



**EMALAHLENI
LOCAL MUNICIPALITY**

**TENDER NO: ELM 17/2023
(RE-ADVERT)**

**TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD
OF THIRTY-SIX (36) MONTHS**

EMPLOYER:
Emalahleni Local Municipality
P.O Box 3
Witbank
1035

Municipal Manager
Tel No.: +27 (13) 690 6911
Fax No.: +27 (13) 690 6207
E-mail: maisela@emalahleni.gov.za

QUERIES:
Directorate: Technical
Mr. S.C Ndlovu (Water Services)
Tel no.: +27 (13) 690 6914
E-mail: NdlovuSC@emalahleni.gov.za

Mrs. P I Skosana (Water Network)
Tel 013 6906914
E-mail: skosanaPI@emalahleni.gov.za

Supply Chain Management
Tel No.: +27 (13) 690 6497
E-mail: masangonz@emalahleni.gov.za

Tender Closing Date:
Friday, 08 December 2023 at 11:00

Bidder's Details:

Company Name	
Physical Address	
Contact No.	
E-mail Address	
Contact Person	
Central Supplier Database No.	
Company Registration No.	

EMALAHLENI LOCAL MUNICIPALITY

TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR A PERIOD OF 36 MONTHS

TENDER NO: ELM 17/2023 (RE-ADVERT)

CONTENTS

SECTION

DESCRIPTION

COVER PAGE

CONTENTS

THE TENDER

PART T1 **TENDERING PROCEDURES**

T1.1 Tender Notice and Invitation to Tender

T1.2 Tender Data

PART T2 **RETURNABLE DOCUMENTS**

T2.1 List of Returnable Documents

T2.2 Returnable Schedules

THE CONTRACT

PART C1 **CONTRACT DATA**

C1.1 Contract Data

PART C2 **PRICING DATA**

C2.1 Pricing Instructions

C2.2 Description of the Works

SECTION

DESCRIPTION

APPENDICES

ANNEXURE A	General Conditions of Contract (GCC)
------------	--------------------------------------



EMALAHLENI LOCAL MUNICIPALITY

TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR A PERIOD OF 36 MONTHS

T1.1: TENDER NOTICE AND INVITATION TO TENDER

Tender Notice and Invitation to Tender

TENDER NO.: ELM 17/2023
(RE-ADVERT)
CLOSING DATE: 08 DECEMBER 2023

TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR A PERIOD OF 36 MONTHS.

Emalahleni Local Municipality hereby invites service providers for the transportation of potable water in eMalahleni for a period of 36 months.

Tender documents with full specifications will be made available and can be obtained from www.emalahleni.gov.za or www.etenders.gov.za

No briefing session will be held for this tender. The closing time for receipt of tenders is **11:00 on Friday, 08 December 2023**. Telegraphic, telephonic, telex, facsimile, e-mail, unmarked and **late tenders** will under no circumstances be considered and accepted. The tender box will be emptied just after closing time on the closing date. The register for all bids received may be requested thereafter and will furthermore be published on the municipal website.

Any technical enquiries relating to the tender document may be directed to Mr S C Ndlovu for Water and Sanitation at telephone number (013) 690 6294 during working hours or e-mails may be sent to ndlovusc@emalahleni.gov.za. Supply Chain Management Office may also be contacted on (013) 690 6483/6497/6484.

Fully completed tender documents, clearly marked "**Tender No. ELM 17/2023 (RE-ADVERT)**" **TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF THIRTY-SIX (36) MONTHS** with "**NAME of TENDERER**" must be placed in a sealed envelope and placed in the **tender box** situated on the **First floor**, Emalahleni Local Municipality, Civic Centre, 29 Mandela Street, eMalahleni 1035 or sent via courier services to the above-mentioned address. Couriered documents should be delivered at the first floor, Supply Chain Management Offices at the aforementioned address **by no later than 11h00 on 08/12/2023**. The envelope must be endorsed with number, title and closing date as indicated above.

A preferential point system shall apply whereby a contract will be allocated to a tenderer in accordance with the Preferential Procurement Regulation, 2022 and as defined in the Conditions of Tender in the tender document, read in conjunction with the Supply Chain Management Policy of Emalahleni Local Municipality where **80 points** will be allocated in respect of price and **20 points** in respect of Specific goals.

The specific goals allocated points in terms of this tender:

A total of 15 preference points shall be allocated on a proportional or pro rata basis for contracting an enterprise owned by historically disadvantaged persons or individuals who meet the following requirements -

- for 100% black person or people owned enterprise 5 points

- for at least 30% woman or women shareholding or owned enterprise 5 points
- For at least 30% youth shareholding or owned enterprise 2.5 points
- for at least 30% people living with disability shareholding or owned enterprise 2.5 points

A total of 5 preference points shall be allocated on a proportional or pro rata basis for implementing of programmes for RDP –

- for enterprise regarded as EME located within the local area of jurisdiction. 5 points

(The Municipality will utilize the CSD report to verify the above-mentioned information)

No awards will be made to a person:

- Who is not registered on the **Central Supplier Database (CSD)**;
- who is in the service of the state;
- If that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; and/or
- who is an advisor or consultant contracted with the municipality or municipal entity.

The municipality reserves the right to withdraw any invitation to tender and/or to re-advertise or to reject any tender or to accept a part of it. The municipality does not bind itself to accepting the lowest tender or award a contract to the bidder scoring the highest number of points.

Should you not hear from us within 90 days after the closing date, please consider your tender unsuccessful.

