



# agriculture, land reform & rural development

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

## TENDER DOCUMENT

### INVITATION TO TENDER FOR PROFESSIONAL SERVICES:

<b>CIVIL ENGINEERING SERVICES</b>
-----------------------------------

FOR THE PROJECT:

**APPOINTMENT OF THE PROFESSIONAL SERVICE PROVIDER FOR DESIGN AND CONSTRUCTION MONITORING FOR THE CONSTRUCTION AND UPGRADING OF GRAVEL TO SURFACED ROAD OF 15KM ROAD FROM GANALAGTE VILLAGE TO N14 ROAD (PHASE 2) LEADING TO DELAREYVILLE TOWN IN NGAKA MODIRI MOLEMA DISTRICT, NORTH WEST**

**TENDER NO: NW CON 001 (2024/2025)**

**CLOSING DATE: 7 OCTOBER 2024**

**CLOSING TIME: 11H00**

**Name of tenderer: .....**

**ISSUED BY:**

Director: Supply Chain and Facilities Management Services  
Department Agriculture Land Reform and Rural Development  
West Gallery, Mega City  
Mahikeng  
2735  
Tel: 018 388 7003

**PREPARED BY:**

Directorate: Rural Infrastructure Development  
West Gallery, Mega City  
Mahikeng  
2735  
Tel: 018 388 7021

## **CONTENTS** Page

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### **The Tender**

T1: TENDERING PROCEDURES	
T1.1 Notice and Invitation to Tender .....	3-4
T1.2 Tender Data .....	5-12
T2: RETURNABLE DOCUMENTS	
T2.1 List of Returnable Documents .....	13-14
T2.2 Returnable Schedules .....	15-37

### **The Contract**

C1: AGREEMENT AND CONTRACT DATA	
C1.1 Form of Offer and Acceptance .....	38-41
C1.2 Contract Data .....	42-46
C2: PRICING DATA	
C2.1 Pricing Instructions .....	47-53
C2.2 Activity Schedule .....	54-56
C3: SCOPE OF SERVICES	
C3 Scope of Services .....	57-65
C4: SITE INFORMATION	
C4 Site Information .....	66

### **Appendices**

A	Standard Conditions of Tender
B	Standard Professional Services Contract
C	2016 National Department of Public Works Scope of Engineering Services and Tariff of Fees for Persons Registered in terms of the Engineering Profession Act, 2000, (Act No. 46 of 2000)

**T1: TENDERING PROCEDURES**

**T1.1 Notice and Invitation to Tender**

T1.1.1 The words “**tender**” and “**bid**” in this document or any documents referred to in this document are interchangeable and are deemed to have the same meaning, similarly the words “tenderer” and “tendering Service Provider” are interchangeable and are deemed to have the same meaning. Unless inconsistent with the context, the masculine gender includes the feminine and neuter genders and *vice versa*, and the singular includes the plural and *vice versa*. In this document, words and expressions signified in the text by the use of capital initial letters, shall have the meanings defined in the Standard Professional Services Contract except where the context otherwise requires.

T1.1.2 The Government of the Republic of South Africa in its **Department agriculture land reform and rural development** invites tenders for the provision of **PROFESSIONAL CIVIL ENGINEERING SERVICES** as further fully described in C3 Scope of Services hereof.

T1.1.3 The address for collection of tender documents and the telephone number of the tender section is:

**MAHIKENG:**  
**Department Agriculture Land Reform and Rural Development**  
**Cnr James Moroka & Sekame Drive**  
**West Gallery, Mega City**  
**Mahikeng**  
**2735**

T1.1.4 A non-refundable bid deposit of **R100** that is payable into the following bank account, is required on collection of the bid document for walk in Service Providers (proof of payment to be produced upon collection):

**Banking Details: DEPARTMENT AGRICULTURE LAND REFORM AND RURAL DEVELOPMENT**  
**Account name :**  
**Bank: ABSA**  
**Branch: 632005**  
**Account no: 40-5400-6793**  
**Reference No: NW CON 001 (2024/2025)**

**ONLY PRINTED HARD COPIES COLLECTED FROM THE DEPARTMENT WILL BE SOLD AT A NON-REFUNDABLE AMOUNT OF R100. ELECTRONICALLY ISSUED OR DOWNLOADED DOCUMENTS ARE FREE OF CHARGE.**

T1.1.5 Tender documents may be collected on working days **between 08:00 and 12:30 and between 13:30 and 16:00**

T1.1.6 All enquiries regarding this bid must be directed to:

**Enquiries – Technical Related:**

Mr. D Thobejane or Mr. S Mtebele  
Tel: (018) 388 7021/7067  
Email: [Dinake.Thobejane@dalrrd.gov.za](mailto:Dinake.Thobejane@dalrrd.gov.za) / [SipheloM@dalrrd.gov.za](mailto:SipheloM@dalrrd.gov.za)

**Enquiries – Supply Chain Management Related:**

Ms. Xoliswa Job  
Tel: 018 388 7044  
Email: [XoliswaJ@dalrrd.gov.za](mailto:XoliswaJ@dalrrd.gov.za)

T1.1.7 A compulsory clarification meeting with representatives of the Employer will take place on the **26 September 2024 starting at 11h00** at

**MAHIKENG:**  
**Ngaka Modiri Molema District Office**  
**Department of Agriculture and land Reform and Rural Development**  
**No 1 Station Road**  
**Molopo Shopping Centre**  
**Mahikeng**  
**2745**

**NB: The briefing session will take place at the parking space in front of the entrance.**

T1.1.8 The closing time and date for the receipt of tenders is **11h00 on Monday 7<sup>th</sup> October 2024** at the following address:

**MAHIKENG:**  
**Department Agriculture Land Reform and Rural Development**  
**Cnr James Moroka & Sekame Drive**  
**West Gallery, Mega City**  
**Mahikeng**  
**2735**

The tender box of the office of the Department of Agriculture, Land Reform and Rural Development is located on the ground floor next to security check point and its open 24 hours a day, 7 days a week.

T1.1.9 Telephonic, facsimile, electronic and late tenders will not be accepted. Requirements for sealing, addressing, delivery, opening and assessment of tenders are stated in T1.2 Tender Data.

**T1.2 Tender Data**

T1.2.1 Standard Conditions of Tender  
The conditions of tender are the **Standard Conditions of Tender** attached hereto as appendix A.

Clause number	
	<p>The conditions of tender are the <b>Standard Conditions of Tender</b> as contained in <b>Annexure C</b> of the <b>Construction Industry Development Board Standard for Uniformity in Engineering and Construction Works Contracts</b> as per Government Notice No. 423 published in Government Gazette No. 42622 of <b>8 August 2019</b> and as amended from time to time. (see <a href="http://www.cidb.org.za">www.cidb.org.za</a>).</p> <p>The Standard Conditions of Tender make several references to the Tender Data for details that apply specifically to this tender. The Tender Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the Standard Conditions of Tender</p> <p>Each item of data given below is cross-referenced to the clauses marked [C] in the Standard Conditions of Tender to which it mainly applies.</p> <p>By submitting a tender in response to T1.1 Notice and Invitation to Tender above, the tenderer binds himself to a <i>pactum de contrahendo</i> (contract aimed at conclusion of another contract), the terms of which are contained in the Standard Conditions of Tender and T1.2 Tender Data.</p>
C.1.1	<p>The Employer is the <b>Government of the Republic of South Africa in its Department of Agriculture, Land Reform and Rural Development</b>.</p>
C.1.2	<p>For this Contract the single volume approach is adopted.</p> <p>This procurement document has been formatted and compiled under the headings for a single volume approach as contained in table 6 of the CIDB's "Standard for Uniformity in Construction Procurement."</p> <p>The tendering Service Provider's attention is specifically drawn to the T2 Returnable Documents identified in the T2.1 List of Returnable Documents and in the T2.2 Returnable Schedules. The Returnable Documents must be obtained and the Returnable Schedules must be completed by a tenderer when submitting a tender. The tenderer must complete these documents, including the "Offer" document in C1.1 Form of Offer and Acceptance, and deliver his tender back to the Employer bound as it was received.</p> <p>The tender document, issued by the Employer, comprises the following separate identifiable documents collectively forming the "Tender Document in a single volume":</p> <p><u>The Tender</u></p> <p>T1: Tendering Procedures        T1.1 Notice and Invitation to Tender        T1.2 Tender Data</p> <p>T2: Returnable Documents        T2.1 List of Returnable Documents        T2.2 Returnable Schedules</p> <p><u>The Contract</u></p> <p>C1: Agreement and Contract Data        C1.1 Form of Offer and Acceptance        C1.2 Contract Data</p> <p>C2: Pricing Data        C2.1 Pricing Instructions        C2.2 Activity Schedule</p>

	C3: Scope of Services C4: Site Information Appendices A and B
C.1.4	The Employer's agent for the purpose of this tender is deemed to be the authorised and designated representative of the Employer, who will be the departmental project manager as noted in T1.1.6 Notice and Invitation to Tender.

C.2.1	<p><b><u>Tenders will only be considered for acceptance if (i.e. will only be regarded as responsive if):</u></b></p> <ol style="list-style-type: none"> <li>1. The tendering Service Provider is a Civil Engineering business undertaking and which is owned and controlled by registered professionals who are registered in terms of the Engineering Profession Act, 2000 (Act no 46 of 2000), and who will hereafter be referred to as <b>registered principals</b> of the business undertaking, Such person must be the:       <ul style="list-style-type: none"> <li>• delegated authority to manage the technical assets and operations of the firm and</li> <li>• carry technical liability for the actions of the firm and therefore be able to determine the technical policies and direct and control the technical operations of the firm.</li> </ul> </li> <li>2. Certified copies of certificates or other documentation clearly proving current professional registration with the relevant council (ECSA), including registration numbers, of all the registered principals mentioned in 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;</li> <li>3. The information, required in respect of 1 and 2 above, has been provided for all Service Providers tendering in consortium or joint venture;</li> <li>4. At least one registered professional civil engineer, of whom the same documentation as in 2 above has been included in the tender, of the tendering Service Provider has been listed in C1.2.3, clause 7.1.2 Key Persons;       <p>[The Employer retains the right to verify current professional registration required in terms of 2, 3 and 4 above with the relevant councils as part of the tender evaluation process. <b>In the event of any such person not currently being registered with the relevant councils, it will render the tender as unacceptable (i.e. non-responsive) and excluded from further consideration.</b>]</p> </li> <li>5. All Returnable Documents mentioned in T2: Returnable Documents (T2.1 List of Returnable Documents and T2.2 Returnable Schedules) have been included in the tender;</li> <li>6. <b>Confirmation of the required level of professional indemnity insurance</b> 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. <b>Tenderer must provide Professional Indemnity Insurance with minimum cover of R1,500,000.00 million. [Unconfirmed professional indemnity insurance will render the tender as unacceptable in terms of risk and excluded from further consideration.]</b></li> <li>7. <b>Attendance of compulsory clarification meeting</b>, if applicable in terms of F.2.7 below, by a representative of the tendering Service Provider. [Non-attendance, if compulsory in terms of F.2.7, will be regarded as a risk to the Employer in that salient information required for tender purposes would not have been to the knowledge of the tendering Service Provider, rendering any resultant tender to be incomplete. <b>Non-attendance will render the tender a risk to the Employer and therefore excluded from further consideration.</b></li> <li>8. A resolution, PA-15.1 (for a single Service Provider tendering herein) or PA-15.2 plus special resolution, PA-15.3 (for multiple Service Providers tendering in consortium or joint venture herein) (forms PA-15.1 to 3 are bound in hereafter) <b>OR</b> A signed letter of authority on Company Letterhead is attached. In case of Joint Venture, all JV Partners must submit signed letter of authority on their company letterhead and one signed letter of authority on JV letterhead. Form of offer must be completed and signed by duly authorized person.</li> </ol> <p><b>Note: Any tender not complying with any of the eight (08) of the above-mentioned stipulations,</b></p>
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	<b>numbered 1 to 8 above, will be regarded as non-responsive and will therefore <u>not</u> be considered for further evaluation.</b>
C.2.7	<p>A <b>compulsory clarification meeting</b> will be held in respect of this tender. Attendance of said clarification meeting is <b>COMPULSORY and will take place on the 26 September 2024 starting at 11h00</b></p> <p>The particulars of said clarification meeting, if applicable, are:  <b>Location: Ngaka Modiri Molema District Office</b>  <b>Department of Agriculture and land Reform and Rural Development</b>  <b>No 1 Station Road</b>  <b>Molopo Shopping Centre</b>  <b>Mahikeng</b>  <b>2745</b></p> <p><b>NB:</b> The briefing session will take place at the parking space in front of the entrance.</p> <p><b>Date: 26 September 2024</b>  <b>Starting time: 11H00</b></p>
C.2.13.3	Each tender offer communicated on paper shall be submitted as an original.
C.2.13.5	<p>The Employer's addresses for delivery of tender offers is:</p> <p style="text-align: center;"><b>North West Provincial Shared Services Centre</b>  <b>Department of Agriculture Land Reform and Rural Development</b>  <b>Corner James Moroka &amp; Sekame Drive</b>  <b>West Gallery, Mega City</b>  <b>Mahikeng</b>  <b>2735</b></p> <p>The tender box of the office of the Department of Agriculture, Land Reform and Rural Development is located on the ground floor next to Security check point and its open 24 hours a day, 7 days a week.</p> <p>For Att.: Director Finance and Supply Chain anagement Services</p> <p>In addition, the following identification details must be provided on the <u>back</u> of the envelope:  <b>Tenderer's name, contact address and telephone number</b>  and in the top left corner on the back of the envelope:  <b>"Tender no.       "</b> (and fill in the tender number as on the front page hereof)  <b>"Tender for Civil Engineering Services "</b>.</p>
C.2.13.6	A two-envelope procedure will not be followed.
C.2.15	<b>The closing time for submission of tenders is on the 7<sup>th</sup> October 2024 at 11H00.</b>
C.2.16	The tender validity period is <b>90</b> Calendar Days. For tenders closing in October, November and December the tender validity period is <b>120</b> Calendar Days.
C.2.19	The tenderer shall provide access for inspections to his offices as may be required by the Employer.
C.2.22	Not a requirement.
C.2.23	The tenderer is required to submit with his tender all documents listed in T2 Returnable Documents, T2.1 and T2.2.
C.3.4	<p>The time and location for opening tender offers are:  Time: Tenders will be opened immediately or as soon as possible after the closing time as stipulated on page 1 of this document:</p> <p><b>Location: North West Provincial Shared Services Centre</b>  <b>Department of Agriculture Land Reform and Rural Development</b>  <b>Corner James Moroka &amp; Sekame Drive</b>  <b>West Gallery, Mega City</b>  <b>Mahikeng</b>  <b>2735</b>  <b>Ground Floor</b></p>

C.3.5	A two-envelope procedure will not be followed.																									
C3.9.3	Omit the wording and replace with the following: “Notify the tenderer of all errors, omissions and/or rate imbalances that are identified in the tender offer and request the tenderer to, within a stipulated time, accept the total of prices as corrected in accordance with C.3.9.4.”																									
C3.9.4	Omit the wording of the first sentence and replace with: “In cases where tender offers contain errors, omissions and/or rate imbalances, these are to be corrected as follows.”  Add sub-paragraph c) as follows: “c) If the tenderer does not accept the corrected tender offer, or cannot reach consensus with the Employer on a corrected tender offer, the tenderer is to be classified as not acceptable/non-responsive and removed from further contention.”																									
C.3.11.	The procedure for the evaluation of responsive tenders is <b>Method 2: financial offer and preference.</b>																									
C.3.11 (continued)	<p>Add sub-paragraph 3.11.2 as follows:</p> <p>Scoring for preferences: <b>Points awarded for attaining Specific Goals</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>• Historically Disadvantaged individuals (HDI): <b>Attach a copy of Identity Document (ID) and company registration document.</b></li> <li>• Who is female: <b>Attach a copy of Identity Document (ID) and company registration document.</b></li> <li>• Who has a disability: <b>Attach a certified copy or original doctor’s letter confirming the disability.</b></li> <li>• Who is youth (a person that is not older than 35 years on the closing date of a bid): <b>Attach a copy of Identity Document (ID) and company registration document.</b></li> <li>• Locality <b>Attach proof of Business premises (Municipal Bill/Rates, Letter from Tribal Authority, Lease agreement)</b></li> </ul> <p><b>Specific goals for the tender and points claimed are indicated per the table below.</b></p> <p><b>(Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)</b></p> <table border="1"> <thead> <tr> <th style="background-color: #d9ead3;">The specific goals allocated points in terms of this tender</th> <th style="background-color: #d9534f; color: white;">Number of points allocated (90/10 system) (To be completed by the organ of state)</th> <th style="background-color: #d9534f; color: white;">Number of points allocated (80/20 system) (To be completed by the organ of state)</th> <th style="background-color: #d99090;">Number of points claimed (90/10 system) (To be completed by the tenderer)</th> <th style="background-color: #d99090;">Number of points claimed (80/20 system) (To be completed by the tenderer)</th> </tr> </thead> <tbody> <tr> <td>Who had no franchise in national elections before the 1983 and 1993 Constitution</td> <td style="text-align: center;">-</td> <td style="text-align: center;">8</td> <td></td> <td></td> </tr> <tr> <td>Who is female</td> <td style="text-align: center;">-</td> <td style="text-align: center;">5</td> <td></td> <td></td> </tr> <tr> <td>Who has a disability</td> <td style="text-align: center;">-</td> <td style="text-align: center;">2</td> <td></td> <td></td> </tr> <tr> <td>Specific goal: Youth</td> <td style="text-align: center;">-</td> <td style="text-align: center;">2</td> <td></td> <td></td> </tr> </tbody> </table>	The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)	Who had no franchise in national elections before the 1983 and 1993 Constitution	-	8			Who is female	-	5			Who has a disability	-	2			Specific goal: Youth	-	2		
The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)																						
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Who has a disability	-	2																								
Specific goal: Youth	-	2																								

	Specific goal: Locality <b>(Ngaka Modiri Molema District Municipality)</b>	-	3		
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F.3.11  
(continued)

Add sub-paragraph 3.11.2 as follows:

Calculate total tender evaluation points:

The point calculated for financial offer will be added to the point scored for preference for each individual tender offer according to the formula:

Total tender evaluation points =  $W_c$  + sum of  $N_p$  for (a), (b) and (c) above.

Quality (functionality) will be scored on those tenders regarded as being responsive. The CRITERIA to be applied in evaluating the proposal is set out in the table below:

0- non-compliance, 1- poor, 2-fair, 3- good, 4- excellent, 5- exceeding expectations

Criterion	Weight	Value	Comments / Remarks
Proposed work plan (approach and methodology). The service provider must demonstrate by providing a unambiguous execution plan detailing all the necessary steps required to complete the project successfully, taking into consideration the expected delivery period, Programme of works; Designing; Tendering stage; Construction stage; Risk plan, Health and Safety, etc.	20		
Tenderer's previous experience (with respect to road design and project management), provide contactable references and contact details. Projects must be from a minimum value of R3 000 000.00 for Professional Services. <i>Points will be allocated as follows:</i> 5 projects & above in the last 10yrs = 5 4 Projects in the last 10yrs = 4 3 Projects in the last 10yrs = 3 2 Projects in the last 10yrs = 2 1 Projects in the last 10yrs = 1 None = 0 <b>NB: Bidders must provide appointment and reference letters for each completed submitted project. The project must be completed in RSA.</b>	40		
Related Experience and Qualification of key personnel (submission of detailed CV signed and certified copies of qualifications and registration certificates). <i>Points will be allocated as follows:</i> Registered Professional Civil Engineer/ Technologist with experience: ( 30 points) Over 12 yrs = 5 Over 9 - 12yrs = 4 Over 6 - 9yrs = 3 Over 3- 6yrs = 2 Over 1 - 3yrs = 1 0 - 1yr = 0  <i>Points will be allocated as follows:</i> Resident Engineer with experience: (10 points) Over 12 yrs = 5 Over 6 - 12yrs = 4 Over 4 - 5yrs = 3 Over 2- 3yrs = 2 Over 1 - 2yrs = 1 0 - 1yr = 0	40		
<b>Total</b>	<b>100</b>		

The proposal will be evaluated individually on score sheets, by a representative evaluation panel according to the evaluation criteria indicated above. All service providers who scored less than **60** out of **100** points for functionality will not be considered further.

**NB: Points scored for Quality (functionality) will not have an influence on the total tender evaluation points.**

	<b>Method 2 (i.e. financial offer and preferences) will be used to calculate the total tender evaluation points.</b>
F3.17	The number of paper copies of the signed contract to be provided by the employer is <u>one</u> .

**T2: RETURNABLE DOCUMENTS**

**This tender document in its entirety, duly initialled on each page, all returnable documents, which must be attached to this tender document, and all returnable schedules must be returned when the tender is submitted.**

**T2.1 List of Returnable Documents** (to be obtained/compiled by the tenderer and attached to this tender). All documents must be duly completed and signed where applicable.

