five (5) years in the table below. **ERWAT reserves the right to verify validity of references provided. Failure to submit three (3) contactable references will lead to disqualification**

Description	Value (R, VAT included)	Period	Reference					
			Full Name & Surname	Organisation	Office landline number	Cell phone number	e-mail address	Physical Address

**FUNCTIONALITY EVALUATION COMMERCIAL LAW AND CONTRACTS (INCLUDING DEBT COLLECTION)**

<b>No.</b>	<b>FIELD(S) OF LAW</b>	<b>REQUIREMENTS</b>	<b>REGISTRATION PERIOD Measured from first day of registration up to tender closing date</b>	<b>TOTAL POINTS 100</b>
3.	Lead Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal Practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more up to 108 months) = 40 points (109 months or more) = 60 points	60
4.	Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more) = 40 points	40
<b>TOTAL</b>		<b>Bidder must score a minimum of <u>80</u> points to be considered for further evaluation</b>		100

### 3. TOWN PLANNING

#### **MANDATORY REQUIREMENTS**

**TABLE 1: MANDATORY REQUIREMENTS TOWN PLANNING**

NO	CRITERIA	SUPPORTING EVIDENCE
1	Legal practitioner enrolment for Lead Attorney	<b>Proof of enrollment as a legal practitioner in terms of Legal Practice Act, Act No. 28 of 2014: as an Attorney. The submission must be a certified copy.</b>

**Table 2 PREVIOUS EXPERIENCE TOWN PLANNING**

Provide the following information on relevant previous experience in relation to applicable field of law category Schedule 1K. Bidders to indicate experience whereof at least **three (3)** must be within the past five (5) years in the table below. **ERWAT reserves the right to verify validity of references provided. Failure to submit three (3) contactable references will lead to disqualification**

Description	Value (R, VAT included)	Period	Reference					
			Full Name & Surname	Organisation	Office landline number	Cell phone number	e-mail address	Physical Address

## **FUNCTIONALITY EVALUATION TOWN PLANNING**

No.	FIELD(S) OF LAW	REQUIREMENTS	REGISTRATION PERIOD Measured from first day of registration up to tender closing date	TOTAL POINTS 100
5.	Lead Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal Practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more up to 108 months) = 40 points (109 months or more) = 60 points	60
6.	Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more) = 40 points	40
TOTAL		Bidder must score a minimum of <b>80 points</b> to be considered for further evaluation		100

#### 4. PROSECUTION OF CONTRAVENTION OF NATIONAL BUILDING REGULATIONS AND BUILDING STANDARDS ACT, 1977

##### MANDATORY REQUIREMENTS

**TABLE 1: MANDATORY REQUIREMENTS PROSECUTION OF CONTRAVENTION OF NATIONAL BUILDING REGULATIONS AND BUILDING STANDARDS ACT, 1977**

NO	CRITERIA	SUPPORTING EVIDENCE
1	Legal practitioner enrolment for Lead Attorney	<b>Proof of enrollment as a legal practitioner in terms of Legal Practice Act, Act No. 28 of 2014: as an Attorney. The submission must be a certified copy.</b>

**Table 2 PREVIOUS EXPERIENCE PROSECUTION OF CONTRAVENTION OF NATIONAL BUILDING REGULATIONS AND BUILDING STANDARDS ACT, 1977**

Provide the following information on relevant previous experience in relation to applicable field of law category Schedule 1K. Bidders to indicate experience whereof at least **three (3)** must be within the past five (5) years in the table below. **ERWAT reserves the right to verify validity of references provided. Failure to submit three (3) contactable references will lead to disqualification**

Description	Value (R, VAT included)	Period	Reference					
			Full Name & Surname	Organisation	Office landline number	Cell phone number	e-mail address	Physical Address

**FUNCTIONALITY EVALUATION PROSECUTION OF CONTRAVENTION OF NATIONAL  
BUILDING REGULATIONS AND BUILDING STANDARDS ACT, 1977**

No.	FIELD(S) OF LAW	REQUIREMENTS	REGISTRATION PERIOD Measured from first day of registration up to tender closing date	TOTAL POINTS  100
7.	Lead Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal Practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points  (60 months or more up to 83 months) = 20 points  (84 months or more up to 108 months) = 40 points  (109 months or more) = 60 points	60
8.	Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points  (60 months or more up to 83 months) = 20 points  (84 months or more) = 40 points	40
TOTAL		Bidder must score a minimum of <b>80 points</b> to be considered for further evaluation		100

## 5. PROCUREMENT/ TENDERS/BIDS AND RELATED CONTRACTS

### **MANDATORY REQUIREMENTS**

**TABLE 1: MANDATORY REQUIREMENTS PROCUREMENT/ TENDERS/BIDS AND RELATED CONTRACTS**

NO	CRITERIA	SUPPORTING EVIDENCE
1	Legal practitioner enrolment for Lead Attorney	<b>Proof of enrollment as a legal practitioner in terms of Legal Practice Act, Act No. 28 of 2014: as an Attorney. The submission must be a certified copy.</b>

**Table 2 PREVIOUS EXPERIENCE PROCUREMENT/ TENDERS/BIDS AND RELATED CONTRACTS**

Provide the following information on relevant previous experience in relation to applicable field of law category Schedule 1K. Bidders to indicate experience whereof at least **three (3)** must be within the past five (5) years in the table below. **ERWAT reserves the right to verify validity of references provided. Failure to submit three (3) contactable references will lead to disqualification**

Description	Value (R, VAT included)	Period	Reference					
			Full Name & Surname	Organisation	Office landline number	Cell phone number	e-mail address	Physical Address



## **FUNCTIONALITY EVALUATION PROCUREMENT/ TENDERS/BIDS AND RELATED CONTRACTS**

No.	FIELD(S) OF LAW	REQUIREMENTS	REGISTRATION PERIOD Measured from first day of registration up to tender closing date	TOTAL POINTS 100
9.	Lead Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal Practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more up to 108 months) = 40 points (109 months or more) = 60 points	60
10.	Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more) = 40 points	40
TOTAL		Bidder must score a minimum of 80 points to be considered for further evaluation		100

## 6. LABOUR LAW

### **MANDATORY REQUIREMENTS**

**TABLE 1: MANDATORY REQUIREMENTS LABOUR**

NO	CRITERIA	SUPPORTING EVIDENCE
1	Legal practitioner enrolment for Lead Attorney	<b>Proof of enrollment as a legal practitioner in terms of Legal Practice Act, Act No. 28 of 2014: as an Attorney. The submission must be a certified copy.</b>

**Table 2 PREVIOUS EXPERIENCE LABOUR**

Provide the following information on relevant previous experience in relation to applicable field of law category Schedule 1K. Bidders to indicate experience whereof at least **three (3)** must be within the past five (5) years in the table below. **ERWAT reserves the right to verify validity of references provided. Failure to submit three (3) contactable references will lead to disqualification**

Description	Value (R, VAT included)	Period	Reference					
			Full Name & Surname	Organisation	Office landline number	Cell phone number	e-mail address	Physical Address