**H.S MAYISELA
MUNICIPAL MANAGER**

**Civic Centre
29 Mandela Street
eMalahleni**

**P.O Box 3
eMalahleni**

www.emalahleni.gov.za

T1.2 : TENDER DATA

Wording

The employer is the EMALAHLENI LOCAL MUNICIPALITY.

The tender documents issued by the employer comprise:

PART T1: TENDERING PROCEDURES

T1.1: Tender Notice and Invitation to Tender

T1.2: Tender Data

PART T2: RETURNABLE DOCUMENTS

T2.1: List of Returnable Documents

T2.2: Returnable Schedules

PART C1: AGREEMENTS AND CONTRACT DATA

C1.1: Standard Conditions of Tender

PART C2: PRICING DATA

C2.1: Pricing Instructions

PART C2: SCOPE OF WORKS

C2.2: Description of the Works

ANNEXURES

The Employer is represented by:

Name: Mr. S C Ndlovu

Contact number: (013) 690 6294

E-mail: ndlovusc@emalahleni.gov.za

Address: 29 Mandela Street, eMalahleni, 1035

No alternative tender offer will be considered; however, proposals and suggestions are welcomed provided that they clearly state the manner of approach, designs if any, calculations and cost implications.

Parts of each tender offer communicated on paper shall be submitted as an original, plus 0 (nil) copies.

All documents accompanying this invitation must be completed in detail where applicable, be sealed in an envelope and be deposited in the bid box or sent via courier services to the given address. Couriers documents should be delivered at the first floor, Supply Chain Management Offices at the below mentioned address before the closing date and time. The bid box is situated at Civic Centre, First Floor, Mandela Street, eMalahleni

Wording
<p>The Employer's address for delivery of tender offers and identification details to be shown on each tender offer package are:</p> <p>Location of tender box: EMALAHLENI LOCAL MUNICIPALITY</p> <p>Physical address: 29 Mandela Street, eMalahleni, 1035</p>
<p>Duly completed and signed original bid documents should be sealed in an envelope marked:</p> <p style="text-align: center;">TENDER NO. ELM 17/2023 (RE-ADVERT)</p> <p style="text-align: center;">TRANSPORTATION OF POTABLE WATER IN EMALAHLENI FOR A PERIOD OF 36 MONTHS</p> <p>Closing date: 08 December 2023</p> <p>Closing time: 11:00</p> <p>Name of bidder: _____</p>
The closing time for submission of tender offers is stated in the Tender Notice/ Invitation to Tender
Late bids shall not be accepted. Please note that bids are late if they are not received at the address given in the invitation after the bid closing date and time.
Telephonic, telegraphic, telex, facsimile or e-mailed tender offers will not be accepted.
All bid prices must be quoted in South African currency on a fixed price basis and include VAT.
The tender offer validity period is 90 Days from the closing date.
All relevant documents attached to this bid must be completed and signed in black ink by an authorized representative of the business. The authorized representative of the business is required to initial each page of the bidding document.
The clarification meeting shall be conducted at cnr. Wotltemade and Sturdee street Emalahleni Local Municipality, whereby a site briefing shall be presented. The Employer shall discuss the scope of works and answer any questions raised.
Tender offers will be opened immediately after the closing time at 11:00 for tenders at the Civic Centre Building of the municipality in the presence of a municipal representative.
The conditions contained in the General Conditions of Contract (GCC) 2010, and the attached bid forms, as well as any other conditions accompanying this invitation are applicable.
The work procedure, the bidder proposes to follow in order to obtain the required result must be clearly outlined and its terms may not conflict with those contained in the General Conditions of Contract.
The Emalahleni Local Municipality reserves the right to accept any bid in whole or in part and does not bind itself to accept the lowest or any bid at all.
Prospective bidders are requested to submit one (1) copy of the tender document.
<p>The following preference point systems are applicable to all bids:</p> <ul style="list-style-type: none"> - the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included). <p>The value of this bid is estimated not to exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable.</p>

Wording
<p>Tender offers will only be accepted on condition that:</p> <ul style="list-style-type: none">a) the tenderer is registered on the Central Supplier Database (CSD) of the National Treasury;b) the tenderer or any of its directors is not listed in the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector; andc) the tenderer has not:<ul style="list-style-type: none">i) abused the Employer's Supply Chain Management System; orii) failed to perform on any previous contract and has been given a written notice to this effect; andd) has completed the Compulsory Municipal Bidding Documents (MBD) and there are no conflicts of interest which may impact on the tenderer's ability to perform the contract in the best interests of the employer or potentially comprise the tender process.

EMALAHLENI LOCAL MUNICIPALITY

**TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR A PERIOD
OF 36 MONTHS.**

TENDER NO: ELM 17/2023 (RE-ADVERT)

PART T2 : RETURNABLE DOCUMENTS

T2.1 List of Returnable Documents

T2.2 Returnable Schedules

EMALAHLENI LOCAL MUNICIPALITY

TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF THIRTY-SIX (36) MONTHS

TENDER NO: ELM 17/2023 (RE-ADVERT)

T2.1 : LIST OF RETURNABLE DOCUMENTS

The following documents are to be completed and returned as they constitute the tender. Whilst many of the returnable are required for the purpose of evaluating the tenders, some will form part of the subsequent contract, as they form the basis of the tender offer. For this reason, it is very important that tenderers return **all information requested**.