1. Certified copies of present registration with the **Engineering Council of South Africa** as "Professional" (Pr. Eng.) Civil Engineering, with the registration numbers, of all the registered principals and professionals mentioned under T1.2 Tender Data, clause F.2.1, item 2, as well as in C1.2.3 Data provided by the Service Provider, clause 7.1.2 Key Persons.
2. A valid Tax Clearance Certificate PIN issued by SARS: In the case of Bidder/ Consortia/JV: Each company must submit valid tax clearance certificate or submit their valid compliance personal identification number (PIN) issued by SARS. Failure to submit an original will result in the disqualification of the tender.)
3. Information relating to the legal status of the tendering Service Provider as per the table on page 15 of form PA-16.1(PSB) (form PA-16.1 (PSB) is bound in hereafter).
4. Signed Letter of authority on Company Letterhead is attached. In case of Joint Venture, all JV Partners must submit signed letter of authority on their company letterhead and one signed letter of authority on JV letterhead.
5. Tenderer must provide letter of Professional Indemnity Insurance with minimum cover of R1,500, 000.00 million. Unconfirmed professional indemnity insurance will render the tender as unacceptable in terms of risk and excluded from further consideration.]
6. Attendance of compulsory clarification meeting, if applicable in terms of F.2.7 below, by a representative of the tendering Service Provider. [Non-attendance, if compulsory in terms of F.2.7, will be regarded as a risk to the Employer in that salient information required for tender purposes would not have been to the knowledge of the tendering Service Provider, rendering any resultant tender to be incomplete. Non-attendance will render the tender a risk to the Employer and therefore excluded from further consideration. In the event of the clarification meeting not being compulsory, this risk criterion will not be applicable.]
7. Fully completed Declarations on SBD4

**T2.2 Returnable Schedules** (all bound into this tender document – to be completed by tenderer) All documents must be duly completed and signed where applicable.

1. Form of Offer and Acceptance (C1.1).
2. Data provided by the Service Provider (C1.2.3).
3. If applicable, a Site Inspection Meeting Certificate, DRDLR-16.1 (PSB) for compulsory clarification meeting (form DRDLR-16.1 (PSB) is bound in hereafter).
5. A resolution, PA-15.1 (for a single Service Provider tendering herein) or PA-15.2 plus special resolution, PA-15.3 (for multiple Service Providers tendering in consortium or joint venture herein) (forms PA-15.1 to 3 are bound in hereafter).

6. Preference points claim form and affidavit, (SBD 6.1) is bound in hereafter). (Failure to complete this form will be interpreted to mean that preference points are not claimed by the tendering Service Provider.)
8. A valid Tax Clearance Certificate PIN issued by SARS: In the case of Bidder/ Consortia/JV: Each company must submit valid tax clearance certificate or submit their valid compliance personal identification number (PIN) issued by SARS.
9. Activity Schedule for Value Based Fees (C2.2.2) – only if remuneration is stipulated as “value based” in C2.1.1.1.
10. Activity Schedule for Time Based Fees (C2.2.3) – only if remuneration is stipulated as “time based” in C2.1.1.1.
11. If applicable, a security clearance form for projects requiring a security clearance.
12. Tenderer must provide letter of Professional Indemnity Insurance with minimum cover of R1,500, 000.00 million. Unconfirmed professional indemnity insurance will render the tender as unacceptable in terms of risk and excluded from further consideration.]
13. Attendance of compulsory clarification meeting, if applicable in terms of F.2.7 below, by a representative of the tendering Service Provider. [Non-attendance, if compulsory in terms of F.2.7, will be regarded as a risk to the Employer in that salient information required for tender purposes would not have been to the knowledge of the tendering Service Provider, rendering any resultant tender to be incomplete. Non-attendance will render the tender a risk to the Employer and therefore excluded from further consideration. In the event of the clarification meeting not being compulsory, this risk criterion will not be applicable.]
14. Fully completed Declarations on SBD4

## PA-16.1 (PSB): OWNERSHIP PARTICULARS

**NB:** 1. This form is to be read with the Notice and Invitation to Tender and F.2.1 sub paragraphs 1 and 2 of the Tender Data pertaining to this Tender, and completed according to the definitions and information contained in said documents.

2. **Failure to complete this form may result in the tender being disqualified.**

<b>Project Title</b>	APPOINTMENT OF THE PROFESSIONAL SERVICE PROVIDER FOR DESIGN AND CONSTRUCTION MONITORING FOR THE CONSTRUCTION AND UPGRADING OF GRAVEL TO SURFACED ROAD OF 15KM ROAD FROM GANALAGTE VILLAGE TO N14 ROAD (PHASE 2) LEADING TO DELAREYVILLE TOWN IN NGAKA MODIRI MOLEMA DISTRICT, NORTH WEST.
<b>Contract Number</b>	NW CON 001 (2024/2025)

### 1. REQUIRED DOCUMENTARY PROOF

The following documentation must be included in the tender as part of the Returnable Documents. Failure to provide the said documentation may result in the tender being disqualified.

<b>Legal Status of Tendering Entity: If the Tendering Entity is:</b>	<b>Documentation to be submitted with the tender:</b>
a. A close corporation, incorporated prior to 1 May 2011 under the Close Corporations Act, 1984(Act 69 of 1984, as amended)	Copies of the Founding Statement – CK1
b. A profit company duly registered as a private company. [including a profit company that meets the criteria for a private company, whose Memorandum of Incorporation states that the company is a personal liability company in terms of Section 8(2)(c) of the Companies Act, 2008 (Act 71 of 2008, as amended)].	Copies of: i. Certificate of Incorporation – CM1; ii. Shareholding Certificates of all Shareholders of the company, plus a signed statement of the company's Auditor, certifying each Shareholder's ownership / shareholding percentage relative to the total; and/or iii. Memorandum of Incorporation in the case of a personal liability company.
c. A profit company duly registered as a private company in which any, or all, shares are held by one or more other close corporation(s) or company(ies) duly registered as profit or non-profit company(ies).	Copies of documents referred to in a. and/or b. above in respect of all such close corporation(s) and/or company(ies).
d. A profit company duly registered as a public company.	Copy of Certificate of Incorporation – CM1, and a signed statement of the company's Secretary or Auditor confirming that the company is a public company.
e. A non-profit company, incorporated in terms of Section 10 and Schedule 1 of the Companies Act, 2008 (Act 71 of 2008, as amended).	Copies of: i the Founding Statement – CK1; and ii the Memorandum of Incorporation setting out the object of the company, indicating the public benefit, cultural or social activity, or communal or group interest.
f. A natural person, sole proprietor or a Partnership	Copy(ies) of the Identity Document(s) of: i. such natural person/ sole proprietor, or ii. each of the Partners to the Partnership.
g. A Trust	Deed of Trust duly indicating names of the Trustee(s) and Beneficiary (ies) as well as the purpose of the Trust and the mandate of the Trustees.

## DALRRD-16.1 (PSB): TENDER CLARIFICATION MEETING CERTIFICATE

<b>Project title:</b>	<b>APPOINTMENT OF THE PROFESSIONAL SERVICE PROVIDER FOR DESIGN AND CONSTRUCTION MONITORING FOR THE CONSTRUCTION AND UPGRADING OF GRAVEL TO SURFACED ROAD OF 15KM ROAD FROM GANALAGTE VILLAGE TO N14 ROAD (PHASE 2) LEADING TO DELAREYVILLE TOWN IN NGAKA MODIRI MOLEMA DISTRICT, NORTH WEST.</b>
<b>Tender no:</b>	NW CON 001 (2024/2025)

This is to certify that I, \_\_\_\_\_

representing \_\_\_\_\_

attended the tender clarification meeting on: \_\_\_\_\_

I further certify that I am satisfied with the description of the work and explanations given at the tender clarification meeting and that I understand the work to be done, as specified and implied, in the execution of this contract.

Name of Tenderer	Signature	Date

Name of DALRRD Representative	Signature	Date

## PA-11.1 (PSB): BIDDERS' DISCLOSURE

<b>Project title:</b>	<b>APPOINTMENT OF THE PROFESSIONAL SERVICE PROVIDER FOR DESIGN AND CONSTRUCTION MONITORING FOR THE CONSTRUCTION AND UPGRADING OF GRAVEL TO SURFACED ROAD OF 15KM ROAD FROM GANALAGTE VILLAGE TO N14 ROAD (PHASE 2) LEADING TO DELAREYVILLE TOWN IN NGAKA MODIRI MOLEMA DISTRICT, NORTH WEST.</b>
<b>Tender no:</b>	NW CON 001 (2024/2025)

### BIDDER'S DISCLOSURE

#### 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<sup>1</sup> 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:

.....  
 .....

---

<sup>1</sup> 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.

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:  
 .....  
 .....

**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 consortium<sup>2</sup> 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

<sup>2</sup> 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.

## PA-15.1: RESOLUTION OF BOARD OF DIRECTORS

**RESOLUTION** of a meeting of the Board of \*Directors / Members / Partners of:

\_\_\_\_\_

(legally correct full name and registration number, if applicable, of the Enterprise)

Held at \_\_\_\_\_ (place)

on \_\_\_\_\_ (date)

**RESOLVED that:**

- 1 The Enterprise submits a Tender to the Department of Agriculture Land Reform and Rural Development in respect of the following project:

\_\_\_\_\_

(project description as per Tender Document)

Tender Number: \_\_\_\_\_ (Tender Number as per Tender Document)

- 2 \*Mr/Mrs/Ms: \_\_\_\_\_

in \*his/her Capacity as: \_\_\_\_\_ (Position in the Enterprise)

and who will sign as follows: \_\_\_\_\_

be, and is hereby, authorised to sign the Tender, and any and all other documents and/or correspondence in connection with and relating to the Tender, as well as to sign any Contract, and any and all documentation, resulting from the award of the Tender to the Enterprise mentioned above.

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			
7			
8			

**Note:**

1. \* Delete which is not applicable.
2. **NB.** This resolution must be signed by all the Directors / Members / Partners of the Tendering Enterprise.
3. Should the number of Directors / Members / Partners exceed the space available above, additional names capacity and signatures must be supplied on a separate page.

**ENTERPRISE STAMP**

## PA-15.2: RESOLUTION OF BOARD OF DIRECTORS TO ENTER INTO CONSORTIA OR JOINT VENTURES

**RESOLUTION** of a meeting of the Board of \*Directors / Members / Partners of:

---

*(Legally correct full name and registration number, if applicable, of the Enterprise)*

Held at \_\_\_\_\_ (place)

on \_\_\_\_\_ (date)

**RESOLVED that:**

1. The Enterprise submit a Tender, in consortium/joint venture with the following Enterprises:

---

*(List all the legally correct full names and registration numbers, if applicable, of the Enterprises forming the consortium/joint venture)*

to the Department of Agriculture Land Reform and Rural Development in respect of the following project:

---

*(Project description as per Tender Document)*

Tender Number: \_\_\_\_\_ *(Tender Number as per Tender Document)*

- 1 \*Mr/Mrs/Ms: \_\_\_\_\_

in \*his/her Capacity as: \_\_\_\_\_ *(Position in the Enterprise)*

and who will sign as follows:

---

be, and is hereby, authorised to sign a consortium/joint venture agreement with the parties listed under item 1 above, and any and all other documents and/or correspondence in connection with and relating to the consortium/joint venture, in respect of the project described under item 1 above.

- 2 The Enterprise accept joint and several liability with the parties listed under item 1 above for the due fulfilment of the obligations of the joint venture deriving from, and in any way connected with, the Contract to be entered into with the Department in respect of the project described under item 1 above.
- 3 The Enterprise choose as its *domicilium citandi et executandi* for all purposes arising from this joint venture agreement and the Contract with the Department in respect of the project under item 1 above:

Physical address: \_\_\_\_\_

---

---

\_\_\_\_\_ (code)

Postal Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ (code)

Telephone number: \_\_\_\_\_ (code)

Fax number: \_\_\_\_\_ (code)

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

**Note:**

1. \* Delete which is not applicable.
2. **NB.** This resolution must be signed by all the Directors / Members / Partners of the Tendering Enterprise.
3. Should the number of Directors / Members / Partners exceed the space available above, additional names and signatures must be supplied on a separate page.

<b>ENTERPRISE STAMP</b>

### PA-15.3: SPECIAL RESOLUTION OF CONSORTIA OR JOINT VENTURES

**RESOLUTION** of a meeting of the duly authorised representatives of the following legal entities who have entered into a consortium/joint venture to jointly tender for the project mentioned below: *(legally correct full names and registration numbers, if applicable, of the Enterprises forming a Consortium/Joint Venture)*

- 1 \_\_\_\_\_  
\_\_\_\_\_
- 2 \_\_\_\_\_  
\_\_\_\_\_
- 3 \_\_\_\_\_  
\_\_\_\_\_
- 4 \_\_\_\_\_  
\_\_\_\_\_
- 5 \_\_\_\_\_  
\_\_\_\_\_
- 6 \_\_\_\_\_  
\_\_\_\_\_
- 7 \_\_\_\_\_  
\_\_\_\_\_
- 8 \_\_\_\_\_  
\_\_\_\_\_

Held at \_\_\_\_\_ *(place)*

on \_\_\_\_\_ *(date)*

**RESOLVED that:**

- A. The above-mentioned Enterprises submit a tender in Consortium/Joint Venture to the Department of Agriculture Land Reform and Rural Development in respect of the following project:

\_\_\_\_\_

\_\_\_\_\_

*(Project description as per Tender Document)*

Tender Number: \_\_\_\_\_ *(Tender Number as per Tender Document)*

B. Mr/Mrs/Ms: \_\_\_\_\_

in \*his/her Capacity as: \_\_\_\_\_ (Position in the Enterprise)

and who will sign as follows: \_\_\_\_\_

be, and is hereby, authorised to sign the tender, and any and all other documents and/or correspondence in connection with and relating to the tender, as well as to sign any Contract, and any and all documentation, resulting from the award of the tender to the Enterprises in Consortium/Joint Venture mentioned above.

C. The Enterprises constituting the Consortium/Joint Venture, notwithstanding its composition, shall conduct all business under the name and style of:

\_\_\_\_\_

D. The Enterprises to the Consortium/Joint Venture accept joint and several liability for the due fulfilment of the obligations of the Consortium/Joint Venture deriving from, and in any way connected with, the Contract entered into with the Department in respect of the project described under item A above.

E. Any of the Enterprises to the Consortium/Joint Venture intending to terminate the consortium/joint venture agreement, for whatever reason, shall give the Department 30 days written notice of such intention. Notwithstanding such decision to terminate, the Enterprises shall remain jointly and severally liable to the Department for the due fulfilment of the obligations of the Consortium/Joint Venture as mentioned under item D above.

F. No Enterprise to the Consortium/Joint Venture shall, without the prior written consent of the other Enterprises to the Consortium/Joint Venture and of the Department, cede any of its rights or assign any of its obligations under the consortium/joint venture agreement in relation to the Contract with the Department referred to herein.

G. The Enterprises choose as the *domicilium citandi et executandi* of the Consortium/Joint Venture for all purposes arising from the consortium/joint venture agreement and the Contract with the Department in respect of the project under item A above:

Physical address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (code)

Postal Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (code)

Telephone number: \_\_\_\_\_ (code)

Fax number: \_\_\_\_\_ (code)

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

*Note:*

- 1 \*Delete which is not applicable.
2. **NB:** This resolution must be signed by all the Duly Authorised Representatives of the Legal Entities to the Consortium / Joint Venture submitting this tender.
3. Should the number of Duly Authorised Representatives of the Legal Entities joining forces in this tender exceed the space available above, additional names, capacity and signatures must be supplied on a separate page.
4. Resolutions, duly completed and signed, from the separate Enterprises who participate in this Consortium / Joint Venture must be attached to the Special Resolution.

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

BID PROCESS (EQUAL OR BELOW 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**

---

a) DEFINITIONS

1. "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;
2. "price" means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
3. "rand value" means the total estimated value of a contract in Rand, calculated at the time of tender invitation, and includes all applicable taxes;
4. "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;
5. "the Act" means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000); and
6. "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 -

a Before 27 April 1994; or

b On or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date.

## 1 GENERAL CONDITIONS

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

- the 80/20 system for requirements with a Rand value of up to 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 80/20 preference point system.
- b) 80/20 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	80
SPECIFIC GOALS	20
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.

2.11 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 (80/20 system)	Percentage ownership equity (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
I. HDI	8		
II. Who is female	5		
III. Who has a disability	2		
IV. Specific goal: Who is youth	2		
V. Specific goal: Locality (Ngaka Modiri Molema District Municipality)	3		

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

- (I) A maximum of 8 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  $\times 8 \div 100 =$  number of points claimed.

1. A maximum of 5 points may be allocated for to tenderers who is female, on the following basis:

•Percentage ownership equity  $\times 5 \div 100 =$  number of points claimed.

- A maximum of 2 points may be allocated to tenderers who has a disability, on the following basis:

•Percentage ownership equity  $\times 2 \div 100 =$  number of points claimed.

- (IV) A maximum of 2 points may be allocated to tenderers who are youth, on the following basis:

Percentage ownership equity  $\times 2 \div 100 =$  number of points claimed.

- (b) A maximum of 3 points may be allocated to tenderers for locality, on the following basis:

Percentage ownership equity  $\times 3 \div 100 =$  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.

## 2. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

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

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

80/20

$$= \left( - \frac{\quad}{\quad} \right)$$

Where

P<sub>s</sub> = Points scored for price of tender under consideration

P<sub>t</sub> = Price of tender under consideration

P<sub>min</sub> = 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 80 points is allocated for price on the following basis:

$$= \left( + \frac{80/20}{-} \right)$$

Where

- Ps = Points scored for price of tender under consideration
- Pt = Price of tender under consideration
- Pmax = Price of highest acceptable tender

1 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—
  - 3. 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
  - 4. 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.

4. SUB-CONTRACTING

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

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

5.1.1 If yes, indicate:

6. What percentage of the contract will be subcontracted: .....%

7. The name of the sub-contractor: .....

8. Points claimed for HDI by the sub-contractor: .....

7. 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:

- v) The information furnished is true and correct;
- vi) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- vii) 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;

8. If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –

disqualify the person from the tendering process;

recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and

forward the matter for criminal prosecution, if deemed necessary.

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

**C1: AGREEMENT AND CONTRACT DATA**

**C1.1 Form of Offer and Acceptance**

**Offer**

The Employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of:

**CIVIL ENGINEERING SERVICES FOR:**

**APPOINTMENT OF THE PROFESSIONAL SERVICE PROVIDER FOR DESIGN AND CONSTRUCTION MONITORING FOR THE CONSTRUCTION AND UPGRADING OF GRAVEL TO SURFACED ROAD OF 15KM ROAD FROM GANALAGTE VILLAGE TO N14 ROAD (PHASE 2) LEADING TO DELAREYVILLE TOWN IN NGAKA MODIRI MOLEMA DISTRICT, NORTH WEST**

The tenderer, identified in the offer signature block, has examined the documents listed in the Tender Data and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the Service Provider under the Contract including compliance with all its terms and conditions according to their true intent and meaning for remuneration to be determined in accordance with the conditions of Contract identified in the Contract Data.

**The offered price for CIVIL ENGINEERING SERVICES, inclusive of value added tax, is**

**R** ..... (in figures)

.....

..... **Rand** (in words)

*(Should there be a discrepancy between the amount in words and the amount in figures then the amount in figures shall govern.)*

This offer may be accepted by the Employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the Tender Data, whereupon the tenderer becomes the party named as the Service Provider in the conditions of Contract identified in the Contract Data.

**THIS OFFER IS MADE BY THE FOLLOWING LEGAL ENTITY:** (cross out block which is not applicable)

Company or close corporation:  
 .....  
 .....  
 and: whose registration number is:  
 .....  
 and: whose income tax reference number is:  
 .....

**OR**

Natural person or partnership:  
 .....  
 .....  
 whose identity number(s) is/are:  
 .....  
 whose income tax reference number is/are:  
 .....

**AND WHO IS** (if applicable):

Trading under the name and style of:  
 .....

**AND WHO IS:**

Represented herein, and who is duly authorised to do so, by:  Mr/Mrs/Ms: .....  In his/her capacity as:  .....	<b>Note:</b>  <b>A resolution / power of attorney, signed by all the directors / members / partners of the legal entity must accompany this offer, authorising the representative to make this offer.</b>
--	---

**SIGNED FOR THE TENDERER:**

Name of representative	Signature	Date

**WITNESSED BY:**

Name of witness	Signature	Date

The tenderer elects as its *domicilium citandi et executandi* in the Republic of South Africa, where any and all legal notices may be served, as (physical address):

.....  
 .....

**Other contact details of the Tenderer are:**

Telephone no: ..... Cellular phone no: .....

Fax no: .....

Postal address: .....

Banker: ..... Branch: .....

## Acceptance

By signing this part of this form of offer and acceptance, the Employer identified below accepts the tenderer's offer. In consideration thereof, the Employer shall pay the Service Provider the amount due in accordance with the conditions of Contract identified in the Contract Data. Acceptance of the tenderer's offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the Contract that is the subject of this agreement.

The terms of the Contract are contained in:

- Part C1 Agreements and Contract Data, (which includes this agreement)
- Part C2 Pricing Data
- Part C3 Scope of Services

and drawings and documents or parts thereof, which may be incorporated by reference into Parts C1 to C3 above.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto as listed in the tender schedules as well as any changes to the terms of the offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this agreement. No amendments to or deviations from set documents are valid unless contained in this schedule.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of Contract identified in the Contract Data. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect, if sent by registered post, 4 days from the date on which it was posted, if delivered by hand, on the day of delivery, provided that it has been delivered during ordinary business hours, or if sent by fax, the first business day following the day on which it was faxed. Unless the tenderer (now Service Provider) within seven working days of the date of such submission notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

### For the Employer:

Name of signatory	Signature	Date

<b>Name of Organisation:</b>	Department of Agriculture Land Reform and Rural Development

### Witnessed by:

Name of witness	Signature	Date

## Schedule of Deviations

### Notes:

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

<b>1.1.1. Subject:</b>
<b>Detail:</b>

<b>1.1.2. Subject:</b>
<b>Detail:</b>

<b>1.1.3. Subject:</b>
<b>Detail:</b>

<b>1.1.4. Subject:</b>
<b>Detail:</b>

<b>1.1.5. Subject:</b>
<b>Detail:</b>

<b>1.1.6. Subject:</b>
<b>Detail:</b>

By the duly authorised representatives signing this agreement, the Employer and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the Tender Data and addenda thereto as listed in the tender schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the Employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the Contract between the Parties arising from this agreement.