## **FUNCTIONALITY EVALUATION LABOUR**

<b>No.</b>	<b>FIELD(S) OF LAW</b>	<b>REQUIREMENTS</b>	<b>REGISTRATION PERIOD</b> <b>Measured from first day of registration up to tender closing date</b>	<b>TOTAL POINTS</b> <b>100</b>
11.	Lead Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal Practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more up to 108 months) = 40 points (109 months or more) = 60 points	60
12.	Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more) = 40 points	40
<b>TOTAL</b>		<b>Bidder must score a minimum of <span style="color: red;">80 points</span> to be considered for further evaluation</b>		100

## 7. CONSTRUCTION LAW

### **MANDATORY REQUIREMENTS**

**TABLE 1: MANDATORY REQUIREMENTS CONSTRUCTION LAW**

NO	CRITERIA	SUPPORTING EVIDENCE
1	Legal practitioner enrolment for Lead Attorney	<b>Proof of enrollment as a legal practitioner in terms of Legal Practice Act, Act No. 28 of 2014: as an Attorney. The submission must be a certified copy.</b>

**Table 2 PREVIOUS EXPERIENCE CONSTRUCTION LAW**

Provide the following information on relevant previous experience in relation to applicable field of law category Schedule 1K. Bidders to indicate experience whereof at least **three (3)** must be within the past five (5) years in the table below. **ERWAT reserves the right to verify validity of references provided. Failure to submit three (3) contactable references will lead to disqualification**

Description	Value (R, VAT included)	Period	Reference					
			Full Name & Surname	Organisation	Office landline number	Cell phone number	e-mail address	Physical Address

## **FUNCTIONALITY EVALUATION CONSTRUCTION LAW**

<b>No.</b>	<b>FIELD(S) OF LAW</b>	<b>REQUIREMENTS</b>	<b>REGISTRATION PERIOD</b> <b>Measured from first day of registration up to tender closing date</b>	<b>TOTAL POINTS</b> <b>100</b>
13.	Lead Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal Practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more up to 108 months) = 40 points (109 months or more) = 60 points	60
14.	Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more) = 40 points	40
<b>TOTAL</b>		<b>Bidder must score a minimum of <span style="color: red;">80 points</span> to be considered for further evaluation</b>		100

## 8. GENERAL LEGAL SERVICES

### **MANDATORY REQUIREMENTS**

**TABLE 1: MANDATORY REQUIREMENTS GENERAL LEGAL SERVICES**

NO	CRITERIA	SUPPORTING EVIDENCE
1	Legal practitioner enrolment for Lead Attorney	<b>Proof of enrollment as a legal practitioner in terms of Legal Practice Act, Act No. 28 of 2014: as an Attorney. The submission must be a certified copy.</b>

**Table 2 PREVIOUS EXPERIENCE GENERAL LEGAL SERVICES**

Provide the following information on relevant previous experience in relation to applicable field of law category Schedule 1K. Bidders to indicate experience whereof at least **three (3)** must be within the past five (5) years in the table below. **ERWAT reserves the right to verify validity of references provided. Failure to submit three (3) contactable references will lead to disqualification**

Description	Value (R, VAT included)	Period	Reference					
			Full Name & Surname	Organisation	Office landline number	Cell phone number	e-mail address	Physical Address

## **FUNCTIONALITY EVALUATION GENERAL LEGAL SERVICES**

<b>No.</b>	<b>FIELD(S) OF LAW</b>	<b>REQUIREMENTS</b>	<b>REGISTRATION PERIOD</b> <b>Measured from first day of registration up to tender closing date</b>	<b>TOTAL POINTS</b> <b>100</b>
15.	Lead Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal Practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more up to 108 months) = 40 points (109 months or more) = 60 points	60
16.	Attorney	Certified proof of a legal practitioner who is admitted and enrolled as such (Attorney) under section 1 definitions of the Legal practise Act 28, of 2014	No submission/ Experience less than 60 months = 0 points (60 months or more up to 83 months) = 20 points (84 months or more) = 40 points	40
<b>TOTAL</b>		<b>Bidder must score a minimum of <span style="color: red;">80 points</span> to be considered for further evaluation</b>		100

### **ERWAT GENERAL NOTES:**

**ERWAT reserves the right to award the bid to one or more than one bidder**

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

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

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

### **PENALTIES**

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

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

### **CONTRACT DOCUMENT**

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

### **PAYMENTS**

- (a) All payments will be discussed and agreed upon on the SLA.
- (b) Standard payment terms are 30 Days from receipt of valid invoice/tax invoice and statement.

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

### **DISCLAIMER – WITHOUT PREJUDICE**

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

However, in the event that reference is made (intentional or non-intentional) to a particular trade mark, name, patent, design, type, specific origin or producer, ERWAT's intent is of such that there is no other sufficiently precise or intelligible way of describing the characteristics of the works/goods/services required, in which



case the bidder must interpret such reference as indicative only and is thus required to offer such and or an equivalent.

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

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

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

## **CONFIDENTIALITY**

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

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

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

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

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

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

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

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

- a) Is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Tenderer or third party who disclosed such Confidential Information, but only to the extent that the Confidential Information has become public knowledge;
- b) Is required by the provisions of any law, statute or regulation or during any court proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed and subject to the provisions of this Agreement, the Tenderer has taken all reasonable steps to oppose or, prevent the disclosure of

and to limit, as far as reasonably possible, the extent of such disclosure and has consulted with ERWAT prior to making such disclosure; and

- c) Is disclosed to ERWAT in terms of this Agreement but, at the time of such disclosure such information is known to be in lawful possession or control of that party and not subject to an obligation of confidentiality.

## **KEY PERSONNEL**

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

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

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

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

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

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

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

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

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

## **PRICING SCHEDULE**

### **PRICING INSTRUCTIONS:**

Costing will be done on a case by case basis. The requests for quotations in relation to requirements will be sent to appointed bidders based on specialisation as indicated in Schedule 1K.

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: \_\_\_\_\_



## **SPECIAL CONDITIONS OF CONTRACT**

### **SUPPLY CHAIN MANAGEMENT**

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**BID: ERW2309/08: RE-TENDER FOR THE APPOINTMENT OF A PANEL TO PROVIDE LEGAL SERVICES TO ERWAT AS AND WHEN REQUIRED FOR A FIXED TERM PERIOD**

**CLOSING DATE: THURSDAY, 22 FEBRUARY 2024 AT 12:00 NOON**

**VALIDITY PERIOD: 120 DAYS FROM DATE OF CLOSING OF BID**

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## **SPECIAL CONDITIONS OF CONTRACT**

### **i. ERWAT OBJECTIVES:**

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

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

### **ii. CONTRACT PERIOD:**

The contract will commence on the last signature date of the Service Level Agreement.

The contract is for a period of 3 years however, 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. The contract will thus continue after the 12<sup>th</sup> month performance evaluation session if deemed to be to the satisfaction of ERWAT as indicated in the performance evaluation document.

If the tender is found to be unauthorised, fruitless and wasteful or irregular as informed through a formal investigation, internal and or external audit outcome, the Auditor General, Council, ERWAT Board of Directors or National Treasury, ERWAT reserves the right to cancel the tender with immediate effect and the bidder will have no claim to his affect. The final terms of payment (where applicable) will be negotiated with the bidder at the time for final close out of the contract.