**1. RETURNABLE SCHEDULES REQUIRED
(included herein for completion)**

Schedule: 1A	MBD 1 - Invitation to Bid
Schedule : 1C	MBD 4 - Declaration of Interest
Schedule : 1D	MBD 6.1 – Preference Points Claim Form in Terms of the Preferential Procurement Regulations 2022
Schedule : 1E	MBD 8 - Declaration of Bidder's Past Supply Chain Management Practices
Schedule : 1F	MBD 9 - Certificate of Independent Bid Determination
Schedule : 1G	Authority of Signatory
Schedule : 1H	Record of Addenda to Tender Documents
Schedule: 1I	Schedule of Similar Work satisfactorily carried out by the Tenderer
Schedule: 1J	Proposed Amendments and Qualifications

2. OTHER MANDATORY DOCUMENTS REQUIRED FOR TENDER COMPLIANCE PURPOSES

Schedule: 2A	Proof of Authority of Signatory
Schedule: 2B	Municipal water and lights statement or written confirmation that municipal rates and taxes and municipal service charges of the prospective bidder and directors of the business are not in arrears from the relevant municipality for more than 90 days or lease agreement in the case of rental of property.
Schedule: 2C	Proof of registration on the Central Suppliers Database (CSD) of the National Treasury.
Schedule: 2D	Joint Venture Agreement in case of a Joint Venture signed by both parties

3. RETURNABLE SCHEDULES REQUIRED FOR TENDER EVALUATION PURPOSES
(to be attached with submission)

4. OTHER SCHEDULES AND AFFIDAVITS THAT WILL BE INCORPORATED INTO THE CONTRACT (included hereafter for completion)

C1.1: The offer portion of the Form of Offer and Acceptance

C1.2: Standard Conditions of Tender

C2.1: Pricing instructions

C2.2: Description of the Works

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF MUNICIPALITY/ MUNICIPAL ENTITY)			
BID NUMBER:	ELM 17/2023 (RE-ADVERT)	CLOSING DATE:	08 DECEMBER 2023
		CLOSING TIME:	11:00
DESCRIPTION	TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF THIRTY-SIX (36) MONTHS		
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).			

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)

SUPPLIER INFORMATION			
NAME OF BIDDER			
POSTAL ADDRESS			
STREET ADDRESS			
TELEPHONE NUMBER	CODE		NUMBER
CELLPHONE NUMBER			
FACSIMILE NUMBER	CODE		NUMBER
E-MAIL ADDRESS			
VAT REGISTRATION NUMBER			
TAX COMPLIANCE STATUS	TCS PIN:		OR CSD No:
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	Yes No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	Yes No [IF YES, ANSWER PART B:3]
SIGNATURE OF BIDDER			DATE
CAPACITY UNDER WHICH THIS BID IS SIGNED			
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT	SCM	CONTACT PERSON	S.C NDLOVU
CONTACT PERSON	Z. MOROKU	TELEPHONE NUMBER	013 690 6294
TELEPHONE NUMBER	013 690 6497	FACSIMILE NUMBER	013 690 6207
FACSIMILE NUMBER	013 690 6207	E-MAIL ADDRESS	ndlovusc@emalahleni.gov.za
E-MAIL ADDRESS	masangonz@emalahleni.gov.za		

PART B

TERMS AND CONDITIONS FOR BIDDING

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

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID. NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE.

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

DATE:

.....

MBD 4

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favoritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorized representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

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

2.1 Full Name of bidder or his or her representative:

2.2 Identity Number:

2.3 Position occupied in the Company (director, trustee, shareholder²):
.....

2.4 Company Registration Number:

2.5 Tax Reference Number:

2.6 VAT Registration Number:

2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

¹"State" means –

(a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(b) any municipality or municipal entity;

(c) provincial legislature;

(d) national Assembly or the national Council of provinces; or

(e) Parliament.

²"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

2.7 Are you or any person connected with the bidder presently employed by the state? **YES / NO**

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:

.....

Name of state institution at which you or the person connected to the bidder is employed:

.....

Position occupied in the state institution:

.....

Any other particulars:

.....

.....

.....

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? **YES / NO**

2.7.2.1 If yes, did you attached proof of such authority to the bid document? **YES / NO**

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

.....

.....

.....

2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? **YES / NO**

2.8.1 If so, furnish particulars:

.....

.....

.....

YES / NO

.....

.....

.....

YES/NO

.....

.....

.....

YES/NO

.....

[illegible]

4 DECLARATION

I THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3
ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME

IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF

CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

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

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

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

1. GENERAL CONDITIONS

1.1 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
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 To be completed by the organ of state

- a) The applicable preference point system for this tender is the 80/20 preference point system.

1.3 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.

1.4 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

- 1.5 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.
- 1.6 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. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 \\
 \mathbf{Ps = 80 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right)} & \mathbf{or} & \mathbf{Ps = 90 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right)}
 \end{array}$$

Where

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

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

3.2.1. POINTS AWARDED FOR PRICE

A maximum of 80 or 90 points is allocated for price on the following basis:

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ P_s = 80 \left(1 + \frac{P_t - P_{max}}{P_{max}} \right) & \text{or} & P_s = 90 \left(1 + \frac{P_t - P_{max}}{P_{max}} \right) \end{array}$$

Where

P_s = Points scored for price of tender under consideration
 P_t = Price of tender under consideration
 P_{max} = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

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

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

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

(b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system, then the organ of state must indicate the points allocated

for specific goals for both the 90/10 and 80/20 preference point system.