**C1.2 Contract Data**

## C1.2.1 Standard Professional Services Contract

The conditions applicable to this Contract are the **Standard Professional Services Contract (July 2009)** published by the Construction Industry Development Board, and are attached hereto as appendix B.

## C1.2.2 Data provided by the Employer

Clause	
	<p>The General Conditions of Contract in the Standard Professional Services Contract (July 2009) make several references to the Contract Data for details that apply specifically to this tender. The Contract Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the General Conditions of Contract.</p> <p>Each item of data given below is cross-referenced to the clause in the General Conditions of Contract to which it mainly applies (appendix B).</p>
1	The Employer is the <b>Government of the Republic of South Africa in its Department of Agriculture Land Reform and Rural Development</b>
1	The Period of Performance is from inception of this Contract until the Service Provider has completed all Deliverables in accordance with the Scope of Services.
1	The Project is for the <b>APPOINTMENT OF THE PROFESSIONAL SERVICE PROVIDER FOR DESIGN AND CONSTRUCTION MONITORING FOR THE CONSTRUCTION AND UPGRADING OF GRAVEL TO SURFACED ROAD OF 15KM ROAD FROM GANALAGTE VILLAGE TO N14 ROAD (PHASE 2) LEADING TO DELAREYVILLE TOWN IN NGAKA MODIRI MOLEMA DISTRICT, NORTH WEST</b>
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 T1.1 Notice and Invitation to Tender under item T1.1.6.
3.5	The Services shall be executed in the Service Provider's own office and on the Project site as described in item C3.2.2 Project description. 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 3.15 hereof. A Penalty amount of R1 000 per day will be applicable per target date for the full period of the delay. In the event that the delay exceeds 30 days, the Employer will have the option to either: (i) terminate the contract and recover any loss as a result of the termination from the Service Provider, or (ii) allow the Service Provider to continue with the Services after the agreement of a new target date and recover the penalty of R1 000 per day for the full period of the delay.
3.15	<p><u>For fees stipulated as “value based” in C2.1 Pricing Instructions, C2.1.1.1:</u> Programme:</p> <p>A programme for the performance of the Service shall be submitted by the Service Provider, identified as the principal agent in terms of C3.5.1 Service Providers, to the departmental project manager, within a period of two (2) weeks following the briefing meeting.</p> <p>The programme will be the result of the co-ordination of all appointed Service Providers' inputs and shall be in sufficient detail describing key milestones, events and activities linked to the fastest realistic timeframes in which the Service can be delivered. Milestones and events are to be listed based on the Scope of Services described in part C3 of the various appointed Service Providers' tender documents and presented in bar chart format. No milestones may, at the co-ordination stage, be extended beyond the timeframes outlined in C3.2.2.3 Project Programme without</p>

	<p>acceptable reasons. The programme thus compiled and presented by the principal agent must be counter-signed by all appointed Service Providers as proof that programme was agreed upon by all during the said co-ordination action.</p> <p>The Employer retains the right to negotiate such submitted programme with the principal agent in consultation with the appointed Service Providers, if required, to promote the interest of the project.</p> <p>For fees stipulated as “time based” in C2.1 Pricing Instructions, C2.1.1.1:  Project Execution Plan (PEP):  A PEP for the performance of the Service shall be submitted by the Service Provider, to the departmental project manager, within a period of two (2) weeks following the briefing meeting.</p> <p>In the event of the Employer not being satisfied with the submitted PEP, the Parties will negotiate in good faith towards a PEP that will be agreeable to both. Such an agreed-upon PEP will form the basis for the management of the appointment and remuneration purposes. Should circumstance change from the initial briefing, the Service Provider and the Employer will negotiate a revised PEP to satisfy such change(s). Should the Parties fail to reach agreement on the PEP or revised PEP, the matter will be dealt with in terms of clause 12.1.2 of the General Conditions of Contract (appendix B). Should the mediation process fail, the Contract will be deemed to have been mutually terminated and any reasonable fees accrued at that stage settled by the Employer.</p>
4.1.1	<p>Briefing meeting:  The departmental project manager shall arrange a briefing meeting, compulsory for all appointed Service Providers, as soon as practicable after the appointment of the professional team as referred to in C3.5.1 Service Providers, or after the appointment of the core members of the professional team required to commence with the Services if not appointed at the same time, during which meeting the departmental project manager, together with any supporting advisors, will verbally brief the professional team comprehensively regarding the requirements of the project and the Scope of Services and hand over, to the Service Providers, all documentation relevant to the execution of the Service.</p>
4.4	Others providing Services on this Project are as listed in C3.5.1 Service Providers.
5.4.1	Minimum professional insurance cover of R1,5million, with the first amount payable not exceeding 5% of the value of indemnity, and/or personal liability – all as more comprehensively described in C1.2.3 Data provided by the Service Provider and in respect of which the Service Provider must provide data as required.
5.5	<p>The Service Provider is required to obtain the Employer’s prior approval in writing before taking any of the following actions:</p> <ol style="list-style-type: none"> <li>1. Travelling for which payment will be claimed, as defined in C2.1.7 Travelling and subsistence arrangements and tariffs of charges;</li> <li>2. Deviate from the final programme as in clause 3.14 above;</li> <li>3. Deviate from the programme (delayed or earlier);</li> <li>4. Deviate from or change the Scope of Services;</li> <li>5. Change Key Personnel on the Service.</li> </ol>
8.1	The Service Provider is to commence the performance of the Services immediately after the Contract becomes effective and execution to be as per the programme in clause 3.14 above (see C3 Scope of Services, C3.6 Brief).
8.4.3 (c)	The period of suspension under clause 8.5 is not to exceed two (2) years.
9.1	Copyright of documents prepared for the Project shall be vested with the Employer.
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 same professional indemnity insurance as per clause 5.4.1 of the General Conditions of Contract (appendix B).
13.4	Neither the Employer nor the Service Provider is liable for any loss or damage resulting from any occurrence unless a claim is formally made within 10 years from the date of termination or completion of the Contract.
13.6	The provisions of clause 13.6 do not apply to the Contract.
14.4	In the first sentence, change "... period of twenty four months after ..." to "... period of thirty six months after ...".
15	In respect of any amount owed by the Service Provider to the Employer, the Service Provider shall pay the Employer interest at the rate as determined by the Minister of Finance, from time to time, in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act no1 of 1999).

C1.2.3 Data provided by the Service Provider

Clause	
	Each item of data given below is cross-referenced to the clause in the General Conditions of Contract to which it mainly applies (appendix B).
1	The Service Provider is the company, close corporation, natural person or partnership named in C1.1 Form of Offer and Acceptance by the tendering Service Provider.
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.
5.4.1	<p><u>Indemnification of the Employer</u></p> <p>I, the undersigned, being duly authorized by the Service Provider, in terms of the completed resolution (PA-15.1 or PA-15.3)</p> <p>..... (Name of authorized person)</p> <p>hereby confirm that the Service Provider known as:</p> <p>..... (Legal name of entity tendering herein)</p> <p>tendering on the project:</p> <p>.....</p> <p>..... (Name of project as per C1.1 Form of offer and acceptance)</p> <p>holds professional indemnity insurance cover, from an approved insurer, duly registered with the Finance Services Board, of not less than <b>R1,5million</b>, with the first amount payable not exceeding 5% of the value of indemnity. I further confirm that the Service Provider will keep such professional indemnity fully subscribed. I further confirm that should the professional indemnity insurance, with no knowledge of the Employer, be allowed to lapse at any time or in the event of the Service Provider cancelling such professional indemnity insurance, with no knowledge of the Employer, at any time or if such professional indemnity cover is not sufficient, then the Service Provider, (i) accepts herewith full liability for the due fulfilment of all obligations in respect of this Service; and (ii) hereby indemnifies, and undertakes to keep indemnified, the Employer in respect of all actions, proceedings, liability, claims, damages, costs and expenses in relation to and arising out of the agreement and/or from the aforesaid Service Provider's intentional and/or negligent wrongful acts, errors and/or omissions in its performance on this Contract.</p> <p>I confirm that the Service Provider undertakes to keep the Employer indemnified, as indicated above, beyond the Final Completion Certificate/Final Certificate by the Employer (whichever is applicable) for a period of ten (10) years after the issue of such applicable certificate.</p>

	<p>I confirm that the Service Provider renounces the benefit of the <i>exceptionis non causa debiti, non numeratae pecuniae</i> and <i>excussionis</i> or any other exceptions which may be legally raised against the enforceability of this indemnification.</p> <p>Notwithstanding the indemnification required above, the Employer reserves the right to claim damages from the Service Provider for this Project where the Service Provider neglects to discharge its obligations in terms of this agreement.</p> <p><b>NAME:</b> .....</p> <p><b>CAPACITY:</b> .....</p> <p><b>SIGNATURE:</b> .....</p>																																		
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, <b>and/or</b>, 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:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Name</th> <th style="width: 30%;">Principal and/or employed professional(s)</th> <th style="width: 40%;">Specific duties</th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr><td>5.</td><td></td><td></td></tr> <tr><td>6.</td><td></td><td></td></tr> <tr><td>7.</td><td></td><td></td></tr> <tr><td>8.</td><td></td><td></td></tr> <tr><td>9.</td><td></td><td></td></tr> <tr><td>10.</td><td></td><td></td></tr> </tbody> </table>		Name	Principal and/or employed professional(s)	Specific duties	1.			2.			3.			4.			5.			6.			7.			8.			9.			10.		
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9.																																			
10.																																			
7.2	<p>A Personnel Schedule is not required.</p>																																		

If the space provided in the table above is not sufficient to describe the **specific duties**, this space may be utilized for such purpose:

**C2: PRICING DATA**

**C2.1 Pricing Instructions**

C2.1.1 Basis of remuneration, method of tendering and estimated fees

C2.1.1.1 Professional fees for civil and structural engineering Services will be paid on a **value basis** as specified in clause C2.1.3.

C2.1.1.2 **Tenderers are to tender: A percentage of the estimated fees**

as set out below.

C2.1.2 Remuneration for **Civil Engineering Services**

C2.1.2.1 **Professional fees shall be calculated as follows for Services rendered by the Service Provider:**

- **the percentage of the normal fees tendered in “C2.2.2 Activity Schedule for Value Based Fees”, column (b), plus Value Added Tax, all according to the provisions under C2.1.3;**

C2.1.2.2 The amount tendered herein (C1.1) is for tender purposes only and will be amended according to the application of the value fee scale *vis-à-vis* the actual cost of construction (if basis of remuneration has been set at “value based” according to C2.1.1.1) or the actual number of hours for each level (if basis of remuneration has been set at “time based” according to C2.1.1.1).

C2.1.2.3 Reimbursable rates for typing, printing and duplicating work and forwarding charges as set out under C2.1.6 herein will be paid in full, irrespective of the percentage or rates tendered as referred to in C2.1.1.2 and C2.1.2.1 above.

C2.1.2.4 **Disbursements in respect of all travelling and related expenses** (including all travelling costs, time charges and subsistence allowances related thereto) to the North West: PSSC Office of the Department of Agriculture, Land Reform and Rural Development **will not be paid for separately. Tenderers must make provision for and include all such costs in their tender when calculating the rates as described in C2.1.1.2 above.**

The offices of the employer must be visited as often as the works require for the execution of all duties on the Project. The Service Provider must be available at 24 hours notice to visit the site if so required.

However, when the Service Provider is requested in writing by or obtained prior approval in writing from the Employer to attend specific meetings at any of the Employer’s other offices or any meetings on site or elsewhere, the service provider will be remunerated **according to the provisions under C2.1.3.2 to C2.1.3.6 herein.**

**“For purpose of this tender, the tenderer is required to provide an address in In the North West, from which all travel would be deemed to originate and will be considered as the tenderer’s office”.** Travelling cost will be refunded for the full distance covered per return trip measured from the office of the Service Provider appointed, upon the submission of proof of such travelling. The Service Provider is expected to provide a travel plan as part of the inception report. In the event that the tenderer does not provide an address, the North West PSSC Office in Mahikeng will be considered as the point of origin for travel purposes.

Office address  
.....  
.....  
.....

C2.1.2.5 All fee accounts must be accompanied by an updated original written certification by the quantity surveyor, if appointed, of the amount(s) on which fees are based. The onus, however, rests on

the Service Provider to calculate fees on the appropriate value and according to the correct fee scale, read in conjunction with this Contract.

- C2.1.2.6 All fee accounts need to be signed by a principal of the Service Provider and submitted in original format, failing which the accounts will be returned. Copies, facsimiles, electronic and other versions of fee accounts will not be considered for payment.
- C2.1.2.7 For all Services provided on a time basis, time sheets giving full particulars of the work, date of execution and time duration, should be submitted with each fee account.
- C2.1.2.8 Payments to the Service Provider will be made electronically according to the banking details furnished by the Service Provider. Any change in such banking details must be communicated to the departmental project manager timeously. Fee accounts, correct in all respects, will be deemed submitted when received by the Employer and settled when electronically processed by the Employer. The Employer reserves the right to dispute the whole account, any item or part of an item at any time and will deal with such case in terms of clause 14.3 of the General Conditions of Contract (appendix B).
- C2.1.2.9 Accounts for Services rendered may be submitted on the successful completion of each stage of work. Interim accounts will only be considered during the construction stage of the works and then not more frequently than quarterly except if otherwise agreed between the authorised and designated representative of the Service Provider and the Employer. Payment of accounts rendered will be subject to the checking thereof by the departmental project manager. The Employer reserves the right to amend the amounts claimed in order to conform to the rates stipulated in this Contract and make payment on the basis of the balance of the account in accordance with clause 14.3 of the General Conditions of Contract (appendix B).
- C2.1.2.10 Fee accounts shall be submitted on the Employer's prescribed format, obtainable on the Employer's Website: <http://www.publicworks.gov.za/> under "Consultants Guidelines" item 9.3.

### **C2.1.3 Value based fees**

- C2.1.3.1 Fees for work done under a value basis fee  
Where value based fees are payable, the Service Provider will be remunerated for Services rendered, subject to the provisions in C2.1.2 above and subject to the specific terms and conditions stated below and elsewhere in this document, in accordance with the **National Department of Public Works Scope of Engineering Services and Tariff of Fees for Persons Registered in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000)** dated 1 March 2016. This document is referred to as the "2016 NDPW - Scope of Engineering Services and Tariff of Fees" hereinafter and is appended as appendix A. This tariff of fees will be payable for the full Period of Performance.
- C2.1.3.2 Normal services  
The fee for normal services shall be the tendered percentage based on the fee provided in the '2016 NDPW-Scope of Engineering Services and Tariff of Fees, clause 4.2.  
  
Where the Service Provider is required to perform a portion of the normal services only, the relevant portion of the fee shall be paid.
- C2.1.3.3 Interim payments to the Service Provider  
For the purposes of ascertaining the interim payments due, the **cost of the works**, which shall exclude any provisional allowances made to cover contingencies and escalation, shall be:
- the applicable portion of the net amount of the accepted tender, or
  - if no tender is accepted, the net amount of the applicable portion of the lowest suitable tender, unless acceptable motivation can be provided to prove that such amount is unreasonable, or
  - if the contract is awarded by negotiation the negotiated price, or
  - if no tenders are invited or if no suitable tenders are received or if no negotiation is concluded, the estimate. The estimate shall be the one accepted by the Employer as representing the value of the works, which for purposes of interim payments will be deemed to be 80% of the engineers estimate or if appointed, 80% of the quantity surveyors estimate.

- C2.1.3.4 Fees for documentation for work covered by a provisional sum  
Where a provisional sum is included in the bills of quantities for work to be documented at a later stage, the documentation fee in respect of such work shall be remunerated at the time when the documentation has been completed. The fee shall relate to the type of documentation drawn up by the civil engineer in respect of each section of such work.
- C2.1.3.5 Time charges for work done under a value based fee  
Where time charges are payable according to clause 3.2 of the Guidelines for Services and Processes and Estimating Fees for Persons Registered in terms of '2016 NDPW-Scope of Engineering Services and Tariff of Fees as amended in C3.3.2 (if basis of remuneration has been set at "value based" according to C2.1.1.1), the principles as described in the '2015 NDPW-Scope of Engineering Services and Tariff of Fees, clause 4.4, and the rates set out below, will be applicable.
- C2.1.3.5.1 Time charges are reimbursable at rates applicable at the time of the actual execution of the specific service. The "Rates for Reimbursable Expenses" as amended from time to time and referred to below, is obtainable on the Employer's Website: <http://www.publicworks.gov.za/> under "Consultants Guidelines" item 1.
- C2.1.3.5.2 The scale of fees on time charges, on which Value Added Tax is excluded, shall be at the following rates per hour, rounded off to the nearest rand: (see Table 8 of "Rates for Reimbursable Expenses" for the actual amounts calculated in accordance with to the principles laid down below):
- (i) for a person in category A and B: 18,75 cents for each R100,00 of the total annual remuneration package attached to the lowest notch of a level 13 salary range (Director) in the Public Service;
  - (ii) for a person in category C: 17,5 cents for each R100,00 of the total annual remuneration package attached to the lowest notch of a level 12 salary range (Deputy Director second leg) in the Public Service;
  - (iii) for a person in category D: 16,5 cents for each R100,00 of his/her gross annual remuneration; provided that this hourly rate shall not exceed 16,5 cents for each R100,00 of the total annual remuneration package attached to the lowest notch of a level 11 salary range (Deputy Director first leg) in the Public Service.
- Hourly rates calculated in terms of (i), (ii) and (iii) above shall be deemed to include overheads and charges in respect of time expended by clerical Personnel which shall, therefore, not be chargeable separately.
- C2.1.3.5.3 Unless otherwise specifically agreed in writing, remuneration for the time expended by principals in terms of C2.1.3.5.2 (i) above on a project shall be limited to 5 per cent of the total time expended for time charges in respect of the Project. Any time expended by principals in excess of the 5 per cent limit shall be remunerated at the rates determined in (ii) or (iii) above.
- C2.1.3.5.4 Notwithstanding the above, where work is of such a nature that Personnel as described in C2.1.3.5.2 (iii) above are capable of performing such work, it shall be remunerated at that level and not at the rates described in (i) and (ii) above, irrespective of who in fact executed the work.
- C2.1.3.5.5 Gross annual remuneration in C2.1.3.5.2 (iii) above shall mean basic salary and guaranteed annual bonus; fringe benefits not included in basic salary; income benefit, as determined from time to time by the South African Revenue Services for income tax purposes, for the private use of a motor vehicle by the employer; employer's contribution to pension/provident fund, medical aid and group life assurance premiums; Compensation Fund and Unemployment Fund contributions, Metropolitan Council levies and any other statutory contributions or levies; all other costs and benefits as per conditions of appointment but excluding any share of profit and payment for overtime.
- C2.1.3.5.6 The salaries referred to in C2.1.3.5.2 (i) to (iii) above can change from time to time, which will, therefore, change the rates applicable. These rates will, however, only be adjusted on the first day of each calendar year irrespective of any changes in salary ranges during the relevant year. The rates applicable at the time of the execution of the work as set out in Table 8 of the "Rates for Reimbursable Expenses", as amended from time to time, may be claimed.

## C2.1.3.6 Additional Services

## C2.1.3.6.1 Additional Services pertaining to all Stages of the Project

Unless separately provided for hereunder and scheduled in the Activity Schedule, no separate payment shall be made for the additional services specified in C3.3.2.1. The cost of providing these services shall be deemed to be included in the value based fee tendered for normal services.

## C2.1.3.6.2 Construction monitoring

The construction monitoring requirements are as specified in C3.3.2.2.

(a) If Level One, part time, monitoring has been specified then no separate payment shall be made for construction monitoring staff as specified in C3.3.2.2 (i)-(iii) or for the transport of the monitoring staff as specified in C3.3.2.2 (iv). The cost of providing construction monitoring staff and transport shall be deemed to be included in the value based fee tendered for normal services.

(b) If Level Two, full time, monitoring has been specified then provision shall be made in the Activity Schedule for the envisaged site staffing requirements as specified in C3.3.2.2 (i)-(iii). The unit of measure shall be the rate per calendar month (*pro rata* for part of a month). Payment shall only be applicable for the period actually established on site and shall in no instance be prior to the date of official handover of the Works to the Contractor or after the date of issue of the Certificate of Completion for the Works contract. The rates tendered for the relevant site staff shall include full compensation for all costs including, inter alia, the following:

- Salary
- Additional allowances
- Bonuses
- Leave and sick leave
- All company contributions such as provident fund, group life benefits, medical aid etc.
- Levies
- Office equipment as set out in C3.3.2.2 (iii)
- Relocation cost and accommodation
- Travelling
- Handling cost and profit.

Payment for personnel shall exclude any periods of leave or sick leave. Time sheets for staff shall be included in the monthly fee account submitted to the Employer for payment. Replacement of staff as a result of any extended period of leave or sick leave outside of the normal contractor's year end break shall be to the approval of the Employer.