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

Bidders annual increase will be done in terms of the percentage/price indicated in the pricing schedule.

In the event that no provision has been made in the pricing schedule, the following process will apply:

The successful bidder(s) pricing will be adjusted annually on written request of the bidder 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 as follows:

#### **3.1 CONSUMER PRICE INDEX**

##### **PERIOD ONE (01)**

- BID PRICE(S) MUST BE FIXED FOR THE FIRST 12 MONTHS AFTER THE BASE MONTH WITH BASE MONTH BEING ONE MONTH PRIOR TO CLOSING OF BID

##### **PERIOD TWO (02)**

- BID PRICE(S) IS/ARE SUBJECT TO ESCALATION OF CPI FOR THE FOLLOWING 12 MONTHS WITH THE BASE MONTH BEING THE 12th MONTH OF PERIOD ONE (01)

##### **PERIOD THREE (03)**

- BID PRICE(S) IS/ARE SUBJECT TO ESCALATION OF CPI FOR THE REMAINING PERIOD WITH THE BASE MONTH BEING THE 12th MONTH OF PERIOD TWO (02)

### 3.2 ALTERNATIVE CONTRACT PRICE ADJUSTMENT:

BID PRICE(S) MUST BE FIXED FOR THE FIRST 12 MONTHS AFTER THE BASE MONTH WITH BASE MONTH BEING ONE MONTH PRIOR TO CLOSING OF BID

In the event that the CPI is deemed to not suffice based on external factors out of the bidders and ERWAT's control, bidders will be required to complete the following table using the contract price adjustment formula with supporting evidence to justify the increase lower or higher than the CPI % at the time of the anniversary of the bid.

IN THIS CATEGORY PRICE ESCALATIONS WILL ONLY BE CONSIDERED IN TERMS OF THE FOLLOWING FORMULA:

$$Pa = (1 - V)Pt \left( D1 \frac{R1t}{R1o} + D2 \frac{R2t}{R2o} + D3 \frac{R3t}{R3o} + D4 \frac{R4t}{R4o} \right) + VPt$$

Where:

- Pa = The new escalated price to be calculated.  
(1-V) Pt = 85% of the original bid price. **Note that Pt must always be the original bid price and not an escalated price.**  
D1, D2.. = Each factor of the bid price e.g. labour, transport, clothing, footwear, etc. The total of the various factors D1,D2...etc. must add up to 100%.  
R1t, R2t... = Index figure obtained from new index (depends on the number of factors used).  
R1o, R2o = Index figure at time of bidding.  
VPt = 15% of the original bid price. This portion of the bid price remains firm i.e. it is not subject to any price escalations.

FURNISH A BREAKDOWN OF YOUR PRICE IN TERMS OF ABOVE-MENTIONED FORMULA. THE TOTAL OF THE VARIOUS FACTORS MUST ADD UP TO 100%.

FACTOR (D1, D2 etc. e.g. Labour, transport etc.)	PERCENTAGE OF BID PRICE



## **RETURNABLE MUNICIPAL BIDDING DOCUMENTS (MBD)**



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

<b>CONFIRMATION OF CSD VENDOR INFORMATION</b>		
1	VENDOR NAME	
2	CSD APPROVED NUMBER	<b>M</b> _____
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**

### **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.

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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.

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

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

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

has been duly authorized to sign all documents in connection with the Bid Document for Contract Number

\_\_\_\_\_ and any Contract which may arise there from on

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

(BLOCK CAPTIALS)

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

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

DATE \_\_\_\_\_

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

**AS WITNESSES:**    1.    \_\_\_\_\_

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

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

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

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

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

**PRICING SCHEDULE****(Professional Services)**

Name of Bidder \_\_\_\_\_

Bid number: **ERW2309/08**Closing Date: **THURSDAY, 22<sup>ND</sup> FEBRUARY 2024**Closing Time: **12:00****OFFER TO BE VALID FOR 120 (ONE HUNDRED AND TWENTY) DAYS FROM THE CLOSING DATE OF BID**

1. The accompanying information must be used for the formulation of proposals.
2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses ***inclusive of VAT*** for the project. R **VALUE TO BE CONFIRMED AS PART OF SERVICE LEVEL AGREEMENT (SLA) PER ORDER ISSUED**

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

4. PERSON AND POSITION	HOURLY RATE	DAILY RATE
<b>LEAD ATTORNEY</b>	.....	.....
<b>ATTORNEY</b>	.....	.....
<b>CANDIDATE ATTORNEY</b>	.....	.....

**N.B: THIS IS AN INDICATIVE TABLE NOT TO BE USED FOR EVALUATION. ONLY TO INDICATE PROFESSIONAL FEES.**

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

**No project phases will be applicable to this Contract.**

- 5.1 Travel expenses (specify, for example rate/km and total km, class of air travel, etc.). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.  
**ERWAT reserves the right to reimburse costs at promulgated fees as per the provision of the respective legislature.**

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

**ERWAT reserves the right at its own discretion to reimburse costs at promulgated fees as per the provision of the respective legislature.**

6. Period required for commencement with project after acceptance of bid: **to be finalised during Service Level Agreement (SLA)**

7. Estimated man-days for completion of project: **to be finalised during Service Level Agreement (SLA)**

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

**Costing will be done on a case by case basis.**

### **DECLARATION OF INTEREST**

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

4.1 Full Name of bidder or his or her representative: \_\_\_\_\_

4.2 Identity Number: 

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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 and or adjudication of this bid? **YES / NO**  
If so, furnish particulars.

\_\_\_\_\_

4.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who

may be involved with the evaluation and or adjudication of this bid?

**YES / NO**

If so, furnish particulars.

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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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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) a 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

## **PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022**

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

**NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

### **GENERAL CONDITIONS**

The 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); is applicable for this tender.

The maximum points for this tender are allocated as follows:

	<b>POINTS</b>
PRICE	80
SPECIFIC GOALS	20
Total points for Price and SPECIFIC GOALS	<b>100</b>

Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

### **DEFINITIONS**

“tender” means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

“price” means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

“rand value” means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

“tender for income-generating contracts” means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and

“the Act” means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

### **FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES**

#### **POINTS AWARDED FOR PRICE**

##### ***3.1.1 THE 80/20 PREFERENCE POINT SYSTEMS***

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

$$Ps = 80 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where

Ps = Points scored for price of tender under consideration  
 Pt = Price of tender under consideration  
 Pmin = Price of lowest acceptable tender

### **POINTS AWARDED FOR SPECIFIC GOALS**

In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

Table 1: Specific goals for the tender and points claimed are indicated per the table below.

*Note to tenderers: The tenderer must indicate how they claim points for each preference point system.*

No.	The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system)	Number of points claimed (80/20 system) (To be completed by the tenderer)
1	EME or QSE 51% owned by women	4	
2	EME or QSE 51% owned by youth	4	
3	EME or QSE 51% owned by people with disabilities	4	
4	EME or QSE 51% owned by military veterans	4	
5	EME or QSE within the boundaries of Ekurhuleni Municipality	4	

The above information will be verified in accordance with the bidders B-BBEE certificate, and or a certificate from the companies and intellectual property commission (CIPC), the department of Military Veterans and or other supporting documents. All supporting evidence must be submitted in order to claim the preferential procurement points claimed. ERWAT reserves the right to verify the information submitted.