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

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

Item no.	The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system)	Number of points claimed (80/20 system) (To be completed by the tenderer)
A total of 15 preference points shall be allocated on a proportional or pro rata basis for contracting an enterprise owned by historically disadvantaged persons or individuals who meet the following requirements -			
1.	for 100% black person or people owned enterprise	5 points	
2.	for at least 30% woman or women shareholding or owned enterprise	5 points	
3.	For at least 30% youth shareholding or owned enterprise	2.5 points	
4.	for at least 30% people living with disability shareholding or owned enterprise	2.5 points	
A total of 5 preference points shall be allocated on a proportional or pro rata basis for implementing of programmes for RDP -			
5.	for enterprise regarded as EME located within the local area of jurisdiction.	5 points	
The Municipality will utilize the CSD report for the above-mentioned information.			

DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number:

4.5. 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]

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favorable arrangements due to such cancellation;
 - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution, if deemed necessary.

SIGNATURE(S) OF TENDERER(S)

SURNAME AND NAME:

DATE:

ADDRESS:

.....

.....

.....

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
 - a. abused the institution's supply chain management system;
 - b. committed fraud or any other improper conduct in relation to such system; or
 - c. failed to perform on any previous contract.
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's database as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this database were informed in writing of this restriction by the National Treasury after the <i>audi alteram partem</i> rule was Applied).	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? To access this Register enter the National Treasury's website, www.treasury.gov.za , click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		

4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply With the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME)

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

I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Municipal Bidding Document (MBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging). ² Collusive bidding is a *per se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. Disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. Cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of:

_____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium³ will not

be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

EMALAHLENI LOCAL MUNICIPALITY

TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR
THE PERIOD OF THIRTY-SIX (36) MONTHS)

TENDER NO: ELM 17/2023 (RE-ADVERT)

SCHEDULE 1J: PROPOSED AMENDMENTS AND QUALIFICATIONS

The Tenderer should record any deviations or qualifications he may wish to make to the tender documents in this Returnable Schedule. Alternatively, a tenderer may state such deviations and qualifications in a covering letter to his tender and reference such letter in this schedule.

Page	Clause or Item	Proposal

Signed.....

Date.....

Name.....

Position.....

EMALAHLENI LOCAL MUNICIPALITY

**TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR
THE PERIOD OF THIRTY-SIX (36) MONTHS**

SCHEDULE 2A: PROOF OF AUTHORITY OF SIGNATORY

EMALAHLENI LOCAL MUNICIPALITY

TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF THIRTY-SIX (36) MONTHS

SCHEDULE 2B: MUNICIPAL RATES AND TAXES

Section 38 (d) (i) of Municipal Supply Chain Regulations requires that the municipality must reject a bidder whose municipal rates and taxes are in arrears for more than three months.

The purpose of this schedule is to obtain proof that municipal services, rates and taxes of the service provider are not in arrears for more than three months, with the relevant municipality / landlord in the municipal area where the service provider conduct his / her business.

The tenderer must attach to this page proof of registration with the Municipalities (local and/or district) as a payer of municipal levies and valid proof that municipal rates and taxes and municipal service charges of the prospective bidder and directors of the business are not in arrears from the relevant municipality for more than 90 days and complete the **Clearance Certificate for Water & Lights** below or lease agreement in the case of rental of the property.

CLEARANCE CERTIFICATE FOR WATER & LIGHTS

Section 38(d) (i) of Municipal Supply Chain Regulations requires that the municipality must reject a bidder whose municipal rates and taxes are in arrears for more than three months.

The purpose of this schedule is to obtain proof that municipal services, rates and taxes of the service provider are not in arrears for more than three months, with the relevant municipality / landlord in the municipal area where the service provider conducts his / her business.

Each bidder must complete the below checklist. Important: if you fail to complete this form, the bid will be non-responsive. (Please tick with **X** where appropriate):

QUESTIONS		YES	NO
1.	Is your municipal rates and taxes account up to date / current (not in arrears for more than three months)?		
2.	If yes, provide the following details:		
2.1	▪ Municipality name		
2.2	▪ Municipal account number		
3.	If yes, please attach proof in the form of the original or certified copy of the bidder's and all director's municipal rates and taxes account not older than 3 months		
4.	Does the bidder lease / rent the property where the business is situated?		
5	If yes, provide the following details:		
5.1	▪ Landlord name		
5.2	▪ Address property is situated		
5.3	▪ Contact number of landlord		
6.	Please attach the copy of the lease agreement signed by the landlord / lessor and the tenant / lessee as proof		
I, (Insert full name)			
of (insert physical address)			
being a Director, Principal Shareholder, owner of company (Insert company name)			
Hereby confirms that, the information submitted in this form is accurate, to the best of my knowledge			
SIGNATURE			

EMALAHLENI LOCAL MUNICIPALITY

TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF THIRTY-SIX (36) MONTHS

SCHEDULE 2C: CSD REGISTRATION

The tenderer must attach to this page proof of registration on the Central Suppliers Database (CSD) of the National Treasury.

EMALAHLENI LOCAL MUNICIPALITY

TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF THIRTY-SIX (36) MONTHS

SCHEDULE 2D: JOINT VENTURE AGREEMENT

The tenderer must attach to this page proof of Joint Venture Agreement in case of a Joint Venture signed by both parties.