No separate payment shall be made for the transport of the construction monitoring staff as specified in C3.3.2.2 (iv) and the cost of the transport shall be deemed to be included in the monthly rate tendered for the provision of the staff.

## C2.1.3.6.3 Occupational Health and Safety Act, 1993 (Act No. 85 of 1993)

No separate payment shall be made for the service specified in C3.3.2.3. The cost of providing this service shall be deemed to be included in the value based fee tendered for normal services.

## C2.1.3.6.4 Quality Assurance System

No separate payment shall be made for the implementation of a quality management system as specified in C3.3.2.4. The cost of providing this service shall be deemed to be included in the value based fee tendered for normal services.

## C2.1.3.6.5 Lead Consulting Engineer

No separate payment shall be made for assuming the leadership of an Employer specified joint venture, consortium or team of consulting engineers as specified in C3.3.2.5. The cost of providing this service shall be deemed to be included in the value based fee tendered for normal services.

**C2.1.3.6.6 Principal Agent of the Client**  
No separate payment shall be made for assuming the role of principle agent of the Employer if specified in C3.3.2.6. The cost of providing this service shall be deemed to be included in the value based fee tendered for normal services.

**C2.1.3.6.7 Land Survey and Geotechnical Studies**  
Separate payment shall be made for the services specified in C3.3.3.2. The cost of providing this service is included in the Activity Schedule for value-based fees.

**C2.1.3.6.8 Other unspecified services**  
The Employer may order duties that fall outside the scope of the project as tendered. Such additional duties may involve, but not limited to:

- Additional design requirements
- Evaluation of alternative tenders
- Additional investigations during the Defects and Liability Period
- Diverse other services

Any such additional services that may be required will be remunerated on a Time Basis as set out in C2.1.3.5. The level of expertise necessary for any such additional work shall be concomitant with the issues to be addressed. The category of personnel necessary to undertake the work shall be approved by the Employer. Any additional identified service shall be fully scheduled and submitted to the Employer for approval prior to the commencement thereof.

#### **C2.1.4 Time based fees**

**C2.1.4.1 Fees for work done under a time based fee**  
Where time based fees are payable (if basis of remuneration has been set at "time basis" according to C2.1.1.1), the principles as described in clauses 4.4 (1), (2) and (3) of the '2015 NDPW-Scope of Engineering Services and Tariff of Fees, excepting that the rates referred to in clause 4.4 (3) shall be replaced by the various rates per hour tendered for the various categories in C2.2.3 Activity Schedule for Time Based Fees, column (e). These rates will be used for the full Period of Performance.

**C2.1.4.2** The various categories (referred to in C2.2.3 Activity Schedule for Time Based Fees, are the categories described in clauses 4.4 (2) of the '2015 NDPW-Scope of Engineering Services and Tariff of Fees.

**C2.1.4.3** Work will be remunerated for at the category level in which it falls as defined in C2.1.4.2 above, irrespective of whether the person who in fact had executed the work functions at a higher category of responsibility and competence.

#### **C2.1.5 Set off**

The Employer reserves the right to set off against any amount payable to the Service Provider, any sum which is owing by the Service Provider to the Employer in respect of this or any other project.

#### **C2.1.6 Typing, printing and duplicating work and forwarding charges**

**C2.1.6.1 Reimbursable rates**  
The costs of typing, printing and duplicating work in connection with the documentation which must of necessity be done, except those which must in terms of the relevant Manual or other instructions be provided free of charge, shall be reimbursable at rates applicable at the time of the execution of such work. The document "Rates for Reimbursable Expenses" as amended from time to time and referred to below, is obtainable on the Employer's Website: <http://www.publicworks.gov.za/> under "Consultants Guidelines" item 1.

**C2.1.6.2 Typing and duplicating**  
If the Service Provider cannot undertake the work himself, he may have it done by another service provider which specialises in this type of work and he shall be paid the actual costs incurred upon

submission of statements and receipts which have been endorsed by him confirming that the tariff is the most economical for the locality concerned.

If the Service Provider undertakes the work himself, he shall be paid in respect of actual expenses incurred subject to the maximum tariffs per A4 sheet as set out in Table 1 in the "Rates for Reimbursable Expenses".

Typing and duplicating expenses shall only be refunded in respect of the final copies of the following documents namely formal reports, formal soil investigation reports, specifications, feasibility reports, bills of quantities, material lists, minutes of site meetings and final accounts. The cost of printed hard covers shall only be paid in respect of documents which will be made available to the public such as bills of quantities and specifications or where provision of hard covers is specifically approved.

The typing of correspondence, appendices and covering letters are deemed to be included in the value based fees and time based fees paid.

**C2.1.6.3 Drawing duplication**

(a) For drawing duplication the standard rate as set out in Table 2 in the "Rates for Reimbursable Expenses" may be claimed **or** may be claimed according to the provisions as in (b) or (c) below.

(b) If the Service Provider undertakes the duplication of drawings, using his own duplication equipment, he shall be paid the actual cost incurred on condition that it is not higher than the lowest of three quotations of local firms doing drawing duplication in his locality. Such quotations must accompany his account.

(c) If the Service Provider does not undertake his own drawing duplication, he shall be paid the lowest of three quotations of local firms doing plan printing in his locality. Such quotations must accompany his account.

(d) Should there not be three firms doing drawing duplication in his locality, it must be mentioned on his account and the available quotation(s) must then accompany the account.

(The cost of providing all polyester negative prints required to form part of the original set of drawings, as-built drawings including computer assisted drawing records for all facets/disciplines involved in the project are included in the tendered fees and will not be reimbursed separately.)

**C2.1.6.4 Forwarding charges**

(a) Only the charges in respect of the forwarding of parcels by courier or air freight on special request by the Employer will be refunded, provided that such charges will not be refunded if the request had been made as a result of a delay caused by the Service Provider.

(b) The cost of postage, facsimile transmissions, telephone calls, e-mails, etc, is deemed to be included in the value based fees and time based fees paid.

**C2.1.7 Travelling and subsistence arrangements and tariffs of charges**

Notwithstanding the ruling in C2.1.2.4 above (regarding disbursements and travelling expenses which will not be paid separately), when the Service Provider is requested in writing by or obtained prior approval in writing from the Employer to attend specific meetings at any of the Employer's offices or any extraordinary meetings on site or elsewhere, he will be remunerated according to the provisions under C2.1.7.1 to C2.1.7.5 herein.

**C2.1.7.1 General**

The most economical mode of transport is to be used taking into account the cost of transport, subsistence and time. Accounts not rendered in accordance herewith may be reduced to an amount determined by the Employer.

As the tariffs referred to hereunder are adjusted from time to time, accounts must be calculated at the tariff applicable at the time of the expenditure.

Where journeys and resultant costs are in the Employer's opinion related to a Service Provider's malperformance or failure, in terms of this Contract, to properly document or co-ordinate the work or to manage the Contract, no claims for such costs will be considered.

C2.1.7.2 Travelling time

Fees for travelling time are as set out in Table 8 in the "Rates for Reimbursable Expenses".

Fees are payable for travelling time at the tariff, as set out in C2.1.3.5 Time charges for work done under a value based fee. Travelling time will be fully reimbursed.

C2.1.7.3 Travelling costs

Fees for travelling costs are as set out in Table 3 in the "Rates for Reimbursable Expenses".

Travelling costs will be refunded for the full distance covered per return trip measured from the office of the Service Provider appointed.

Compensation for the use of private motor transport will be in accordance with the Government tariff for the relevant engine swept volume, up to a maximum of 3000 cubic centimetres, prescribed from time to time and as set out in Table 3 in the "Rates for Reimbursable Expenses".

C2.1.7.4 Hired vehicles

In cases where use is made of hired vehicles, the most economical sized vehicle available is to be used but compensation shall nevertheless be restricted to the cost of a hired car not exceeding a capacity of 1300 cc. Where use of a special vehicle is essential (e.g. four track or minibus to accommodate more people), prior approval in writing must be obtained from the departmental project manager.

C2.1.7.5 Subsistence allowance

The subsistence allowances are as set out in Tables 4 and 5 in the "Rates for Reimbursable Expenses".

Only actual costs are payable in respect of absence from office of less than 24 hours.

Should the daily tariff as set out in Table 4 be inadequate, substantiated actual costs plus a special daily allowance as shown in Table 5 for incidental expenses, may be claimed. It must be noted that claims may only be according to Table 4 or Table 5. Accommodation should be limited to the equivalent of a three star hotel and no alcoholic beverages or entertainment costs may be claimed for.

**C2.2 Activity Schedule**

C2.2.1 Activities

C2.2.1.1 The services as defined in the C3 Scope of Services are required. The activity schedule below lists the normal services as defined in '2016 NDPW-Scope of Engineering Servicers and Tariff of Fees, (appendix C), clause 3 and as further defined in C3 Scope of Services, as well as additional services as defined in C3 Scope of Services, of this document. (The clause references refer to the corresponding clauses in the '2016 NDPW-Scope of Engineering Servicers and Tariff of Fees

C2.2.1.2 The estimated normal fees have been calculated using the '2016 NDPW-Scope of Engineering Servicers and Tariff of Fees, (appendix C), by applying the applicable fee scale given in clause 4.2.1 (1)-(2) for an engineering project or clause 4.2.2 (1) for a building project, to determine the basic fee and by multiplying the basic fee by the applicable multiplication factor given in clause 4.2.1 (4) or clause 4.2.2 (2) respectively. The **cost of the works** and the values used to determine the multiplication factors are defined in C 3.2.2.3.

No allowance has been made in the estimated normal fees below for the additional services in C2.1.3.6 that have been specified to be included in the normal fees. The tenderer shall make provision for the cost of the additional services that are to be included under normal services by adjusting the percentage tendered in column (b).

C2.2.1.3 The services are to be provided in stages and the proportioning of the fee for normal services over the various stages shall be as set out in '2016 NDPW-Scope of Engineering Servicers and Tariff of Fees, (appendix C), clause 4.2.8.

C2.2.1.4 The tenderer must make provision for all activities necessary for the execution of the service as set out in C3 Scope of Services.

C2.2.2 Activity Schedule for Value Based Fees

## ACTIVITY SCHEDULE FOR VALUE BASED FEES

### ACTIVITY SCHEDULE FOR VALUE BASED FEES FOR CIVIL ENGINEERING SERVICES

#### Tenderer's Tender for Value Based Fees for Civil Engineer

**Fee for Normal Services inclusive of certain additional services as specified in Consultant's framework contract no.:** .....

Latest estimate of the construction cost for Civil engineering works (Excl. VAT)	(g) Estimated normal fees (Excl. VAT)	Unit	(h) Percentage of normal fees tendered by Tenderer	(g)x(h) Financial Offer by Tenderer for Value Based Fees for Civil Engineer (VAT excluded)
R 86 000 000.00	R 6 042 245.00	%	%	= R (1)

**Additional Services – Consultant's framework contract no.:** .....

Description	Qty	Unit	Rate	
Level Two, Full time construction monitoring	18	month	R	= R (2)
Act as an "agent" of the Client to undertake duties falling under the Occupational Health and Safety Act, 1993 (act No. 85 of 1993) and the Construction Regulations in terms thereof, on behalf of the Client.	18	Month	R	= R (3)
As direct sub-consultant, to be appointed by the Service Provider, for: geotechnical investigation complete with test results and foundation recommendations of the site		L/Sum	R	= R (4)
As direct sub-consultant, to be appointed by the Service Provider, for: Engineering Survey of the site including bench marks, contours, existing structures, services, topographical detail and verification corner peg positions of the site.		L/Sum	R	= R (5)
Ensure compliance with the requirements of the National Environmental Management Act in terms of Environmental Impact Assessment (EIA), Record of Decision (RoD), Environmental Management Plan (EMP), Water use licence, etc		L/Sum	R	= R (6)
Provision for the laboratory test and services for the Engineer		L/Sum	R	= R (7)
Disbursement Cost		L/Sum	R	= R (8)
A direct Sub-consultant, to be appointed by the service provider, for: Independent Environmental Control Officer (ECO) monitoring requirements on a monthly basis for the duration of the construction and rehabilitation phases of the project		L/Sum	R	= R (9)
Other services		L/Sum	R	= R (10)
<b>Sub-total Normal Fees (A)</b>				= R (11)
<b>Sub-total Additional Services (B)</b>				= R (12)
<b>Sub-total A+B</b>				(13)

**Add 15% VAT**

(14)

**TOTAL FINANCIAL  
OFFER FOR CIVIL  
ENGINEERING  
SERVICES**

= R

(15)

**NOTE:** 1. Total Financial Offer for Civil Engineering Services **must be carried over to C1.1 Form of Offer and Acceptance**, if this tender is for value based fees. Failure to carry this over to the Form of Offer and Acceptance **will render the tender non-responsive**.

2. Remuneration for value based appointments will be calculated as determined in C2.1.2 (i.e. the percentage of the normal fee tendered multiplied by the value fee scale *vis-à-vis* the actual cost of construction). The percentage of the normal fee shall apply to each stage for services provided in stages. In terms of C2.1.2.4, time spent on travelling, as well as any other travel related expenses (such as travelling costs and subsistence allowances) will not be remunerated – except as provided for in C2.1.7.

The actual period of construction will be calculated by the successful Service Provider and approved by the Department after the completion of project scoping and design. The tendered rates will however remain fixed irrespective of the final construction period.

### 3: SCOPE OF SERVICES

#### C3.1 Employer's objectives

This tender is for:

A Service Provider performing civil engineering work on an **engineering project**.

#### C3.2 Description of the Services

##### C3.2.1 Services

The general descriptions of the services required are as defined in the 2016 NDPW - Scope of Engineering Services and Tariff of Fees, (appendix C).

Specific services required are set out in Section C3.3 Extent of Services as well as in the most recent publication of the Departmental: Manual for Civil Consulting Engineers. Should there be any discrepancies between this Tender Document and the Manual for Civil Consulting Engineers, the former shall take precedence.

Specific services required are set out in Section C3.3 Extent of Services.

##### C3.2.2 Project description

###### C3.2.2.1 Background

The Department of Rural Development and Land Reform (DALRRD) is mandated to implement 3 categories of roads, namely access to farms, access to villages and access to farmer production support units in line with the CRDP policy framework which makes provision for infrastructure development and improvement.

The Department of Rural Development and Land Reform wishes to appoint suitably qualified, experienced and competent Service Provider who is registered with all required professional bodies for all the services that will be needed to oversee the upgrading to surface of road from Ganalaagte village to N14 in Tswaing local Municipality within Ngaka Modiri Molema District, North West (15km).

###### Scope

The Department of Agriculture Land Reform and Rural Development wishes to appoint a suitably qualified and competent Service Provider who is a professional civil engineering practitioner, to undertake the following services, (referred to as Planning, Studies, Investigations & Assessments Reports and Normal Services in the 2016 NDPW - Scope of Engineering Services and Tariff of Fees, (Appendix C)):

C 2.1 The following list, which is not necessarily exhaustive, indicates activities that may form part of this Service:

1. Work stage 1: Appraisal and definition of the project
2. Work stage 2: Design concept
3. Work stage 3: Design development
4. Work stage 4: Technical documentation
5. Work stage 5: Contract administration and project management
6. Supplementary services
7. Other services

- Visit the project and prepare Feasibility assessment report.
- Subject to the outcome of the feasibility assessment the go ahead will be given for the design, Specification and Bill of quantities to be developed for the particular project

- Design and construction supervision for upgrading of 15km gravel road to a 15km surfaced road with all necessary storm water channelling systems located in Ganalaagte village, including preparation of applications and approval of wayleaves.
- Identify areas in the road where culverts will be required and determine the nature and size of the culvert.
- Structural Design and Loading requirements in accordance Code of Procedure for the Planning and Design of Highway and Road Structures in South Africa” February 2002 as well as TMH7 “Code of Practise for the Design of Highway Bridges and Culverts in South Africa Parts 1, 2 and 3 as amended in 1988. The Structural Design shall specify the requirements as per the standard specifications or Road and Bridge Works for State Road Authorities of 1988 drafted by COLTO.
- The engineering options to be presented must also include an in-depth life-cycle cost analysis taking into consideration the preventative and remedial maintenance requirements associated with each option. The information must be presented in such a manner that comparisons could be easily made between the various options.
- Designs and information collected during the execution of the project.
- Provide the Department with both electronic and hard copies of the designs and technical reports.
- Assist the Department with procurement of suitable service provider (contractors) to undertake the construction works, in the manner compiling bid documents and assessing tenders received. All work will be undertaken by the department
- Assist the Department fully with project co-ordinates and the management of contractors who will be responsible for the various projects.

The successful Service Provider shall also be required to render or facilitate the rendering of the following Additional Services as part of his duties

- Ensure compliance with the requirements of the National Environmental Management Act in terms of Environmental Impact Assessment (EIA), Record of Decision (RoD), Environmental Management Plan (EMP), etc.
- Act as an “agent” of the Client to undertake duties falling under the Occupational Health and Safety Act, 1993 (act No. 85 of 1993) and the Construction Regulations in terms thereof, on behalf of the Client.
- Detailed topographical survey of the study area for design purposes by a Registered Professional Land Surveyor.
- Comprehensive Geotechnical Investigations, including soil testing, drilling, etc to ascertain engineering characteristics of the in-situ material for design purposes by a Registered Professional Specialist Geotechnical Engineer.
- Full time Construction monitoring level 2 on site during the construction phase in accordance with the stipulations of National Department of Public Works Scope of Engineering Services and Tariff of Fees for Persons Registered in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000)

The required Service Provider should be a Registered Professional Engineer with Engineering Council of South Africa (ECSA) and must demonstrate relevant experience in line with the proposed scope of work. In case where the a Service Provider is a company/close corporation/partnership.

C3.2.2.2 Location of the Project

The office of the Employer to which this contract applies is located at the head office of the Employer at the physical address in T1.1.6 above. The Service Provider shall execute all work in relation to this project in its own offices. The project is located under Tswaing Local Municipality, Ngaka Modiri Molema District Municipality, North West Province.

C3.2.2.3 Project Cost Estimate

The project estimate is contained in the specific professional discipline activity schedule and used in the normal fee calculation as per this appointment. The successful service provider must ensure that the estimated construction budget for this project does not exceed the available budget inclusive of VAT without acceptable motivation and approval by the Employer.

C3.2.2.4 Project Programme

The service provider is expected to complete all design work, including the compilation of construction bid documents, within 3 months of appointment. An allowance of 3 months should be made for the department to appoint the construction contractors.

The final programme for the project in the form of a GANT chart, indicating overlaps between various tasks, shall be prepared by the appointed Service Provider and approved by the Department. The programme shall be in sufficient detail to monitor the Service Provider's performance.

The duration of construction will also be determined by the Service Provider once the project scoping and design have been completed.

No agreed milestones may be extended beyond the timeframes outlined in the programme without acceptable motivation and approval by the Department.

C3.2.2.5 Information available from Employer

The Service Provider must make arrangements to collect any other data and information that is required to complete its designs. The Service Provider must also make provision in its pricing for any extra cost that would be incurred in obtaining any other information and data.

C3.2.2.6 Other Contracts on Site

No other contractors on site.

Any other contracts not anticipated by the Employer shall be brought to the attention of the Employer and coordinated by the Service Provider. The Service Provider shall duly inform the Employer of any impacts associated with such contracts.

C3.2.2.7 Reporting Requirements and Approval Procedure

The Service Provider shall meet with the Employer as and when reasonably instructed by the Employer to discuss and minute progress of the services. Notwithstanding any other requirements, the Service Provider shall submit a bi-weekly progress report to the Employer in a format approved by the Employer.

All project milestones including associated reports are to be approved by the Departmental Project Manager prior to proceeding to the next stage of the project. Budgets, cashflows and execution programmes are also subject to the approval of the Departmental Project manager.

**C3.3 Extent of the Services**

The following services as defined in the 2016 NDPW - Scope of Engineering Services and Tariff of Fees, clause 3, are required: (The clause references refer to the corresponding clauses in the

Tariff of Fees.)

C3.3.1 Planning, Studies, Investigations and Assessments Reports

C3.3.2 Normal Services (clause 3.2) including:

Clause 3.2.1 Inception Stage

Clause 3.2.2 Preliminary Design: Concept and Viability

Clause 3.2.3 Detail Design Stage

Clause 3.2.4 Documentation and Procurement Stage

Clause 3.2.5 Contract Administration and Inspection Stage

Clause 3.2.6 Close-Out Stage

C3.3.3 Additional Services (clause 3.3) including:

C3.3.3.1 Clause 3.2.1 Additional Services pertaining to all Stages of the Project

This contract requires the following additional services to be undertaken:

Clause 3.3.1. Geotechnical investigations

Clause 3.3.2 Construction Monitoring

Clause 3.3.3 Occupational Health and Safety Act Services

Clause 3.3.4 Detailed topographical survey of the study area for design purposes by a registered Professional Land Surveyor

Clause 3.3.5 Ensure compliance with the requirements of the National Environmental Management Act in terms of Environmental Impact Assessment (EIA), Record of Decision (RoD), Environmental Management Plan (EMP), etc.

Provision has been made in the pricing schedule for the items above.

C3.3.2.2 Clause 3.2.2 Construction Monitoring

(i) General

The consultant must make available construction monitoring staff for Level two, (full-time), monitoring.

The competence and experience of the tenderer's proposed site personnel shall be an integral part of the Employer's tender evaluation process. On acceptance of their tender by the Employer, the Service Provider shall not be permitted to offer alternative core personnel unless such alternative offer is as a result of a bona fide unforeseen circumstance. In such an event, the Employer shall only accept alternative personnel possessing at least similar qualifications and experience to those persons proposed in the tender.