In the case of multi-parties (Joint ventures, consortiums, partnerships, etc.), allocation of points will be calculated by adding the individual parties in the JV, etc. ownership % together; divide the total by the number of parties in the respective joint ventures, consortiums, partnerships, etc. The average % will thus be the indicating factor for the number of points to be scored limited to the maximum available points.

e.g. Joint venture:

Party 1 = 51% EME/QSE owned by women  
 Party 2 = 100% EME/QSE owned by women  
 = **151%** / 2 parties in the JV = 75% and will score = 4 points

The above principle will apply to points 1, 2, 3 & 4 indicated in Table 1 above.

For point 5: The collective JV agreement's address, or the Lead JV partners' domicile Address will be utilized for scoring of points.

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

Name of company/firm: \_\_\_\_\_

Company registration number: \_\_\_\_\_

**TYPE OF COMPANY/ FIRM**

- ☐ Partnership/Joint Venture / Consortium
- ☐ One-person business/sole propriety
- ☐ Close corporation
- ☐ Public Company
- ☐ Personal Liability Company
- ☐ (Pty) Limited
- ☐ Non-Profit Company
- ☐ State Owned Company

[TICK APPLICABLE BOX]

I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- The information furnished is true and correct;
- The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- In the event of a contract being awarded as a result of points claimed as shown in table 1 above, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
  - disqualify the person from the tendering process;
  - recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted 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
  - forward the matter for criminal prosecution, if deemed necessary.

Company name: \_\_\_\_\_

Company address: \_\_\_\_\_

\_\_\_\_\_

Name& Surname of Representative: \_\_\_\_\_

Signature Of Bidder: \_\_\_\_\_

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

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

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

This Municipal Bidding Document must form part of all bids invited.

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.

The bid of any bidder may be rejected if that bidder, or any of its directors have:

- abused the company's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
- been convicted for fraud or corruption during the past five years;
- willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
- 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).

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

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

Name& Surname of Representative: \_\_\_\_\_

Signature Of Bidder:

\_\_\_\_\_

Designation:

\_\_\_\_\_

Date:

\_\_\_\_\_

**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 *per 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:

<sup>1</sup>

## **CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

### **ERW2309/08: RE-TENDER FOR THE APPOINTMENT OF A PANEL TO PROVIDE LEGAL SERVICES TO ERWAT AS AND WHEN REQUIRED FOR A FIXED TERM PERIOD**

in response to the invitation for the bid made by:

#### **EKURHULENI WATER CARE COMPANY (ERWAT)**

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

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

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



9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
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.

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**SIGNATURE**

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**DATE**

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**POSITION**

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**NAME OF BIDDER**

## POPIA CONSENT FORM

### PROTECTION OF PERSONAL INFORMATION ACT, 4 OF 2013

By signing this referral form:

- a) I/we hereby grant my/our voluntary consent that my/our personal information may be processed, collected, used and disclosed in compliance with the Protection of Personal Information Act, 4 of 2013.
- b) I/we furthermore agree that my/our personal information may be used for the lawful and reasonable purposes in as far as the ERWAT (responsible party) must use my/our information in the performance of its public legal duty.
- c) I/we understand that my/our personal information may be disclosed to a third party in as far as the ERWAT must fulfil its public legal duty.
- d) I/we furthermore understand that there are instances in terms of abovementioned Act where my express consent is not necessary to permit the processing of personal information, which may be related to litigation or when the information is publicly available. Further details are available on the ERWAT website.

Company name: \_\_\_\_\_

Company address: \_\_\_\_\_  
\_\_\_\_\_

Name& Surname of Representative: \_\_\_\_\_

Signature Of Bidder: \_\_\_\_\_

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

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

**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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## **GENERAL CONDITIONS OF CONTRACT**

### **1. Definitions**

The following terms shall be interpreted as indicated:

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

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

## **2. Application**

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

## **3. General**

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

- 3.2 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.

**1. Standards**

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

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

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

**6. Patent Rights**

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

**7. Performance security**

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents. Another form of acceptable to the purchaser; or
  - b) a cashiers' or certified cheque.

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

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

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

## **9. Packing**

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, and in any subsequent instructions ordered by the purchaser.

## **10. Delivery and documents**

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



**11. Insurance**

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

**12. Transportation**

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

**13. Incidental Services**

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any:
- (a) Performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - (b) Furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - (c) Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - (d) Performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
  - (e) Training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

**14. Spare parts**

- 14.1 As specified, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
  - (b) in the event of termination of production of the spare parts:
    - (i) advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
    - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

**15. Warranty**

- 15.1 The supplier warrants that the goods supplied under the contract is new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship

(except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise.
- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

## **16. Payment**

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated.

## **17. Prices**

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

## **18. Variation Orders**

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

## **19. Assignment**

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

## **20. Subcontracts**

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

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

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

## **22. Penalties**

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

## **23. Termination for default**

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - (a) if the supplier fails to perform any other obligation(s) under the contract; or
  - (c) if the supplier, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner, as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

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

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

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

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

- 24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the supplier to the purchaser or the purchaser may deduct such amounts from moneys (if any) which may otherwise be due to the supplier in regard to goods or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

## **25. Force Majeure**

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

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

**26. Termination for insolvency**

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

**27. Settlement of Disputes**

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
  - (b) the purchaser shall pay the supplier any monies due the supplier for goods delivered and / or services rendered according to the prescripts of the contract.

**28. Limitation of Liability**

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

**29. Governing language**

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

**30. Applicable law**

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

### **31. Notices**

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

### **32. Taxes and duties**

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

### **33. Transfer of contracts**

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

### **34. Amendment of contracts**

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

### **35. Prohibition of restrictive practices**

- 35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding.
- 35.2 If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 Of 1998.
- 35.3 If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

**CONTRACT FORM: RENDERING OF SERVICES****MBD7.2**

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

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

2. I hereby undertake to render services described in the attached bidding documents to (name of the institution) \_\_\_\_\_ in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number **ERW2309/08** 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 date of the bid.
3. 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 2022;
    - Declaration of interest;
    - Declaration of bidder's past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract
4. 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 services 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.
5. 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.
6. 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.
7. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
8. I confirm that I am duly authorised to sign this contract.

**NAME (PRINT)** \_\_\_\_\_**CAPACITY** \_\_\_\_\_**SIGNATURE** \_\_\_\_\_**NAME OF FIRM** \_\_\_\_\_**DATE** \_\_\_\_\_**WITNESSES**

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

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

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

**CONTRACT FORM: RENDERING OF SERVICES**

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

1. I \_\_\_\_\_ in my capacity as \_\_\_\_\_ accept your bid under reference number: **ERW2309/08** dated \_\_\_\_\_ for the rendering of services indicated hereunder and/or further specified in the annexure(s).