EMALAHLENI LOCAL MUNICIPALITY

TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF THIRTY-SIX (36) MONTHS

TENDER NO: ELM 17/2023 (RE-ADVERT)

PART C1 : STANDARD CONDITIONS OF TENDER

C1.1 Standard Conditions of Tender

C 1.1: Standard Conditions of Tender

1 GENERAL

1.1 Actions

- 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 timeously and with integrity, and behave equitably, honestly and transparently, comply with all legal obligations and not engage in anticompetitive practices.
- 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:

- a) 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.
- b) 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.

- 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

1.2 **Tender documents**

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

1.3 **Interpretation**

- 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.

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

- 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 fulfill his or her duties impartially;
 - ii) an individual or organization 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 organization which employs that employee.
- b) **comparative offer** means the tenderer's financial offer after all tendered parameters that will affect the value of the financial offer have been taken into consideration in order to enable comparisons to be made between offers on a comparative basis
- 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; and
- d) **fraudulent practice** means the misrepresentation of the facts in order to influence the tender process or the award of a contract arising from a tender offer to the detriment of the employer, including collusive practices intended to establish prices at artificial levels
- e) **organization** means a company, firm, enterprise, association or other legal entity, whether incorporated or not, or a public body
- f) **quality (functionality)** means the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs

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 read, copied and recorded.

Writing 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.

1.5 The employer's right to accept or reject any tender offer

1.5.1 The employer may accept or reject any variation, deviation, tender offer, or alternative tender offer, and may cancel the tender process and reject all tender offers at any time before the formation of a contract. The employer shall not accept or incur any liability to a tenderer for such cancellation and rejection, but will give written reasons for such action upon written request to do so.

1.5.2 The employer may not subsequent to the cancellation or abandonment of a tender process or the rejection of all responsive tender offers re-issue a tender covering substantially the same scope of work within a period of three months unless only one tender was received and such tender was returned unopened to the tenderer.

1.6 Procurement procedures

1.6.1 General

Unless otherwise stated in the tender data, a contract will be concluded with the tenderer who 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.

1.6.2 Competitive negotiation procedure

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.

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

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

- 1.6.2.4 The contract shall be awarded in accordance with the provisions of the General Conditions of Contract after tenderers have been requested to submit their best and final offer.

2 TENDERER'S OBLIGATIONS

2.1 Eligibility

- 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.
- 2.1.2 Submit a tender offer only if the tenderer satisfies that the minimum score for functionality criteria will be met.
- 2.1.3 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.

2.2 Cost of tendering

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.

2.3 Check documents

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

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.

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.

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.

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.

2.8 Seek clarification

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

2.9 Insurance

Be aware that the extent of insurance to be provided by the employer (if any) may 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.

2.10 Pricing the tender offer

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

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

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.

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.

2.11 Alterations to documents

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. Erasures and the use of masking fluid are prohibited.

2.13 Submitting a tender offer

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

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.

- 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.
- 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 shall be the lead partner whom the employer shall hold liable for the purpose of the tender offer.
- 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.
- 2.13.6 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.
- 2.13.7 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.
- 2.13.8 Accept that tender offers submitted by facsimile or e-mail will be rejected by the employer, unless stated otherwise in the tender data.
- 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.
- 2.15 **Closing time**
- 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
- 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.
- 2.16 **Tender offer validity**
- 2.16.1 Hold the tender offer(s) valid for acceptance by the employer at any time during the validity period (**not less than 90 days**) stated in the tender data after the closing time stated in the tender data.
- 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.

- 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.
- 2.16.4 Where a tender submission is to be substituted, submit a substitute tender in accordance with the requirements of **clause 2.13** with the packages clearly marked as "SUBSTITUTE".
- 2.17 **Clarification of tender offer after submission**
- 2.17.1 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:
- Clause 2.17.1** 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.
- 2.18 **Provide other material**
- 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.
- 2.18.2 Dispose of samples of materials provided for evaluation by the employer, where required.
- 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.
- 2.20 **Submit securities, bonds, policies etc.**
- 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.
- 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.

2.22 Return of other tender documents

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

2.23 Certificates

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

EMALAHLENI LOCAL MUNICIPALITY

TENDER NO: ELM 17/2023 (RE-ADVERT)

PART C2: PRICING DATA

- C2.1 Pricing Instructions**
- C2.2 Description of Works**

C2.1 PRICING INSTRUCTIONS

1. General

The pricing instructions describe the criteria and assumptions which will be assumed in the contract that the Tenderer has taken into account when developing his prices. The bills of quantities record the contractor's rates for providing supplies, services, engineering and construction works in accordance with the scope of work.

The terms of payment and the provisions for price adjustment, if applicable, are established in the contract data. These items are not described in the pricing data.

The tenderer's obligations in pricing the tender offer and the employer's undertakings in the checking and correction of arithmetical errors are dealt with in the standard conditions of tender contained in annexure F of SANS 294, as amended in and read in conjunction with the tender data.

2. Documents mutually explanatory

The documents forming the Contract are to be taken as mutually explanatory of one another. The bill of quantities forms an integral part of the contract documents and shall be read in conjunction with the tender data, contract data, and scope of work, site information general and special conditions of contract, the specifications and the drawings.

3. Definitions

For the purpose of this bill of quantities, the following words shall have the meanings hereby assigned to them:

Unit	The unit of measurement for each item of work as defined in the scope of work and site information
Quantity	The number of units of work for each item.
Rate	The payment per unit of measurement at which the contractor contracts to do the work.
Amount	The product of the quantity and the rate tendered for an item.
Sum	An amount contracted for an item, the extent of which is described in the bill of quantities, the specifications or elsewhere but the quantity of work of which is not measured in any units.

