



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA

TENDER DOCUMENT

INVITATION TO TENDER FOR THE APPOINTMENT OF A PROJECT MANAGEMENT UNIT(PMU) TO PROVIDE PROJECT MANAGEMENT, PLANNING, HIGH LEVEL DESIGN AND COST ESTIMATION FOR THE BUILT ENVIRONMENT PROFESSIONAL SERVICES AND ADVISORY SERVICES FOR A PERIOD OF 3 YEARS.

APPOINTMENT OF PROJECT MANAGEMENT UNIT IN CONSORTIUM/ MULTI-DISCIPLINARY CONSISTING OF AMONG OTHERS:

1. Project Management Services (Project Leader)
2. Agricultural Engineering Services
3. Civil / Structural Engineering Services
4. Mechanical / Electrical Engineering Services
5. Quantity Surveying Services
6. Architectural Services
7. Environmental Management Services
8. Occupational Health and Safety Services
9. Town and Regional Planning

NB: SERVICE PROVIDERS MUST INDICATE BY A TICK WHETHER THEY ARE TENDERING IN CONSORTIUM OR MULTI DISCIPLINARY.

MULTI DISCIPLINARY		CONSORTIUM	
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TENDER NO: DALRRD LP 0004 (2024-2025)

CLOSING DATE: 30 August 2024

CLOSING TIME: 11H00

Name of tenderer:

ISSUED BY:
THE DIRECTOR: FINANCE AND SUPPLY CHAIN MANAGEMENT SERVICES
DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

DALRRD LP 0004 (2024-2025)

APPOINTMENT OF A PROJECT MANAGEMENT UNIT(PMU) TO PROVIDE PROJECT MANAGEMENT, PLANNING, HIGH LEVEL DESIGN AND COST ESTIMATION FOR THE BUILT ENVIRONMENT PROFESSIONAL SERVICES AND ADVISORY SERVICES FOR A PERIOD OF 3 YEARS.

THERE WILL BE NO BRIEFING SESSION FOR THIS BID:

INFORMATION ON TENDER BOX

BID BOX INFORMATION

TENDER NO. DALRRD LP 0004 (2024-2025)

YOU ARE HEREBY INVITED TO BID TO THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
(DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT)

BIDS RECEIVED AFTER THE CLOSING TIME AND DATE ARE LATE AND WILL AS A RULE NOT BE ACCEPTED FOR CONSIDERATION.

SUBMIT ALL BIDS ON THE OFFICIAL FORMS - DO NOT RETYPE

Bid documents **must** be deposited in the box which is identified as the bid box of the:

**DEPARTMENT OF AGRICULTURE, LAND REFORM & RURAL DEVELOPMENT
LIMPOPO PROVINCIAL SHARED SERVICE CENTRE
70 HANS VAN RENSBURG STREET
POLOKWANE
0700**

TEL: (015) 495 1073

THE BID BOX OF THE OFFICE OF THE DEPARTMENT OF AGRICULTURE, LAND REFORM & RURAL DEVELOPMENT IS OPEN FROM 08:00 to 16:00, 5 DAYS A WEEK. THE BID BOX WILL BE CLOSED ON THE CLOSING TIME OF BIDS WHICH IS 11H00.

BIDDERS SHOULD ENSURE THAT BIDS ARE DELIVERED TIMEOUSLY TO THE CORRECT ADDRESS

SUBMIT EACH BID IN A SEPARATE SEALED ENVELOPE

***Note:** Any reference to words "Bid" or "Bidder" herein and/or in any other documentation shall be constructed to have the same meaning as the words "Tender" or "Tenderer"



agriculture, land reform & rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE DIRECTOR

Directorate: Finance and Supply Chain Management Services: **Sub-Directorate:** Demand and Acquisition Management Services: **Enquiries:** Mr L Mahloromela: **Tel:** (015) 495 0622

YOU ARE HEREBY INVITED TO BID TO THE DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

BID NO: DALRRD LP 0004 (2024-2025)

CLOSING TIME: 11:00

CLOSING DATE: 30 August 2024

BIDS RECEIVED AFTER THE CLOSING TIME AND DATE ARE LATE AND WILL AS A RULE NOT BE ACCEPTED FOR CONSIDERATION.

1. Kindly furnish us with a bid for services shown on the attached forms.
2. Attached please find:
 - 2.1 Authority to Sign the Standard Bidding Documents (SBDs) on behalf of an Entity Pg 4-5
 - 2.2 Invitation to Bid - SBD1 Pg 6-7
 - 2.3 Declaration of Interest - SBD4 Pg 8-9
 - 2.4 Preference Points Claim Form - SBD 6.1 Pg 10-16
 - 2.5 Terms of Reference Pg 17-45
 - 2.6 General Condition of Contract (GCC) Pg 46-73
 - 2.7 Standard professional service contract Pg 74-77
 - 2.8 Standard conditions of tender Pg 78-94
3. The attached forms must be completed in detail and returned with your bid. Failure to comply may disqualify your proposal. Each bid document must be submitted in a separate sealed envelope stipulating the following information: Name and Address of the bidder, Bid number and closing date of bid.

Bid proposals must be deposited into the Tender/ Bid Box situated at the reception area of the Department of Agriculture, Land Reform & Rural Development, Limpopo Provincial Shared Service Centre, 70 Hans Van Rensburg Street, Polokwane, 0700 by not later than the closing date and time indicated above. Bid proposals which are not inside the Tender/ Bid Box on the closing date and time will not be considered.

Yours faithfully

SIGNED
BIDS MANAGEMENT
DIRECTOR: FINANCE AND SUPPLY CHAIN MANAGEMENT
DATE: 08 August 2024

AUTHORITY TO SIGN THE STANDARD BIDDING DOCUMENTS (SBDs) ON BEHALF OF AN ENTITY.

Only authorized signatories may sign the original and all copies of the tender offer where required.

In the case of a **ONE-PERSON CONCERN** submitting a tender, this shall be clearly stated.

In case of a **COMPANY** submitting a tender, include a copy of a **resolution by its board of directors** authorizing a director or other official of the company to sign the documents on behalf of the company.

In the case of a **CLOSE CORPORATION** submitting a tender, include a copy of a **resolution by its members** authorizing a member or other official of the corporation to sign the documents on each member's behalf.

In the case of a **PARTNERSHIP** submitting a tender, **all the partners shall** sign the documents, unless one partner or a group of partners has been authorized to sign on behalf of each partner, in which case **proof of such authorization** shall be included in the Tender.

In the case of a **JOINT VENTURE** submitting a tender, include **a resolution** of each company of the Joint Venture together with a resolution by its members authorizing a member of the Joint Venture to sign the documents on behalf of the Joint Venture.”

ACCEPT THAT FAILURE TO SUBMIT PROOF OF AUTHORIZATION TO SIGN THE TENDER SHALL RESULT IN A TENDER OFFER BEING REGARDED AS NON-RESPONSIVE.

AUTHORITY OF SIGNATORY

Signatories for companies, close corporations and partnerships must establish their authority **BY ATTACHING TO THIS FORM, ON THEIR ORGANISATIONS'S LETTERHEAD STATIONERY**, a copy of the relevant resolution by their Board of Directors, Members or Partners, duly signed and dated.

An **EXAMPLE** is shown below for a COMPANY:

MABEL HOUSE (Pty) Ltd

By resolution of the Board of Directors taken on 26 May 2021,

MR A.F JONES

has been duly authorised to sign all documents in connection with

Contract no CRDPMP0001 (2021/2022), and any contract which may arise there from,

on behalf of MABEL HOUSE (Pty) Ltd.

SIGNED ON BEHALF OF THE COMPANY: (Signature of Managing Director)

IN HIS CAPACITY AS: Managing Director

DATE: 20 May 2000

SIGNATURE OF SIGNATORY: (Signature of A.F Jones)

As witnesses:

1.

2.

Signature of person authorised to sign the tender

Date

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR THE DEPARTMENT OF AGRICULTURE, LAND REFORM RURAL DEVELOPMENT					
REFERENCE NUMBER	DALRRD LP 0004 2024/25	CLOSING DATE:	30 August 2024	CLOSING TIME:	11:00 AM
DESCRIPTION	APPOINTMENT OF A PROJECT MANAGEMENT UNIT(PMU) TO PROVIDE PROJECT MANAGEMENT, PLANNING, HIGH LEVEL DESIGN AND COST ESTIMATION FOR THE BUILT ENVIRONMENT PROFESSIONAL SERVICES AND ADVISORY SERVICES FOR A PERIOD OF 3 YEARS.				
BID RESPONSE DOCUMENTS MUST BE DEPOSITED IN THE TENDER BOX (address)					
70 HANS VAN RENSBURG					
POLOKWANE					
0007					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Daisy Mongwai		CONTACT PERSON	MA Mokiti	
TELEPHONE NUMBER	015 495 1703		TELEPHONE NUMBER	015 495 1073	
E-MAIL ADDRESS	daisy.mongwai@dalrrd.gov.za		E-MAIL ADDRESS	mashela.mokiti@dalrrd.gov.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		O R	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	Yes	No	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?	Yes	No
	[IF YES ENCLOSE PROOF]			[IF YES, ANSWER THE QUESTIONNAIRE BELOW]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	YES	NO			
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	YES	NO			
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	YES	NO			
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	YES	NO			
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	YES	NO			
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

PART B

TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED—(NOT TO BE RE-TYPED) OR ONLINE
- 1.3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
- 1.4. WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.

1.5. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) 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 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER.
- 2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA

- 3.1. (RSA)? YES NO
- 3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA? YES NO
- DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE
- 3.3. RSA? YES NO
- 3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? YES NO

IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....
.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

2.3.1 If so, furnish particulars:

.....
.....

¹ the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

3 DECLARATION

I, _____ the _____ undersigned, (name)...

.....
In submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 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 consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 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.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

..... Signature Date
..... Position Name of bidder

² Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill, and knowledge in an activity for the execution of a contract.

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

BID PROCESS (ABOVE R 50 MILLION)

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**

1. DEFINITIONS

- (a) **“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;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of tender invitation, and includes all applicable taxes;
- (d) **“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;
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000); and
- (f) "Historically Disadvantaged individuals" means a person historically disadvantaged by unfair discrimination on the basis of race: Provided that a person historically disadvantaged on the basis of race refers to Africans, Coloureds, Indians and people of Chinese descent who are South African citizens by birth or descent; or who became citizens of the Republic of South Africa by Naturalisation -
 - Before 27 April 1994; or
 - On or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date.

2. GENERAL CONDITIONS

2.1 The following preference point systems are applicable to invitations to tender:

- the 90/10 system for requirements with a Rand value of above R50 000 000 (all applicable taxes included); and

2.2 To be completed by the organ of state

- a) The applicable preference point system for this tender is the 90/10 preference point system.
- b) 90/10 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

2.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

2.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	90
SPECIFIC GOALS	10
Total points for Price and SPECIFIC GOALS	100

2.5 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.

2.6 Tenderers that fail to claim points for specific goals or that fail to fully complete the table in paragraph 2.12 below, will not be awarded points for specific goals.

2.7 Tenderers that make a calculation error when claiming points as per the table in paragraph 2.12 below, will not be awarded points for specific goals. Please take note of the examples on how to calculate points for specific goals as per paragraph 2.12 below.

2.8 Tenderers that fail to submit the correct SBD 6.1 form as issued by the Department of Agriculture, Land Reform and Rural Development, will not be awarded points for specific goals.

2.9 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.

2.10 Tenderers who wish to claim points in terms of the table in paragraph 2.12 below need to provide proof for each point claimed as guided below:

2.10.1 Historically Disadvantaged individuals (HDI):

- **Attach a copy of Identity Document (ID) and company registration document.**

2.10.2 Who is female:

- **Attach a copy of Identity Document (ID) and company registration document.**

2.10.3 Who has a disability:

- **Attach a certified copy or original doctor's letter confirming the disability.**

2.10.4 Who is youth (a person that is not older than 35 years on the closing date of a bid):

- **Attach a copy of Identity Document (ID) and company registration document.**

2.10.5 Special goal: Locality

- A **valid** municipal services account (water, sanitation, rates and electricity) in the name of the bidder/s or active director/s **or**
- A valid lease agreement from the lessor **or**
- A letter on the letterhead of the ward councilor / traditional authority/council that must be signed, stamped and dated.

2.11 The Department will use the Central Supplier Database and documents submitted by the tenderer to verify the points claimed for specific goals.

2.12 Specific goals for the tender and points claimed are indicated per the table below.

(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.

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

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system)	Percentage ownership equity (To be completed by the tenderer)	Number of points claimed (90/10 system) (To be completed by the tenderer)
I. HDI	4		
II. Who is female	2		
III. Who has a disability	1		
IV. Specific goal: Who is youth	1		
V. Specific goal: Locality (Promotion of Limpopo Province owned enterprise)	2		

The number of points claimed for specific goals, are calculated as follow:

- (I) A maximum of 4 points may be allocated to tenderers who had no franchise in national elections before the 1983 and 1993 Constitution, on the following basis:
 - **Percentage ownership equity** x 4 ÷ 100 = number of points claimed.
- (II) A maximum of 2 points may be allocated for to tenderers who is female, on the following basis:
 - **Percentage ownership equity** x 2 ÷ 100 = number of points claimed.
- (III) A maximum of 1 points may be allocated to tenderers who has a disability, on the following basis:
 - **Percentage ownership equity** x 1 ÷ 100 = number of points claimed.
- (IV) A maximum of 1 points may be allocated to tenderers who are youth, on the following basis:
 - **Percentage ownership equity** x 1 ÷ 100 = number of points claimed.
- (V) A maximum of 2 points may be allocated to tenderers for locality, on the following basis:
 - **Percentage ownership equity** x 2 ÷ 100 = number of points claimed.

2.13 It is important to note that failure by a tenderer to complete the table in paragraph 2.12 in full, will result in points for specific goals not to be allocated.

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

3.1.1 THE 90/10 PREFERENCE POINT SYSTEMS

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

90/10

$$Ps = 90 \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

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

3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

3.2.1. POINTS AWARDED FOR PRICE

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

$$P_s = 90 \left(1 + \frac{90/10 (P_t - P_{max})}{P_{max}} \right)$$

Where

P_s = Points scored for price of tender under consideration

P_t = Price of tender under consideration

P_{max} = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

4.1. 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 the table in paragraph 2.12 above as may be supported by proof/documentation stated in the conditions of this tender.

4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

(a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

(b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

4.3 A consortium or joint venture may, based on the percentage of the contract value managed or executed by their members, be entitled to claim points in respect of specific contract participation goals.

4.4 A tenderer will not be awarded points for HDI if it is indicated in the tender documents that such a tenderer intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for the same number or more points for equity ownership.

4.5 A tenderer awarded a contract as a result of preference for contracting with, or providing equity ownership to a HDI, may not subcontract more than 25% of the value of the contract to a tenderer who is not a HDI or does not qualify for the same number or more preference for equity ownership.

5. SUB-CONTRACTING

5.1 Will any portion of the contract be sub-contracted?
(*Tick applicable box*)

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

5.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted %
- ii) The name of the sub-contractor:
- iii) Points claimed for HDI by the sub-contractor:

6. DECLARATION WITH REGARD TO COMPANY/FIRM

6.1. Name of company/firm:

6.2. Company registration number:

6.3. 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]

6.4. 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:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;

- iv) 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 –
- (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the 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
 - (e) forward the matter for criminal prosecution, if deemed necessary.