2. An official order indicating service delivery instructions is forthcoming.
3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

ITEM NO.	DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)
	<i>Kindly refer to the pricing schedule/BOQ*</i>	<i>Kindly refer to the pricing schedule/BOQ*</i>	<i>Determined in the Service Level Agreement</i>	<i>Refer to MBD 6.1</i>	<i>Refer to MBD 6.1</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: \_\_\_\_\_





#### **DRAFT SERVICE LEVEL AGREEMENT**

Bidders should take note of the attached draft service level agreement that will be concluded upon final confirmation of award. This draft will be used as a format and structure for the final document. The contract will thus take effect on the date of the last signatory on the finalised Service Level Agreement.

## Service Level Agreement (SLA)

<b>Document Owner:</b>	Ekurhuleni Water Care Company (ERWAT)
<b>Service Provider:</b>	

### Version

Version	Date	Description	Author
1.0	xxxxxx	Service Level Agreement	

### Approval

*(By signing below, all Approvers agree to all terms and conditions outlined in this Agreement.)*

Approvers	Role	Signed	Approval Date
xxx	xxx		
xxx	xxx		
xxx	xxx		
xxx	xxx		

## SERVICE LEVEL AGREEMENT

### MADE AND ENTERED INTO BETWEEN **EKURHULENI WATER CARE COMPANY (ERWAT)**

**Company registration number:** 1992/005753/08

Herein referred to as ERWAT, a Section 21 company. Represented by **Mr. K. Chihota** in his capacity as Interim Managing Director or his duly authorized representative.

(HEREINAFTER REFERRED TO AS “**EMPLOYER**”)

AND

**XXXXXX.**

A Private Company duly registered and incorporated as such under laws of the Republic of South Africa with Registration Number **XXXXXXXXXXXXXXXXXX** under VAT Registration Number **XXXXXXXXXXXXXXXXXX** herein represented by \_\_\_\_\_ in her capacity as \_\_\_\_\_, of \_\_\_\_\_ and duly authorized thereto by virtue of a resolution passed on \_\_\_\_\_ as attached herewith under **Annexure A**).

(HEREINAFTER REFERRED TO AS “**THE SERVICE PROVIDER**”)

#### 1. **PREAMBLE**

**WHEREAS** ERWAT has awarded Bid Number :**ERW2309/08** to the SERVICE PROVIDER and the SERVICE PROVIDER accepted the bid for the RE: **BID FOR RE-TENDER FOR THE APPOINTMENT OF A PANEL TO PROVIDE LEGAL SERVICES TO ERWAT AS AND WHEN REQUIRED FOR A FIXED TERM PERIOD THE APPOINTMENT OF ATTORNEYS TO PROVIDE EKURHULENI WATER CARE COMPANY (ERWAT) WITH SUCH LEGAL SERVICES AS AND WHEN REQUIRED FOR THE PERIOD OF THIRTY-SIX (36) MONTHS** as per the Scope of work (Section 2.1 under the Bid and as attached herewith under **Annexure B**) and Bill of Quantities (Section 2.3 under the Bid and as attached herewith under **Annexure C**) included in the said Bid;

**AND WHEREAS** the SERVICE PROVIDER as part of the terms and conditions of the said Bid warrants the services and administration thereof as stated in the Bid Document and the Bid Proposal and further shall administer the service as per the service levels set out in this Service Level Agreement;

**AND WHEREAS** the SERVICE PROVIDER agrees to enter into this service level Agreement which is an integral part of the Bid Proposal submitted by the SERVICE PROVIDER in respect of Bid no: **ERW2309/08** and which is further subjected to the General Conditions of Contract (GCC, July 2010 attached herewith under **Annexure D**).

**AND WHEREAS** the parties acknowledge that they are familiar with the contents of the bid, ERWAT's Bid no: **ERW2309/08** as well as the General Conditions of Contract (GCC, July 2010) {where applicable}, applicable legislations including but not limited to the Constitution of the Republic of South Africa, Municipal Systems Act, Municipal Financial Management Act,

prescripts governing Government Supply Chain Management, Preferential Procurement Policy Frame Work Act, legislation governing the legal fraternity and all other related legislation.

**THEREFORE**, the parties wish to record in writing the terms and conditions of their agreement relating to the aforementioned and incidental thereto.

## **2. DEFINITIONS AND INTERPRETATIONS**

### **2.1 DEFINITIONS:**

- 2.1.1 **“Agreement or Contract”** – shall mean this Service Level Agreement including the Bid Document, the Service Provider’s proposal (submitted in response to the Bid Document), General Conditions of Contract (GCC, July 2010), Award Letter, the letter of acceptance and all the relevant Annexes as applicable.
- 2.1.2 **“Bid Document”** – means the request and description of work called for including the subsequent offer to supply a service to ERWAT at a specified price and in accordance with the specifications contained in the ERWAT description of work and for purposes of the Agreement is also referred to as Terms of Reference and Bid Document under Bid Number: **ERW2309/08**
- 2.1.3 **“Award Letter”** – means the written communication by ERWAT to the SERVICE PROVIDER recording the acceptance by ERWAT of the SERVICE PROVIDER’s Bid, subject to the further terms and conditions to be included in this Agreement.
- 2.1.4 **“Service”** – shall mean the **BID FOR THE RE-TENDER OF THE APPOINTMENT OF A PANEL TO PROVIDE LEGAL SERVICES TO ERWAT AS AND WHEN REQUIRED FOR A FIXED TERM PERIOD** as per the Scope of work (Section 2.1 under as attached herewith under **Annexure B**) and Bill of Quantities (Section 2.3 under the Bid and as attached herewith under **Annexure C**) included in the said Bid.
- 2.1.5 **“The parties”** – shall mean **ERWAT** (Employer or Client) and (The SERVICE PROVIDER).
- 2.1.6 **“Service Provider”** – shall mean the contracting party named in the Contract Data who is employed by the Employer or Client to perform the Services described in the Contract, and legal successors to the Service Provider and legally permitted assignees.
- 2.1.7 **“Managing Director”** – shall mean ERWAT’s Accounting Officer or his duly authorised representative.
- 2.1.8 **“Service Provider’s Representative”** – shall mean the SERVICE PROVIDER or its designated employee, who has been appointed in writing, by the SERVICE PROVIDER, respectively whose responsibility is to ensure that it complies with its contractual obligations under this Agreement and will be communication channel between the parties.
- 2.1.9 **“Day”** – shall mean a calendar day.
- 2.1.10 **“Appointment date”** – shall mean the date that a written communication of award of the contract by ERWAT was issued to the SERVICE PROVIDER.
- 2.1.11 **“Commencement Date”** – shall refer to the date on which the “Purchase Order” is issued to the SERVICE PROVIDER.
- 2.1.12 **“Effective date or Start date”** – shall be the date the SLA is signed by the SERVICE PROVIDER.
- 2.1.13 **“Contract Price”** – shall mean the price to be paid for services rendered in accordance with the Pricing Data.