The Employer shall be entitled to instruct the Service Provider to remove from the Works any person employed by the Service Provider on or about the execution of the Works who, in the opinion of the Employer, misconducts himself or is incompetent or negligent in the proper performance of his duties, or whose presence on site is otherwise considered by the Employer, on reasonable grounds, to be undesirable.

(ii) Accommodation

Appropriate housing for the site staff shall be provided by the Service Provider. Site staff shall be housed as near to the location of the Works as may be practically possible. No separate payment will be made for the accommodation of site staff and rates tendered for the relevant site staff shall include full compensation for all accommodation costs.

(iii) Establishment of site office

Provision and maintenance of a site office building, all related services and supply of office furniture will be made under the Works Contract. The Service Provider shall however provide all office equipment and incidentals required for carrying out administration, supervision and inspection of the Works and shall include:

- a) Cell phones, including rental and call charges.
- b) All safety equipment for supervisory staff in accordance with the OHS requirements (e.g. safety jackets, boots etc).
- c) All equipment including copier rental, fax machine, consumables, stationary, digital camera etc.
- d) All necessary computer hardware, software, printers and modems and associated consumables.
- e) Any other items necessary for the capture of all relevant data required for administrating the contract and reporting to the Employer.

One landline, including rental and call costs for work related office and fax usage shall be provided through the Works Contract.

(iv) Transport for site staff

The Service Provider shall provide sufficient appropriate vehicles on site for site staff.

**C3.3.2.3 Clause 3.3.3 Occupational Health and Safety Act, 1993 (Act No. 85 of 1993)**

The Service Provider shall act as an “agent” of the Employer in rendering Occupational Health and Safety services as contemplated in the Construction Regulations to the Occupational Health and Safety Act, 1993 (Act 85 of 1993).

The Service Provider under this contract shall however make provision for the incorporation of the Occupational Health and Safety specifications, compiled by others, in the tender documentation, if applicable.

It is a firm requirement that in the designs, planning and supervision of the execution of the work done under the contract resulting from this tender, all applicable regulations and stipulations under OH&SA, (Act 85 of 1993) including regulations and codes of practice etc. are complied with and that the final product shall be in full compliance with said legislation, standards etc.

Furthermore, the Service Provider shall be fully responsible for the compliance of his operation, equipment as well as staff and persons under his supervision on site whether by invitation instruction or otherwise and regardless of the capacity, purpose and relationship of any such persons to the appointment, to all aspects of all applicable regulations and stipulations under OH&SA, (Act 85 of 1993).

**C3.3.3 Additional Services (Other)**

**C3.3.3.1** The Service Provider shall also prepare land surveys and geotechnical investigations, specifications of which will be approved by the Employer.

**C3.3.3.2** The Employer may order duties that fall outside the scope of the project as tendered. Any such additional services that may be required will be remunerated as set out in the Pricing Data.

**C3.4 Use of reasonable skill and care**

It will be expected of the Service Provider to apply reasonable skills and due diligence in the execution of the duties stipulated in this document which shall include *inter alia* the following:

Although the Service Provider’s documents may be scrutinised by the Employer, this shall in no way relieve him of his professional responsibility for the proper and prompt execution of his duties. The Employer shall also be entitled to have any documentation or calculations verified by Others.

In the event of malperformance, default or negligence, the Employer shall have the right to claim compensation or damages and set off such against any amount payable.

During assessment of any existing facilities, which may have a direct bearing on the Project, the Service Provider shall determine deficiencies with such facilities in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993), the SANS 10400, etc. and recommend measures to rectify those during the project execution phase.

The departmental project manager shall be notified by the Service Provider and his personnel of any transgression of *inter alia* the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and environmental legislation during the Service Provider's operation pertaining to the Contract regardless of who may be involved.

### **C3.5 Role Players**

It will be required of the Service Provider to co-operate with the following role players:

Local, provincial and national authorities, statutory bodies, governmental departments, Others, as may be required from time to time, including the client department/end user(s).

### **C3.6 Brief**

#### **C3.6.1 Target dates and times**

The Service Provider will be expected throughout to give preference to the execution of the work involved in this commission.

The work of all Service Providers will be co-ordinated by the principal agent. All work is to be performed by the persons listed as Key Persons and persons under their supervision and further be executed as described in the Programme according to clause 3.14 of the Contract Data (and/or PEP according to the same clause, if applicable).

During the construction phase of the Project it will be expected of the principal agent to obtain a construction programme from the main contractor to continuously monitor his progress against that programme for compliance and to take whichever steps have been described in the relevant manual and the Working Guideline for Project Managers. This should be done in collaboration with the rest of the professional team, should the progress not be according to the said programme.

#### **C3.6.2 Reporting requirements**

Notwithstanding any other requirements as listed elsewhere, the Service Provider shall submit a monthly report indicating progress of the Services.

#### **C3.6.3 Local content**

It is the policy of the Employer to give preference to materials and equipment of South African manufacture. The Service Provider is to ensure that, wherever feasible, designs are based on locally manufactured equipment and materials which can meet requirements at competitive prices.

#### **C3.6.4 Design innovation**

Given the need for energy efficiency and environmental sustainability in the built environment, each member of the professional team, is required, wherever possible and applicable, to demonstrate design innovation in all aspects of the Service towards "green" design solutions. Aspects to be considered and incorporated in all new building and/or maintenance designs are, *inter alia* but not limited to,

- a.) sustainable development  
eg. in building form, material choice, construction detailing and methods, recycling ability;
- b.) energy efficiency  
eg.
  - i) passive design methods towards energy conservation and consumption: building orientation, exploitation of nature's inherent energy sources),
  - ii) energy efficient solutions and installations for lighting, ventilation, cooling, heating, etc (eg. energy efficient light fittings),
  - iii) alternative or renewable energy sources where practical/feasible/economical;

- c.) water conservation/saving/re-use methods; and
- d.) environmental friendliness (eg. respect for natural habitat, blending of building with site/environment/surrounding fabric, positioning of buildings, consideration of neighbouring sites' access to sun, wind, view, etc).

#### C3.6.5 Final disposal of documents

Upon approval and finalisation of the final account of projects requiring a security clearance, it is a requirement that the Service Provider forward to the Employer all documents relating to this service. The same may also be requested on projects not requiring a security clearance.

### C3.7 Applicable legislation and standards

This section applies to legislation emanating from national and provincial governments as well as that of any local authorities in whose area of jurisdiction the subject of the appointment falls and which has a bearing on the activities and facilities under this appointment.

All the applicable legislation, which do not specifically allow discretion in respect of compliance by the State, shall be followed exactly as intended by such legislation regardless of any instructions, verbal or in writing, to the contrary. (Refer *inter alia* to Section 41 of the Occupational Health and Safety Act, 1993 (Act 85 of 1993)).

Should any applicable legislation allow discretion in respect of compliance by the State, it shall be followed exactly as intended by the relevant legislation as if no discretion is allowed until such time as specific instructions in writing are issued to the appointed professional team by the departmental project manager.

The Service Provider undertakes to ensure that his actions and outcome thereof including, but not limited to, the facilities to be affected by the Service shall be in accordance with all relevant legislation and upon delivery, will function as required by said relevant legislation. The Service Provider's actions and the outcome thereof will in no way be detrimental to the health and safety of the occupants or persons present therein or in the vicinity thereof. Similarly it must not be detrimental to any aspects of the environment in its structure or operation if operated as specified in operation manual(s). The relevant legislation meant herein, as amended, consist of *inter alia* the following, but not limited to:

- Atmospheric Pollution Prevention Act, 1965 (Act 45 of 1965);
- Construction Industry Development Board Act, 2000 (Act 38 of 2000);
- Council for the Built Environment Act, 2000 (Act 43 of 2000);
- Electricity Act, 1987 (Act 41 of 1987);
- Engineering Profession Act, 2000 (Act 46 of 2000);
- Environmental Conservation Act, 1998 (Act 107 of 1998);
- Fire Brigade Services Act, 2000 (Act 14 of 2000);
- Local Government Municipal Systems Act, 2000 (Act 32 of 2000), municipal by-laws and any special requirements of the local service supply authority;
- National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977);
- National Environmental Management Act, 1998 (Act 107 of 1998);
- National Heritage Resources Act, 1999 (Act 25 of 1999);
- National Water Act, 1998 (Act 36 of 1998);
- Occupational Health and Safety Act, 1993 (Act 85 of 1993);
- Telecommunications Act, 1996 (Act 103 of 1996);
- Water Services Act, 1997 (Act 108 of 1997) and general authorizations;
- the latest issue of SANS 10142: "Code of Practice for the Wiring of Premises";
- the Regulations of the local Gas Board, where applicable and
- all regulations promulgated under the above Acts.

This will be a continuous process throughout the appointment, which will manifest itself during the following phases:

- development of plans and documentation;
- supervision of any Service Providers under the appointment;

- ensuring compliance of the end product;
- compiling and issuing of Instruction/Operational Manuals indicating *inter alia* what the legal and safety requirements entail for the user(s)/operator(s) of the facilities;
- providing instruction to the intended users/operators.

The Service Provider accepts full and complete responsibility (both contractually and/or in delict) regarding compliance with the Occupational Health and Safety Act, 1993 (Act 85 of 1993) for his acts and omissions as well as those of his employees and indemnifies the Employer against any legal action in this regard.

The Service provider undertakes to ensure that the requirements of the Occupational Health and Safety Act, 1993 will similarly apply to the agreement with any sub service providers inclusive of indemnifying the Employer against any legal action regarding the actions and/or omissions by them.

**C3.9 Access to land/buildings/sites**

Access to the land/buildings/sites shall be negotiated in consultation with the departmental project manager.

**C3.10 Software application for programming**

The Service Provider must avail himself of software to be used in the Project documentation for compatibility with other Service Providers as well as the Employer. Specific requirements for compatibility are specified in the relevant manuals.

**C3.11 Security clearance**

It is an explicit condition of this agreement that partners, directors and/or the members of staff who will have insight into the planning of projects requiring security clearance, be kept to a minimum and that such persons will not object to being submitted to a security clearance, if the Employer so requires.

If the latter is applicable, the necessary forms will accompany this tender or be provided to the Service Provider at any stage thereafter. These forms must be completed, if attached, and returned with the tender. It is important to furnish information which is complete in every respect.

Should the authority responsible for the clearance, for security reasons not be satisfied with the classification obtained of any of the staff members of the Service Provider, it will be a further condition of this appointment that none of such staff members be involved with any aspect of the Project.

All documents pertaining to these projects must be stored in a safe place when not in use so as to ensure that the level of security of the projects is maintained.

The Employer will not accept liability for any costs in this regard.

FINGER PRINTS (except Defence projects)

Persons of whom security clearance is required can obtain a finger print form SAP 91(a) from any police station. Kindly ensure that the police official responsible for taking the finger prints certifies the form since non-certification will result in the form being unacceptable.

**C3.12 Forms for contract administration**

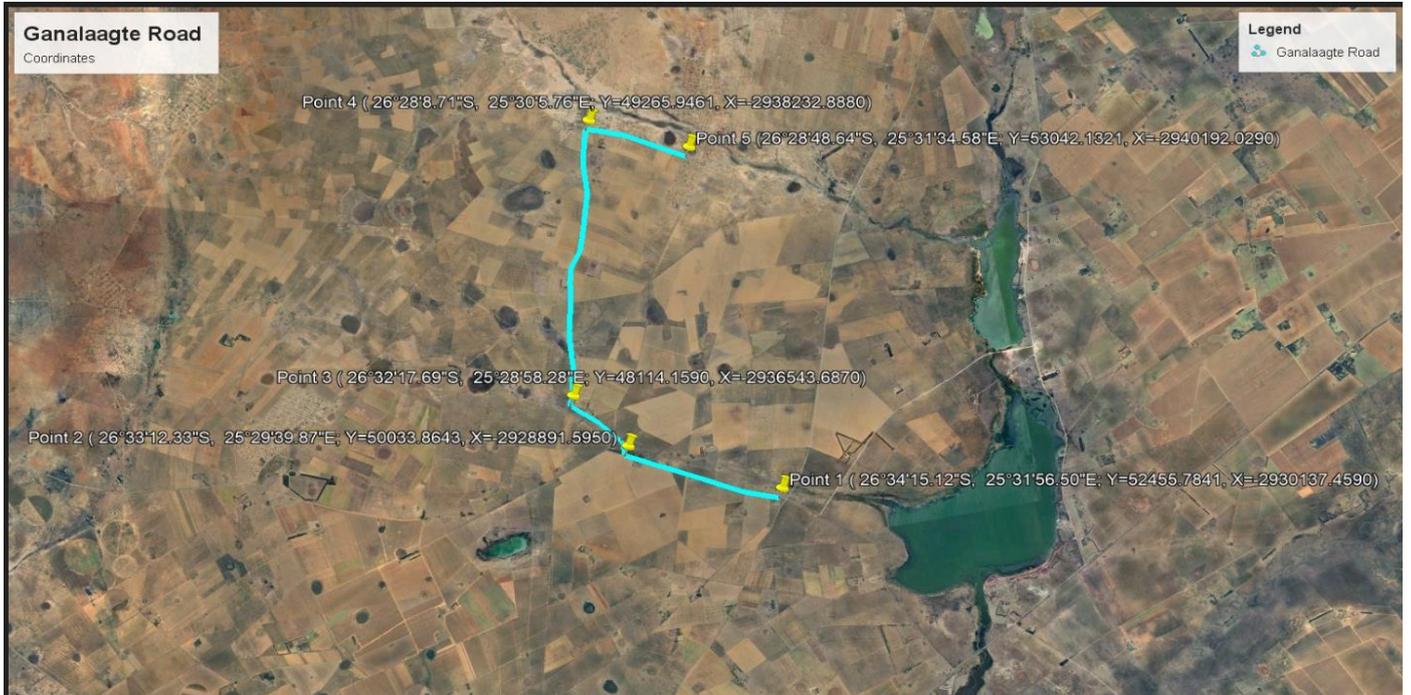
All forms required during contract administration, called PRM forms, are available on the Employer's website at <http://www.publicworks.gov.za/> under "Consultants Guidelines" item 14. The agreement and conditions of contract to be entered into with the main contractor shall be the GCC, Third version (2015)

**C3.13 Condition to accept unregistered persons with suitable built environment qualifications on secondment**

It is an express term of the contract that the Service Provider, after award of tender, accept unregistered, suitably qualified (built environment) persons in his office for the purpose of exposing the latter to the full extent of professional work, or as may be required according to specific circumstances, in order to gain experience which can be presented to the relevant Council for consideration towards professional registration. The secondment of such unregistered persons will be negotiated with the Service Provider in terms of numbers, periods of training and extent of professional work opportunity to be afforded. The conditions of secondment will be the subject of a separate Memorandum of Understanding with the Service Provider which will serve as an annexure hereto. Any secondment arrangements will cease upon the professional registration of the seconded person or as agreed on and so included in the aforesaid Memorandum of Understanding. The responsibility for salaries of seconded persons will remain with the Employer, but responsibility for operational expenses, necessary for the execution of the work, will vest with the Service Provider, all of which will be dealt with in the Memorandum of Understanding.

**C4: SITE INFORMATION**

C4.1 This project will be undertaken in Tswaing Local Municipality in North West Province, as shown below



## Appendix A

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<input type="text"/>					
Contractor	Witness 1	Witness 2	Employer	Witness 1	Witness 2

# CIDB STANDARD CONDITIONS OF TENDER

## SECTION T1.2.1: CIDB STANDARD CONDITIONS OF TENDER

*As published in Annex F of the CIDB Standard for Uniformity in Construction Procurement in Board Notice 16 Government Gazette No 38960 of 10 July 2015. The conditions of tender are the Standard Conditions of Tender (August 2019) as contained in Annex C of the Construction Industry Development Board (CIDB) Standard for Uniformity in Engineering and Construction Works Contracts*

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Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

## Annex C

### Standard Conditions of Tender

#### C.1 General

##### C.1.1 Actions

C.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 C.2 and C.3, timeously and with integrity, and behave equitably, honestly and transparently, comply with all legal obligations and not engage in anticompetitive practices.

C.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 or her 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.*

C.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.

##### C.1.2 Tender Documents

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

##### C.1.3 Interpretation

C.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.

C.1.3.2 These conditions of tender, the tender data and tender schedules which are required for tender evaluation purposes, shall form part of any contract arising from the invitation to tender.

C.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 tenderer 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 tenderer who 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;

#### **C.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.

#### **C.1.5 Cancellation and Re-Invitation of Tenders**

C.1.5.1 An employer 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 engineering and construction works specified in the invitation;
- b) funds are no longer available to cover the total envisaged expenditure; or
- c) no acceptable tenders are received.
- d) there is a material irregularity in the tender process.

C.1.5.2 The decision to cancel a tender invitation must be published in the same manner in which the original tender invitation was advertised

C.1.5.3 An employer may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

#### **C.1.6 Procurement procedures**

##### **C.1.6.1 General**

Unless otherwise stated in the tender data, a contract will, subject to C.3.13, be concluded with the tenderer who in terms of C.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.

##### **C.1.6.2 Competitive negotiation procedure**

C.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 C.3.4, the employer shall announce only the names of the tenderers who make a submission. The requirements of C.8 relating to the material deviations or qualifications which affect the competitive position of tenderers shall not apply.

C.1.6.2.2 All responsive tenderers or at least a minimum of not less than three responsive tenderers that are highest ranked in terms of the evaluation criteria stated in the tender data shall be invited to enter into competitive negotiations based on the principle of equal treatment, keeping confidential the proposed solutions and associated information.

Notwithstanding the provisions of C.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.

C.1.6.2.3 At the conclusion of each round of negotiations, tenderers shall be invited by the employer to revise their 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.

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

### **C.1.6.3 Proposal procedure using the two stage-system**

#### **C.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.

#### **C.1.6.3.2 Option 2**

C.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.

C.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.

## **C.2 Tenderer's obligations**

### **C.2.1 Eligibility**

C.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.

C.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.

### **C.2.2 Cost of tendering**

C.2.2.1 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.

C.2.2.2 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.

### **C.2.3 Check documents**

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

### **C.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.

### **C.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.

### **C.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.

### **C.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.

### **C.2.8 Seek clarification**

REQUEST CLARIFICATION OF THE TENDER DOCUMENTS, IF NECESSARY, BY NOTIFYING THE EMPLOYER AT LEAST FIVE (5) WORKING DAYS BEFORE THE CLOSING TIME STATED IN THE TENDER DATA.

### **C.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.

### **C.2.10 Pricing The Tender Offer**

C.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 fourteen (14) days before the closing time stated in the tender data.

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

C.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.

C.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.

### **C.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.

### **C.2.12 Alternative Tender Offers**

C.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.

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

C.2.12.3 An alternative tender offer must only be considered if the main tender offer is the winning tender.

### **C.2.13 Submitting A Tender Offer**

C.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 identified in the contract data and described in the scope of works, unless stated otherwise in the tender data.

C.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.

C.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.

C.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.

C.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.

C.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.

C.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.

C.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.

C.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.

#### **C.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.

#### **C.2.15 Closing Time**

C.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.

C.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.

#### **C.2.16 Tender Offer Validity**

C.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.

C.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.

C.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. If the validity period stated in C.2.16 lapses before the employer evaluating tender, the contractor reserves the right to review the price based on Consumer Price Index (CPI).

C.2.16.4 Where a tender submission is to be substituted, a tenderer must submit a substitute tender in accordance with the requirements of C.2.13 with the packages clearly marked as “SUBSTITUTE”.

#### **C.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.

*Note: Sub-clause C.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.*

#### **C.2.18 Provide Other Material**

C.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.

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

#### **C.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.

#### **C.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.

#### **C.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.

#### **C.2.22 Return of other tender documents**

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

#### **C.2.23 Certificates**

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

### **C.3 The employer's undertakings**

#### **C.3.1 Respond to requests from the tenderer**

C.3.1.1 Unless otherwise stated in the tender Data, respond to a request for clarification received up to five (5) working days before the tender closing time stated in the Tender Data and notify all tenderers who collected tender documents.

C.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.

#### **C.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 (3) working 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 collected tender documents.

#### **C.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.

#### **C.3.4 Opening of tender submissions**

C.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.

C.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 BBEE status level and time for completion for the main tender offer only.

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

#### **C.3.5 Two-envelope system**

C.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.

C.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 BBEE status level. Return unopened financial proposals to tenderers whose technical proposals failed to achieve the minimum number of points for functionality.

### **C.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.

### **C.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.

### **C.3.8 Test for responsiveness**

C.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.

C.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.

### **C.3.9 Arithmetical errors, omissions and discrepancies**

C.3.9.1 Check responsive tenders for discrepancies between amounts in words and amounts in figures. Where there is a discrepancy between the amounts in figures and the amount in words, the amount in words shall govern.

C.3.9.2 Check the highest ranked tender or tenderer with the highest number of tender evaluation points after the evaluation of tender offers in accordance with C.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.

C.3.9.3 Notify the tenderer of all errors or omissions that are identified in the tender offer and either confirm the tender offer as tendered or accept the corrected total of prices.

C.3.9.4 Where the tenderer elects to confirm the tender offer as tendered, correct the errors as follows:

- a) 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.

- b) 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.

### C.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.

### C.3.11 Evaluation of tender offers

The Standard Conditions of Tender standardize the procurement processes, methods and procedures from the time that tenders are invited to the time that a contract is awarded. They are generic in nature and are made project specific through choices that are made in developing the Tender Data associated with a specific project.