..... SIGNATURE(S) OF TENDERER(S)	
SURNAME AND NAME:
DATE:
ADDRESS:

DALRRD LP 0004 (2024-2025)

APPOINTMENT OF A PROJECT MANAGEMENT UNIT(PMU) TO PROVIDE PROJECT MANAGEMENT, PLANNING, HIGH LEVEL DESIGN AND COST ESTIMATION FOR THE BUILT ENVIRONMENT PROFESSIONAL SERVICES AND ADVISORY SERVICES FOR A PERIOD OF 3 YEARS.

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1. BACKGROUND

The Department of Agriculture, Land Reform and Rural Development has number of Programs, to support agricultural development and also has been mandated to implement Agri-parks and other projects that will support the Agri-parks in Limpopo Province. These programs include Infrastructure development for farmers, cooperatives, and agricultural irrigation schemes. The infrastructure covers a wide variety of structures and processes such as Socio economic infrastructure, Irrigation, Animal handling & Production facilities, Soil Conservation & Civil structures and Agro-processing facilities. These programs are implemented across all Municipalities within all Five (5) Districts of Limpopo Province.

The optimal and sustainable agricultural production on Land Reform projects in the Limpopo Province remains the responsibility of Department of Agriculture, Land Reform and Rural Development (DALRRD). It is therefore of fundamental importance that the set legislations, strategies, plans and reforms are translated into action in promoting broad economic development in the form of farmer settlement, food security, economic development, job creation and agricultural business development. Promotion of the latter will therefore be based on provision of agricultural support to intended beneficiaries of the land reform projects within the parameters of the stipulated Departmental programmes.

In the Limpopo Province there are five (5) Districts, and each district will have a Agri- park identified. The province has five (5) prioritised FPSU which are in Mopani, Vhembe, Sekhukhune, Waterberg, and Capricorn District municipalities. Currently Rural Infrastructure Development (RID) is responsible for all Agri-parks infrastructure projects and other infrastructure development in the Limpopo province.

RID Limpopo is also expected to provide technical assistance in the implementation of all infrastructure projects for other directorates, i.e. Land Development Support, Property Management, etc within the Department of Agriculture, Land Reform and Rural Development.

The component (RID) does not have the requisite technical capacity to do all the infrastructure projects as there is currently only few officials. The unit currently relies on appointing Professional Service Provider's per project and in some instances must implement the project in house.

2. SCOPE OF WORK

The goal of this Bid is the appointment of the Project Management Unit(PMU) will be mainly to provide technical expertise to the Department of Agriculture, Land Reform and Rural Development. The Project Management Unit(PMU) will be expected to assist the Client in contracting professionals and/or building contractors in the built environment and to manage such contracts on behalf of the Employer. In addition, the Project Management Team will be required to amongst other functions normally required in projects of this nature, provide the following functions:

1. Act as the Employer's agent and/or Implementing Agent where necessary
2. Advise the Employer on matters relating to:
 - a) Land use and Community establishment
 - b) Environmental Assessment
 - c) Design frameworks
 - d) Advise the department in terms of all engineering works
 - e) Develop TORs for contracting other professionals and/or building contractors.
3. Assist the department with the assessment of work and payment certificates submitted by registered professionals and/or building contractors in the built environment.
4. Provide overall management and co-ordination of the project.
5. Assume the role of secretariat for the project team committee and Keep proper records of all information relating to projects.
6. Provide professional advice and make presentations where required.
7. Keep proper records (according to an agreed system which will be approved) of all information relating to the project; technical and otherwise.
8. Provide Professional Engineering Services as described in the scope of works in respect of:
 - a) Stage 1: Project Inception that will involve project briefing, appraisal and definition of the project
 - b) Stage 2: Concept and Viability that will involve design concept, development of project concept, design criteria, surveys, and cost estimate.
 - c) Stage 3: Design Development that will involve progress design approval of work done and revisions inclusive of final designs, technical specifications,
 - d) Stage 4: Documentation and Procurement which will involve tender advertisement, final tender documents, and briefing of contractors, tender closing and opening submission of tender report by the service provider
 - e) Stage 5: Contract Administration and Inspection which will include project management and technical Supervision on-site and provision of administrative and technical support during consultation meetings and technical meeting relating to any of the sites.
 - f) Stage 6: Close out
9. Conduct Feasibility study and Business Plan Development
10. Obtain environmental approvals
11. Provide realistic and reliable cost estimates
12. Acceleration of the construction schedule
13. Contract and Project Management
14. Improve quality control to reduce potential defects and poor workmanship
15. Provide value engineering to eliminate unnecessary risks
16. Provide professional advice and make presentations where required
17. Provide Mentorship and Training to Candidate Engineers/ Candidate construction project managers during project implementation to enable Departmental engineers/ construction managers gain relevant experience for Professional Registration.

2.1 DURATION OF THE CONTRACT

The Project Management Unit(PMU) will be constituted for the period of three years (3) from the date of the appointment letter.

2.2 IMPLEMENTATION OF THE PMU

3.1 The DALRRD intends to appoint the services of a PMU to assist the Client in contracting professionals and/or building contractors in the built environment and to manage such contracts on behalf of the Employer .In an effort to ensure that the Department consistently meet its service delivery targets, sufficient resources and effective measures need to be put in place.

2.3 PROGRAMMES AND PROJECTS

The present list (but not limited to) of Programmes that the Department are using for Agricultural Development post settlement support and that will be covered by the services of the Professional Engineers are as follows:

- Establishment and Revitalisation of Irrigation Schemes/River valley catalytic programme (RVCP)
- Animal Veldt Management Programme(AVMP)
- Land Development Supports projects (LDS)
- Food security projects
- Rural Infrastructure Development (RID) projects (inclusive of Socio-Economic projects)
- Cooperatives and Enterprise Development (CED)projects
- Tenure Reform (CPAs, Labour Tenants and Farm dwellers) projects
- Restitution Post Settlement Support projects
- Development and Maintenance of Agricultural Facilities
- Agricultural Risk Management such as Droughts, Floods, Food and Mouth Diseases(FMD)
- Dam Safety

Typical Projects under these Programmes are as follows:

Irrigation

- Vegetable gardens with single or multiple users
- Irrigation schemes for single or multiple users
- Surface, Drip, Micro, Sprinkler and Mechanised systems
- Automation and Fertigation
- Shade-net and tunnels
- Green house structures
- Sub-surface drainage
- Field evaluation of Irrigation systems on schemes

Animal Production & Handling Facilities

- Piggery
- Poultry - naturally ventilated

- Poultry - Controlled Environmental Houses
- Cattle handling facilities
- Storage facilities
- Cattle feedlot
- Dip-tanks
- Abattoir
- Small stock facilities
- Aquaculture facilities
- Game handling facilities
- Fencing for livestock & game
- Stock water supply systems - boreholes, pipelines, windmills, drinking and feeding troughs & reservoirs

Soil Conservation Structures

- Waterways
- Contours
- Storm-water drains
- Gabion structures
- Inlet and outlet work
- Other Conservation measures (e.g. Tyre-, concrete- and net-structures)

Agro-Processing Facilities

- Washing, grading, and packaging
- Washing and processing
- Cold storage
- Marketing and Pack house facilities

Civil & Other Structures

- Storerooms and sheds (e.g. Feeds, Fertilisers, Tractors & Farm Equipment.)
- Drilling, testing, and equipping of boreholes
- Canals & weirs (River abstraction works)
- Pump-stations and main pipelines
- Offices and Housing structures
- Domestic water supply (Reticulation and Reservoirs)
- Electricity supply and reticulation
- Farm Roads
- Access roads
- Low water bridge
- Security lights (Flood or High mast)
- Security fencing
- Storage dams in river or off-channel
- Storage at field edge (lei dams)
- Fire-belt
- Solar systems connections
- VIP toilets

Dam safety

- Dam safety evaluations
- Dam break analysis
- Reservoir routing analysis
- Emergency preparedness plan
- Operational and maintenance plan
- Routine maintenance

Other Engineering work

- Other Engineering work related to the Department of Agriculture, Land Reform and

Rural Development - Limpopo Province that may be required.

2.4 PSSC and District Offices

The point of service provided shall be to the offices as specified below:

- Provincial Shared Services Centre (PSSC):Polokwane
- Mopani District Office,
- Vhembe District Office,
- Sekhukhune District Office,
- Waterberg District Office,
- Capricorn District Office

2.5 Implementing Authority

Implementing Authority: Agriculture, Land Reform and Rural Development-Limpopo Province, Directorate - Rural Infrastructure Development.

Address of Implementing Authority DALRRD Limpopo PSSC
70 Van Rensburg Street
POLOKWANE
0700

ENQUIRIES – TECHNICAL RELATED:

Ms MA Mokiti
Tel: (015) 495 1073
E-mail: Mashela.mokiti@dalrrd.gov.za

ENQUIRIES – SUPPLY CHAIN MANAGEMENT RELATED:

Mr. L Mahloromela
Department of Agriculture, Land Reform and Rural Development
Private Bag X 9552
Polokwane
0700
Tel: (015) 495 0662
E-mail: leshoka.mahloromela@dalrrd.gov.za

OR

Ms D Mongwai
Tel: (015) 495 1703
Email: daisy.mongwai@dalrrd.gov.za

2.6 Objectives and Minimum Standards

The overall objective is to provide Project Management Services for Department Agriculture, Land Reform and Rural Development Programs with active participation of Program & Project Managers, Relevant Officials and Beneficiaries.

To achieve these objectives the PMU shall meet with the following guidelines and standards:

- a) All applicable SA National Standards (SANS).
- b) All applicable Acts and Regulations.

- c) Directives particular to the Project as required by the Client Body.
- d) Professional engineering interpretation of the Project Engineer as agreed with the Client Body.

Multidisciplinary Professional Consulting Engineering firms shall adhere and comply with the following:

- a) Project and Construction Management Act, 2000 (Act No 48 of 2000)
- b) Engineering Profession Act, 2000 (Act no 46 of 2000) (Civil & Structural),
- c) Engineering Profession Act, 2000 (Act no 46 of 2000) (Mechanical & Electrical),
- d) Engineering Profession Act, 2000 (Act no 46 of 2000) (Agricultural),
- e) Quantity Surveying Profession Act, 2000 (Act no 49 of 2000),
- f) Architectural Professions Act, 2000 (Act no 44 of 2000),
- g) Planning Profession Act, 2002 (Act 36 of 2002)
- h) Natural Scientific Professions Act of 2003, (Act 27 of 2003)
- i) Land Survey Act, 1997 (Act No. 8 of 1997)

2.7 General Scope of Works

The Multi-disciplinary specialized professional consulting engineering consultant will be remunerated at the tariffs applicable for personnel fees, appurtenant engineering instrument usage and the reimbursable expenses (as specified in clause 4 of this document) on a cost and time basis for consulting services related to specialized engineering in the general scope of works (GS) as listed herein under:

- GS1 Scoping Report / Feasibility Study (Incl. EIA)
- GS2 Cost Estimation
- GS3 Technical Report
- GS4 Land survey (E.g. Topographical and aerial photography)
- GS5 Preliminary Engineering Design (Incl. OHS)
- GS6 Detailed Design
- GS7 Compilation of Specifications, Drawings and Bills of Quantities/Rates
- GS8 Tender, Bidding and Adjudication Procedures
- GS9 Assist farmers and beneficiaries in appointing reputable contractors in LDS
- GS10 Project Management (Incl. OHS)
- GS11 Supervision, Monitoring & Evaluation of construction work
- GS12 Skills transfer to officials and farmers
- GS13 Close-out Report (Incl. As-build drawings and O&M manuals)

The format of documentation should be as follows:

- | | |
|---------------------|---|
| Reports: | Hard copies and Electronic copy in PDF format, Word & Excel format on request. |
| Plans & Drawings: | Hard copies and Electronic copy in PDF & DXF format |
| Tender documents: | Hard copies and Electronic copy in Word & Excel format |
| Survey data: | Electronic copies in DTM format and compatible for Model Maker or Civil Designer. |
| Aerial photography: | Geo-referenced Electronic copy in JPG, TIF or SID format. |

Note: All electronic data should be GIS compatible.

2.8 Specific Scope of Work

SS1 Water supply for Agricultural, Industrial and Domestic use (per project)

Consulting activities to include:

- Desk study (Existing reports & designs, data base search, statistical data)
- Water allocation (Incl. Inter alia, verification, validation, Water licence and rights)
- Site verification and role player liaison
- Water source development (Incl. Groundwater - Sitting, drilling & testing)
- Geotechnical or Geo-hydrological interpretation
- Laboratory analyses
- Data processing and demand analysis
- Hydraulic analysis
- Design water supply works
- Compile specifications, drawings and Bills of Quantities/Rates
- Compile tender/bidding documentation and execute adjudication procedures
- Execute construction supervision and project management
- Act as agent for client in terms of OHS
- Commission the Works
- Compile close-out report (Incl. as build plans and O&M manuals)

SS2 Irrigation (per project)

Consulting activities to include:

- Desk study (Existing reports & designs, data base search, statistical data)
- Site verification and role player liaison
- Interpretation of soil survey
- Laboratory analyses
- Data processing and demand analysis
- Hydraulic analysis
- Design irrigation system
- Compile specifications, drawings, and Bills of Quantities/Rates
- Compile tender/bidding documentation and execute adjudication procedures
- Execute construction supervision and project management
- Act as agent for client in terms of OHS
- Commission the Works
- Compile close-out report (Incl. as build plans and O&M manuals)

SS3 Farm structures and animal handling facilities (per project)

Consulting activities to include:

- Desk study (data base search, statistical data)
- Site verification and role player liaison
- Geotechnical interpretation
- Laboratory analyses
- Data processing and demand analysis
- Design farm structures and animal handling facilities
- Compile specifications, drawings and Bills of Quantities/Rates
- Compile tender/bidding documentation and execute adjudication procedures
- Execute construction supervision and project management
- Act as agent for client in terms of OHS

- Commission the Works
- Compile close-out report (Incl. as build plans and O&M manuals)

SS4 Steel structures and storerooms (per project)

Consulting activities to include:

- Desk study (data base search, statistical data)
- Site verification and role player liaison
- Geotechnical interpretation
- Laboratory analyses
- Data processing and demand analysis
- Design steel structures and storerooms
- Compile specifications, drawings and Bills of Quantities/Rates
- Compile tender/bidding documentation and execute adjudication procedures
- Execute construction supervision and project management
- Act as agent for client in terms of OHS
- Compile close-out report (Incl. as build plans and O&M manuals)

SS5 Stock, Game and Security fencing (per project)

Consulting activities to include:

- Desk study (data base search, statistical data)
- Site verification and role player liaison
- Geotechnical interpretation
- Laboratory analyses
- Data processing and demand analysis
- Design fences
- Compile specifications, drawings and Bills of Quantities/Rates
- Compile tender/bidding documentation and execute adjudication procedures
- Execute construction supervision and project management
- Act as agent for client in terms of OHS
- Commission the Works
- Compile close-out report (Incl. as build plans and O&M manuals)

SS6 Farm Roads and Low Water Bridges (per project)

Consulting activities to include:

- Desk study (data base search, statistical data)
- Site verification and role player liaison
- Geotechnical interpretation
- Laboratory analyses
- Data processing and demand analysis
- Design the Works (Incl. surface drainage on roads)
- Compile specifications, drawings and Bills of Quantities/Rates
- Compile tender/bidding documentation and execute adjudication procedures
- Execute construction supervision and project management
- Act as agent for client in terms of OHS
- Compile close-out report (Incl. as build plans and O&M manuals)

SS7 Electricity supply, Solar system and reticulation (per project)

Consulting activities to include:

- Desk study (data base search, statistical data)
- Site verification and role player liaison
- Geotechnical interpretation
- Data processing and demand analysis
- Design the Works
- Compile specifications, drawings, and Bills of Quantities/Rates
- Compile tender/bidding documentation and execute adjudication procedures
- Execute construction supervision and project management
- Act as agent for client in terms of OHS
- Commission the Works
- Compile close-out report (Incl. as build plans and O&M manuals)

SS8 Refurbishment and construction of Offices and houses (per project)

Consulting activities to include:

- Desk study (data base search, statistical data)
- Site verification and role player liaison
- Geotechnical interpretation
- Data processing and demand analysis
- Design the Works
- Compile specifications, drawings and Bills of Quantities/Rates
- Compile tender/bidding documentation and execute adjudication procedures
- Execute construction supervision and project management
- Act as agent for client in terms of OHS
- Commission the Works
- Compile close-out report (Incl. as build plans and O&M manuals)

SS9 Canals, Weirs, and dams (per project)

Consulting activities to include:

- Desk study (data base search, statistical data)
- Water allocation (Water licence and rights)
- Site verification and role player liaison
- Geotechnical interpretation
- Hydrological interpretation
- Hydraulic analysis
- Laboratory analyses
- Data processing and demand analysis
- Design the works
- Compile specifications, drawings and Bills of Quantities/Rates
- Compile tender/bidding documentation and execute adjudication procedures
- Execute construction supervision and project management
- Act as agent for client in terms of OHS
- Compile close-out report (Incl. as build plans and O&M manuals)

SS10 Soil Conservation Structures (per project)

Consulting activities to include:

- Desk study (data base search, statistical data)
- Site verification and role player liaison
- Geotechnical interpretation
- Hydrological interpretation
- Hydraulic analysis

- Laboratory analyses
- Data processing and demand analysis
- Design the works
- Compile specifications, drawings and Bills of Quantities/Rates
- Compile tender/bidding documentation and execute adjudication procedures
- Execute construction supervision and project management
- Act as agent for client in terms of OHS
- Compile close-out report (Incl. as build plans and O&M manuals)

SS11 Dam Safety (per project)

Consulting activities to include:

- Desk study (data base search, statistical data)
- Site verification and role player liaison
- Geotechnical interpretation
- Hydrological interpretation
- Hydraulic analysis
- Laboratory analyses
- Data processing and demand analysis
- Design the works
- Compile specifications, drawings and Bills of Quantities/Rates
- Compile tender/bidding documentation and execute adjudication procedures
- Execute construction supervision and project management
- Act as agent for client in terms of OHS
- Compile close-out report (Incl. as build plans and O&M manuals)

SS12 Agro-Processing (per project)

Consulting activities to include:

- Desk study (data base search, statistical data)
- Site verification and role player liaison
- Geotechnical interpretation
- Analysis for product specific requirements
- Laboratory analyses
- Data processing and demand analysis
- Design the works
- Compile specifications, drawings and Bills of Quantities/Rates
- Compile tender/bidding documentation and execute adjudication procedures
- Execute construction supervision and project management
- Act as agent for client in terms of OHS
- Compile close-out report (Incl. as build plans and O&M manuals)

SS13 Supervision of Contractors

Consulting activities to include:

- Familiarise with the Employers plans, programs and contracts.
- Site verification and role player liaison
- Act as the Employers Agent by managing Consultants on other projects
- Construction supervision of work undertaken by the companies and Contractors as follow:
 - The function on the construction supervision work is to represent the

- client on site, including the following: -
 - Ensuring that the equipment and material used is according to the required standards and specifications.
 - Review of work procedures
 - Ensuring that the equipment is installed correctly and according to the approved specifications and designs (e.g. laying of pipe).
 - Checking that the specified SANS codes are adhered to.
 - Ensuring that the pre-approved design is adhered to.
 - Inspect all completed work and materials on site and prepare progress reports.
- Health and safety issues on site.
 - The Service Provider will act as the agent for the client in terms of the Construction Regulation 2003, issued in terms of the Occupational Health and Safety Act of 1993.
 - The Service Provider shall arrange, formally and in writing, for the contracted companies to provide documentary evidence of compliance with all the requirements of the Occupational Health and Safety Act, 1993 (Act No.85 of 1993).
 - The Service Provider shall execute the duties of the client, as his appointed agent, as contemplated in the Construction Regulations to the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993).
 - The Service Provider shall comply with Covid-19 Occupational Health and Safety measures in workplaces - covid-19 (C19-OHS), 2020.
- Design review

The contractors and farmers can submit designs and bills of material to the Department for Checking on an on-going basis. Once satisfied, the Department then issues an order for the work. The Service Provider will provide support to the Department for this design review function. The function can best be described as technical auditing.

This design review function includes:

 - Checking the bill of material against the design
 - Checking of prices against the given rates and / or industry norms
 - Checking compliance to relevant SANS codes
 - Spot checks on various critical parts of the design e.g. pump selection, friction loss in mainline, road specification etc.
- Quality assurance of works
 - Check that the turn-key company has an approved quality assurance plan in place and that the plan is always implemented.
 - Check various critical aspects of the installation which could have major impacts on the longevity of the scheme i.e. bedding and depth of pipe.
- Project administration including measurement of progress and checking of payment certificates. Measurement of progress on a weekly basis and prepare progress reports on monthly basis. Compare progress according to the approved and agreed program submitted by the contractor. Give instructions on behalf of the client to the contractor regarding deviations on the program.
- Training of Departmental staff

- Certain staff members have been appointed as project managers for the Land Development Support as well as Rural Infrastructure Development programmes. It is of utmost importance that the Service Provider/Consultant communicates and always co-operates with these members.
- The Service Provider/Consultant is required to act as a mentor to these staff members and assist in their efforts to become registered as Professionals under the Engineering Profession Act 46 of 2000.
- Any other work which may be required by the client.
- Compile tender/bidding documentation and execute adjudication procedures

Key Performance Indicators

- Site agent time per site: 8 hours (1 day) per week.
- Maximum of 4 sites per individual site agent (schemes can be clustered according to geographical location).
- Turn around for compiling technical evaluation report: 10 working days
- Turn-around time per design review: 3 working days
- Turn-around time for invoice checking: 2 working days
- Bi-weekly progress measurement on each site
- Monthly reports on progress on the ground to be submitted by the 7th of each month
- Monthly reports on the individual activities of Service Provider members
- Invoices for the Service Provider to be submitted monthly and by the 15th of the following month depending on a project.
- Mid-year and Annual performance reviews of the appointed Consultants

3. STAFFING

3.1 Staffing, Conduct and Experience

The Consultant's staff shall always act professionally and with integrity, objectivity, and independence as a faithful technical advisor to the Employer. The Consultant's team shall have the necessary professional knowledge, skill, and experience to undertake the assignment. Appointed Consultants and their staff must comply with ESCA inclusive of other statutory bodies' Code of Conduct.

The Consultant's team must consist of experienced, suitably qualified and competent multi-disciplinary engineering firms with an ability to undertake the following multi-disciplinary services:

- Project Management Services (Project Leader)
- Agricultural Engineering Services
- Architectural Services
- Civil and Structural Engineering Services
- Mechanical and Electrical Engineering Services
- Quantity Surveying Services
- Technicians (compiling, drafting etc.)
- Administrative staff (Filing, minutes taking, administration etc.)

Additional Services

- Agricultural Economics and Agribusiness Services

- Farm Planning Specialists (Crop and Livestock Projects)
- Town and Regional planning
- Geotechnical Investigation
- Land Surveying
- Occupational Health and Safety services
- Environmental Practitioner Services

3.2 Project Leader Agricultural Engineer Profile

In addition, the Service Provider will ensure that there is an allocated Project Leader with expertise in Infrastructure planning and development that will report to the Director: Rural Infrastructure Development or a Delegated Official, as and when required. The Project Leader must have a proven track record of:

1. Managing and executing complex agricultural and rural development infrastructure projects within the built environment.
2. Working with National, Provincial and municipal level stakeholders in the agriculture development field.
3. Must have excellent written and verbal communication skills.
4. Must have excellent presentation skills.
5. Must have excellent Organisational skills
6. Must be able to draft Terms of Reference (TOR) for the DALRRD to appoint a Service Provider/s to work in the infrastructure projects.
7. Must have full back office support of the appointed service provider in order to obtain the expertise and skill required to complete any task.
8. The Project leader must be a principal registered professional in the agricultural engineering field, with experience, of complex projects.
9. This individual should have more than 10 years in Agricultural and Rural Infrastructure development experience.
10. The Project Leader will work hand in hand with the Project Manager of the contract.
11. Duties of the Project Leader will include:
 - a) Obtaining project brief from client and briefing team
 - b) Develop the project concept for client approval
 - c) Assign relevant team members for project implementation
 - d) Delegating tasks to the project manager after project concept has been formulated and approved by client
 - e) Keep project schedules up to date and provide detailed weekly (or at agreed frequency) progress reports and risk registers on the project and other relevant programme information.
 - f) In conjunction with Project Manager, keep accurate records, minutes, action lists and organise meetings.
 - g) In conjunction with Project Manager, ensure all documents and files are always kept up to date and perform secretarial functions.
 - h) In conjunction with Project Manager, ensure that project staff are able to make travel plans at short notice to meet with stakeholders as and when required by the DALRRD.

3.3 Specialized Skills

Personnel with specialized skills will be required by the Employer. These skills shall be provided using the rates set out in the Schedule of Rates. The Consultant shall demonstrate to the Employer that they have the range of skills, experience, and resources necessary to meet the core requirements of this contract while also having

the resources and skills to meet requirements for specialist personnel.

3.4 Empowerment

The commitment of the Employer to the Government's policy concerning the empowerment of historically disadvantaged individuals, companies and Small, Medium, Micro Enterprises (HDI/HDC/SMMEs) shall be noted and adhered to by the Consultant.

3.5 Experience

Tenderers should indicate in their proposals their expertise and their capacity to undertake this assignment together with an indicative plan.

Tenderers must, in their submissions, prove their experience in planning, design, procurement, construction supervision and project management of the following elements.

- Water resource development, water treatment, including the storage, conveyance, pumping and reticulation aspects of water services for agricultural use.
- Irrigation systems.
- Farm structures and animal handling facilities.
- Steel structures and storerooms.
- Stock, Game and Security fencing
- Roads and low water bridges
- Electricity supply, Solar system and reticulation
- Refurbishment and construction of new Offices and housing
- Canals, weirs, and dams
- Soil conservation structures
- Dam safety
- Agro-Processing
- Agricultural Mechanisation/Equipment

3.6 Employer's Requirements

The following Employer's Requirements should also be noted:

- Liaison with officials will be through the Program or Project Manager.
- The tender rates shall be submitted in the form of a Schedule of Rates.
- The Department of Agriculture, Land Reform and Rural Development in Limpopo Province reserves the right to increase or decrease the Terms of Reference to meet their requirements from time to time.
- There is no guarantee as to the minimum or maximum value of the final Contract.
- The rates will be applied unaltered to work carried out anywhere in the Limpopo Province.
- Where the Schedule of Rates does not cover all rates required for a particular Project, additional rates shall be negotiated prior to the approval of the Agreement for the Project.

4. PRICING SCHEDULE

4.1 Notes on Personnel, Fees and Tariffs

The fees for engineering services rendered in accordance with the Scope of Work must be calculated in accordance with the Guideline Scope of Services and Tariff of Fees for Persons Registered in Terms of the Engineering Profession Act, 2000 (Act 46 of 2000), published in terms of Board Notice No. 243 of 2013, as amended, for the relevant work description. Refer also to the Department of Public Service and Administration (DPSA) and Department of Public Works (DPW) websites in this regard.

Rates for persons not registered in terms of the Engineering Profession Act, should be in accordance with their relevant professional bodies where applicable.

Please note that all the categories of staff listed below, may not be required for the implementation of the projects with which the Consultants may be involved during the duration of the contract. However, it is compulsory that the list be completed in full and that the Consultant has an agreement with the specialist, where this capacity does not exist in-house. The estimated quantities of hours are based on various assumptions and will only be used to calculate the competitive bid price for the purposes of evaluating this tender.

NB: Rates provided must be inclusive of disbursements and all overheads since no additional charges shall be accepted above rates provided. The rates per discipline are fixed for the duration of the term contract and must include possible escalations applicable.

4.2 Remuneration

The Service Provider shall be remunerated in accordance with the Standardised Rates for Professional Engineers as set out in the appointment letter and as per the principles and guidelines set out in the Engineering Professions Act no.46 of 2000. The rates are VAT inclusive.

As per Government Gazette, Volume 669, No: 443333, Part 4 of 4 Issued 26 March 2021 for determination of fees for such Engineering Projects; this contract shall allow for four different methods of remuneration to be utilised either jointly or singular namely:

- a) Percentage fee based on the cost of works
- b) Fees for services that are additional to those provided for in the normal percentage fee-based calculation
- c) Time-based fees
- d) Reimbursable expenses

Where the scope of work is uncertain remuneration will primarily be based on time and reimbursable expenses. This will mainly be utilised in the project inception phase prior to the determination of project scope and estimated project cost and any other Ad-Hoc services required.

Where the location, size, character, form and function of the works has been defined through previous studies and investigations that have either formed part of the client's normal business practices or have been the subject of previous separate appointments paid for on a time and cost basis, the remuneration can be determined using the

guideline tariffs that are based on the cost of the works. This will provide a convenient way to express the fee payable if the scope of work is somewhat uncertain.

For the kind of projects in this contract the percentage fees applicable to these projects and services provided will be agreed between the department and the service providers of total project cost excluding disbursements. This amount is determined after the project has been assessed and estimate reviewed and accepted by the Departmental Representative. As per Government Gazette, Volume 669, No: 443333, Part 4 of 4 Issued 26 March 2021, the products of this contract are classified "Building Projects". In this case the total professional fees will be disbursed on deliverable basis as per table below:

Stage of Service	Measurable Deliverable	Disbursement %
Building Projects:		
Inception	Inception Report	5
Concept and Viability	Conceptual Design & report	25
Design Development	Detailed Designs & report	25
Documentation & Procurement	Tender document & cost estimates for procurement	15
Contract Administration & Inspection	Monthly progress reports	25
Close-Out	As built drawings & close out report	5

4.2.1 Time Based Fees

The Service Providers shall be remunerated in accordance with the Standardised Rates for Professional Engineers as set out; and as per the principles and guidelines set out in the Engineering Professions Act no.46 of 2000. The rates are VAT inclusive.

Item No	Description	Fixed Rate	Estimated Hours a week	Estimated no of weeks	Total per service Provider
1	Agricultural Engineering Services		30	150	
2	Project Management Services: Leader		30	150	
3	Architectural Services		30	150	
4	Civil and Structural Services		30	150	
5	Mechanical and Electrical Services		25	100	
6	Quantity Surveying Services		30	150	
7	Technicians (compiling and drafting etc.)		30	150	
8	Administrative staff (filling, minutes taking administration etc.)		25	100	
	Additional Services				
9	Agricultural Economics and Agribusiness Services		25	100	
11	Town and Regional Planning		25	100	

12	Geotechnical Investigation		25	100	
13	Land Surveying		20	90	
14	Environmental Practitioner Services		20	95	
15	Additional Provisional Sum services: Construction monitoring, OHS and studies required per project	Provisional Sum			R 5 700 000.00
16	Design and project management	Provisional Sum			R 6 500 000.00
17	Disbursements: Travelling, Subsistence allowance, copying, Printing, etc.	Provisional Sum			R 5 500 000.00
	Sub-Total				
	VAT @15%				
	Total				

TOTAL AMOUNT IN WORDS

Signed: _____ Date: _____

Name : _____ Position: _____

Tenderer: _____

Witness Name (Tenderer)

Signature

Date

NB: All the professions must be priced accordingly and failure to comply will result in your bid being disqualified.