## **2.2 INTERPRETATION:**

- 2.2.1 In this Agreement clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention: -
- 2.2.2 An expression which denotes –
- 2.2.2.1 any gender includes the other genders;
  - 2.2.2.2 a natural person includes an artificial or juristic person and vice versa;
  - 2.2.2.3 the singular includes the plural and vice versa.
- 2.2.3 Any reference to any statute, regulation or other legislation or official policy shall be a reference to that statute, regulation or other legislation or national policy as at the signature date of this Agreement, and as amended or re-enacted from time to time;
- 2.2.4 Where any term is defined within a particular clause, other than the interpretation clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement.
- 2.2.5 When any number of days is prescribed, such shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case the last day shall be the next succeeding day which is a business day.
- 2.2.6 Expressions defined in this Agreement will bear the same meanings in the annexures to this Agreement which do not themselves contain their own conflicting definitions.
- 2.2.7 The terms of this Agreement having been negotiated, the contra proferentem rule shall not be applied in the interpretation of this Agreement.

## **3. CONFIRMATION OF DATES**

- 3.1 In this Agreement, each of the dates and durations specified hereunder shall refer to the days and months respectively allocated to in the following:
- 3.1.1 “**Commencement Date**” – shall refer to the date on which the “Purchase Order” is issued to the SERVICE PROVIDER.

## **3.2 APPOINTMENT OF THE SERVICE PROVIDER**

- 3.1.1 ERWAT hereby appoints the SERVICE PROVIDER who, with the signing of this Agreement at the end hereof, accepts such appointment to provide the Services outlined, subject to the terms and conditions set out herein.
- 3.1.2 All rights and obligations arising from this Agreement shall be deemed to have come into operation on the Commencement Date.
- 3.1.3 Neither the appointment of THE SERVICE PROVIDER in clause 4.1 nor anything in this Agreement shall give rise to or be construed as giving rise to an employer/employee relationship between the parties, nor shall it give rise to a joint venture nor an agreement of partnership between the parties, nor shall it give rise to a labour broking agreement.
- 3.1.4 The parties acknowledge that neither of the parties has any authority whatsoever to represent or to bind the other party in any capacity whatsoever. In particular, but without limiting the generality, neither of the parties shall be entitled to conclude any Agreement or sign any document on behalf of the other party, or in any way bind the other party's performance or discharge of any obligation.
- 3.1.5 The parties agree that no staff member of ERWAT may be requested or solicited to accept any reward gift or favour, nor may any staff member of ERWAT accept any reward gift or favour, for persuading the municipal council or any structure or functionary of the council with regard to the exercise of any power or the performance of any duty, or to make a representation to the council or any structure or functionary, or to disclose any privileged or confidential information, or to do or not to do anything within that staff member's powers or duties.

- 4.1 The conduct described under sub-clause 4.5 goes to the root of the Agreement and constitutes a breach of this Agreement with the further proviso that any person found guilty of such conduct shall be dealt with in terms of the provisions of South African Law.

## **5. COMMENCEMENT AND TERM OF THE AGREEMENT**

- 5.1 The Agreement shall endure for the entire Period of Performance.
- 5.2 The contract will commence on the last signature date of the Service Level Agreement ending on a completion period to not exceed 36-months.
- 5.4 Upon **full completion** of the assignment, the service provider shall hand over the final report to be accepted by ERWAT; on the Termination Date (i.e. the period includes all public, religious and builder's holidays), where applicable.
- 5.5 If the tender is found to be unauthorised, fruitless and wasteful or irregular as informed through a formal investigation, internal and or external audit outcome, the Auditor General, Council, ERWAT Board of Directors or National Treasury, ERWAT reserves the right to cancel the tender with immediate effect and the bidder will have no claim to his affect. The final terms of payment (where applicable) will be negotiated with the bidder at the time for final close out of the contract.

## **6. CONTRACT PRICE**

- 6.1 The price charged by the SERVICE PROVIDER for Service performed under this Agreement shall be as per the rates quoted by the SERVICE PROVIDER in their Bid Document.
- 6.2 The Bid of the SERVICE PROVIDER was awarded and accepted at the agreed rates as outlined in the Pricing Schedule (as attached herewith under **Annexure C**).
- 6.3 The fees charged in this bid, will be firm for a period of twelve (12) months, thereafter CPI will be considered at the anniversary of the contract, for year two (2) and year three (3), unless the contract is terminated prior to contract period.

## **7. INDEMNIFICATION**

Indemnification is applicable in terms of the Bid Document section 3.7 ERWAT INDEMNITY

- 7.1. 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:

- 7.1.1. 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.
- 7.1.2. 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.
- 7.1.3. Any liability arising from loss or damage to Contractor and/or Subcontractor's equipment and their other property on site.
- 7.1.4. Any liability arising from claims with regard to the death of/or injury or sickness or disease to Contractor' employees or the death of/or injury or sickness or disease to third parties.
- 7.1.5. Any liability arising from any loss of/or damage to property belonging to a third party.
- 7.1.6. 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.

7.1.7. 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.

7.1.8. Contractor shall indemnify ERWAT against all claims, proceedings, damages and costs of whatsoever nature arising out of contravention of environmental legislation.

## **8. TERMS OF REFERENCE AND BID DOCUMENTS**

8.1 The original Bid Document (Terms of Reference) submitted by the Service Provider and attached to this Agreement must be regarded as an integral part of this Agreement and forms part of the whole Agreement between the Parties.

8.2 This Agreement must be interpreted in the light of the fact that the prescriptions, conditions and guidelines in the Terms of Reference and Bid Documents are intended to supplement, particularise and expand the terms and conditions of this Agreement.

8.3 Where possible the stipulations in the Terms of Reference and Bid Document must be interpreted in such a way that it is not in conflict with this Agreement. However, where any terms, conditions, prescription or guidelines in the Terms of Reference are in direct conflict with this Service Level Agreement and cannot be given a meaning or meanings that are not in conflict with the Agreement, and cannot be reconciled with it, then the Service Level Agreement shall prevail, and where the Service level agreement and Bid document is silent the General Conditions of Contract (GCC, July 2010) shall prevail.

## **9. RESPONSIBILITIES OF THE SERVICE PROVIDER**

9.1 The Services to be rendered by the Service Provider under this Agreement include provision of the following legal services, inter alia:

9.1.1 Conveyancing

9.1.2 Notarial Practices

9.1.3 Expropriations

9.1.4 Valuations, rates and Taxes

9.1.5 Mining and Mineral Law

9.1.6 Environmental Law and Water Laws

9.1.7 Evictions

9.1.8 Commercial Law and Contracts

9.1.9 Town Planning

9.1.10 Prosecution of Contravention of National Building Regulations and Building Standards Act, 1977

9.1.11 Procurement/Tenders/ Bids and Related Contracts

9.1.12 Labour

9.1.13 General Legal Services:

9.1.13.1 Intellectual Property

9.1.13.2 Information Technology

9.1.13.3 Access to Information and Administrative Justice

9.1.13.4 The rendering of such other legal services not specified elsewhere (Probity services, Debt Collection).

## **10. PAYMENTS**

10.1 Payments will be effected within 30 days from receipt of a valid Invoice/Tax Invoice **and** Statement.

10.2 All invoices/tax invoices and statements must comply with the **VAT Act No 89 of 1991** before payment can be effected.

10.3 Payment will be made on all deliveries and services which were authorised through Purchase Orders and confirmation of such services being fulfilled to ERWAT's satisfaction.