Conditions of tender are by definition the document that establishes a tenderer's obligations in submitting a tender and the employer's undertakings in soliciting and evaluating tender offers. Such conditions establish the rules from the time a tender is advertised to the time that a contract is awarded and require employers to conduct the process of offer and acceptance in terms of a set of standard procedures.

<b>The CIDB Standard Conditions of Tender are based on a procurement system that satisfies the following system requirements:</b>	
<b>Requirement</b>	<b>Qualitative interpretation of goal</b>
Fair	The process of offer and acceptance is conducted impartially without bias, providing simultaneous and timely access to participating parties to the same information.
Equitable	Terms and conditions for performing the work do not unfairly prejudice the interests of the parties.
Transparent	The only grounds for not awarding a contract to a tenderer who satisfies all requirements are restrictions from doing business with the employer, lack of capability or capacity, legal impediments and conflicts of interest.
Competitive	The system provides for appropriate levels of competition to ensure cost effective and best value outcomes.
Cost effective	The processes, procedures and methods are standardized with sufficient flexibility to attain best value outcomes in respect of quality, timing and price, and least resources to effectively manage and control procurement processes.

**The activities associated with evaluating tender offers are as follows:**

- a) Open and record tender offers received
- b) Determine whether or not tender offers are complete
- c) Determine whether or not tender offers are responsive
- d) Evaluate tender offers
- e) Determine if there are any grounds for disqualification
- f) Determine acceptability of preferred tenderer
- g) Prepare a tender evaluation report
- h) Confirm the recommendation contained in the tender evaluation report

#### C.3.11.1 General

The employer must appoint an evaluation panel of not less than three persons conversant with the proposed scope of works to evaluate each responsive tender offer using the tender evaluation methods and associated evaluation criteria and weightings that are specified in the tender data.

### **C.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.

### **C.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:

- a) is not under restrictions, or has principals who are under restrictions, preventing participating in the employer's procurement;
- b) 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;
- c) has the legal capacity to enter into the contract;
- d) is not; insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act No. 2008, bankrupt or being wound up, has his/her affairs administered by a court or a judicial officer, has suspended his/her 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.

### **C.3.14 Prepare contract documents**

C.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.

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

### **C.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.

### **C.3.16 Registration of the award**

An employer must, within twenty-one (21) working days from the date on which a contractor's offer to perform a construction works contract is accepted in writing by the employer, register and publish the award on the cidb Register of Projects.

### **C.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.

### **C.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.

# Appendix B

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## STANDARD PROFESSIONAL SERVICES CONTRACT

**(July 2015 )**  
**(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

<b>TABLE OF CONTENTS PAGE</b>	<b>PAGE</b>
1. Definitions	1
2. Interpretation	2
3. General	2
3.1 Governing law	2
3.2 Change in legislation	2
3.3 Language	3
3.4 Notices	3
3.5 Location	3
3.6 Publicity and publication	3
3.7 Confidentiality	3
3.8 Variations	3
3.9 Changes to the Contract Price or Period of Performance	4
3.10 Sole agreement	4
3.11 Indemnification	4
3.12 Penalty	4
3.13 Equipment and materials furnished by the Employer	5
3.14 Illegal and impossible requirements	5
3.15 Programme	5
3.16 Price adjustment to time-based fees for inflation	5
4. Employer's Obligations	6
4.1 Information	6
4.2 Decisions	6
4.3 Assistance	6
4.4 Services of Others	6
4.5 Notification of material change or defect	6
4.6 Issue of instructions	7
4.7 Payment of Service Provider	7
5. Service Provider's Obligations	7
5.1 General	7
5.2 Exercise of authority	7
5.3 Designated representative	7
5.4 Insurances to be taken out by the Service Provider	7
5.5 Service Provider's actions requiring Employer's prior approval	7
5.6 Co-operation with Others	8
5.7 Notice of change by Service Provider	8
6. Conflicts of Interest	8
6.1 Service Provider not to benefit from commissions, discounts, etc.	8
6.2 Royalties and the like	8
6.3 Independence	8
7. Service Provider's Personnel	8
7.1 General	8
7.2 Provision of Personnel in terms of a Personnel Schedule	9
8. Commencement, Completion, Modification, Suspension and Termination	9
8.1 Commencement of Services	9

8.2 Completion	9
8.3 Force Majeure	10
8.4 Termination	10
8.5 Suspension	11
8.6 Rights and liabilities of the Parties	11
9. Ownership of Documents and Copyright	
11	
10. Succession and assignment	11
11. Subcontracting	12
12. Resolution of Disputes	12
12.1 Settlement	12
12.2 Mediation	13
12.3 Adjudication	13
12.3 Arbitration	13
13. Liability	
14	
13.1 Liability of the Service Provider	14
13.2 Liability of the Employer	14
13.3 Compensation	14
13.4 Duration of Liability	14
13.5 Limit of Compensation	14
13.6 Indemnity by the Employer	15
13.7 Exceptions	15
14. Remuneration and reimbursement of Service Provider	15
15. Amounts due to the Employer	16
Personnel schedule	17
Contract Data	18
Form of Offer and Acceptance	22

# 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 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, trade marks 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.

- 5.1.2 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 subcontracted 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 for payment.

# **Appendix C**

**ENGINEERING COUNCIL OF SOUTH AFRICA**

**Guideline Professional Fees**  
**(Scope of Services and Tariff of Fees for Persons Registered in terms**  
**of the Engineering Profession Act, 46 of 2000)**

**National Department of Public Works & Infrastructure  
Scope of Engineering Services and Tariff of Fees  
for Persons Registered in terms of the  
Engineering Profession Act, 2000,  
(Act No.46 of 2000)**

**The commencement date of this document**

**shall be**

**1 April 2016**

# 2016 National Department of Public Works & Infrastructure: Scope of Engineering Services and Tariff of Fees for Registered Professionals

## INDEX

<b>1.</b>	<b>PREAMBLE.....</b>	<b>3</b>
<b>2.</b>	<b>GENERAL PROVISIONS.....</b>	<b>3</b>
2.1	Generality of terms.....	3
2.2	Definitions.....	3
2.3	Short Title.....	4
<b>3.</b>	<b>SCOPE OF SERVICES.....</b>	<b>4</b>
3.1	Planning, Studies, Investigations and Assessments Reports.....	4
3.2	Normal Services.....	5
3.2.1	Stage 1 - Inception.....	5
3.2.2	Stage 2 - Preliminary Design: Concept Viability.....	6
3.2.3	Stage 3 - Detail Design.....	6
3.2.4	Stage 4 - Documentation and Procurement.....	7
3.2.5	Stage 5 - Contract Administration and Inspection.....	8
3.2.6	Stage 6 - Close-Out.....	9
3.2.7	Targeted (Preferential) Procurement.....	9
3.3	Additional Services.....	9
3.3.1	Additional Services pertaining to all Stages of the Project.....	9
3.3.2	Construction Monitoring.....	10
3.3.3	Occupational Health and Safety Act 1993 (Act No. 85 of 1993).....	11
3.3.4	Quality Assurance System.....	11
3.3.5	Lead Consulting Engineer.....	11
3.3.6	Principal agent of the Client.....	12
3.3.7	Mediation, Arbitration and Litigation proceedings and similar Services.....	12
<b>4.</b>	<b>TARIFF OF FEES.....</b>	<b>12</b>
4.1	Application of Tariff of Fees.....	12
4.2	Fees for Normal Services.....	14
4.2.1	Civil and Structural Engineering Services pertaining to Engineering Projects.....	14
4.2.2	Civil Engineering Services pertaining to Multi-disciplinary Projects.....	16
4.2.3	Structural Engineering Services pertaining to Multi-disciplinary Projects.....	17
4.2.4	Mechanical Engineering Services pertaining to Engineering Projects.....	18
4.2.5	Mechanical Engineering Services pertaining to Multi-disciplinary Projects.....	19
4.2.6	Electrical and Electronic Engineering Services pertaining to Engineering Projects.....	20
4.2.7	Electrical and Electronic Engineering Services pertaining to Multi-disciplinary Projects.....	21
4.2.8	Services provided partially or in stages.....	22
4.2.9	Cancellation or Abandonment.....	23
4.3	Fees for Additional Services.....	23
4.4	Time Based Fees.....	23
4.5	Expenses and Costs.....	25

## 1. PREAMBLE

This document is based on the "Guideline Scope of Services and Tariff of Fees for Persons Registered in terms of the Engineering Profession Act, 2000, (Act No.46 of 2000)" determined by the Engineering Council of South Africa under Section 34(2) of the Engineering Profession Act, 2000 (Act No. 46 of 2000) and published under Government Gazette No 34875 Board Notice 206 of 20 December 2011 (ECSA Guideline Fee Scales).

Changes have been made to the ECSA Guideline Fee Scales to reflect the specific requirements of the National Department of Public Works for professional engineering appointments/contracts. The **services** to be provided by the **consulting engineer** and the corresponding remuneration have been set out herein for projects implemented by or on behalf of the National Department of Public Works and were determined with consideration of the factors put forward in the ECSA Guideline Fee Scales.

The Scope of Services and Tariff of Fees described herein are generally applicable and are referred to in the **agreement**. Specific requirements with regards to the Scope of Services and the Tariff of Fees shall be set out in the **agreement** and should any requirement of the **agreement** be in conflict with the requirement of this document, the requirement of the Agreement shall prevail.

Any amount mentioned in or fee calculated in terms of this document is exclusive of Value Added Tax.

This document allows for four different methods of remuneration namely:

- (1) Fees for Normal Services (percentage fee based on the cost of works),
- (2) Fees for Additional Services (fees for services additional to those provided for in the Normal Services),
- (3) Time based fees and
- (4) Expenses and costs.

Words or expressions in bold font are defined in clause 2.2.

## 2. GENERAL PROVISIONS

### 2.1 Generality of Terms

In this document, except where the context otherwise requires or indicates:

- (1) the masculine includes the feminine,
- (2) the singular includes the plural, and
- (3) any reference to a natural person includes a juristic person.

### 2.2 Definitions

In this Schedule, any word or expression defined in **the Act** has that meaning, unless the context otherwise indicates:

- (1) **Agreement** means the Letter of Appointment/Acceptance or the Professional Services Contract.
- (2) **Client** means any juristic person or organ of the State engaging a **consulting engineer** for services on a **project**.
- (3) **Construction monitoring** means the process of administering the construction contract and over-seeing and/or inspecting the works, to the extent of the **consulting engineer's** engagement, for the purpose of verification that the works are being completed in accordance with the requirements of the contract that the designs are being correctly interpreted and that appropriate construction techniques are being utilized. **Construction monitoring**, to whatever extent, shall not diminish the **contractor's** responsibility for executing and completing the works in accordance with his contract.
- (4) **Consulting engineer** for purposes of these rules only, means any professional registered in terms of **the Act**, or a juristic person who employs such professional, engaged by a **client** on a **project**.
- (5) **Contractor** means any person or a juristic person under contract to a **client** to perform the **works** or part of it on a **project**, including a subcontractor under contract to such **contractor**.

- (6) **Cost of the works** means the total amount, exclusive of value added tax, certified or which would normally be certifiable for payment to **contractor(s)** (irrespective of who actually carries out the works) in respect of the **works** designed, specified or administered by the **consulting engineer**, before deduction of liquidated damages or penalties, including –
  - a *pro rata* portion of all preliminary and general items applicable to the **works** and
  - the costs of new materials, goods or equipment, or a fair evaluation, of such material, goods or equipment as if new whether supplied new or otherwise by, or to, the **client** and including the cost or a fair evaluation of the cost of installation. The sourcing, inspection and testing of such will comprise additional **services** by the **consulting engineer**.
- (7) **Electronic Engineering Services** means **services** related to the provision of electronic systems and detailing the terminations, signals and interconnections of electronic components as distinct from conventional electrical HV, MV and LV systems and related reticulation.
- (8) **Engineering Project** means a project of which the scope comprises mainly engineering work of one discipline only and all financial and administrative matters are dealt with by the **consulting engineer** or where the **consulting engineer** will act as **principal agent** where other disciplines are also involved.
- (9) **Multi-disciplinary Project** means a project comprising building work, together with its associated engineering work, where the engineer is subject to the authority of another professional acting as the Principal Agent while financial and administrative matters are dealt with by another professional.
- (10) **Normal services** means the **services** set out in clause 3.2.
- (11) **Principal Agent** means the Professional Service Provider appointed as such.
- (12) **Project** means any total scheme envisaged by a **client**, including all the **works** and **services** concerned.
- (13) **Services** means the services contemplated in clause 3 on a **project** for which a **consulting engineer** is engaged.
- (14) **Stage** means a stage of **normal services** set out in clause 3.2.
- (15) **The Act** means the Engineering Profession Act, 2000 (Act No. 46 of 2000).
- (16) **Total annual cost of employment** means the total annual cost of employment as defined in clause 4.4(4).
- (17) **Works** means the activities on a **project** for which **contractor(s)** are under contract to the **client** to perform or are intended to be performed, including the supply of goods and equipment.

## 2.3 Short Title

This document is called the “2016 NDPWI – Scope of Engineering Services and Tariff of Fees”.

## 3. SCOPE OF SERVICES

### 3.1 Planning, Studies, Investigations and Assessments Reports

These services, as indicated below, relate to carrying out studies and investigations as well as the preparation and submission of reports embodying preliminary proposals or initial feasibility studies and will normally be remunerated on a time and cost basis.

- (1) Consultation with the **client** or **client's** authorized representative.
- (2) Inspection of the site of the **project**.
- (3) Preliminary investigation, route location, planning and a level of design appropriate to allow decisions on feasibility.
- (4) Consultation with authorities having rights or powers of sanction as well as consultation with the public and stakeholder groups.
- (5) Advice to the **client** as to regulatory and statutory requirements, including environmental management and the need for surveys, analyses, tests and site or other investigations, as well as approvals, where such are required for the completion of the report, and arranging for these to be carried out at the **client's** expense.
- (6) Searching for, obtaining, investigating and collating available data, drawings and plans relating to the **works**.
- (7) Investigating financial and economic implications relating to the proposals, feasibility studies and/or option analysis and recommendations.

- (8) Clause 3.1(7) does not normally apply to civil and structural **services** on **multi-disciplinary projects**, except as far as the interpretation of cost figures for civil and structural **services** are concerned.

**Deliverables:**

- Submission of a report for consideration by the **client**, including all or any of the above, with emphasis on the following:
  - Collation of information.
  - Reports on technical and financial feasibility and related implications.
  - List of consents and approvals.
  - Schedule of required surveys, tests, analyses, site and other investigations.
    - Comparison of **project** options, including life cycle costing and recommendations where required.

### 3.2 Normal Services

These services are applicable to projects where the nature, form and function of the facility has been defined through previous investigations and reports and the engineering services are required to take the **project** through to successful completion of construction.

#### 3.2.1 Stage 1 – Inception

(Defined as: Establish **client** requirements and preferences, assess user needs and options, appointment of necessary consultants, and establish the **project** brief including **project** objectives, priorities, constraints, assumptions aspirations and strategies.)

- (1) Assist in developing a clear **project** brief.
- (2) Attend **project** initiation meetings.
- (3) Advise on procurement policy for the **project**.
- (4) Advise on the rights, constraints, consents and approvals.
- (5) Define the scope of **services** and scope of work required.
- (6) Conclude the terms of the **agreement** with the **client**.
- (7) Inspect the site and advise on the necessary surveys, analyses, tests and site or other investigations where such information will be required for **Stage 2** including the availability and location of infrastructure and services.
- (8) Determine the availability of data, drawings and plans relating to the **project**.
- (9) Advise on criteria that could influence the **project** life cycle cost significantly.
- (10) Provide necessary information within the agreed scope of the **project** to other consultants involved.

**Deliverables:**

- Submission of a report for consideration by the **client**, including all or any of the above, with emphasis on the following:
  - Agreed scope of **services** and scope of work.
  - Signed **agreement**.
  - Report on **project**, site and functional requirements.
  - Schedule of required surveys, tests, analyses, site and other investigations.
  - Schedule of consents and approvals.

#### 3.2.2 Stage 2 – Preliminary Design: Concept and Viability

(Defined as: Prepare and finalise the **project** concept in accordance with the brief, including project scope, scale, character, form and function, plus preliminary programme and viability study/ assessment of the **project**.)

Following the **client's** instructions to proceed with the development of preliminary proposals or the basic planning of the **project**, comprising all or any of the following:

- (1) Agree documentation programme with principal consultant and other consultants involved.
- (2) Attend design and consultants' meetings.
- (3) Establish the concept design criteria.
- (4) Prepare initial concept design and related documentation.
- (5) Advice to the **client** as to the regulatory and statutory requirements, including environmental management and the need for any further surveys, analyses, tests and site or other investigations, as well as approvals, which may be required and arranging for these to be carried out at the **client's** expense. This advice is to be presented by the **consulting engineer** based on the interpretation of the results of these tests and investigations including geotechnical and/or foundation investigations, in a report containing recommendations to be applied to and incorporated in designs. The **consulting engineer** will also take the environmental management plan into account for the full life cycle of the **project**.
- (6) Preparation and submission to the **client** of any preliminary plans, drawings and estimates required for seeking the approval of statutory authorities and the **client**.
- (7) Refine and assess the concept design to ensure conformance with all regulatory requirements and consents.
- (8) Establish access, utilities, services and connections required for the design of the **project**.
- (9) Coordinate design interfaces with other consultants involved.
- (10) Prepare process designs (where required), preliminary designs including preliminary drawings and plans, and related documentation for approval by authorities and **client**, including costing of the aforementioned.
- (11) Provide cost estimates and life cycle costs including financial implications and preliminary programmes.
- (12) Liaise, co-operate and provide necessary information to the **client**, principal consultant and other consultants involved.

**Deliverables:**

- Submission of a report for consideration by the **client**, including all or any of the above, with emphasis on the following:
  - Concept design report.
  - Schedule of required surveys, tests and other investigations and related reports.
  - Process design report.
  - Preliminary design report.
  - Cost estimates, concept and viability reports which include all or any of the above.

### 3.2.3 Stage 3 – Detail Design

(Defined as: Finalise the design, outline specifications, cost plan, financial viability and programme for the **project**.)

- (1) Review documentation programme with principal consultant and other consultants involved.
- (2) Attend design and consultants' meetings.
- (3) Incorporate **client's** and authorities' detailed requirements into the design.
- (4) Incorporate other consultant's designs and requirements into the design.
- (5) Prepare design development drawings including draft technical details and specifications.
- (6) Prepare detail designs, and design drawings including draft technical details and specifications:
  - In the case of reinforced concrete **works**, drawings must include bending schedules.
  - In the case of structural steel **works**, drawings and details provided by the **consulting engineer** must include full information, dimensions and specifications on all sections, connections, plates, fasteners, bolts and welding, to such an extent that no further designs by **contractor(s)** or other parties are required. The **consulting engineer** need not provide shop drawings for the manufacture of the structural steel **works**.
- (7) Review and evaluate design, specifications and estimates of the **cost of works** in order to finalise the detail design **stage**.

- (8) Advice to the **client** on any alternative designs and tenders, but excluding detailed inspection, reviewing and checking of alternative designs and drawings not prepared by the **consulting engineer** and submitted by any **contractor** or potential **contractor**.
- (9) Liaise, co-operate and provide necessary information to the principal consultant and other consultants involved.
- (10) Submit the necessary design documentation to local and other authorities for approval and obtain said approval or alternatively for record purposes where approval is not required by Building Regulations.
- (11) Accommodate services design.

**Deliverables:**

- Submission of a report for consideration by the **client**, including all or any of the above, with emphasis on the following:
  - Detail design drawings.
  - Outline specifications.
  - Local and other authority submission drawings, reports and approvals.
  - Detailed estimates of construction costs.

### 3.2.4 Stage 4 – Documentation and Procurement

(Defined as: Prepare procurement and construction documentation, confirm and implement the procurement strategies and procedures for effective and timeous procurement of necessary resources for execution of the **project**.)

- (1) Attend design and consultants' meetings.
- (2) Prepare and finalise specifications, schedule of quantities and preambles for the **works**.
- (3) Submission of detailed estimates, capital and life cycle costs, financial implications and programmes for implementation of the **works**.
- (4) Reaffirm detailed cost estimates and adjust designs and documents if necessary to remain within approved budget.
- (5) Prepare and finalise the procurement strategy for **contractor(s)** or assist the principal consultant where relevant.
- (6) Prepare documentation for **contractor** procurement.
- (7) Assist in calling for tenders/bids and/or negotiation of prices and/or assist the principal consultant where relevant.
- (8) Liaise, co-operate and provide necessary information to the principal consultant and the other consultants as required.
- (9) Assist in the evaluation of tenders/bids.
- (10) Assist with the preparation of contract documentation for signature.
- (11) Assess samples and products for compliance and design intent.
- (12) Advice to the **client** on any alternative designs and tenders, but excluding detailed inspection, reviewing and checking of alternative designs and drawings not prepared by the **consulting engineer** and submitted by any **contractor** or potential **contractor**.
- (13) Placing orders for the **works** on behalf of the **client**.

**Deliverables:**

- Submission of a report for consideration by the **client**, including all or any of the above, with emphasis on the following:
  - Finalised Specifications.
  - Service co-ordination.
- Detail design drawings.
- Tender/bid documentation.
- Tender/bid evaluation and report.
- Tender/bid recommendation.
- Priced contract documentation.