5. EVALUATION OF TECHNICAL SECTIONS FOR QUALITY CRITERIA

Tenders will be evaluated in terms of the evaluation criteria stipulated below:

- (A) Evaluation for Mandatory Criteria
- (B) Evaluation in Terms of Functionality
- (C) Price and Specific Goal

5.1 Mandatory Requirements for Bidding

Any bid submission that fails to comply with any of the mandatory requirements listed below, will automatically be disqualified.

5.1.1 The tendering Service Provider in **Consortium** is made up of professional practices in each of the professional service as listed in the tender document and for each of the professional practice making up the consortium, must at least be owned by registered professionals of that specific profession, who are registered in terms of the:

- Project and Construction Management Act, 2000 (Act No 48 of 2000)
- Engineering Profession Act, 2000 (Act no 46 of 2000) (Civil & Structural),
- Engineering Profession Act, 2000 (Act no 46 of 2000) (Mechanical & Electrical),
- Engineering Profession Act, 2000 (Act no 46 of 2000) (Agricultural),
- Quantity Surveying Profession Act, 2000 (Act no 49 of 2000),
- Architectural Professions Act, 2000 (Act no 44 of 2000),
- Planning Profession Act, 2002 (Act 36 of 2002)
- Natural Scientific Professions Act of 2003, (Act 27 of 2003)
- Land Survey Act, 1997 (Act No. 8 of 1997)
- National Environmental Management Act, 1998 (Act 107 of 1998) (Section 24H): (EAPASA)
- Construction Health and Safety Act, 2000 (Act No. 48 of 2000) and who will hereafter be referred to as registered principals.

And / or

5.1.2 A **multi-disciplinary firm**, that is made up of professional practices in each of the professional services listed in the tender document, of which each professional division/section in the practice or practises is under the fulltime supervision of a registered professional in that specific profession registered in terms of the:

- Project and Construction Management Act, 2000 (Act No 48 of 2000)
- Engineering Profession Act, 2000 (Act no 46 of 2000) (Civil & Structural),

- Engineering Profession Act, 2000 (Act no 46 of 2000) (Mechanical & Electrical),
- Engineering Profession Act, 2000 (Act no 46 of 2000) (Agricultural),
- Quantity Surveying Profession Act, 2000 (Act no 49 of 2000),
- Architectural Professions Act, 2000 (Act no 44 of 2000),
- Planning Profession Act, 2002 (Act 36 of 2002)
- Natural Scientific Professions Act of 2003, (Act 27 of 2003)
- Land Survey Act, 1997 (Act No. 8 of 1997)
- National Environmental Management Act, 1998 (Act 107 of 1998) (Section 24H): (EAPASA)
- Construction Health and Safety Act, 2000 (Act No. 48 of 2000) and who will hereafter be referred to as registered principles of the practices.

In the event of any legal entity, as meant above, being a listed public Company on the stock exchange, the percentages related to ownership and control referred to are to be made relevant to persons duly appointed as Directors of such entity.

A professional practice has the key professionals (personnel) in its permanent employment at the close of tender. Alternatively, a signed undertaking from a specialist professional firm/consultant having the required professionals (personnel), stating that they will undertake the necessary work on behalf of the tenderer in terms of a sub-consultant agreement, will be acceptable. Such undertaking must be attached to, clause 7.1.2 - Key Persons.

NB: SERVICE PROVIDERS MUST INDICATE WHETHER THEY ARE TENDERING IN CONSORTIUM OR MULTI DISCIPLINARY.

- 5.1.3 Fully completed bid document and all attached Standard Bidding Documents (SBD) (SBD1, SBD4, SBD6.1, SBD7.2).
- 5.1.4 Valid Certified copies (within the last 6 months - i.e. prior to bid closing date) of present registration with the following councils:
- South African Council of Project and Construction Management Professions (Construction Project Management & Health and Safety)
 - Engineering Council of South Africa (Civil Engineering)
 - Engineering Council of South Africa (Mechanical Engineering & Electrical Engineering)
 - Engineering Council of South Africa (Agricultural Engineering)
 - South African Council for the Architectural Profession
 - South African Council for the Quantity Surveyors
 - South African Council for Planners
 - South African Council for Natural Scientific Professions
 - South African Council for Professional and Technical Surveyors

as “**Professional**”, with the registration numbers, of all the registered principals.

Note: For this bid, the categories in which a “Professional” in the Engineering Profession that will be accepted are: Professional Engineer and Professional Engineering Technologist only.

The information, required in respect of 1.1; 1.2 and 1.2.1 above, has been provided for all Service Providers tendering in consortium or multidisciplinary. The department will verify the professional certificates/registration with relevant professional bodies prior to evaluating the bidder.

5.1.5 Tax Requirements:

- Bidders must ensure compliance with their tax obligations.
- 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.
- Application for tax compliance status (TCS) 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.
- Bidders may also submit a printed TCS together with the bid.
- In bids where consortia / joint ventures / multi-disciplinary / sub-contractors are involved; each party must submit a separate proof of TCS / pin / CSD number.
- Where no TCS is available but the bidder is registered on the central supplier database (CSD), a CSD number must be provided.

5.1.6 Letter of authority on Company Letterhead. Attach a resolution letter authorizing a particular person to sign the bid documents. Failure to submit such documentation will automatically disqualify the bid.

- In the case of a ONE-PERSON CONCERN submitting a Quotation bid, this shall be clearly stated on the company letter head.
- In case of a COMPANY submitting a quotation bid, include a copy of a resolution by its board of directors authorizing a director or other official of the company to sign the documents on behalf of the company.
- In the case of a CLOSED CORPORATION submitting a quotation bid, include a copy of a resolution by its members authorizing a member or other official of the corporation to sign the documents on each member’s behalf.
- In the case of a PARTNERSHIP submitting a quotation bid, 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 an authorization shall be included in the Tender.

- In the case of a JOINT VENTURE submitting a tender, must include a resolution of each company of the Joint Venture together with a resolution by its members authorizing a member of the Joint Venture to sign the documents on behalf of the Joint Venture.(each entity including a letter from the Joint Venture/Consortium) . In case of Joint Venture/Consortium bidders are expected to submit a copy of the agreement.

5.1.7 Proof of Central Supplier Database (CSD) Registration.

- In case of Joint Venture each entity must submit a separate proof of Centralised Supplier Database registration.

5.1.8 Compulsory Registration of key personnel with regulatory bodies.

- Copies of certified educational and council certificates (not older than six months from the date of bid closure) from the relevant bodies clearly proving current professional registration with the relevant council, including registration numbers, of all the registered principals mentioned in 5.1 above are included with the tender as part of the returnable documentation. In the event of any legal entity, as meant above, being a private Company with shareholding, the same information/documentation as for registered principals must be provided with the tender, in respect of all Directors formally appointed to manage the business undertaking. Sole Proprietors, Partners in Partnerships, and Members of Close Corporations are principals as defined in 1 above and information/documentation in respect of such persons must be provided as described.

- 5.1.9** Confirmation of the required R 10 000 000.00 of professional indemnity insurance specified in terms of Contract Data clause 5.4.1 (C1.2.3 Data provided by the Service Provider). [If confirmation/proof of professional indemnity insurance is not duly confirmed in C1.2.3 Data provided by the Service Provider, the risk to Employer will be regarded as unacceptable and render the tender unacceptable on grounds of not being to specification. The Employer retains the right to request documentary proof of such insurance as part of the tender evaluation process. (A letter of intent will not be accepted). A combined Professional indemnity (PI) for Consortium must be submitted for required amount of R 10 000 000.00. **(Proof of Professional Indemnity must not be older than 90 days on the closing of the bid)**

5.2 Evaluation in Terms of Functionality

DALRRD shall evaluate the Technical Sections received at Tender Closure, and opened in accordance with the approved procedures, in accordance with the following steps.

In Step 1, DALRRD shall examine each Technical Section submitted to determine whether the Technical Section is complete and substantially responsive.

In Step 2, DALRRD shall evaluate the Technical Sections (refer to schedules 1,2 and 3 below) that are substantially responsive based on the following criteria and marking system:

The tenders will be evaluated in accordance with the following Eligibility and Quality criteria:

Schedule 1: Experience of Tenderer	50
Schedule 2: Experience of Key Personnel	35
Schedule 3: Approach Paper and Methodology	15
Total	100

The contract will be executed based on Schedules of Rates. No specific quantity of work has been identified. The tendered schedule of rates for various items is based on the DALRRD approved Consulting Fees (for various personnel categories) **as well as** the tendered time basis quantity for specified personnel categories.

5.3 Schedule 1: Experience of the Tenderer [50 Points]
Explanation of how points will be awarded for Relevant Project Experience

The following are relevant project experience categories:

- Irrigation and boreholes
- Water reticulation
- Buildings and Structures
- Roads and Stormwater

The experience of the tenderer as a company (as opposed to key staff members) in providing professional engineering services in Public sector, Private Sector and Local government space over the past 10 years from the date of the advert.

The project chosen for referencing should be for work done in the Public sector and Local Government space. The projects should be within the **10 years** period from date of tender advert. The scope and nature of projects must cover the categories mentioned.

The service providers must submit **an appointment letter, signed copy of completion certificate issued for the project/s and reference letter for each completed project/s**. This experience must only relate to instances where the tenderer acted as the main / principal consultant. The reference letter must be on the client's letterhead per completed project and should include minimum of the following:

- **Employer's Contact Person and telephone number, where available**
- **Description of Project Nature and Location**
- **Contract Value of the Project Inclusive of VAT (Rand)**
- **Date (Start and Actual Completion)**

The scoring of the tenderer's experience will be as follows:

<u>CATEGORIES</u>	Water Reticulation	Buildings and Structures	Roads & storm water	Irrigation and boreholes	Weight
Poor (score 0)	The tenderer has failed to submit any completed relevant projects in all the categories				50
Good (score 3)	The tenderer has submitted one(1) completed relevant project in each of the 4 categories				
Very Good (score 4)	The tenderer has submitted two(2) completed relevant projects in each of the 4 categories				
Excellent (score 5)	The tenderer has submitted three(3) or more completed relevant projects in each of the 4 categories				

5.4. Schedule 2: Experience of Key Personnel [35 Points]

Bidders are expected to submit CVs, certified copies of qualifications, IDs and registration certificates of each key personnel proposed for contract, indicate experience. Foreign qualifications to have SAQA verification certificate.

The experience of all the key personnel will be evaluated in relation to their respective academic and professional qualification and experience (as explained herein this schedule) on projects having scope of work relevant to this project and positions proposed by the tenderer.

A. Electrical or Mechanical Engineer (5)

Related Experience and Qualification of key personnel
(Submission of short CV and certified copies of qualifications and registration certificates).

Points will be allocated as follows:

Registered Professional Electrical or Mechanical Engineer with experience in post registration

- over 7 years = 5
- 6 - 7 years = 4
- 5 - 6 years = 3
- 3 - 4 years = 2
- 1 - 2 years = 1
- No Experience = 0

B. Architect (10)

Related Experience and Qualification of key personnel
(Submission of short CV and certified copies of qualifications and registration certificates).

Points will be allocated as follows:

Registered Professional Architect with experience in post registration

- over 7 years = 5
- 6 - 7 years = 4
- 5 - 6 years = 3
- 3 - 4 years = 2
- 1 - 2 years = 1
- No Experience = 0

C. Professional Civil Engineer or Professional Civil Engineering Technologist (10)

Related Experience and Qualification of key personnel

(Submission of short CV and certified copies of qualifications and registration certificates).

Points will be allocated as follows:

Registered Professional Civil Engineer or Professional Civil Engineering Technologist with experience in post registration

- over 7 years = 5
- 6 - 7 years = 4
- 5 - 6 years = 3
- 3 - 4 years = 2
- 1 - 2 years = 1
- No Experience = 0

D. Quantity Surveyor (10)

Related Experience and Qualification of key personnel

(Submission of short CV and certified copies of qualifications and registration certificates).

Points will be allocated as follows:

Registered Quantity Surveyor with experience in post registration

- over 7 years = 5
- 6 - 7 years = 4
- 5 - 6 years = 3
- 3 - 4 years = 2
- 1 - 2 years = 1
- No Experience = 0

Note: It should be noted that the tendering entity must ensure that they have in their team all the specialists listed on the schedule of rates above, even though these resources will not be considered for evaluation purposes:

The undersigned, who warrants that he / she is duly authorized to do so on behalf of the enterprise, confirms that the contents of this schedule are within my personal knowledge and are to the best of my behalf both true and correct.

Signed

Date

Name

Position

Tenderer

5.4 Schedule 3: Approach Paper and Methodology [15 Points]

The approach paper must respond to the scope of work, the nature of the contract and outline the proposed approach / methodology including that relating to the controlling programming and management of sub-consultants in relation to the works that may be provided over the term of the contract. The approach paper as such needs to:

Understanding of the Project Brief	Scoring					
	0	1	2	3	4	5
	No information provided	Proposal submitted does not address the TOR	Proposal Submitted addressed the TOR partially	Proposal Submitted addresses the TOR accurately	Proposal Submitted addresses the TOR comprehensively	Proposal Submitted addresses the TOR and provides additional planning and implementation plans

N.B. The Bids that fail to achieve a minimum of **70** points out of **100** points for functionality will be disqualified.

6. RIGHT OF DALRRD TO INVESTIGATE AND SEEK CLARIFICATION

- 6.1. DALRRD may, in its sole discretion, seek clarification, during the process. In the process of clarification, no change in the substance of the Technical Section or in the Financial Section shall be sought, offered or permitted.
- 6.2. DALRRD will, seek all clarifications in writing and the Tenderers' responses shall also be in writing.
- 6.3. Without limiting the generality above, DALRRD may, in its sole discretion,
 - (a) investigate evidence of the ability and experience of a Tenderer under consideration, including joint venture partners, proposed subcontractors, and parties otherwise related to the Tenderer or the Tenderer's Proposal; and
 - (b) require or seek out confirmation from other parties of information furnished by a Tenderer.
 - (c) The Department may allocate a project in its entirety to another consultant if other consultants has shown incapacity.

7. RETURNABLE SCHEDULES

List of Returnable Documents

The Service Providers must submit the following Returnable Documents. The complete bid document as received from the employer, together with all additional documentation as requested, must be submitted. No documentation must be removed

from the bid document.

Compulsory Returnable Documents:

- Signed Joint Venture Agreement and Power of Attorney in case of Joint Ventures.
- Company Profile, including previous contract work done and contactable references per contract.
- Professional Indemnity Insurance for Bidding Consultants
- Compulsory Registration of key personnel with regulatory bodies
- Signed CV's of key personnel and certified qualifications on the proposal
- Certified ID copies of the consulting firm Directors

NB: It is the responsibility of the bidder to ensure that the following key information is in order to avoid any disqualification during the bid evaluations:

- Tax compliance status
- The Business registration status
- Tender restrictions and defaulters' status
- Bank Account information
- Identification number and the service of the state status

Non-submission of any of the above listed documents may lead to disqualification of the bid.

Returnable documents required only for bid evaluation purposes.

- Record of Addenda to Bid Documents.
- Proposed Amendments, Deviations and Alternatives.
- Bidder's previous experience.
- List of traceable references for similar services.
- Approach paper and methodology - Full and Detailed.
- Schedule of facilities available.

Proof of office address,

Signed list for the computers and hardware for the Consultant firm (include serial numbers),

Proof of software licences (copy for the invoice or certificate),

Signed list for Survey Equipment owned (provide invoice) or letter of intent to hire or proof of account with the Survey equipment supplier,

Signed CVs of Team Leader and support Professionals staff with letter of consent, certified proof of Qualification(s) not older than three (3) months and organogram.