## **11. FORCE MAJEURE**

- 11.1 For purpose of this clause, "Force Majeure" means an event beyond the control of the Service Provider and not involving the Service Provider's fault or negligence and not foreseeable. Such events may include, but are not limited to, fire, flood, typhoon and earthquake including any other "acts of God."
- 11.2 Notwithstanding the provisions of clauses 10 and 14, the Service Provider shall not be liable for damages, penalties, forfeiture of its performance security, or termination for default if and to the extent that this delay in performance or other failure to perform their obligations under the Agreement is the result of an event of force majeure.
- 11.3 If a force majeure situation arises, the Service Provider shall promptly notify ERWAT in writing of such condition and the cause thereof. Unless otherwise directed by ERWAT in writing, the Service Provider shall continue to perform its obligations under the Agreement as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

## **13. RESPONSE TIME**

- 13.1 Service Providers must ensure they have enough personnel and be able to adhere to a standard order turn-around time of shall not exceed 7 days from date a purchase order is issued.

## **14. PENALTIES**

- 14.1. Clause 22 "Penalties" of the General Conditions of Contract (GCC, July 2010), refers and will be applicable to this Agreement and read in its entirety.
- 14.2. (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

## **15. PERFORMANCE MANAGEMENT SYSTEM**

- 15.1. The Performance management system will be implemented in terms of section 3.6 of the bid document.
- 15.2 The SERVICE PROVIDER shall be subjected to a performance evaluation, conducted on a quarterly basis.
- 15.3 An example of a performance evaluation form is contained in **Annexure E**.

## **16. DELAYS IN THE PERFORMANCE OF SERVICES**

- 16.1 Performance of Service must be adhered to by the Service Provider in accordance with the time schedule prescribed by ERWAT and which forms part of this Agreement.
- 16.2 If at any time during the performance of the Agreement, the Service Provider or its sub-contractors encounters inclement weather conditions (i.e. Abnormal Rainfall) impeding timely performance of Service, the Service Provider shall promptly notify ERWAT in writing of the effect of the delays and its likely duration. As soon as practicable after receipt of the Service Provider's notice, ERWAT shall evaluate the situation and may at its discretion extend the Service Provider's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the Parties by amendment to this Agreement.
- 16.3 Except as provided for under clause 11, a delay by the Service Provider in the performance of its delivery obligations shall render the Service Provider liable to the imposition of penalties pursuant



to clause 10, unless an extension of time is agreed upon with the exclusion of imposition of penalties.

- 16.4 In the event of delays beyond the Termination Date, ERWAT shall be entitled to procure a similar Service at the Service Provider's expense and risk, or to cancel the Agreement and procure such a Service as may be required to complete the Agreement without prejudice obligations to their other rights, and further be entitled to claim damages from the Service Provider.

## **17. TERMINATION FOR DEFAULT**

- 17.1. ERWAT may, without prejudice to any other remedy for breach of Agreement, by written notice of default sent to the Service Provider, terminate this Agreement in whole or in part:

- 17.1.1. If the Service Provider fails to deliver on any or all of the Services within the period(s) specified in the Agreement, or within any extension thereof granted by ERWAT;
- 17.1.2. If the Service Provider fails to perform any other obligation(s) under the Agreement, or;
- 17.1.3. If the Service Provider, in the opinion of ERWAT, has engaged in corrupt or fraudulent practices in completing for or in executing the Agreement.

## **18. TERMINATION OF INSOLVENCY**

- 18.1. For the purpose of this Agreement, insolvency means, an event whereby the Service Provider's financial liabilities exceeds its assets (fairly valued), where the Service Provider does not have or cannot raise enough funds to complete the Services as stipulated in this Agreement, which may lead to delays or complete failure to deliver on the Services. In such an event, termination will be enforced by ERWAT without compensation to the Service Provider, provided that such termination will not be prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to ERWAT.

## **19. WORKING HOURS**

- 19.1. Services will be rendered Monday to Friday on a time agreed by both parties.

## **20. DOMICILE AND NOTICES**

- 20.1. The parties choose their domicile for all purposes relating to this Agreement, including the giving of any notice, the payment of any sum and the serving any process, as follows:

### **20.1.1. EKURHULENI WATER CARE COMPANY**

Physical: - Hartebeestfontein Office Park  
R25 (Bronkhorstspuit/Bapsfontein)  
Kempton Park

Postal: - PO. Box 13106  
Norkem Park  
1631

Fax: - (011) 927 7031  
Email Address: - [mail@erwat.co.za](mailto:mail@erwat.co.za)

### **20.1.2. THE SERVICE PROVIDER**

Physical:  
Tel no  
Email Address:

- 20.2. Each party shall be entitled from time to time, by giving written notice to the others, to vary its physical domicile to any other physical address (not being a post office box or "remainder post") within the Republic or to vary its postal domicile or its facsimile domicile to any other within the Republic.
- 20.3. Any notice given or any payment made by any party to any other ("addressee") which is;
- 20.4. Delivered by hand between the hours of 08:h00 and 16:h30 on any business day to the addressee's physical domicile for the time being, shall be deemed to have been received by the addressee at the time of delivery;
- 20.5. Posted by registered post to the addressee's postal domicile for the time being, shall be presumed to have been received by the addressee on the fourteenth day after date of posting.
- 20.6. Any notice given by any party to any other which is sent by facsimile to the addressee's facsimile domicile for the time being shall be deemed to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.
- 20.7. This domicile clause shall not operate so as to invalidate the giving or receipt of any notice, which is actually received by the addressee other than by a method referred to in this clause.
- 20.8. Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

## **23. LIMITATION OF LIABILITY**

- 23.1 Clause 28 "Limit of Liability" of the General Conditions of Contract (GCC, July 2010), refers and will be applicable to this Agreement and read in its entirety.

## **24. BREACH**

- 2.4 Should either party commit a breach of any provision of this Agreement and fail to remedy such breach within fourteen (14) days (or such period as may be determined by the aggrieved Party) after receiving written notice from the Party aggrieved thereby requiring the defaulting Party to do so, then the aggrieved Party shall be entitled, without prejudice to the aggrieved Party's other rights in law, to cancel this Agreement or to claim immediate specific performance of all of the defaulting Party's obligations whether or not due for performance, in either event without prejudice to the aggrieved Party's right to claim damages.

## **25. CONFIDENTIALITY**

- 25.1. It is recorded that the SERVICE PROVIDER, by virtue of his/her association with ERWAT, will become in possession of and will have access to confidential information belonging to ERWAT including, but without limiting the generality of the foregoing, the following matters:
- 25.2. The contractual and financial arrangements between ERWAT and other bidders;
- 25.2.1. ERWAT's financial matters;
- 25.2.2. All other matters, which relate to ERWAT's business and in respect of which information is not readily available in the ordinary course of business to a competitor.
- 25.3. Having regard to the facts recorded above, the SERVICE PROVIDER undertakes that in order to protect the proprietary interest of ERWAT in the confidential information-
- 25.3.1. They will not during the contract period or at any time thereafter, directly or indirectly, either use or disclose any of the confidential information, other than as may be required

by their Contract with ERWAT or as may be required to comply with any law or to enforce service provider's rights in terms of this Contract;

- 25.3.2. Any written or other Instructions, Drawings, Notes, Memoranda or Records which are made available to them or which come into their possession by any means whatsoever shall be deemed to be the property of ERWAT. Such property of ERWAT shall be surrendered to ERWAT on demand and in any event on the termination date of this Agreement and the SERVICE PROVIDER shall not retain any copies thereof or extracts there from.