4. Descriptions

Descriptions in the bill of quantities are abbreviated and comply generally with those in the standardized specifications. Clause 8 of each standardized specification, read together with the relevant clauses of the scope of work, set out what ancillary or associated activities are included in the rates for the operations specified. Should any requirements of the measurement and payment clause of the applicable standardized specification, or the scope of work, conflict with the terms of the bill, the requirements of the standardized specification or scope of work, as applicable, shall prevail.

5. **References**

The clauses in a specification in which further information regarding the schedule item can be obtained appear under “reference clause” in the bill. The reference clauses indicated are not necessarily the only sources of information in respect of scheduled items. Further information and specifications may be found elsewhere in the contract documents. Standardized specifications are identified by the letter or letters which follow in the COLTO 1998 Edition.

6. **Net measurements**

Unless otherwise stated, items are measured net in accordance with the drawings, and no allowance is made for off-cuts and waste.

7. **Quantities**

The quantities set out in the bill of quantities are the estimated quantities of the contract works, but the contractor will be required to undertake whatever quantities may be directed by the engineer from time to time. The contract price for the completed contract shall be computed from the actual quantities of work accepted and certified for payment.

8. **Currency**

All rates and sums of money quoted in the bill of quantities shall be in Rand and whole cents. Fractions of a cent shall be discounted.

9. **Value Added Tax**

Value Added Tax shall be excluded from the rates and sums contracted for the various items of work included in the bill of quantities. VAT will be added as a single entry to the summary.

10. **Rates and prices**

10.1 General

- a) The contractor must price each item in the bill of quantities in **BLACK INK**. Reproduced computer printouts of the bills of quantities will not be acceptable.
- b) The rates and prices to be inserted in the bill of quantities shall cover all the services and incidentals for the work described under the several items. Such prices and rates shall cover all costs and expenses that may be required in and for the execution of the work described, and shall cover the cost of all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based, as well as overhead charges and profit. Reasonable prices shall be inserted as these will be used as a basis for assessment of payment for additional work that may have to be carried out.
- c) A price or rate is to be entered against each item in the bill of quantities, whether the quantities are stated or not. An item against which no price is entered will be considered to be covered by the other prices or rates in the

bill. The contractor will not be paid for items against which no rate or lump sum has been entered in the bill of quantities.

- d) Should the contractor indicate against any item that compensation for such item is included in another item, the rate for the item included in another item shall be deemed nil.

10.2 "Rate only" items

The contractor shall fill in a rate (in the rate column) against all items where the words "rate only" appear in the amount column, which rate will constitute payment for work which may be done in terms of this item. Such "rate-only" items are used where it is estimated that little or no work will be required under the item or where the item is to be considered as an alternative to another item for which a quantity is given.

10.3 Arithmetic

Excepting where sum amounts are required or where provisional sums have been indicated, the contractor shall enter an applicable rate in the rate column of the bill of quantities for each scheduled item. He shall also enter an appropriate sum in the Amount column for each scheduled item, by determining in the applicable line item the product of the quantity and the unit rate.

If there is an error in the line item resulting from the product of the unit rate and the quantity, the rate shall be binding and the error of extension as entered in the tender offer will be corrected by the employer in determining the contract price.

Where there is an error in addition, either as a result of other corrections required by this checking process or in the tenderer's addition of prices, such error will be corrected by the employer in determining the contract price.

11. Variation in text

No alteration, erasure or addition is to be made in the text of the bill of quantities. Should any alteration, erasure or addition be made, it will not be recognized; the original wording of the bill of quantities will be adhered to.

12. Construction

- a) Attention is drawn to clause 6.7.1 of the general conditions of contract and the contractor must not order the quantities of materials stated in the bill of quantities until he has confirmation from the Manager Disaster, Traffic and Law Enforcement on site that such equipment are in fact the correct equipment.
- b) Items marked "L" in the bill of quantities shall be carried out using labour intensive methods.

C2.2 Description of Works

ELM 17/2023 (RE-ADVERT): TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF THIRTY-SIX (36) MONTHS

TRANSPORTATION OF PORTABLE WATER TO VARIOUS SETTLEMENTS WITHIN EMALAHLENI FOR A PERIOD OF 36 MONTHS.

A. General Information

Purpose

The purpose of this tender is to appoint reliable service providers for the transportation of portable water to various settlements within eMalahleni for a period of 36 months. The objective is to provide safe portable water to all the communities within its jurisdiction, and this includes rural communities who cannot access portable water through the existing bulk and network infrastructure.

Submission of proposals

The proposal must be sealed in an envelope clearly marked “**TRANSPORTATION OF POTABLE WATER IN EMALAHLENI LOCAL MUNICIPALITY FOR A PERIOD OF 36 MONTHS**” must be deposited in the tender box of Emalahleni Local Municipality on or before the closing date of **08 December 2023 at 11:00**.

Proposals must be signed by an authorized agent to bind the contractor to its provisions.

B. Background

Emalahleni Local Municipality as a Water Service Authority and Water Service Provider, has a legislative mandate to fulfill and powers vested in it by the National Water Act to provide clean and safe water to the community. Included in such mandate, it is the function of the Emalahleni Local Municipality to provide safe portable water to all the communities within its jurisdiction, and this includes rural communities who cannot access portable water through the existing bulk and network infrastructure as in terms of Water Services Act 108 of 1997.

The Act mandates the municipality to ensure uninterrupted and quality water supply to its consumers within its area of jurisdiction. The Act further obligates the Water Service Provider to make provision for basic water supply in case of planned and unplanned interruptions.