Other schedules and documents that will be incorporated into the contract and must be completed & submitted to be considered responsive.

- Fully completed and signed Certificate of Authority for Signatory.
- Schedule of amendments, deviations and alternatives.
- Fully completed and signed all SBD forms
- The Bill of Quantities (BoQ) must be fully completed and signed
- Offer and Acceptance
- Other - Form of Offer and Acceptance

.....
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.....

.....
 Note that the bid document must be fully completed and signed, failure which may result in disqualification of the bid.

7.1 CONTRACT DATA

The conditions applicable to this Contract are the **Standard Professional Services Contract** published by the CIDB and are attached hereto.

Clause	
1	The Employer is the Government of the Republic of South Africa in its Department of Agriculture, Land Reform and Rural Development.
3.4 and 4.3.2	The authorised and designated representative of the Employer is the departmental project manager, details of whom are as indicated in the Terms of Reference under Technical Enquiries
3.5	Services shall be executed in the Service Provider's own office and on the identified project sites. No portion of the work may be performed by a person employed by the State. No portion of the work may be sublet to any other person or persons without the prior written approval of the Employer.
3.6	Omit the following: "... within two (2) years of completion of the Service ..".
3.12.1	Period of Performance shall be sub dividable in separate target dates according to the programme to be submitted in terms of clause 3.14 hereof. A Penalty amount of R3500.00 per calendar day will be applicable per target date, to a maximum equal to R1 000 000, after which the contract may be terminated.
3.14	The Period of Performance is from inception of this Contract until Thirty-six (36) months from the date of appointment on the panel. The Service Provider has completed all Deliverables in accordance with the Scope of Services.
9.1	Copyright of documents prepared for the Project shall be vested with the Employer.
SERVICE PROVIDER'S OBLIGATIONS	
12.1.2	Interim settlement of disputes is to be by mediation.
12.2.1	In the event that the Parties fail to agree on a mediator, the mediator is to be nominated by the president of the Association of Arbitrators (Southern Africa).
12.2.4 / 12.3.4	Final settlement is by litigation.
13.1.3	All partners in a joint venture or consortium shall carry the combined professional indemnity insurance as per clause 5.4.1 of the General Conditions of Contract (appendix B).
13.6	The provisions of clause 13.6 do not apply to the Contract.
DATA PROVIDED BY THE SERVICE PROVIDER	
	Each item of data given below is cross-referenced to the clause in the General Conditions of Contract in the Standard Professional Services Contract (July 2009) to which it mainly applies (appendix B).

TABLE OF CLAUSES

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34. Prohibition of restrictive practices

5.3	The authorised and designated representative of the Service Provider is the person named in the resolution PA-15.1 or PA-15.3 by the tendering Service Provider.																																				
7.1.2	<p>As an extension of the definitions contained in clause 1 hereof, Key Persons must, for the purposes of this Contract, include one or more of the professionally registered principal(s) of the Service Provider, and/or, one or more professional(s) employed to render professional services, for whom certified copies of certificates or other documentation clearly proving current professional registration with the relevant council, including registration numbers, must be included with the tender as part of the returnable documentation.</p> <p>The Key Persons and their jobs / functions in relation to the Services are: As per Mandatory requirements list registered Principal/s and/or Employed Professionals. Please provide the professionals assigned for this specific project, FAILURE TO COMPLETE THE TABLE BELOW WILL LEAD TO DISQUALIFICATION:</p> <p><i>NB: ENSURE VALID AND CERTIFIED COPIES OF ALL THE REGISTERED PRINCIPALS/ OWNERS AND EMPLOYED PROFESSIONALS ARE ATTACHED:</i></p> <table border="1" data-bbox="384 826 1402 1270"> <thead> <tr> <th data-bbox="384 826 724 887">Name</th> <th data-bbox="724 826 1064 887">Indicate the relevant body or council registered with</th> <th data-bbox="1064 826 1402 887">Specify duties in relation to this Bid</th> </tr> </thead> <tbody> <tr> <td colspan="3" data-bbox="384 887 1402 947">List of registered principals /owners of the firm (if tendering in Consortium please provide the information of all companies tendering in Joint Venture or Consortium)</td> </tr> <tr><td data-bbox="384 947 724 981">1.</td><td data-bbox="724 947 1064 981"></td><td data-bbox="1064 947 1402 981"></td></tr> <tr><td data-bbox="384 981 724 1014">2.</td><td data-bbox="724 981 1064 1014"></td><td data-bbox="1064 981 1402 1014"></td></tr> <tr><td data-bbox="384 1014 724 1048">3.</td><td data-bbox="724 1014 1064 1048"></td><td data-bbox="1064 1014 1402 1048"></td></tr> <tr><td data-bbox="384 1048 724 1081">4.</td><td data-bbox="724 1048 1064 1081"></td><td data-bbox="1064 1048 1402 1081"></td></tr> <tr><td data-bbox="384 1081 724 1115">5.</td><td data-bbox="724 1081 1064 1115"></td><td data-bbox="1064 1081 1402 1115"></td></tr> <tr><td data-bbox="384 1115 724 1149">6.</td><td data-bbox="724 1115 1064 1149"></td><td data-bbox="1064 1115 1402 1149"></td></tr> <tr><td data-bbox="384 1149 724 1182">7.</td><td data-bbox="724 1149 1064 1182"></td><td data-bbox="1064 1149 1402 1182"></td></tr> <tr><td data-bbox="384 1182 724 1216">8.</td><td data-bbox="724 1182 1064 1216"></td><td data-bbox="1064 1182 1402 1216"></td></tr> <tr><td data-bbox="384 1216 724 1249">9.</td><td data-bbox="724 1216 1064 1249"></td><td data-bbox="1064 1216 1402 1249"></td></tr> <tr><td data-bbox="384 1249 724 1270"></td><td data-bbox="724 1249 1064 1270"></td><td data-bbox="1064 1249 1402 1270"></td></tr> </tbody> </table>	Name	Indicate the relevant body or council registered with	Specify duties in relation to this Bid	List of registered principals /owners of the firm (if tendering in Consortium please provide the information of all companies tendering in Joint Venture or Consortium)			1.			2.			3.			4.			5.			6.			7.			8.			9.					
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GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 “Day” means calendar day.
 - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
 - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
 - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goodson own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

- 1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.
- 2. Application**
- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.
- 3. General**
- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information; inspection.**
- 5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance**
- 7.1 Within thirty (30) days of receipt of the notification of contract award,

security

the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
 - (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the

cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

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

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

10. Delivery and documents

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

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

12. Transportation

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

13. Incidental services

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

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties,

- provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

14. Spare parts

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

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any actor omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser

may have against the supplier under the contract.

16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

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

18. Contract amendments

18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily

available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

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

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms 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 intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

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

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

24. Anti-dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or 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 contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him

- 25. Force Majeure**
- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.
- 26. Termination for insolvency**
- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
- 27. Settlement of Disputes**
- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier.
- 28. Limitation of liability**
- 28.1 Except in cases of criminal negligence or willful 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 in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34. Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

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

Js General Conditions of Contract (revised July 2010)

Appendix A

Standard Conditions of Tender

Annex A

(normative)

Standard Conditions of Tender

F.1 General

F.1.1 Actions

F.1.1.1 The employer and each tenderer submitting a tender offer shall comply with these conditions of tender. In their dealings with each other, they shall discharge their duties and obligations as set out in F.2 and F.3, timeously and with integrity, and behave equitably, honestly and transparently, comply with all legal obligations and not engage in anticompetitive practices.

F.1.1.2 The employer and the tenderer and all their agents and employees involved in the tender process shall avoid conflicts of interest and where a conflict of interest is perceived or known, declare any such conflict of interest, indicating the nature of such conflict. Tenderers shall declare any potential conflict of interest in their tender submissions. Employees, agents and advisors of the employer shall declare any conflict of interest to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to the procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

Note: 1) A conflict of interest may arise due to a conflict of roles which might provide an incentive for improper acts in some circumstances. A conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of that person to act properly in his other position even if no improper acts result.

2) Conflicts of interest in respect of those engaged in the procurement process include direct, indirect or family interests in the tender or outcome of the procurement process and any personal bias, inclination, obligation, allegiance or loyalty which would in any way affect any decisions taken.

F.1.1.3 The employer shall not seek and a tenderer shall not submit a tender without having a firm intention and the capacity to proceed with the contract.

F.1.2 Tender Documents

The documents issued by the employer for the purpose of a tender offer are listed in the tender data.

F.1.3 Interpretation

F.1.3.1 The tender data and additional requirements contained in the tender schedules that are included in the returnable documents are deemed to be part of these conditions of tender.

F.1.3.2 These conditions of tender, the tender data and tender schedules which are only required for tender evaluation purposes, shall not form part of any contract arising from the invitation to tender.

F.1.3.3 For the purposes of these conditions of tender, the following definitions apply:

- a) **Conflict of interest** means any situation in which:
 - i) Someone in a position of trust has competing professional or personal interests which make it difficult to fulfil his or her [duties impartially](#);
 - ii) An individual or organisation is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit; or
 - iii) Incompatibility or contradictory interests exist between an employee and the organisation which employs that employee.
- b) **Comparative offer** means the price after the factors of a non-firm price and all unconditional discounts it can be utilised to have been taken into consideration;

- c) **corrupt practice** means the offering, giving, receiving or soliciting of anything of value to influence the action of the employer or his staff or agents in the tender process;
- d) **fraudulent practice** means the misrepresentation of the facts in order to influence the tender process or the award of a contract arising from a tender offer to the detriment of the employer, including collusive practices intended to establish prices at artificial levels;
- e) **organization** means a company, firm, enterprise, association or other legal entity, whether incorporated or not, or a public body;
- f) **functionality** means the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs.

F.1.4 Communication and employer's agent

Each communication between the employer and a tenderer shall be to or from the employer's agent only, and in a form that can be readily read, copied and recorded. Communications shall be in the English language. The employer shall not take any responsibility for non- receipt of communications from or by a tenderer. The name and contact details of the employer's agent are stated in the tender data.

F.1.5 Cancellation and Re-Invitation of Tenders

F.1.5.1 An organ of state may, prior to the award of the tender, cancel a tender if-

- (a) due to changed circumstances, there is no longer a need for the services, works or goods requested; or
- (b) funds are no longer available to cover the total envisaged expenditure; or
- (c) no acceptable tenders are received.

F.1.5.2 The decision to cancel a tender must be published in the cidb website and in the government Tender Bulletin for the media in which the original tender invitation was advertised.

F.1.6 Procurement procedures

F.1.6.1 General

Unless otherwise stated in the tender data, a contract will, subject to F.3.13, be concluded with the tenderer who in terms of F.3.11 is the highest ranked or the tenderer scoring the highest number of tender evaluation points, as relevant, based on the tender submissions that are received at the closing time for tenders.

F.1.6.2 Competitive negotiation procedure

F.1.6.2.1 Where the tender data require that the competitive negotiation procedure is to be followed, tenderers shall submit tender offers in response to the proposed contract in the first round of submissions. Notwithstanding the requirements of F.3.4, the employer shall announce only the names of the tenderers who make a submission. The requirements of F.3.8 relating to the material deviations or qualifications which affect the competitive position of tenderers shall not apply.

F.1.6.2.2 All responsive tenderers, or not less than three responsive tenderers that are highest ranked in terms of the evaluation method and evaluation criteria stated in the tender data, shall be invited in each round to enter into competitive negotiations, based on the principle of equal treatment and keeping confidential the proposed solutions and associated information. Notwithstanding the provisions of F.2.17, the employer may request that tenders be clarified, specified and fine-tuned in order to improve a tenderer's competitive position provided that such clarification, specification, fine-tuning or additional information does not alter any fundamental aspects of the offers or impose substantial new requirements which restrict or distort competition or have a discriminatory effect.

F.1.6.2.3 At the conclusion of each round of negotiations, tenderers shall be invited by the employer to make a fresh tender offer, based on the same evaluation criteria, with or without adjusted weightings. Tenderers shall be advised when they are to submit their best and final offer.

F.1.6.2.4 The contract shall be awarded in accordance with the provisions of F.3.11 and F.3.13 after tenderers have been requested to submit their best and final offer.

F.1.6.3 Proposal procedure using the two stage-system

F.1.6.3.1 Option 1

Tenderers shall in the first stage submit technical proposals and, if required, cost parameters around which a contract may be negotiated. The employer shall evaluate each responsive submission in terms of the method of evaluation stated in the tender data, and in the second stage negotiate a contract with the tenderer scoring the highest number of evaluation points and award the contract in terms of these conditions of tender.

F.1.6.3.2 Option 2

F.1.6.3.2.1 Tenderers shall submit in the first stage only technical proposals. The employer shall invite all responsive tenderers to submit tender offers in the second stage, following the issuing of procurement documents.

F.1.6.3.2.2 The employer shall evaluate tenders received during the second stage in terms of the method of evaluation stated in the tender data, and award the contract in terms of these conditions of tender.

F.2 Tenderer's obligations

F.2.1 Eligibility

F.2.1.1 Submit a tender offer only if the tenderer satisfies the criteria stated in the tender data and the tenderer, or any of his principals, is not under any restriction to do business with employer.

F.2.1.2 Notify the employer of any proposed material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used by the employer as the basis in a prior process to invite the tenderer to submit a tender offer and obtain the employer's written approval to do so prior to the closing time for tenders.

F.2.2 Cost of tendering

F2.2.1 Accept that, unless otherwise stated in the tender data, the employer will not compensate the tenderer for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer complies with requirements.

F2.2.2 The cost of the tender documents charged by the employer shall be limited to the actual cost incurred by the employer for printing the documents. Employers must attempt to make available the tender documents on its website so as not to incur any costs pertaining to the printing of the tender documents.

F.2.3 Check documents

Check the tender documents on receipt for completeness and notify the employer of any discrepancy or omission.

F.2.4 Confidentiality and copyright of documents

Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by the employer only for the purpose of preparing and submitting a tender offer in response to the invitation.

F.2.5 Reference documents

Obtain, as necessary for submitting a tender offer, copies of the latest versions of standards, specifications, conditions of contract and other publications, which are not attached but which are incorporated into the tender documents by reference.

F.2.6 Acknowledge addenda

Acknowledge receipt of addenda to the tender documents, which the employer may issue, and if necessary apply for an extension to the closing time stated in the tender data, in order to take the addenda into account.

F.2.7 Clarification meeting

Attend, where required, a clarification meeting at which tenderers may familiarize themselves with aspects of the proposed work, services or supply and raise questions. Details of the meeting(s) are stated in the tender data.

F.2.8 Seek clarification

Request clarification of the tender documents, if necessary, by notifying the employer at least five working days before the closing time stated in the tender data.

F.2.9 Insurance

Be aware that the extent of insurance to be provided by the employer (if any) might not be for the full cover required in terms of the conditions of contract identified in the contract data. The tenderer is advised to seek qualified advice regarding insurance.

F.2.10 Pricing the tender offer

F.2.10.1 Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes (except Value Added Tax (VAT), and other levies payable by the successful tenderer, such duties, taxes and levies being those applicable 14 days before the closing time stated in the tender data.

F.2.10.2 Show VAT payable by the employer separately as an addition to the tendered total of the prices.

F.2.10.3 Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the conditions of contract identified in the contract data.

F.2.10.4 State the rates and prices in Rand unless instructed otherwise in the tender data. The conditions of contract identified in the contract data may provide for part payment in other currencies.

F.2.11 Alterations to documents

Do not make any alterations or additions to the tender documents, except to comply with instructions issued by the employer, or necessary to correct errors made by the tenderer. All signatories to the tender offer shall initial all such alterations.