### 3.2.5 Stage 5 – Contract Administration and Inspection

(Defined as: Manage, administer and monitor the construction contracts and processes including preparation and coordination of procedures and documentation to facilitate practical completion of the **works**.)

- (1) Attend site handover.
- (2) Issue construction documentation in accordance with the documentation schedule including, in the case of structural engineering, reinforcing bending schedules and detailing and specifications of structural steel sections and connections.
- (3) Execute the contract administration in terms of the contract between the **client** and the **contractor**.
- (4) Prepare schedules of predicted cash flow.
- (5) Prepare pro-active estimates of proposed variations for **client** decision making.
- (6) Preparation of and issuing variation orders on behalf of and after consultation with the **client**.
- (7) Attend regular site, technical and progress meetings.
- (8) Inspect **works** for conformity to contract documentation.
- (9) Adjudicate and resolve financial claims by **contractor(s)**.
- (10) Assist in the resolution of contractual claims by the **contractor**.
- (11) Assist the **client** in the resolution of disputes or differences that may arise between the **client** and the **contractor**, except mediation, arbitration and/or litigation.
- (12) Establish and maintain a financial control system.
- (13) Clarify details and descriptions during construction as required.
- (14) Assist and/or prepare valuations for payment certificates to be issued by the **principal agent**.
- (15) Witness and review of all tests and mock ups carried out both on and off site.
- (16) Check and approve **contractor** drawings for design intent.
- (17) Update and issue drawings and drawings register.
- (18) Issue contract instructions as and when required.
- (19) Agreeing and verifying final quantities during construction with the **contractor**.
- (20) Review and comment on operation and maintenance manuals, guarantee certificates and warranties.
- (21) Inspect the **works** and issue practical completion certificates and defects lists.
- (22) Arranging for the delivery of all test certificates, including the Electrical Certificate of Compliance, statutory and other approvals, as built drawings and operating manuals.
- (23) Advice to the **client** on any further alternative designs, but excluding detailed inspection, reviewing and checking of alternative designs and drawings not prepared by the **consulting engineer** and submitted by any **contractor**.

#### Deliverables:

- Submission of a report for consideration by the **client**, including all or any of the above, with emphasis on the following:
  - Schedules of predicted cash flow.
  - Construction documentation.
  - Register of drawings issued.
  - Estimates for proposed variations.
  - Contract instructions.
  - Financial control reports.
  - Valuations for payment certificates.
  - Progressive and draft final account(s).
  - Practical completion and defects list.
  - Electrical Certificate of Compliance.

Where a quantity surveyor is included in the project team in Multi-Disciplinary works, items 4, 5, 9 and 12 will not be required from the engineer.

### 3.2.6 Stage 6 – Close-Out

(Defined as: Fulfil and complete the **project** close-out including necessary documentation to facilitate effective completion, handover and operation of the **project**).

- (1) Inspect and verify the rectification of defects.
- (2) Prepare comments for relevant payment valuations and completion certificates.
- (3) Prepare and/or procure operations and maintenance manuals, guarantees and warranties.
- (4) Prepare and/or procure as-built drawings and documentation.
- (5) Agreeing final quantities with **contractor(s)**, compiling final accounts and issuing final payment certificates.

#### Deliverables:

- Valuations for payment certificates.
- Works and final completion lists.
- Operations and maintenance manuals, guarantees and warranties.
- As-built drawings and documentation.
- Final accounts.

### 3.2.7 Targeted (Preferential) Procurement

Should the **client** during any **stage** of the **project**, require the **consulting engineer** to perform work or **services** pertaining to targeted procurement, such work and or **services** could entail, but are not limited to, any or all of the following:

- (1) incorporation of any targeted (preferential) participation goals;
- (2) the measuring of key participation indicators;
- (3) the selection, appointment and administration of participation and;
- (4) auditing compliance to the above by any **contractor** s and/or professional consultant.

## 3.3 Additional Services

The following **services** are additional to the **normal services** provided by the **consulting engineer**, unless specifically agreed otherwise between the **consulting engineer** and the **client**. The **agreement** on the scope of **services** and remuneration shall be in writing and should, if at all possible, be concluded before such **services** are rendered.

### 3.3.1 Additional Services pertaining to all Stages of the Project

- (1) Enquiries not directly concerned with the **works** and its subsequent utilisation.
- (2) Valuation for purchase, sale or leasing of plant, equipment, material, systems, land or buildings or arranging for such valuation.
- (3) Making arrangements for way leaves, servitudes or expropriations.
- (4) Negotiating and arranging for the provision or diversion of services not forming part of the **works**.
- (5) Additional work in obtaining the formal approval of the appropriate Government Departments or Public Authorities, including the making of such revisions as may be required as a result of decisions of such Departments or Authorities arising out of changes in policy, undue delay, or other causes beyond the **consulting engineer's** control.
- (6) Topographical and environmental surveys, analyses, tests and site or foundation or other investigations, model tests, laboratory tests and analyses carried out or procured on behalf of the **client**.
- (7) Setting out or staking out the **works** and indicating any boundary beacons and other reference marks.
- (8) Preparation of drawings for manufacture and installation or detailed checking of such for erection or installation fit.
- (9) Detailed inspection, reviewing and checking of designs and drawings not prepared by the **consulting engineer** and submitted by any **contractor** or potential **contractor** as alternative to those embodied in tender or similar documents prepared by the **consulting engineer**.

- (10) Preparing and setting out particulars and calculations in a special form required by any relevant authority.
- (11) Abnormal additional **services** by or costs to the **consulting engineer** due to the failure of a **contractor** or others to perform their required duties adequately and on time.
- (12) Executing or arranging for the periodic monitoring and adjustment of the **works**, after final handover and completion of construction and commissioning, in order to optimise or maintain proper functioning of any process or system.
- (13) Investigating or reporting on tariffs or charges leviable by or to the **client**.
- (14) Advance ordering or reservation of materials and obtaining licenses and permit.
- (15) Additional **services**, duties and/or work resulting from project scope changes, alterations and/or instructions by the **client**, or his duly authorized agents, requiring the **consulting engineer** to advice upon, review, adapt and/or alter his completed designs and/or any other documentation and/or change the scope of his **services** and/or duties. Such additional **services** are subject to **agreement** in writing between the **consulting engineer** and the **client** prior to the execution thereof.
- (16) Exceptional arrangements, communication, facilitation and agreements with any stakeholders other than the **client** and **contractor(s)** appointed for the **works** on which the **consulting engineer** provides **services**.
- (17) Any other additional **services**, of whatever nature, specifically agreed to in writing between the **consulting engineer** and the **client** prior to the execution thereof.

### 3.3.2 Construction Monitoring

- (1) If the **construction monitoring**, as set out in clause 3.2.5(3), is deemed to be insufficient by the **consulting engineer**, the **consulting engineer** may, with prior written approval having been obtained from the **client**, appoint or make available additional staff for such **construction monitoring** as are necessary to undertake additional **construction monitoring** on site to the extent specifically defined and agreed with the **client**. The functions in respect of additional **construction monitoring** are to be limited to detailed inspections and exclude those mentioned under clause 3.2.5.

Applications for additional staff must be made on the department's prescribed format, together with which the **consulting engineer** must submit a proper motivation, containing *inter alia*, a schedule indicating the envisaged time to be spent on additional **construction monitoring** as applied for, as well as the envisaged time to be spent on normal **construction monitoring** as set out in clause 3.2.5(3).

- (2) Alternatively, the **client** may appoint or make available staff, as intended in clause 3.3.2(1), subject to approval by the **consulting engineer**.
- (3) Staff, as intended in clauses 3.3.2(1) and 3.3.2(2), shall report to and take instructions from the **consulting engineer** or an authorized representative of the **consulting engineer** only and shall be deemed to be in the employ of the **consulting engineer**.
- (4) Should any change regarding the persons utilized for additional on-site monitoring or their remuneration or duration of services be necessary, the utilization of such persons and/or their remuneration must be agreed to in writing with the **client** prior to the implementation thereof.
- (5) If, for any reason, no additional staff or inadequate staff for **construction monitoring** is appointed, the **consulting engineer** shall provide additional **services**, including additional site visits, as required and agreed to in writing with the **client** prior to commencement thereof.
- (6) Where provided for in the **agreement**, the duties of the **consulting engineer** for the following defined levels of **construction monitoring**, respectively, are as follows:

(a) **Level 1:**

The **construction monitoring** staff shall:-

- (i) Maintain a part-time presence on site as agreed with the **client** to review random samples and review important completed work prior to enclosure or on completion as appropriate.
- (ii) Where the **consulting engineer** is the sole consultant or **principal agent**, carry out such administration of the **project** as is necessary on behalf of the **client**.

- (iii) Where the **principal agent**, other than the **consulting engineer**, has been appointed for the **project**, provide such information as to enable the **principal agent** to fulfil his responsibilities.
- (iv) Be available to provide the **contractor** with technical interpretation of the plans and specifications.

(b) **Level 2:**

The **construction monitoring** staff shall:-

- (i) Maintain a full time presence on site to constantly review –
  - (a) Work procedures
  - (b) Construction materialsfor compliance with the requirements of the plans and specifications and review completed work prior to enclosure or on completion as appropriate.
- (ii) Where the **consulting engineer** is the sole consultant or **principal agent**, carry out such administration of the **project** as is necessary on behalf of the **client**.
- (iii) Where the **principal agent**, other than the **consulting engineer** has been appointed for the **project**, provide such information as to enable the **principal agent** to fulfil his responsibilities.
- (iv) Be available to provide the **contractor** with technical interpretation of the plans and specifications.

### 3.3.3 Occupational Health and Safety Act, 1993 (Act No.85 of 1993)

Should the **client** require the **consulting engineer** to undertake duties falling under the Occupational Health and Safety Act, 1993 (Act No.85 of 1993) and the Construction Regulations in terms thereof, on behalf of the **client**, the additional **services** may include the following:

- (1) The **consulting engineer** must arrange, formally and in writing, for the **contractor** to provide documentary evidence of compliance with all the requirements of the Occupational Health and Safety Act, 1993 (Act No.85 of 1993).
- (2) The **consulting engineer** must 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).

### 3.3.4 Quality Assurance System

Where the **client** requires that a quality management system or quality assurance services, over and above **construction monitoring** services, be applied to the **project**, these are in addition to **normal services** provided by the **consulting engineer** and to be specifically defined and separately agreed in writing prior to commencement thereof.

### 3.3.5 Lead Consulting Engineer

Should the **client** require the **consulting engineer** to assume the leadership of a joint venture, consortium or team of consulting engineers, of the same discipline, prescribed or requested by the **client**, the additional **services** may include the following:

- (1) Responsibility for the overall administration of all sections of the **services**, including those portions of the **services**, which fall within the ambit of the other consulting engineers.
- (2) Responsibility for the overall co-ordination, programming of design and financial control of all the **works** included in the **services**.
- (3) Processing certificates or recommendations for payment of **contractor(s)**.

### 3.3.6 Principal Agent of the Client

When a **consulting engineer** is, in addition to his normal functions as **consulting engineer**, appointed as the **principal agent** of the **client** on a project, the **consulting engineer** will also be responsible for the following:

- (1) Leadership of the professional team.
- (2) Submission of preliminary and developed proposals in the form of consolidated reports, drawings and specifications together with estimates of time required and **cost of the works**.
- (3) The overall administration of all sections of the **project** including those, which fall within the ambit of the other professional members in the team.
- (4) The overall coordination, programming of design and financial control of the **project**.
- (5) Resolving differences that may arise between the **client** and the **contractor(s)**, excluding mediation, arbitration or litigation.
- (6) Approval of certificates for payment to **contractor(s)** issued by the other professional members in the team before their presentation to the **client** for settlement.
- (7) Making arrangements to provide the **client**, on completion of the **works**, with such record drawings as may be required for a proper record of the **works** as constructed and such manuals as may be required for the operation and maintenance of the relevant parts of the **works**.
- (8) Approval of the final contract account and provision of a close out report for the **project**.
- (9) Manage targeted procurement **services** as indicated in clause 3.2.7.

### 3.3.7 Mediation, Arbitration and Litigation proceedings and similar Services

Where the **client** requires the **consulting engineer** to, on his behalf, perform the **services** listed hereunder or similar work, the extent thereof and remuneration therefore is subject to agreement between the **client** and the **consulting engineer**:

- (1) Dealing with matters of law, obtaining parliamentary or other statutory approval, licenses or permits.
- (2) Assisting with or participating in contemplated or actual mediation, arbitration or litigation proceedings.
- (3) Officiating at or attending courts and commissions of enquiry, select committees and similar bodies convened by statute, regulation or decree.

## 4. TARIFF OF FEES

### 4.1 Application of Tariff of Fees

- (1) The tariff of fees contained in this Schedule applies in respect of the **services** set out in clause 3 "Scope of Services".
- (2) The **client** shall remunerate the **consulting engineer**, for the **services** rendered, on the basis of clauses 4.2 and 4.5. In cases where the **client** and **consulting engineer** have agreed that clauses 4.2 and 4.3 are not applicable, payment should be on the basis of clause 4.4 or as agreed according to clause 4.1(4).
- (3) The **client** shall reimburse the **consulting engineer** for all expenses and costs incurred in terms of clause 4.5 in performing his **services**, irrespective of whether fees are charged in terms of clauses 4.2 and 4.3 or clause 4.4 as well as for all costs incurred on behalf, and with the approval of the **client**.
- (4) While the tariff of fees contained in this document can be applied to many projects the factors that influence the fees to be paid for **services** are complex and depend on a number of contributing factors. These contributing factors that should be taken into account may include, inter alia, all or any of the following:

- 
- (a) **Project complexity:** Projects may range from relatively simple projects where it is based on well established, common practices to more complex projects where it calls for the application of new, unusual or untried practices.
  - (b) **Cost of the works:** This may range from a situation where the **cost of the works** is abnormally high relative to the **services** being rendered to a project where the **cost of the works** is abnormally low relative to the **services** required from the **consulting engineer**.
  - (c) **Time duration:** This may involve projects where the **works** are executed over appreciably shorter or longer periods than would normally be expected for any of the **stages** defined in 3 "Scope of Services".
  - (d) **Level of responsibility, liability and risk:** These may range from relatively low levels of responsibility and/or risks to projects with unusually high responsibilities and/or risks that are expected to be carried by the **consulting engineer**.
  - (e) **Level of expertise, qualifications, skills and experience:** Some works do not require a high degree of expertise while other works may require more specialized expertise or substantial skills and experience that cost more to develop and retain.
  - (f) **Level of technology** required and changes in technology that may influence the costs of the **services** provided.
  - (g) Whether aspects related to labour intensive works need to be considered in the design.
- (5) Combinations of one or more of the above factors may require an adjustment of the tariffs to fairly compensate the **consulting engineer** and this adjustment should be negotiated in good faith by both parties.
  - (6) Agreement on any adjustment of or special fees should be reached at the time of the engagement of the **consulting engineer** or as soon after circumstances warrant such as practically possible, but in all cases prior to the **consulting engineer** rendering **services** which may be affected.
  - (7) Where the **normal services** relate to more than one of the disciplines of consulting engineering contemplated in clauses 4.2.1 to 4.2.7 namely civil, structural, mechanical, electrical and **electronic engineering services**, a separate fee for **services** in each discipline should be calculated in accordance with the relevant clause. Where a **consulting engineer** is appointed for either or both electronic and electrical services, his payment shall be according to the electrical fee scales based on the combined value of these **services**.
  - (8) Where at the instance and with the consent of the **client** the **works** are undertaken on separate non-contiguous sites, continuity is interrupted or are unusually fragmented or are constructed as separately documented phases or sections, the fee for **normal services** is:
    - (a) The sum of the fees calculated separately for each site, contract, phase or section as if they were separate works; or
    - (b) A fee agreed to between the **client** and the **consulting engineer** and which fee lies between the fee calculated on the total **cost of the works** and the sum of the fees contemplated in clause 4.1(8)(a) above.
  - (9) For the calculation of fees, "duplication of works" is defined as the re-use of designs, drawings and details done by a consultant to duplicate a complete unit (e.g. a building or bridge).
  - (10) The following fees may be claimed after each **stage** of **services** or monthly or as agreed between the **consulting engineer** and the **client**:
    - (a) Percentage fees determined on the basis of the **cost of the works** prevailing at the time of the fee calculation and *pro rata* to the completed **services**, or a portion of the total fee based on completion of the **stages** along the lines indicated in 4.2.8.
    - (b) Time based fees applicable when the **services** were rendered.
  - (11) Disbursements as set out in clause 4.1(3) may be claimed monthly.

## 4.2 Fees for Normal Services

### 4.2.1 Civil and Structural Engineering Services pertaining to Engineering Projects

- (1) The basic fee for **normal services** in the disciplines of civil and structural engineering, pertaining to **engineering projects**, is determined from the table below. The fee is the sum of the primary fee and the secondary fee applicable to the specific **cost of the works** in respect of which the **services** were rendered on the **project**.

Cost of the Works		Basis of Fee Calculation	
Where the costs of the works:		Primary Fee	Secondary fee
Exceeds	But does not exceed		
R 0	R 598,000	R 0	A Lump Sum or on Time Basis
R 598,000	R 1,419,000	R 74,800	12,5% on the balance over R 598 000
R 1,419,000	R 6,985,000	R 177,400	10,0% on the balance over R 1 419 000
R 6,985,000	R 14,248,000	R 734,000	9,0% on the balance over R 6,985,000
R 14,248,000	R 35,480,000	R 1,387,600	8,0% on the balance over R 14,248,000
R 35,480,000	R 70,961,000	R 3,086,200	6,0% on the balance over R 35,480,000
R 70,961,000	R 427,427,000	R 5,215,100	5,5% on the balance over R 70,961,000
R 427,427,000		R 24,820,700	5,0% on the balance over R 427,427,000

- (2) The following additional fee shall be applicable to the value of the reinforced concrete and structural steel portions of the **works**, inclusive of the costs of concrete, reinforcing, formwork, structural steel work and any *pro rata* preliminary and general amounts. Where structures of identical design are repeated on the same **project**, the combined costs shall be cumulated for the determination of the cost of the reinforced concrete and structural steel works.

Cost of the Works		Basis of Fee Calculation	
Where the costs of the works:		Primary Fee	Secondary fee
Exceeds	But does not exceed		
R 0	R 598,000	R 0	A Lump Sum or on Time Basis
R 598,000	R 1,419,000	R 29,900	5,0% on the balance over R 598,000
R 1,419,000	R 6,985,000	R 71,000	4,5% on the balance over R 1,419,000
R 6,985,000	R 14,248,000	R 321,400	4,0% on the balance over R 6,985,000
R 14,248,000	R 35,480,000	R 611,900	3,0% on the balance over R 14,248,000
R 35,480,000	R 70,961,000	R 1,248,900	2,0% on the balance over R 35,480,000
R 70,961,000	R 427,427,000	R 1,958,500	1,5% on the balance over R 70,961,000
R 427,427,000		R 7,305,500	1,5% on the balance over R 427,427,000

- (3) To calculate the fee for railway track work in terms of this item, 50 per cent of the cost of the permanent way materials is excluded from the **cost of the works**, but the full cost of ballast and equipment specially designed by the **consultant** is included in the **cost of the works**.
- (4) For **normal services** relating to a description of the **works** mentioned in the first column of the following table, the proportion of the basic fee relating to the specific item calculated in terms of clause 4.2.1(1) and 4.2.1(2) is multiplied by the category factor mentioned against that description in the second column of the table. In case more than one of the descriptions below applies, the effective factor will be the product of the factors involved, except for the fee for targeted procurement.

- (5) These factors do not apply when fees are a lump sum or on a time basis.
- (6) In the case of road works, where the road traverses both rural and urban areas, an adjustment *pro rata* to the length of road in rural and urban area should be made.
- (7) In the case of road rehabilitation a combination of factors applies depending on the situation of the road (rural or urban) and the category factor for alterations to existing works.

Description of the Works	Factor by which basic fee is multiplied
Rural roads (single carriageways), excluding bridges	0,85
Rural freeways and dual carriageways, excluding bridges	0,95
Freeways and dual carriageways through existing peri-urban areas, excluding bridges	1,00
Single Carriageways through existing urban areas	1.00
Freeways and dual carriageways through existing urban areas	1,25
Gravel roads: Primary roads	1,25
Secondary roads	1,00
Informal roads	0,75
Water and waste water treatment works	1,25
Services (Excluding roads for existing informal settlements including roads and to reduced standards or supplies)	1,25
Water and sanitation in rural areas	1,35
Alterations to existing works (Only applicable to the fees on the portion or section of <b>works</b> affected)	1,25
Mass concrete foundations, brickwork and cladding designed and detailed by the <b>consulting engineer</b> (Only applicable to the design portion of the fees on such <b>works</b> )	0,33
Duplication of works (Only applicable to the design portion of the fees on duplicated works)	0,25
Targeted procurement (Additional fee based on the basic fees before the application of any of the other factors. Only applicable where specifically appointed for service)	0,07

#### 4.2.2 Civil Engineering Services pertaining to Multi-disciplinary Projects

- (1) The basic fee for **normal services** in the discipline of civil engineering, pertaining to **multi-disciplinary projects**, is determined from the table below. The fee is the sum of the primary fee and the secondary fee applicable to the specific **cost of the works** in respect of which the **services** were rendered on the **project**.