In 2005/2006 Financial years the Council took a resolution to provide free basic water to informal settlements and water distressed areas by means of water tankers, hence the transportation of potable water is being rendered. Due to capacity challenges within the municipal fleet more than 121 areas are being serviced by external service providers in order for the municipality to realize its mandate.

C. Scope of Works

Service required and Condition

Collection of portable water from the following filling water stations: Witbank (Kwa-Guqa), Ogies and Ga-Nala collection points and water transportation to various settlements within Emalahleni. (Due to the significance and essentiality of the service the Municipality reserves the right to cancel or terminate the contract in a case of a 5-day non-delivery of the service in a month.). A schedule of deliveries will be provided to the successful bidders and the route will be allocated proportionally to the qualifying number of water tankers.

A minimum of fourth (40) water tankers is required to services more than 121 areas that without piped water supply.

Truck Specification and Operation Conditions

- A built-in water tank with Steps from rear platform to top catwalk with a lockable tap for drinking water. (ranging from 10 000L to 20 000L).
- The Water Tanker shall be used to carry potable water only.
- The water tank shall have a capacity ranging from 10 000L to 20 000L, and be available for inspection during evaluation.
- The tank construction shall be such that there shall be no leakages
- The tank must be fitted with the water pump and the pipe system
- The tank shall be mounted slightly sloping towards the rear so as to decant the tank completely
- The tank shall have a circular manhole of 300 - 600 mm dia.
- Mounted on top of the tank depending on the size of the tank, a water tight manhole cover with good quality rubber and gasket shall be bolted to the collar of manhole.
- The manhole cover shall be provided with round threaded blank cap with lugs of 10" dia. With rubber gasket.
- The tank shall be fitted with one 63 mm instantaneous hydrant.
Connection with non-return valve, for filling the tank throughout 50 mm above galvanized 'C' class pipe.
- The truck must be fitted with a tracking device. (Track records print outs to be used for monthly payment)
- Each contractor shall provide a high-pressure hose reel to fit into the Municipalities fire hydrant for use in case of an emergency.
- To provide a locker of suitable size with locking arrangement, the locker will be used for keeping delivery hoses accessories.

- Suitable locker provision shall be made at a convenient place.

Steel tank

- The inside surface of the tank shall be prepared with sand blasting to remove the complete corrosion of M.S. material including baffle plates and immediately two coats of Epoxy primer shall be applied from inside and outside.

The tank shall be offered for inspection immediately after sand blasting is completed before epoxy primer is applied.

Water quality monitoring (by the municipality)

The Scientific Services Section shall conduct water quality sampling of the prospective bidders to ensure the quality of water inside the tankers.

- **Team Capability**

Briefly explain the technical capability of the project team that will be directly involved in the execution of the project. Also include the availability of resources including equipment at the team's disposal to be able to execute the project successfully please attached the CV's of the personnel that will be involve in the project.

- **Price Proposal**

All prices quoted must be VAT inclusive.

Please ensure that the following documents are attached:

- Bidders must be registered on the Central Supplier Database (CSD) of the National Treasury and attach their CSD Report
- Original completed and signed applicable bid documents and **preference claim forms** in terms of the Preferential Procurement Regulations.
- Tax compliance status pin
- Municipal water and lights statement or written confirmation that municipal rates and taxes and municipal service charges of the prospective bidder and all Executive Directors of the business are not in arrears from their respective municipality for more than 90 days.
- Joint Venture Agreement in case of a Joint Venture signed by both parties. (if applicable)
- Authority of signatory (Attached on Bid document)
- A Detailed Company Profile (detailing relevant past experience)
- Schedule of previous contracts completed
- Truck proof of ownership (License Registration)
- Team capability- CV's for the personnel that will be involve in the project
- Tracker certification for the trucks
- Photos for the truck, the trucks will be subjected for loco inspection and the following checklist will be checked (As per the attached checklist)

SHOULD ALL DOCUMENTS STATED ABOVE NOT BE ATTACHED, YOUR BID MAY BE DECLARED INVALID AND FOR THOSE WHO MEET THE REQUIREMENTS, A FUTHER EVALUATION WILL BE PERFORMED BASED ON FUNCTIONAILTY AND IN -LOCO INSPECTION.

Additional conditions

- The lowest or any proposal will not necessarily be accepted, and Emalahleni Local Municipality reserves the right to accept the whole or any portion of a proposal.
- All prices and details must be legible / readable to ensure the bid will be considered for adjudication.
- Bidders are requested to furnish the full registered name of the bidding company on the bid.
- Bidders are also required to initial each page of the proposal.
- Corrections may not be made by means of a correction fluid or tape such as Tipp-ex or a similar product. In the event of a mistake having been made it shall be crossed out in ink and be accompanied by a full signature at each and every alteration. The Municipality reserves the right to reject the proposal if corrections are not made in accordance with the above.
- No price increases will be considered in the event of payments made against invoiced prices.