F.2.12 Alternative tender offers

F.2.12.1 Unless otherwise stated in the tender data, submit alternative tender offers only if a main tender offer, strictly in accordance with all the requirements of the tender documents, is also submitted as well as a schedule that compares the requirements of the tender documents with the alternative requirements that are proposed.

F.2.12.2 Accept that an alternative tender offer may be based only on the criteria stated in the tender data or criteria otherwise acceptable to the employer.

F.2.12.3 An alternative tender offer may only be considered in the event that the main tender offer is the winning tender.

F.2.13 Submitting a tender offer

F.2.13.1 Submit one tender offer only, either as a single tendering entity or as a member in a joint venture to provide the whole of the works, services or supply identified in the contract data and described in the scope of works, unless stated otherwise in the tender data.

F.2.13.2 Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing legibly in non-erasable ink.

F.2.13.3 Submit the parts of the tender offer communicated on paper as an original plus the number of copies stated in the tender data, with an English translation of any documentation in a language other than English, and the parts communicated electronically in the same format as they were issued by the employer.

F.2.13.4 Sign the original and all copies of the tender offer where required in terms of the tender data. The employer will hold all authorized signatories liable on behalf of the tenderer. Signatories for tenderers proposing to contract as joint ventures shall state which of the signatories is the lead partner whom the employer shall hold liable for the purpose of the tender offer.

F.2.13.5 Seal the original and each copy of the tender offer as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

F.2.13.6 Where a two-envelope system is required in terms of the tender data, place and seal the returnable documents listed in the tender data in an envelope marked "financial proposal" and place the remaining returnable documents in an envelope marked "technical proposal". Each envelope shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

F.2.13.7 Seal the original tender offer and copy packages together in an outer package that states on the outside only the employer's address and identification details as stated in the tender data.

F.2.13.8 Accept that the employer will not assume any responsibility for the misplacement or premature opening of the tender offer if the outer package is not sealed and marked as stated.

F.2.13.9 Accept that tender offers submitted by facsimile or e-mail will be rejected by the employer, unless stated otherwise in the tender data.

F.2.14 Information and data to be completed in all respects

Accept that tender offers, which do not provide all the data or information requested completely and in the form required, may be regarded by the employer as non-responsive.

F.2.15 Closing time

F.2.15.1 Ensure that the employer receives the tender offer at the address specified in the tender data not later than the closing time stated in the tender data. Accept that proof of posting shall not be accepted as proof of delivery.

F.2.15.2 Accept that, if the employer extends the closing time stated in the tender data for any reason, the requirements of these conditions of tender apply equally to the extended deadline.

F.2.16 Tender offer validity

F.2.16.1 Hold the tender offer(s) valid for acceptance by the employer at any time during the validity period stated in the tender data after the closing time stated in the tender data.

F.2.16.2 If requested by the employer, consider extending the validity period stated in the tender data for an agreed additional period with or without any conditions attached to such extension.

F.2.16.3 Accept that a tender submission that has been submitted to the employer may only be withdrawn or substituted by giving the employer's agent written notice before the closing time for tenders that a tender is to be withdrawn or substituted.

F.2.16.4 Where a tender submission is to be substituted, submit a substitute tender in accordance with the requirements of F.2.13 with the packages clearly marked as "SUBSTITUTE".

F.2.17 Clarification of tender offer after submission

Provide clarification of a tender offer in response to a request to do so from the employer during the evaluation of tender offers. This may include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the competitive position of tenderers or substance of the tender offer is sought, offered, or permitted. This will be applicable to task orders during appointment on specific projects

Note: *Sub-clause F.2.17 does not preclude the negotiation of the final terms of the contract with a preferred tenderer following a competitive selection process, should the Employer elect to do so.*

F.2.18 Provide other material

F.2.18.1 Provide, on request by the employer, any other material that has a bearing on the tender offer, the tenderer's commercial position (including notarized joint venture agreements), preferencing arrangements, or samples of materials, considered necessary by the employer for the purpose of a full and fair risk assessment. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the employer's request, the employer may regard the tender offer as non-responsive.

F.2.18.2 Dispose of samples of materials provided for evaluation by the employer, where required.

F.2.19 Inspections, tests and analysis

Provide access during working hours to premises for inspections, tests and analysis as provided for in the tender data.

F.2.20 Submit securities, bonds and policies

If requested, submit for the employer's acceptance before formation of the contract, all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the contract data.

F.2.21 Check final draft

Check the final draft of the contract provided by the employer within the time available for the employer to issue the contract.

F.2.22 Return of other tender documents

If so instructed by the employer, return all retained tender documents within 28 days after the expiry of the validity period stated in the tender data.

F.2.23 Certificates

Include in the tender submission or provide the employer with any certificates as stated in the tender data.

F.3 The employer's undertakings

F.3.1 Respond to requests from the tenderer

F.3.1.1 Unless otherwise stated in the tender Data, respond to a request for clarification received up to five working days before the tender closing time stated in the Tender Data and notify all tenderers who drew procurement documents.

F.3.1.2 Consider any request to make a material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used to prequalify a tenderer to submit a tender offer in terms of a previous procurement process and deny any such request if as a consequence:

- a) an individual firm, or a joint venture as a whole, or any individual member of the joint venture fails to meet any of the collective or individual qualifying requirements;
- b) the new partners to a joint venture were not prequalified in the first instance, either as individual firms or as another joint venture; or
- c) in the opinion of the Employer, acceptance of the material change would compromise the outcome of the prequalification process.

F.3.2 Issue Addenda

If necessary, issue addenda that may amend or amplify the tender documents to each tenderer during the period from the date that tender documents are available until three days before the tender closing time stated in the Tender Data. If, as a result a tenderer applies for an extension to the closing time stated in the Tender Data, the Employer may grant such extension and, shall then notify all tenderers who drew documents.

F.3.3 Return late tender offers

Return tender offers received after the closing time stated in the Tender Data, unopened, (unless it is necessary to open a tender submission to obtain a forwarding address), to the tenderer concerned.

F.3.4 Opening of tender submissions

F.3.4.1 Unless the two-envelope system is to be followed, open valid tender submissions in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data. Tender submissions for which acceptable reasons for withdrawal have been submitted will not be opened.

F.3.4.2 Announce at the meeting held immediately after the opening of tender submissions, at a venue indicated in the tender data, the name of each tenderer whose tender offer is opened and, where applicable, the total of his prices, number of points claimed for its BBBEE status level and time for completion for the main tender offer only.

F.3.4.3 Make available the record outlined in F.3.4.2 to all interested persons upon request.

F.3.5 Two-envelope system

F.3.5.1 Where stated in the tender data that a two-envelope system is to be followed, open only the technical proposal of valid tenders in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data and announce the name of each tenderer whose technical proposal is opened.

F.3.5.2 Evaluate functionality of the technical proposals offered by tenderers, then advise tenderers who remain in contention for the award of the contract of the time and place when the financial proposals will be opened. Open only the financial proposals of tenderers, who score in the functionality evaluation more than the minimum number of points for functionality

stated in the tender data, and announce the score obtained for the technical proposals and the total price and any points claimed on BBBEE status level. Return unopened financial proposals to tenderers whose technical proposals failed to achieve the minimum number of points for functionality.

F.3.6 Non-disclosure

Not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tender offers, the final evaluation price and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.

F.3.7 Grounds for rejection and disqualification

Determine whether there has been any effort by a tenderer to influence the processing of tender offers and instantly disqualify a tenderer (and his tender offer) if it is established that he engaged in corrupt or fraudulent practices.

F.3.8 Test for responsiveness

F.3.8.1 Determine, after opening and before detailed evaluation, whether each tender offer properly received:

- a) complies with the requirements of these Conditions of Tender, b) has been properly and fully completed and signed, and
- c) is responsive to the other requirements of the tender documents.

F.3.8.2 A responsive tender is one that conforms to all the terms, conditions, and specifications of the tender documents without material deviation or qualification. A material deviation or qualification is one which, in the Employer's opinion, would:

- a) detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Scope of Work,
- b) significantly change the Employer's or the tenderer's risks and responsibilities under the contract, or
- c) affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

Reject a non-responsive tender offer, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

F.3.9 Arithmetical errors, omissions and discrepancies

F.3.9.1 Check the highest ranked tender or tenderer with the highest number of tender evaluation points after the evaluation of tender offers in accordance with F.3.11 for:

- a) the gross misplacement of the decimal point in any unit rate;
- b) omissions made in completing the pricing schedule or bills of quantities; or c) arithmetic errors in:
 - i) line item totals resulting from the product of a unit rate and a quantity in bills of quantities or schedules of prices; or ii) the summation of the prices.

F3.9.2 The employer must correct the arithmetical errors in the following manner:

- a) Where there is a discrepancy between the amounts in words and amounts in figures, the amount in words shall govern.
- b) If bills of quantities or pricing schedules apply and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate shall be corrected.
- c) Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the prices shall govern and the tenderer will be asked to revise selected item prices (and their rates if bills of quantities apply) to achieve the tendered total of the prices.

Consider the rejection of a tender offer if the tenderer does not correct or accept the correction of the arithmetical error in the manner described above.

F.3.10 Clarification of a tender offer

Obtain clarification from a tenderer on any matter that could give rise to ambiguity in a contract arising from the tender offer.

Table F.1: Formulae for calculating the value of A

Formula	Comparison aimed at	Option 1a	Option 2 a
1	Highest price or discount	$A = (1 + (P - P_m)) P_m$	$A = P / P_m$
2	Lowest price or percentage commission /	$A = (1 - (P - P_m)) P_m$	$A = P_m / P$
<p>a) P_m is the comparative offer of the most favourable comparative offer. P is the comparative offer of the tender offer under consideration.</p>			

F.3.11.8 Scoring preferences

Confirm that tenderers are eligible for the preferences claimed in accordance with the provisions of the tender data and reject all claims for preferences where tenderers are not eligible for such preferences.

Calculate the total number of tender evaluation points for preferences claimed in accordance with the provisions of the tender data.

F.3.11.9 Scoring functionality

Score each of the criteria and sub criteria for quality in accordance with the provisions of the Tender Data.

Calculate the total number of tender evaluation points for quality using the following formula:

$$NQ = W2 \times SO / MS$$

where: SO is the score for quality allocated to the submission under consideration;
 MS is the maximum possible score for quality in respect of a submission; and
 $W2$ is the maximum possible number of tender evaluation points awarded for the quality as stated in the tender data

F.3.12 Insurance provided by the employer

If requested by the proposed successful tenderer, submit for the tenderer's information the policies and / or certificates of insurance which the conditions of contract identified in the contract data, require the employer to provide.

F.3.13 Acceptance of tender offer

Accept the tender offer, if in the opinion of the employer, it does not present any risk and only if the tenderer:

- is not under restrictions, or has principals who are under restrictions, preventing participating in the employer's procurement,
- can, as necessary and in relation to the proposed contract, demonstrate that he or she possesses the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel, to perform the contract,
- has the legal capacity to enter into the contract,
- is not insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act, 2008, bankrupt or being wound up, has his affairs administered by

a court or a judicial officer, has suspended his business activities, or is subject to legal proceedings in respect of any of the foregoing,

- e) complies with the legal requirements, if any, stated in the tender data, and
- f) is able, in the opinion of the employer, to perform the contract free of conflicts of interest.

F.3.14 Prepare contract documents

F.3.14.1 If necessary, revise documents that shall form part of the contract and that were issued by the employer as part of the tender documents to take account of:

- a) addenda issued during the tender period,
- b) inclusion of some of the returnable documents, and
- c) other revisions agreed between the employer and the successful tenderer.

F.3.14.2 Complete the schedule of deviations attached to the form of offer and acceptance, if any.

F.3.15 Complete adjudicator's contract

Unless alternative arrangements have been agreed or otherwise provided for in the contract, arrange for both parties to complete formalities for appointing the selected adjudicator at the same time as the main contract is signed.

F.3.16 Notice to unsuccessful tenderers

F.3.16.1 Notify the successful tenderer of the employer's acceptance of his tender offer by completing and returning one copy of the form of offer and acceptance before the expiry of the validity period stated in the tender data, or agreed additional period.

F.3.16.2 After the successful tenderer has been notified of the employer's acceptance of the tender, notify other tenderers that their tender offers have not been accepted.

F.3.17 Provide copies of the contracts

Provide to the successful tenderer the number of copies stated in the Tender Data of the signed copy of the contract as soon as possible after completion and signing of the form of offer and acceptance.

F.3.18 Provide written reasons for actions taken

Provide upon request written reasons to tenderers for any action that is taken in applying these conditions of tender, but withhold information which is not in the public interest to be divulged, which is considered to prejudice the legitimate commercial interests of tenderers or might prejudice fair competition between tenderers.

F3.19 Transparency in the procurement process

F3.19.1 The cidb prescripts require that tenders must be advertised and be registered on the cidb i.Tender system.

F3.19.2 The employer must adopt a transparency model that incorporates the disclosure and accountability as transparency requirements in the procurement process.

F3.19.3 The transparency model must identify the criteria for selection of projects, project information template and the threshold value of the projects to be disclosed in the public domain at various intervals of delivery of infrastructure projects.

F3.19.4 The client must publish the information on a quarterly basis which contains the following information:

- Procurement planning process
- Procurement method and evaluation process
- Contract type
- Contract status
- Number of firms tendering
- Cost estimate
- Contract title
- Contract firm(s)
- Contract price
- Contract scope of work
- Contract start date and duration
- Contract evaluation reports

F3.19.5 The employer must establish a Consultative Forum which will conduct a random audit in the implementation of the transparency requirements in the procurement process.

F3.19.6 Consultative Forum must be an independent structure from the bid committees.

F3.19.7 The information must be published on the employer's website.

F 3.19.8 Records of such disclosed information must be retained for audit purposes.

STANDARD PROFESSIONAL SERVICES CONTRACT

(July 2009)
(Third Edition of CIDB document 1014)



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PREFACE

The Standard Professional Services Contract has been prepared for use by Employers when they engage firms or individuals (Service Providers) for the performance of knowledge-based expertise provided on the basis of trust.

This document is intended to be used with the procurement documents prepared in accordance with the provisions of SANS 10403: Formatting and Compilation of Construction Procurement Documents

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GENERAL CONDITIONS OF CONTRACT

1. DEFINITIONS

In the Contract, the following words and expressions shall have the meanings indicated, except where the context otherwise requires. Defined terms and words are signified in the text of the Contract by the use of capital initial letters.

Contract

The Contract signed by the Parties and of which these General Conditions of Contract form part.

Contract Data

Specific data, which together with these General Conditions of Contract, collectively describe the risks, liabilities and obligations of the contracting Parties and the procedures for the administration of the Contract.

Contract Price

The price to be paid for the performance of the Services in accordance with the Pricing Data.

Day

A calendar day.

Defect

A part of the Services, as performed, which does not comply with the requirements of the Contract.

Deliverable

Any measurable, tangible, verifiable outcome, result or item that must be produced or completed;

Employer

The contracting party named in the Contract who employs the Service Provider.

Force Majeure

An event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

Key Persons

Persons who are named as such in the Contract Data who will be engaged in the performance of the Services.

Others

Persons or organisations who are not the Employer, the Service Provider or any employee, Subcontractor, or supplier of the Service Provider.

Parties

The Employer and the Service Provider.

Period of Performance

The period within which the Services are to be performed and completed, commencing from the Start Date.

Personnel

Persons hired by the Service Provider as employees and assigned to the performance of the Services or any part thereof.

Personnel Schedule

A schedule naming all Personnel and Key Persons.

Pricing Data

Data that establishes the criteria and assumptions that were taken into account when developing the Contract Price and the record of the components that make up the Contract Price.