Cost of the Works		Basis of Fee Calculation	
Where the costs of the works:		Primary Fee	Secondary fee
Exceeds	But does not exceed		
R 0	R 598,000	R 0	A Lump Sum or on Time Basis
R 598,000	R 1,419,000	R 74,800	12,5% on the balance over R 598,000
R 1,419,000	R 6,985,000	R 177,400	10,0% on the balance over R 1,419,000
R 6,985,000	R 14,248,000	R 734,000	9,0% on the balance over R 6,985,000
R 14,248,000	R 35,480,000	R 1,387,600	8,0% on the balance over R 14,248,000
R 35,480,000	R 70,961,000	R 3,086,200	7,0% on the balance over R 35,480,000
R 70,961,000	R 427,427,000	R 5,569,900	7,0% on the balance over R 70,961,000
R 427,427,000		R 30,522,500	7,0% on the balance over R 427,427,000

- (2) For **normal services** relating to a description of the **works** mentioned in the first column of the following table, the proportion of the basic fee relating to the specific item calculated in terms of clause 4.2.2(1) is multiplied by the category factor mentioned against that description in the second column of the table. In case more than one of the descriptions below applies, the effective factor will be the product of the factors involved.

These factors do not apply when fees are a lump sum or on a time basis.

Description of the Works	Factor by which basic fee is multiplied
Alterations to existing works (Only applicable to the fees on the portion or section of <b>works</b> affected)	1,25
Internal water and drainage for buildings upon specific agreement with the <b>client</b> to render such services	1,25
Duplication of works (Only applicable to the design portion of the fees on duplicated <b>works</b> )	0,25

### 4.2.3 Structural Engineering Services pertaining to Multi-disciplinary Projects

- (1) The basic fee for **normal services** in the discipline of structural engineering, pertaining to **multi-disciplinary projects**, is determined from the table below. The fee is the sum of the primary fee and the secondary fee applicable to the specific **cost of the works** in respect of which the **services** were rendered on the project.

Cost of the Works		Basis of Fee Calculation	
Where the costs of the works:		Primary Fee	Secondary fee
Exceeds	But does not exceed		
R 0	R 598,000	R 0	A Lump Sum or on Time Basis
R 598,000	R 1,419,000	R 74,800	12,5% on the balance over R 598,000
R 1,419,000	R 6,985,000	R 177,400	10,0% on the balance over R 1,419,000
R 6,985,000	R 14,248,000	R 734,000	9,0% on the balance over R 6,985,000
R 14,248,000	R 35,480,000	R 1,387,600	8,0% on the balance over R 14,248,000
R 35,480,000	R 70,961,000	R 3,086,000	7,0% on the balance over R 35,480,000
R 70,961,000	R 427,427,000	R 5,570,000	7,0% on the balance over R 70,961,000
R 427,427,000		R 30,523,000	7,0% on the balance over R 427,427,000

- (2) For **normal services** relating to a description of the **works** mentioned in the first column of the following table, the proportion of the basic fee relating to the specific item calculated in terms of clause 4.2.3(1) is multiplied by the category factor mentioned against that description in the second column of the table. In case more than one of the descriptions below applies, the effective factor will be the product of the factors involved.

These factors do not apply when fees are a lump sum or on a time basis.

Description of the Works	Factor by which basic fee is multiplied
Alterations to existing works (Only applicable to the fees on the portion or section of <b>works</b> affected)	1,25
Mass concrete foundations and brickwork designed and cladding designed and detailed by the <b>consulting engineer</b> (Only applicable to the design portion of the fees on such works)	0,33
Duplication of works (Only applicable to the design portion of the fees on duplicated <b>works</b> )	0,25

#### 4.2.4 Mechanical Engineering Services pertaining to Engineering Projects

- (1) The basic fee for **normal services** in the discipline of mechanical engineering, pertaining to **engineering projects**, is determined from the table below. The fee is the sum of the primary fee and the secondary fee applicable to the specific **cost of the works** in respect of which the **services** were rendered on the **project**.

Cost of the Works		Basis of Fee Calculation	
Where the costs of the works:		Primary Fee	Secondary fee
Exceeds	But does not exceed		
R 0	R 598,000	R0	A Lump Sum or on Time Basis
R 598,000	R 1,419,000	R74,800	12,5% on the balance over R 571 000
R 1,419,000	R 6,985,000	R177,400	10,0% on the balance over R 1 353 000
R 6,985,000	R 14,248,000	R734,000	8,0% on the balance over R 6 659 000
R 14,248,000	R 35,480,000	R1,315,000	7,0% on the balance over R 13 582 000
R 35,480,000	R 70,961,000	R2,801,300	6,0% on the balance over R 33 824 000
R 70,961,000	R 427,427,000	R4,930,100	5,5% on the balance over R 67 648 000
R 427,427,000		R24,535,700	5,5% on the balance over R 407 474 000

- (2) For **normal services** relating to a description of the **works** mentioned in the first column of the following table, the proportion of the basic fee relating to the specific item calculated in terms of clause 4.2.4(1) is multiplied by the category factor mentioned against that description in the second column of the table. In case more than one of the descriptions below applies, the effective factor will be the product of the factors involved, except for the fee for targeted procurement.

These factors do not apply when fees are a lump sum or on a time basis.

Description of the Works	Factor by which basic fee is multiplied
Alterations to existing <b>works</b> (Only applicable to the fees on the portion or section of <b>works</b> affected)	1,25
Duplication of <b>works</b> (Only applicable to the design portion of the fees on duplicated <b>works</b> )	0,25
Targeted procurement (Additional fee based on the basic fees before the application of any of the other factors. Only applicable where specifically appointed for service)	0,07

#### 4.2.5 Mechanical Engineering services pertaining to Multi-disciplinary Projects

- (1) The basic fee for **normal services** in the discipline of mechanical engineering or wet services, pertaining to **multi-disciplinary projects**, is determined from the table below. The fee is the sum of the primary fee and the secondary fee applicable to the specific **cost of the works** in respect of which the **services** were rendered on the **project**.

Cost of the Works		Basis of Fee Calculation	
Where the costs of the works:		Primary Fee	Secondary fee
Exceeds	But does not exceed		
R 0	R 598,000	R0	A Lump Sum or on Time Basis
R 598,000	R 1,419,000	R89,700	15,0% on the balance over R 571 000
R 1,419,000	R 6,985,000	R212,900	12,5% on the balance over R 1 353 000
R 6,985,000	R 14,248,000	R908,600	10,5% on the balance over R 6 659 000
R 14,248,000	R 35,480,000	R1,671,200	9,5% on the balance over R 13 582 000
R 35,480,000	R 70,961,000	R3,688,300	9,0% on the balance over R 33 824 000
R 70,961,000	R 427,427,000	R6,881,500	8,5% on the balance over R 67 648 000
R 427,427,000		R37,181,200	8,5% on the balance over R 407 474 000

- (2) For **normal services** relating to a description of the **works** mentioned in the first column of the following table, the proportion of the basic fee relating to the specific item calculated in terms of clause 4.2.5(1) is multiplied by the category factor mentioned against that description in the second column of the table. In case more than one of the descriptions below applies, the effective factor will be the product of the factors involved, except for the fee for targeted procurement.

These factors do not apply when fees are a lump sum or on a time basis.

Description of the Works	Factor by which basic fee is multiplied
Multi-tenant installations: <i>The Multi-tenant factor only becomes applicable if substantial fragmentation of services, which would otherwise not be divided, occurs as a result of the multi-tenant application. Normal multi-zoning, even if applied in multi-tenant accommodation, does not qualify for the application of the Multi-tenant factor.</i>	1,25
<b>Alterations to existing works</b> (Only applicable to the fees on the portion or section of <b>works</b> affected)	1,25
<b>Duplication of works</b> (Only applicable to the design portion of the fees on duplicated <b>works</b> )	0,25
For <b>projects</b> where the <b>cost of the works</b> exceeds R 572,000 and where bills of quantities are not required from the <b>consulting engineer</b> and all financial, tender and contractual matters are dealt with by the Quantity Surveyor or other parties	0,75
<b>Targeted procurement</b> (Additional fee based on the basic fees before the application of any of the other factors. Only applicable where specifically appointed for service)	0,07

#### 4.2.6 Electrical and Electronic Engineering Services pertaining to Engineering Projects

- (1) The basic fee for **normal services** in the discipline of electrical and electronic engineering, pertaining to **engineering projects**, is determined from the table below. The fee is the sum of the primary fee and the secondary fee applicable to the specific **cost of the works** in respect of which the services were rendered on the **project**.

Cost of the Works		Basis of Fee Calculation	
Where the costs of the works:		Primary Fee	Secondary fee
Exceeds	But does not exceed		
R 0	R 598,000	R0	A Lump Sum or on Time Basis
R 598,000	R 1,419,000	R74,800	12,5% on the balance over R 571 000
R 1,419,000	R 6,985,000	R177,400	10,0% on the balance over R 1 353 000
R 6,985,000	R 14,248,000	R734,000	8,0% on the balance over R 6 659 000
R 14,248,000	R 35,480,000	R1,315,000	7,0% on the balance over R 13 582 000
R 35,480,000	R 70,961,000	R2,801,300	6,0% on the balance over R 33 824 000
R 70,961,000	R 427,427,000	R4,930,100	5,5% on the balance over R 67 648 000
R 427,427,000		R24,535,700	5,5% on the balance over R 407 474 000

- (2) For **normal services** relating to a description of the **works** mentioned in the first column of the following table, the proportion of the basic fee relating to the specific item calculated in terms of clause 4.2.6(1) is multiplied by the category factor mentioned against that description in the second column of the table. In case more than one of the descriptions below applies, the effective factor will be the product of the factors involved, except for the fee for targeted procurement.

These factors do not apply when fees are a lump sum or on a time basis.

Description of the Works	Factor by which basic fee is multiplied
Alterations to existing <b>works</b> (Only applicable to the fees on the portion or section of <b>works</b> affected)	1,25
Duplication of <b>works</b> (Only applicable to the design portion of the fees on duplicated <b>works</b> )	0,25
Targeted procurement (Additional fee based on the basic fees before the application of any of the other factors. Only applicable where specifically appointed for service)	0,07

#### 4.2.7 Electrical and Electronic Engineering services pertaining to Multi-disciplinary Projects

- (1) The basic fee for **normal services** in the discipline of electrical and electronic engineering, pertaining to **multi-disciplinary projects**, is determined from the table below. The fee is the sum of the primary fee and the secondary fee applicable to the specific **cost of the works** in respect of which the **services** were rendered on the **project**.

Cost of the Works		Basis of Fee Calculation	
Where the costs of the works:		Primary Fee	Secondary fee
Exceeds	But does not exceed		
R 0	R 598,000	R0	A Lump Sum or on Time Basis
R 598,000	R 1,419,000	R89,700	15,0% on the balance over R 571 000
R 1,419,000	R 6,985,000	R212,900	12,5% on the balance over R 1 353 000
R 6,985,000	R 14,248,000	R908,600	10,5% on the balance over R 6 659 000
R 14,248,000	R 35,480,000	R1,671,200	9,5% on the balance over R 13 582 000
R 35,480,000	R 70,961,000	R3,688,300	9,0% on the balance over R 33 824 000
R 70,961,000	R 427,427,000	R6,881,500	8,5% on the balance over R 67 648 000
R 427,427,000		R37,181,200	8,5% on the balance over R 407 474 000

- (2) For **normal services** relating to a description of the **works** mentioned in the first column of the following table, the proportion of the basic fee relating to the specific item calculated in terms of clause 4.2.7(1) is multiplied by the category factor mentioned against that description in the second column of the table. In case more than one of the descriptions below applies, the effective factor will be the product of the factors involved, except for the fee for targeted procurement.

These factors do not apply when fees are a lump sum or on a time basis.

Description of the Works	Factor by which basic fee is multiplied
Multi-tenant installations: <i>The Multi-tenant factor only becomes applicable if substantial fragmentation of services, which would otherwise not be divided, occurs as a result of the multi-tenant application. Normal multi-zoning, even if applied in multi-tenant accommodation, does not qualify for the application of the Multi-tenant factor.</i>	1,25
Alterations to existing <b>works</b> (Only applicable to the fees on the portion or section of <b>works</b> affected)	1,25
Duplication of <b>works</b> (Only applicable to the design portion of the fees on duplicated <b>works</b> )	0,25
For <b>projects</b> where the <b>cost of the works</b> exceeds R 572,000 and where bills of quantities are not required from the <b>consulting engineer</b> and all financial, tender and contractual matters are dealt with by the Quantity Surveyor or other parties.	0,75
Targeted procurement (Additional fee based on the basic fees before the application of any of the other factors. Only applicable where specifically appointed for service)	0,07

#### 4.2.8 Services provided partially or in Stages

- (1) The following table shall be used for proportioning the basic fee for **normal services** over the various **stages** of the **services**.

Stage of Services	Percentage points for each stage
<b>Civil: Engineering Projects:</b> <ul style="list-style-type: none"> <li>• Inception</li> <li>• Preliminary Design: Concept and Viability</li> <li>• Detail Design</li> <li>• Documentation and Procurement</li> <li>• Contract Administration and Inspection</li> <li>• Close-Out</li> </ul>	 5 20 30 15 25 5
<b>Structural: Engineering Projects:</b> <ul style="list-style-type: none"> <li>• Inception</li> <li>• Preliminary Design: Concept and Viability</li> <li>• Detail Design</li> <li>• Documentation and Procurement</li> <li>• Contract Administration and Inspection</li> <li>Close-Out</li> </ul>	 5 20 30 15 25 5
<b>Civil: Multi-disciplinary Projects:</b> <ul style="list-style-type: none"> <li>• Inception</li> <li>• Preliminary Design: Concept and Viability</li> <li>• Detail Design</li> <li>• Documentation and Procurement</li> <li>• Contract Administration and Inspection</li> <li>• Close-Out</li> </ul>	 5 20 30 15 25 5
<b>Structural: Multi-disciplinary Projects:</b> <ul style="list-style-type: none"> <li>• Inception</li> <li>• Preliminary Design: Concept and Viability</li> <li>• Detail Design</li> <li>• Documentation and Procurement</li> <li>• Contract Administration and Inspection</li> <li>• Close-Out</li> </ul>	 5 20 30 15 25 5
<b>Mechanical, electrical and electronic projects:</b> <ul style="list-style-type: none"> <li>• Inception</li> <li>• Preliminary Design: Concept and Viability</li> <li>• Detail Design</li> <li>• Documentation and Procurement</li> <li>• Contract Administration and Inspection</li> <li>• Close-Out</li> </ul>	 5 20 30 15 25 5

- (2) Where not all the **stages** of the **normal services** are provided by the **consulting engineer**, the fee is, subject to clause 4.1(7), calculated as a percentage of the total fee calculated in terms of this clause, which percentage is the sum of the percentage points appropriate to each **stage** as set out in the above table against those **stages** of the **services** provided by the **consulting engineer**.

## 4.2.9 Cancellation or Abandonment

Should instructions having been given by the **client** to the **consulting engineer** to proceed with any of the **stages** of **services** set out in clause 4.2.8(1) and the whole or part of the **works** is cancelled or abandoned or postponed payments will be according to the stipulations of this **agreement**.

## 4.3 Fees for Additional Services

- (1) Subject to clauses 4.2.8(2), 4.3(2), 4.3(3), 4.3(4), 4.3(5), 4.3(6) and 4.3(7), the fees for additional **services**, contemplated in clause 2.2, are agreed to between the **client** and the **consulting engineer** as set out in clause 4.1.
- (2) For additional **services** as a result of the resumption of such **services** or the alteration or modification of designs on the instructions of the **client**, the **consulting engineer** is entitled to time based fees and actual costs incurred.
- (3) For the provision of a **construction monitoring** service, as contemplated in clause 3.3.2, the **consulting engineer** is entitled to recover from the **client** the fees as agreed between the **consulting engineer** and the **client**:
  - (a) for part time **construction monitoring** staff costs, the amount payable to such staff shall be at the hourly rates contemplated in clause 4.4(3);
  - (b) for full time **construction monitoring** service the fee shall be based on the **total annual cost of employment** plus a surcharge of twelve percentage points (12%);
  - (c) a maximum of 50 hours may be applied for part time **construction monitoring** per month. Time spent on site in excess hereof will be without further remuneration; and
  - (d) distances for travelling applied for may not be exceeded without prior written approval of the departmental project manager. Remuneration of travelling will be calculated according to actual distances per month at the applicable rate of the time of travel.
- (4) For all other costs, as set out in clause 4.5, the actual expenses incurred.
- (5) For duties under the Occupational Health and Safety Act, 1993 (Act No.85 of 1993), as contemplated in clause 3.3.3, the **consulting engineer** shall, if so appointed by the **client**, be remunerated on a time and cost basis as agreed with the **client**.
- (6) For assuming the leadership of a joint venture, a consortium or team of consulting engineers, as contemplated in clause 3.3.5, the fee for the lead **consulting engineer** shall be ten percentage points (10%), which is not an additional fee but is that portion of the fee for **services** rendered by the team, which shall be allocated to the lead **consulting engineer**. The apportionment of the fee to **services** is as stated in clause 4.2.8(1).
- (7) For **services** as **principal agent** of the **client**, as contemplated in clause 3.3.6, the **consulting engineer** is entitled to an additional fee calculated at one percentage point (1%) of the total **cost of the works** comprising the **project**. The **consulting engineer** is not entitled to any fees for **principal agent** if he is not explicitly appointed as such.

## 4.4 Time Based Fees

- (1)
  - (a) Time based fees are all-inclusive fees, including allowances for overhead charges incurred by the **consulting engineer** as part of normal business operations, including the cost of management, as well as payments to administrative, clerical and secretarial staff used to support professional and technical staff in general and not on a specific project only.
  - (b) Time based fees are calculated by multiplying the hourly rate contemplated in clause 4.4(3), which is applicable to the **consulting engineer** for professional and any other technical staff employed by the **consulting engineer**, with the actual time spent by such staff in rendering the **services** required by the **client**.
  - (c) Professional and technical staff include all staff performing work directly related to the execution of the **services** the **consulting engineer** is engaged for by the **client** and excludes all administrative, clerical and secretarial staff used to support professional and technical staff in general and not on a specific project only, but includes the typing of letters, minutes, reports and documents for **projects**.
- (2) To determine the time based fee rates the professional and technical staff concerned is divided into:-

- (a) **Category A**, in respect of a private consulting practice in engineering, shall mean a top practitioner whose expertise and relevant experience is nationally or internationally recognized and who provides advice at a level of specialization where such advice is recognized as that of an expert.
- (b) **Category B**, in respect of a private consulting practice in engineering, shall mean a partner, a sole proprietor, a director, or a member who, jointly or severally with other partners, co-directors or co-members, bears the risks of the business or takes full responsibility for the projects and related liabilities of such practice and where his/her level of expertise and relevant experience is commensurate with the position performs work of a conceptual nature in engineering design and development, provides strategic guidance in planning and executing a project and/or carries responsibility for quality management pertaining to a project.
- (c) **Category C**, in respect of a private consulting practice in engineering, shall mean all salaried professional staff with adequate expertise and relevant experience performing work of an engineering nature and who carry the direct technical responsibility for one or more specific activities related to a project. A person referred to in Category B may also fall in this category if such person performs work of an engineering nature at this level.
- (d) **Category D**, in respect of a private consulting practice in engineering, shall mean all other salaried technical staff with adequate expertise and relevant experience performing work of an engineering nature with direction and control provided by any person contemplated in *categories A, B or C*.
- (3) The scale of fees on a time basis, on which Value Added Tax is excluded, shall be at the following rates per hour, rounded off to the nearest rand:
- (a) for a person in *category A and B*: 18.75 cents for each R100 of the total annual remuneration package (lowest notch) attached to a Director's grading (level 13) in the Public Service;
- (b) for a person in *category C*: 17,5 cents for each R100 of the total annual remuneration package (lowest notch) attached to a Deputy Director's grading (level 12) in the Public Service;
- (c) for a person in *category D*: 16,5 cents for each R100 of his/her **total annual cost of employment**; provided that this hourly rate shall not exceed 16,5 cents for each R100 of the total annual remuneration package (lowest notch) attached to an Assistant Director's grading (level 11) in the Public Service.

Hourly rates calculated in terms of (a), (b) and (c) above shall be deemed to include overheads and charges in respect of time expended by clerical personnel, which shall, therefore, not be chargeable separately.

Unless otherwise specifically agreed in writing, remuneration for the time expended by *Category B persons* in terms of (a) above on a project shall be limited to 5 per cent of the total time expended on the **project**. Any time expended by principals in excess of the 5 per cent limit shall be remunerated at the rates determined in (b) or (c) above.

Notwithstanding the above, where work is of such a nature that personnel as described in paragraph (c) above are capable of performing such work, it shall be remunerated at that level and not at the rates described in paragraphs (a) and (b) above, irrespective of who in fact executed the work.

The salaries referred to in (a) to (c) above can change from time to time, which will, therefore, change the rates applicable. These rates will, however, only be adjusted on the first day of each calendar year irrespective of any changes in salary ranges during the relevant year. The rate as set out in Table 8 of the "Rates for Reimbursable Expenses", as amended from time to time may be used as bases for relevant claims.

- (4) For the purposes of clause 4.4(3)(c), the **total annual cost of employment** (gross annual remuneration) of a person contemplated in clause 4.4(2) means the total amount borne by an

employer in respect of the employment of such a person per year, calculated at the amounts applicable to such a person at the time of appointment of the person.

## 4.5 Expenses and Costs

All expenses and costs shall be claimed for in accordance with the provisions of the **agreement** subject to the submission of substantiating documentation.