## **26. PUBLICITY**

- 26.1. None of the parties shall issue any public document or make any press release relating to or arising out of this Agreement or its subject matter without obtaining the prior written approval of all other party to this Agreement, to the contents thereof and the manner of its presentation and publication; provided that such approval shall not be unreasonably withheld or delayed.

## **27. CESSION OF RIGHTS**

- 27.1. Save as otherwise expressly stipulated in this Agreement, this Agreement is personal to the parties;
- 27.2. No party may cede, delegate or assign any of its rights or obligations in terms of this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

## **28. WAIVER OF RIGHTS**

- 28.1. No party's partial exercise of, or failure to exercise or delay in exercising any right, power, privilege or remedy in terms of this Agreement shall be construed as a waiver by that party.
- 28.2. Such partial exercise or failure shall not operate so as to preclude that party from exercising its rights strictly in accordance with this Agreement, unless such party has expressly waived or otherwise foregone its ability to exercise such right, power, privilege or remedy (at all or in part or until after such period of delay) in terms of a written document signed by such party.
- 28.3. In the event of a party having concluded such a written document, it shall be strictly construed to form an integral part of this Agreement.

## **29. AMENDMENT OR VARIATION OF THIS AGREEMENT**

- 29.1. Any amendments or variations to this agreement will be reduced to writing and signed off by both parties.

## **30. ENTIRE AGREEMENT**

- 30.1 This service level agreement constitutes the entire Agreement between the parties and replaces all previous representations, arrangements, discussion and agreements between the parties.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20.

**AS WITNESSES:**

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

\_\_\_\_\_  
Duly authorised for and on behalf of  
**EKURHULENI WATER CARE COMPANY**

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

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of

\_\_\_\_\_, 20.

**AS WITNESSES:**

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

\_\_\_\_\_  
Duly authorised for and on behalf of

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



### **PERFORMANCE EVALUATION MANAGEMENT**

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 2023/2024, 2024/2025 and 2025/2026 financial budget years.

The following document is a draft of the performance evaluation that will be conducted with the awarded bidders on a regular basis as determined in the Service Level Agreement. The final performance evaluation document will be finalised at SLA stage and signed together with the SLA.

The Company Secretariate and/Accounting Officer will monitor performance on a monthly basis at scheduled meetings with the service provider where minutes of progress, activities, challenges, risks encountered, and planned work will be recorded. Evaluation will be based on progress, outputs, targets on key deliverables and compliance to the reporting timelines as specified. The draft Performance Evaluation Document is attached to this document for ease of reference and will be finalised at signing of the service level agreement.



**PERFORMANCE MANAGEMENT SYSTEM  
EXTERNAL SERVICE PROVIDERS**

(in terms of Section 116 of the Municipal Finance Management Act, Act 56 of 2003)

<b>CONTRACT DESCRIPTION</b>	<b>RE-TENDER FOR THE APPOINTMENT OF A PANEL TO PROVIDE LEGAL SERVICES TO ERWAT AS AND WHEN REQUIRED FOR A FIXED TERM PERIOD</b>	
<b>AWARDED COMPANY</b>	XXXX	
<b>BID NO</b>	<b>ERW2309/08</b>	<b>DATE APPROVED:XXXX</b>
<b>TERM OF CONTRACT</b>	3 YEARS – OPEX	
<b>RESPONSIBLE PERSON FOR ASSESSMENT &amp; COMPLETION OF PERFORMANCE REPORT</b>	XXXXXXXXXX	

KEY PERFORMANCE AREA	KEY PERFORMANCE INDICATOR	RESPONSIBLE PERSON & TARGET DATE	COMPLIANCE (poor, satisfactory, excellent, challenges) & DATE	DEVIATIONS, IF ANY, PROVIDE REASONS	AGREED RECTIFICATION MEASURES TO COMPLY
<b>A. OPERATIONAL KPI's (TO BE COMPLETED BY RELEVANT DEPARTMENT ACCORDING TO APPROVED TENDER SPECIFICATIONS)</b>					
1. Conveyancing, Notarial Services & Other property related services	As per scope of work	Service Provider			
2. Commercial Law & Contracts	As per scope of work	Service Provider			
3. Town Planning	As per scope of work	Service Provider			
4. Prosecution of Contravention of National Building Regulations and Building Standards Act	As per scope of work	Service Provider			
5. Procurement / Tenders / Bids & Related Contracts	As per scope of work	Service Provider			
6. Labour	As per scope of work	Service Provider			
7. General Legal Services	As per scope of work	Service Provider			
8. Submission of quarterly reports	As per scope of work	Service Provider			
<b>B. COMMERCIAL KPI (TO BE COMPLETED BY SCM – ANNUALLY)</b>					
1. Registration with National Treasury Centralised Supplier Database (CSD)	Proof submitted that bidder is registered with CSD	Service Provider & ERWAT Annually			
2. SARS Tax compliance Verification	Bidder submitted PIN or authorization for ERWAT to verify TAX matters for duration of contract	Service Provider & ERWAT Annually			

3. Submission of Invoices	<p>The Original Tax Invoices submitted for payment reflects the following information:</p> <ol style="list-style-type: none"> <li>1. On letterhead</li> <li>2. Business street/physical address</li> <li>3. Business telephone and fax number</li> <li>4. Quotation reference number</li> <li>5. Company VAT Registration Number (if applicable)</li> <li>6. ERWAT's VAT Registration Number: 4870136530</li> <li>7. Tax Reference Number</li> <li>8. Company Registration Number</li> </ol>	Service Provider Monthly			
4. Legal practitioner enrolment	<p>Proof of enrollment as a legal practitioner in terms of Legal Practice Act, Act No. 28 of 2014: <i>For each individual listed in schedule 1K. All submissions must be certified copies.</i></p>	Service Provider Annually			
5. Valid Fidelity Fund certificate	<p>One of the legal practitioners listed in schedule 1K must submit a valid Fidelity Fund certificate in terms of Legal Practice Act, Act No. 28 of 2014: It must be a valid certificate at the date of tender closing date. The submission must be a certified copy.</p>	Service Provider Annually			

Accepted and agreed upon:

XXX

ON BEHALF OF SERVICE PROVIDER  
DULY AUTHORISED TO DO SO

XXX

SIGNATURE:  
PROJECT MANAGER

XXXX

SIGNATURE:  
COMPANY SECRETARY

DATE

DATE

DATE



FOR ERWAT OFFICIAL USE ONLY:	
<b>COMPLIANCE VERIFIED:</b>   <b>SCM SPECIALIST: CONTRACT MANAGEMENT</b>   <b>DATE</b>	<b>NOTED BY:</b>   <b>MANAGER: SUPPLY CHAIN MANAGEMENT</b>   <b>DATE</b>
<b>Recommended action to be taken on poor performance:</b>	<b>Action taken on poor performance:</b>