Project

The project named in the Contract Data for which the Services are to be provided.

Scope of Work

The document which defines the Employer's objectives and requirements and specifies the Services which must, or may, be provided under the Contract.

Service Provider

The contracting party named in the Contract Data who is employed by the Employer to perform the Services described in the Contract, and legal successors to the Service Provide and legally permitted assignees.

Services

The work to be performed by the Service Provider pursuant to the Contract as described in the Scope of Work.

Start date

The date on which the Services are to commence. as stated in the Contract Data

Subcontractor

A person or body corporate who enters into a subcontract with the Service Provider to perform part of the Services.

2. INTERPRETATION

2.1 Unless inconsistent with the context, an expression which denotes :

- a) any gender includes the other genders;
- b) a natural person includes a juristic person and vice versa;
- c) the singular includes the plural and vice versa.

2.2 If there is any conflict between the provisions of these General Conditions of Contract and the Contract Data, the provisions of the Contract Data shall prevail.

2.3 The clause headings shall not limit, alter or affect the meaning of the Contract.

3. GENERAL

3.1 Governing law

Law governing the Contract shall be the law of the Republic of South Africa.

3.2 Change in legislation

If after the commencement of the Contract, the cost or duration of the Services is altered as a result of changes in, or additions to, any statute, regulation or bye-law, or the requirements of any authority having jurisdiction over any matter in respect of the Project, then the Contract

Price and time for completion shall be adjusted in order to reflect the impact of those changes, provided that, within 14 Days of first having become aware of the change, the Service Provider furnished the Employer with detailed justification for the adjustment to the Contract Price or Period of Performance (or both).

3.3 Language

3.3.1 The language of the Contract and of all communications between the Parties shall be English.

3.3.2 All reports, recommendations and reports prepared by the Service Provider under the Contract shall be in English.

3.4 Notices

3.4.1 Any notice, request, consent, approvals or other communication made between the Parties pursuant to the Contract shall be in writing and forwarded to the address specified in the Contract Data. Such communication shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or one week after having been sent by registered post, or unless otherwise indicated in the Contract Data, when sent by e-mail or facsimile to such Party

3.4.2 A Party may change its address for receipt of communications by giving the other Party 30 Days advance notice of such change.

3.5 Location

The Services shall be performed at such locations as are specified in the Contract Data, and where the location of a particular task is not so specified, at such locations as the Employer may approve.

3.6 Publicity and publication

Unless otherwise stated in the Contract Data, the Service Provider shall not release public or media statements or publish material related to the Services or Project within two (2) years of completion of the Services without the written approval of the Employer, which approval by the Employer shall not be unreasonably withheld.

3.7 Confidentiality

Both parties shall keep all sensitive information obtained by them in the context of the Contract confidential and shall not divulge it without the written approval of the other Party.

3.8 Variations

- 3.8.1 The Employer may, without changing the objectives or fundamental scope of the C Contract, order variations to the Services in writing or may request the Service Provider to submit proposals, including the time and cost implications, for variations to the Services.
- 3.8.2 The reasonable cost of preparation and submission of such proposals and the incorporation into the Contract of any variations to the Services ordered by the Employer, including any change in the Contract Price, shall be agreed between the Service Provider and the Employer.
- 3.8.3 Where a variation is necessitated by default or breach of Contract by the Service Provider, any additional cost attributable to such variation shall be borne by the Service Provider.

3.9 Changes to the Contract Price or Period of Performance

- 3.9.1 The Service Provider is entitled to apply to the Employer for a change in Contract Price or the Period of Performance in the event that:
- a) a change in legislation takes place in accordance with the provisions of Clause 3.2;
 - b) a variation to the Services is made in accordance with the provisions of Clause 3.8;
 - c) the Employer or Others do not perform an action, provide access to people, places or things or perform work in accordance with the programme (see Clause 3.15);
 - d) the contract is suspended in accordance with the provisions of Clause 8.5;
 - e) the contract is restarted following a suspension; or
 - f) an event occurs which neither Party could prevent and which prevents the Service Provider from completing the Services or a part thereof
- 3.9.2 The Service Provider shall submit proposals to change the Contract Price or the Period for Completion (or both) to the Employer within 6 weeks of becoming aware of an event described in 3.9.1 occurring, failing which, the Service Provider shall not be entitled to a change in the Contract Price or Period of Performance.
- 3.9.3 The Employer shall assess the changes to the Contract Price on the effect of the event on the Services based on time-based fees.
- 3.9.4 The Employer shall assess the changes to the Period of Performance on the basis of the time that planned completion as shown on the latest approved programme is delayed.

3.10 Sole agreement

The Contract constitutes the sole agreement between the Parties for the performance of the Services and any representation not contained therein shall not be of any force or effect. No amendments will be of any force or effect unless reduced to writing and signed by both Parties.

3.11 Indemnification

The Service Provider shall, at his own expense, indemnify, protect and defend the Employer, its agents and employees, from and against all actions, claims, losses and damage arising from any negligent act or omission by the Service Provider in the performance of the Services, including any violation of legal provisions, or rights of others, in respect of patents, trademarks and other forms of intellectual property such as copyrights.

3.12 Penalty

3.12.1 If due to his negligence, or for reasons within his control, the Service Provider does not perform the Services within the Period of Performance, the Employer shall without prejudice to his other remedies under the Contract or in law, be entitled to levy a penalty for every Day or part thereof, which shall elapse between the end of the period specified for performance, or an extended Period of Performance, and the actual date of completion, at the rate and up to the maximum amount stated in the Contract Data.

3.12.2 If the Employer has become entitled to the maximum penalty amount referred to in 3.12.1, He may after giving notice to the Service Provider :

- a) Terminate the Contract
- b) Complete the Services at the Service Provider's cost.

3.13 Equipment and materials furnished by the Employer

3.13.1 Equipment and materials made available to the Service Provider by the Employer, or purchased by the Service Provider with funds provided by the Employer for the performance of the Services shall be the property of the Employer and shall be marked accordingly. Upon termination or expiration of the Contract, the Service Provider shall make available to the Employer an inventory of such equipment and materials and shall dispose of them in accordance with the Employer's instructions.

3.13.2 The Service Provider shall, at his own expense, insure the equipment and materials referred to in 3.13.1 for their full replacement value.

3.14 Illegal and impossible requirements

The Service Provider shall notify the Employer immediately, on becoming aware that the Contract requires him to undertake anything which is illegal or impossible.

3.15 Programme

3.15.1 The Service Provider shall, within the time period set out in the Contract Data and whenever a programme is amended or revised, submit for the Employer's approval a programme for the performance of the Services which shall, *inter alia*, include:

- a) The order and timing of operations by the Service Provider and any actions, access to people, places and things and work required of the Employer and Others;
- b) The dates by which the Service Provider plans to complete work needed to allow the Employer and Others to undertake work required of them;
- c) Provisions for float;
- d) The planned completion of the Services or part thereof in relation to a Period of Performance; and
- e) Other information as required in terms of the Scope of Work or Contract Data.

3.15.2 The Employer may, during the course of the Contract, request the Service Provider to amend the programme. Where this is not practicable, the Service Provider shall advise the Employer accordingly and advise him of alternative measures, if any, which might be taken.

3.15.3 A programme shall be deemed to be approved if the Employer fails to approve such programme or give reasons for not approving a programme within three weeks of receipt of a request by the Service Provider to approve a programme.

3.15.3 The Service Provider shall update the programme:

- a) Unless otherwise stated in the Contract Data, every three months to reflect actual progress to date;
- b) Whenever a change in Period of Performance or Contract Price is applied for; and
- c) Whenever a change in the Period of Performance is changed by the Employer

and submit such revised programme to the Employer for approval.

3.16 Price adjustment to time-based fees for inflation

3.16.1 Time-based fees which are stated in the Pricing Data as a unique rate and are not calculated by multiplying the total annual cost of employment contained, shall unless otherwise stated in the Contract Data, be adjusted in terms of 3.16.2 on each anniversary of the Starting Date.

3.16.2 The adjustment to the time-based fees shall be equal to:

$(CPI_n - CPI_s) / CPI_s$

Where CPI_s = the indices specified in the Contract Data during the month in which the start date falls.

CPI_n = the latest indices specified in Contract Data during the month in which the anniversary of the Start Date falls.

4. EMPLOYER'S OBLIGATIONS

4.1 Information

4.1.1 The Employer shall timeously provide to the Service Provider, free of cost, all available information and data in the Employer's possession which may be required for the performance of the Services.

4.1.2 The Employer shall provide the Service Provider with reasonable assistance required in obtaining other relevant information that the latter may require in order to perform the Services.

4.2 Decisions

The Employer shall, within a reasonable time, give his decision on any matter properly referred to him in writing by the Service Provider so as not to delay the performance of Services.

4.3 Assistance

4.3.1 The Employer shall co-operate with the Service Provider and shall not interfere with or obstruct the proper performance of the Services. The Employer shall as soon as practicable:

- a) Authorise the Service Provider to act as his agent insofar as may be necessary for the performance of the Services;
- b) Provide all relevant data, information, reports, correspondence and the like, which become available;
- c) Procure the Service Provider's ready access to premises, or sites, necessary for the performance of the Services;
- d) assist in the obtaining of all approvals, licenses and permits from state, regional and municipal authorities having jurisdiction over the Project, unless otherwise stated in the Contract Data;

4.3.2 Unless otherwise communicated, the authorised and designated person named in the Contract Data has complete authority in giving instructions and receiving communications on the Employer's behalf and interpreting and defining the Employer's policies and requirements in regard to the Services.

4.4 Services of Others

The Employer shall, at his own cost, engage such Others as may be required for the execution of work not included in the Services, but which is necessary for the completion of the Project.

4.5 Notification of material change or defect

The Employer shall immediately advise the Service Provider on becoming aware of:

- a) any matter other than a change in legislation which will materially change, or has changed the Services; or
- b) a material defect or deficiency in the Services.

4.6 Issue of instructions

Where the Service Provider is required to administer the work or services of Others, or any contract or agreement, on behalf of the Employer, then the Employer shall issue instructions related to such work, services, contract or agreement only through the Service Provider.

4.7 Payment of Service Provider

The Employer shall pay the Service Provider the Contract Price in accordance with the provisions of the Contract.

5. SERVICE PROVIDER'S OBLIGATIONS

5.1 General

5.1.1 The Service Provider shall perform the Services in accordance with the Scope of Work with all reasonable care, diligence and skill in accordance with generally accepted professional techniques and standards.

5.1.1 If the Service Provider is a joint venture or consortium of two or more persons, the Service Provider shall designate one person to act as leader with authority to bind the joint venture or consortium. Neither the composition nor the constitution of the joint venture or consortium shall be altered without the prior consent in writing of the Employer, which shall not be unreasonably withheld.

5.2 Exercise of authority

The Service Provider shall have no authority to relieve Others appointed by the Employer to undertake work or services on the Project of any of their duties, obligations, or responsibilities under their respective agreements or contracts, unless expressly authorised by the Employer in response to an application by the Service Provider in writing to do so.

5.3 Designated representative

Unless otherwise communicated, the authorised and designated person named in the Contract Data has complete authority to receive instructions from and give information to the Employer on behalf of the Service Provider.

5.4 Insurances to be taken out by the Service Provider

5.4.1 The Service Provider shall as a minimum and at his own cost take out and maintain in force all such insurances as are stipulated in the Contract Data.

5.4.2 The Service Provider shall, at the Employer's request, provide evidence to the Employer showing that the insurance required in terms of Clause 5.4.1 has been taken out and maintained in force.

5.5 Service Provider's actions requiring Employer's prior approval

The Service Provider shall obtain the Employer's prior approval in writing before taking, inter alia, any of the following actions:

- a) appointing Subcontractors for the performance of any part of the Services,
- b) appointing Key Persons not listed by name in the Contract Data.
- c) any other action that may be specified in the Contract Data.

5.6 Co-operation with Others

If the Service Provider is required to perform the Services in co-operation with Others he may make recommendations to the Employer in respect of the appointment of such Others. The Service Provider shall, however, only be responsible for his own performance and the performance of Subcontractors unless otherwise provided for.

5.7 Notice of change by Service Provider

On becoming aware of any matter which will materially change or has changed the Services, the Service Provider shall within 14 Days thereof give notice to the Employer.

6. CONFLICTS OF INTEREST

6.1 Service Provider not to benefit from commissions, discounts, etc.

The remuneration of the Service Provider under the Contract shall constitute the Service Provider's sole remuneration in connection with the Contract, or the Services, and the Service Provider shall not accept for his own benefit any trade commission, discount, or similar payment in connection with activities pursuant to the Contract, or in the discharge of his obligations under the Contract, and shall use his best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them shall, similarly, not receive any additional remuneration.

6.2 Royalties and the like

The Service Provider shall not have the benefit, whether directly or indirectly, of any royalty or of any gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the Contract, or Project, unless so agreed by the Employer in writing.

6.3 Independence

The Service Provider shall refrain from entering into any relationship which could be perceived as compromising his independence of judgement, or that of Subcontractors or Personnel.

7. SERVICE PROVIDER'S PERSONNEL

7.1 General

- 7.1.1 The Service Provider shall employ and provide all qualified and experienced Personnel required to perform the Services.
- 7.1.2 Where required in terms of the Contract, the Service Provider shall provide Key Persons as listed in the Contract Data to perform specific duties. If at any time, a particular Key Person cannot be made available, the Service Provider may engage a replacement who is equally or better qualified to perform the stated duty, subject to the Employer's approval, which approval shall not be unreasonably withheld.
- 7.1.3 Where the fees for the Services are time-based, the fee payable for a person provided as a replacement to a named Key Person shall not exceed that which would have been payable to the person replaced.
- 7.1.4 The Service Provider shall bear all additional costs arising out of or incidental to replacement of Personnel, except where such replacement is otherwise provided for in the Contract.
- 7.1.5 The Service Provider shall take all measures necessary and shall provide all materials and equipment necessary to enable Personnel to perform their duties in an efficient manner.

7.2 Provision of Personnel in terms of a Personnel Schedule

- 7.2.1 The Service Provider shall, where required in terms of the Contract Data, provide appropriate Personnel for such time periods as required in terms of the Contract and enter all data pertaining to Personnel including titles, job descriptions, qualifications and estimated periods of engagement on the performance of the Services in the Personnel Schedule.
- 7.2.2 Where the Service Provider proposes to utilise a person not named in the Personnel Schedule, he shall submit the name, relevant qualifications and experience of the proposed replacement person to the Employer for approval. Should the Employer not object in writing within 10 Days of receipt of such notification, the replacement shall be deemed to have been approved by the Employer.
- 7.2.3 The Services shall be performed by the Personnel listed in the Personnel Schedule for the periods of time indicated therein. The Service Provider may, subject to the approval of the Employer, make such adjustments to the data provided in terms of Clause 7.2.1 above as may be appropriate to ensure the efficient performance of the Services, provided that the adjustments will not cause payments to exceed any limit placed on the Contract Price.

7.2.4 The Service Provider shall, if required in terms of Clause 7.2.1:

- a) Forward to the Employer for approval, within 15 Days of the award of the Contract, the Personnel Schedule and a timetable for the placement of Personnel.
- b) inform the Employer of the date of commencement and departure of each member of Personnel during the course of the Project.
- c) submit to the Employer for his approval a timely request for any proposed change to Personnel, or timetables.

8. COMMENCEMENT, COMPLETION, MODIFICATION, SUSPENSION AND TERMINATION

8.1 Commencement of Services

The Service Provider shall commence the performance of the Services within the period stated in the Contract Data.

8.2 Completion

8.2.1 Unless terminated in terms of the Contract, or otherwise specified in the Contract Data, the Contract shall be concluded when the Service Provider has completed all Deliverables in accordance with the Scope of Work.

8.2.2 The Service Provider may request an extension to the Period of Performance if he is or will be delayed in completing the Contract by any of the following causes:

- a) additional Services ordered by the Employer;
- b) failure of the Employer to fulfil his obligations under the Contract;
- c) any delay in the performance of the Services which is not due to the Service Provider's default;
- d) *Force Majeure*; or
- e) suspension.

8.2.3 The Service Provider shall within 14 Days of becoming aware that a delay may occur or has occurred, notify the Employer of his intention to make a request for the extension of the Period of Performance to which he considers himself entitled and shall within 30 days after the delay ceases deliver to the Employer full and detailed particulars of the request.

8.2.4 The Employer shall, within 30 Days of receipt of a detailed request, grant such extension to the Period of Performance as may be justified, either prospectively or retrospectively, or inform the Service Provider that he is not entitled to an extension. Should the Service Provider find the decision of the Employer to be unacceptable he shall, nevertheless, abide by such decision in the performance of the Services and the matter shall be dealt with as a dispute in terms of Clause 12.

8.3 Force Majeure

8.3.1 The failure of a Party to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of *Force Majeure*, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet the terms and conditions of this Contract, and has informed the other Party as soon as possible about the occurrence of such an event.

8.3.2 In the event that the performance of the Services has to be suspended on the grounds of *Force Majeure*, the Period of Performance shall be extended by the extent of the delay plus a reasonable period for the resumption of work.

8.3.3 During the period of his inability to perform the Services as a result of an event of *Force Majeure*, the Service Provider shall be entitled to any payment due in terms of the Contract and shall be reimbursed for additional costs reasonably and necessarily incurred by him in suspending, delaying and re-activating the performance of the Services.

8.4 Termination

8.4.1 The Employer may terminate the Contract:

- (a) where the Services are no longer required;
- (b) where the funding for the Services is no longer available;
- (c) if the Service Provider does not remedy a failure in the performance of his obligations under the Contract within thirty (30) Days after having been notified thereof, or within any further period as the Employer may have subsequently approved in writing;
- (d) if the Service Provider becomes insolvent or liquidated; or
- (e) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days;

8.4.2 The Employer shall give the Service Provider not less than thirty (30) Days written notice of any termination made in terms of 8.4.1 (a) or (b).

8.4.3 The Service Provider may terminate the Contract, by giving not less than thirty (30) Days written notice to the Employer after the occurrence of any of the following events:

- (a) If the Employer fails to pay any monies due to the Service Provider in terms of the Contract and not subject to dispute pursuant to Clause 12 within forty-five (45) Days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days; or
- (c) When the Services have been suspended under Clause 8.5 and the period of suspension exceeds the period stated in the Contract Data, or it is clear to the Service Provider that it will be impossible or impractical to resume the suspended Services before the period of suspension has exceeded the period stated in the Contract Data; or
- (d) if the Employer is in material breach of a term of the Contract and fails to rectify such breach within 30 Days of the receipt of written notice requiring him to do so.

8.4.4 Upon termination of this Contract pursuant to Clauses 8.4.1 or 8.4.3, the Employer shall remunerate the Service Provider in terms of the Contract for Services satisfactorily performed prior to the effective date of termination and reimburse the Service Provider any reasonable cost incident to the prompt and orderly termination of the Contract, except in the case of termination pursuant to events (c) and (d) of Clause 8.4.1.

8.4.5 Should the Service Provider, being an individual or the last surviving principal of a partnership or body corporate, die or be prevented by illness or any other circumstances beyond his control from performing the obligations implied by the Contract, the Contract shall be terminated without prejudice to the accrued rights of either Party against the other.

8.5 Suspension

- 8.5.1 The Employer may temporarily suspend all or part of the Services by notice to the Service Provider who shall immediately make arrangements to stop the performance of the Services and minimise further expenditure.
- 8.5.2 When Services are suspended, the Service Provider shall be entitled to pro-rata payment for the Services carried out and reimbursement of all reasonable cost incident to the prompt and orderly suspension of the Contract.

8.6 Rights and liabilities of the Parties

Completion, suspension or termination of the Contract shall not prejudice or affect the accrued rights or liabilities of the Parties.

9. OWNERSHIP OF DOCUMENTS AND COPYRIGHT

- 9.1 Copyright of all documents prepared by the Service Provider in accordance with the relevant provisions of the copyright Act (Act 98 of 1978) relating to Project shall be vested in the party named in the Contract Data. Where copyright is vested in the Service Provider, the Employer shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the Project and need not obtain the Service Provider's permission to copy for such use. Where copyright is vested in the Employer, the Service Provider shall not be liable in any way for the use of any of the information other than as originally intended for the Project and the Employer hereby indemnifies the Service Provider against any claim which may be made against him by any party arising from the use of such documentation for other purposes.
- 9.2 The ownership of data and factual information collected by the Service Provider and paid for by the Employer shall, after payment by the Employer, lie with the Employer.
- 9.3 The Employer shall have no right to use any documents prepared by the Service Provider whilst the payment of any fees and expenses due to the Service Provider in terms of the Contract is overdue.

10. SUCCESSION AND ASSIGNMENT

- 10.1 Except as defined in Clause 8.4.4 above, each Party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other Party and to the other partners, successors, executors, administrators, assigns and legal representatives of the other Party in respect of all obligations and liabilities of the Contract.
- 10.2 An assignment shall be valid only if it is a written agreement by which the Service Provider transfers his rights and obligations under the Contract, or part thereof, to others.
- 10.3 The Service Provider shall not, without the prior written consent of the Employer, assign the Contract or any part thereof, or any benefit or interest thereunder, except in the following cases :
- (a) By a charge in favour of the Service Provider's bankers of any monies due or to become due under the Contract; or

- (b) By assignment to the Service Provider's insurers of the Service Provider's right to obtain relief against any other person liable in cases where the insurers have discharged the Service Provider's loss or liability.
- 10.4 The approval of an assignment by the Employer shall not relieve the Service Provider of his obligations for the part of the Contract already performed or the part not assigned.
- 10.5 If the Service Provider has assigned his Contract or part thereof without authorization, the Employer may forthwith terminate the Contract and the third party will have no claim against the Employer resulting from such termination.

11. SUBCONTRACTING

- 11.1 A Service Provider may not subcontract any work which he has the skill and competency to perform, unless otherwise permitted in the Contract Data.
- 11.2 A subcontract, where permitted in terms of the Contract Data, shall be valid only if it is a written agreement by which the Service Provider entrusts performance of a part of the Services to Others.
- 11.3 The Service Provider shall not subcontract to nor engage a Subcontractor to perform any part of the Services without the prior written authorization of the Employer. The services to be sub-contracted and the identity of the Subcontractor shall be notified to the Employer. The Employer shall, within 14 Days of receipt of the notification and a full motivation why such services are to be subcontracted, notify the Service Provider of his decision, stating reasons, should he withhold such authorization. If the Service Provider enters into a subcontract with a Subcontractor without prior approval, the Employer may forthwith terminate the Contract.
- 11.4 The Employer shall have no contractual relationships with Subcontractors. However, if a Subcontractor is found by the Employer to be incompetent, the Employer may request the Service Provider either to provide a Subcontractor with qualifications and experience acceptable to the Employer as a replacement, or to resume the performance of the relevant part of the Services himself.
- 11.5 The Service Provider shall advise the Employer without delay of the variation or termination of any subcontract for performance of all or part of the Services.
- 11.6 The Service Provider shall be responsible for the acts, defaults and negligence of Subcontractors and their agents or employees in the performance of the Services, as if they were the acts, defaults or negligence of the Service Provider, his agents or employees. Approval by the Employer of the subcontracting of any part of the Contract or of the engagement by the Service Provider of Subcontractors to perform any part of the Services shall not relieve the Service Provider of any of his obligations under the Contract.

12. RESOLUTION OF DISPUTES

12.1 Settlement

- 12.1.1 The Parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to the Contract and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.
- 12.1.2 Any dispute or claim arising out of or relating to the Contract which cannot be settled between the Parties shall in the first instance be referred by the Parties to either mediation or adjudication as provided for in the Contract Data.

12.2 Mediation

- 12.2.1 If the Contract Data does not provide for dispute resolution by adjudication, not earlier than 14 Days after having advised the other Party, in terms of Clause 12.1, that negotiations in regard to a dispute have failed, an aggrieved Party may require that the dispute be referred, without legal representation, to mediation by a single mediator. The mediator shall be selected by agreement between the Parties, or, failing such agreement, by the person named for this purpose in the Contract Data. The costs of the mediation shall be borne equally by the Parties.
- 12.2.2 The mediator shall convene a hearing of the Parties and may hold separate discussions with any Party and shall assist the Parties in reaching a mutually acceptable settlement of their differences through means of reconciliation, interpretation, clarification, suggestion and advice. The Parties shall record such agreement in writing and thereafter they shall be bound by such agreement.
- 12.2.3 The mediator is authorised to end the mediation process whenever in his opinion further efforts at mediation would not contribute to a resolution of the dispute between the Parties.
- 12.2.4 If either Party is dissatisfied with the opinion expressed by the mediator or should the mediation fail, then such Party may require that the dispute be referred to arbitration or litigation in a competent civil court, as provided for in the Contract Data.

12.3 Adjudication

- 12.3.1 If the Contract Data does not provide for dispute resolution by mediation, an aggrieved Party may refer the dispute to adjudication. Adjudication shall be in accordance with the latest edition of the separately published CIDB Adjudication Procedures.
- 12.3.2 The adjudicator shall be appointed in terms of the Adjudicator's Agreement bound in the Construction Industry Development Board's Adjudication Procedure.
- 12.3.3 The Adjudicator shall be any person agreed to by the parties or, failing such agreement, shall be nominated by the person named in the Contract Data. The Adjudicator shall be appointed in accordance with the Adjudicator's Agreement contained in the CIDB Adjudication Procedure.
- 12.3.4 If a Party is dissatisfied with the decision of the Adjudicator, the Party may give the other Party notice of dissatisfaction within 28 Days of the receipt of that decision and refer the dispute to arbitration or litigation in a competent civil court as provided for in the Contract Data. If no notice of dissatisfaction is given within the specified time, the decision shall be final and binding on the Parties.

12.4 Arbitration

- 12.4.1 Arbitration, where provided for in the Contract Data, shall be by a single arbitrator in accordance with the provisions of the Arbitration Act of 1965 as amended and shall be conducted in accordance with such procedure as may be agreed between the Parties or, failing such agreement, in accordance with the Rules for the Conduct of Arbitrations published by the Association or Arbitrators current at the date the arbitrator is appointed.
- 12.4.2 The arbitrator shall be mutually agreed upon or, failing agreement, to be nominated by the person named in the Contract Data.

13. LIABILITY

13.1 Liability of the Service Provider

- 13.1.1 The Service Provider shall be liable to the Employer arising out of or in connection with the Contract if a breach of Clause 5.1 is established against him.
- 13.1.2 The Service Provider shall correct a Defect on becoming aware of it. If the Service Provider does not correct a Defect within a reasonable time stated in a notification and the Defect arose from a failure of the Service Provider to comply with his obligation to provide the Services, the Service Provider shall pay to the Employer the amount which the latter assesses as being the cost of having such Defect corrected by Others.
- 13.1.3 All persons in a joint venture or consortium shall be jointly and severally liable to the Employer in terms of this Contract and shall carry individually the minimum levels of insurance stated in the Contract Data, if any.

13.2 Liability of the Employer

The Employer shall be liable to the Service Provider arising out of or in connection with the Contract if a breach of an obligation of his in terms of the Contract is established. The Service Provider shall have no separate delictual right of action against the Employer.

13.3 Compensation

If it is established that either Party is liable to the other, compensation shall be payable only on the following terms:

- (a) Compensation shall be limited to the amount of reasonably foreseeable loss and damage suffered as a result of the breach.
- (b) In any event, the amount of compensation will be limited to the amount specified in Clause 13.5.

13.4 Duration of Liability

Notwithstanding the terms of the Prescription Act No. 68 of 1969 (as amended) or any other applicable statute of limitation neither the Employer nor the Service Provider shall be held liable for any loss or damage resulting from any occurrence unless a claim is formally made within the period stated in the Contract Data or, where no such period is stated, within a period of three years from the date of termination or completion of the Contract.

13.5 Limit of Compensation

13.5.1 Unless otherwise indicated in the Contract Data, the maximum amount of compensation payable by either Party to the other in respect of liability under the Contract is limited to:

- a) The sum insured in terms of 5.4 in respect of insurable events; and
- b) The sum stated in the Contract Data or, where no such amount is stated, to an amount equal to twice the amount of fees payable to the Service Provider under the Contract, excluding reimbursement and expenses for items other than salaries of Personnel, in respect of non-insurable events.

13.5.2 Each Party agrees to waive all claims against the other insofar as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amount payable.

13.5.3 If either Party makes a claim for compensation against the other Party and this is not established, the claimant shall reimburse the other for his reasonable costs incurred as a result of the claim or if proceedings are initiated in terms of Clause 12 for such costs as may be awarded.

13.6 Indemnity by the Employer

Unless otherwise indicated in the Contract Data, the Employer shall indemnify the Service Provider against all claims by third parties which arise out of or in connection with the performance of the Services save to the extent that such claims do not in the aggregate exceed the limit of compensation in Clause 13.5, if applicable, or are covered by the insurances arranged under the terms of Clause 5.4.

13.7 Exceptions

13.7.1 Clauses 13.5 and 13.6 shall not apply to claims arising from deliberate misconduct.

13.7.2 The Service Provider shall have no liability whatsoever for actions, claims, losses or damages occasioned by:

- a) The Employer omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Service Provider, or requiring the Service Provider to implement a decision or recommendation with which the Service Provider disagrees or on which he expresses a serious reservation; or
- b) The improper execution of the Service Provider's instructions by agents, employees or independent contractors of the Employer.

14. REMUNERATION AND REIMBURSEMENT OF SERVICE PROVIDER

The Employer shall remunerate and reimburse the Service Provider for the performance of the Services as set out in the Pricing Data. If not otherwise stated in the Pricing Data, the following shall apply:

14.1 The Service Provider shall be entitled to render interim monthly accounts for fees and reimbursements throughout the duration of the Contract. Interim amounts of lump sum fees due shall be based on progress.

14.2 Amounts due to the Service Provider shall be paid by the Employer within thirty (30) Days of receipt by him of the relevant invoices. If the Service Provider does not receive

payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Employer, at the prime interest rate charged by his bank and certified by such bank, plus 2% per annum, and calculated from the due date of payment.

- 14.3 If any item or part of an item in an invoice submitted by the Service Provider is disputed by the Employer, the latter shall, before the due date of payment, give notice thereof with reasons to the Service Provider, but shall not delay payment of the balance of the invoice. Clause 14.2 shall apply to disputed amounts which are finally determined to be payable to the Service Provider.
- 14.4 In respect of Services charged for on a time-basis and all other reimbursable expenses the Service Provider shall maintain records in support of such charges and expenses for a period of twenty-four months after the completion or termination of the Contract. Within this period the Employer may, on not less than 14 Days' notice, require that a reputable and independent firm of accountants, nominated by him at his expense, audit any claims made by the Service Provider for time charges and expenses by attending during normal working hours at the office where the records are maintained.

15 AMOUNTS DUE TO THE EMPLOYER

Amounts due to the Employer shall be paid by the Service Provider within thirty (30) Days of receipt by him of the relevant invoices. If the Employer does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Service Provider, at the rate stated in the Contract Data, calculated from the due date.