2. SPECIAL CONDITIONS OF CONTRACT

1. The successful service provider must provide clearance from the municipality where they are based indicating that they are not in arrears with regard to their respective municipal services accounts.
2. Bidders must initial all the pages of the Bid document and sign the Bidder particulars page in full.
3. Bidders must complete the original Bid document in black ink, and notice must be taken that tip-ex may not be used in the document
4. The original Bid document must be submitted together with the cost proposals
5. The transaction shall be subject to any stipulations in any Act, Ordinance or By-law pertaining thereto.
6. No proposals by any person that is not competent to enter into an agreement will be considered and if it is established that it is the case, the contract agreement in this regard will be considered null and void by Council.
7. Disputes must be settled by means of mutual consultation, mediation (with or without legal representation) or when unsuccessful, in a South African court of law on an attorney and client scale.
8. Should any legal action be deemed necessary to determine any aspect arising out of these conditions or to enforce any rights in terms of these conditions, then and in that event the parties hereto agree categorically to the jurisdiction of the Magistrate's Court to hear such action and to pass judgment notwithstanding the fact that the cause of action is beyond the jurisdiction of the Court: Provided always that Council shall have the right in its sole discretion to take action in any competent higher court in any matter exceeding the ordinary jurisdiction of the Magistrate's Court.
9. The stealing and selling of Municipal water is strictly prohibited and it remains the company's responsibility to ensure that its truck drivers comply to this condition as the municipality will dismiss the company should its truck drivers be found to have engaged in illegal sale of municipality water.
10. Water tankers to be fitted with functional trucking devices and generated monthly report will form part of supporting documents to confirm payments for the work done, **NO PAYMENT WILL BE PROCESSED IF THE TRUCKING DEVICE REPORT ISN'T SUBMITTED.**
11. The successful bidders' truck will have to be blended with the municipal logo as contracted services for the municipality by the owner.

Council reserves the right to accept any cost proposal in a tender submitted or part thereof and will not be obliged to accept the highest tender price submitted in a tender OR any proposal submitted.

3.GENERAL

All relevant documentation must be handed to the Emalahleni Local Municipality on completion of the project if applicable.

4. FINANCIAL CONTRACT ARRANGEMENTS

The following financial conditions are set by Council:

- a) No payment of the milestones shall be made prior to an inspection to be done by Council to determine whether the work is complete and satisfactory
- b) Payment will be made upon completion of milestones as agreed to in the tender
- c) Payment of the sub-consultants will be made by the successful bidder/appointed consultant in due consultation with Council and upon verification by Council that the work is complete and satisfactory.

5. EVALUATION AND ADJUDICATION CRITERIA

All bid proposals received will be evaluated and adjudicated on an **80/20** preference point system.

Technical Proposal

All bid proposals received will firstly be evaluated on the following scoring criteria on the basis of functionality and price (80%) and Specific goals (20%).

Prospective bidders must at least achieve a minimum score of 70% in respect of functionality in order to be regarded as responsive and to qualify for further evaluation.

Functionality Breakdown and Weights

CRITERIA	OWNED WATER TANKERS	HIRED WATER TANKERS	WEIGHTS	SCORE
Proof of Ownership or lease agreement for the trucks			5	
Business situated within the Emalahleni Local Municipality jurisdiction area (locality)			10	
Water tankers registered within the Municipality jurisdiction area local licensing traffic authority			20	
Water tankers condition			55	
Team capability - office personnel and site personnel (driver's license and PDP)			10	
TOTAL POINTS			100	

All bidders who have scored a minimum of 70% on functionality will be considered for further evaluation and all those who failed to achieve the minimum percentage will be disqualified.

The final evaluation for functionality will be in-logo inspection. This will comprise of the following:

1. WATER TANKER CONDITION:

- 4 points, the truck must be roadworthy
 - 5 points, the readings on the truck odometer must be less than 300 KM
 - 10 points, built- in water tanker (only built-in tank trucks meaning that motor vehicle that have been specifically designed to carry liquefied loads,
 - 6 points, truck paint must be uniform (truck and the tanker must have same colour)
 - 10 points, the truck must be fitted with a water pump and pipe system
 - 2 points, the truck must have an access, lockable manhole lid without and leaks
 - 2 points, truck must be fitted with step ladder
 - 16 points, the tanker must be free from corrosiveness
- NB please attach photos to verify the above-mentioned pointers and confirmation will be done during in-logo inspection.

All bidders who have qualified after the in-logo inspection will then be evaluated for the price which is calculated on rates only and the 80/20 preference points and specific goals.

AN IN- LOCO INSPECTION WILL THEN BE CONDUCTED TO DETERMINE THE FITNESS AND ROADWORTYNESS OF ALL TRUCKS, ONLY TRUCKS THAT WILL MEET THE ABOVE REQUIREMENTS WILL BE ALLOCATED ROUTES.

ROUTES WILL BE ALLOCATED PROPORTIONALLY TO THE NUMBER OF TRUCKS THAT WILL HAVE PASS THE TEST, BIDDERS ARE NOT RESTRICTED TO SPECIFIC NUMBER OF TRUCKS, HOWEVER ANY OTHER ADDITIONAL TRUCKS AFTER THE CLOSING DATE OF THE IN-LOGO INPECTION WILL BE SUBJECTED TO THE SAME PROCESS BEFORE THEY CAN BE ALLOCATED ROUTES.

2. PROOF OF OWNERSHIP OR LEASE AGREEMENT FOR THE TRUCKS:

Full 5 points will be allocated provided the supporting documents are attached or 0 point for not submitting the supporting documents.

3. BUSINESS SITUATED WITHIN EMALAHLENI LOCAL MUNICIPALITY JURISDICTION AREA (LOCALITY):

NB PLEASE ATTACH PROOF/MUNICIPALITY ACCOUNT, LEASE AGREEMENT OR BUSINESS CARD WITH FULL DETAILS

- 10 points Business operating with Emalahleni Local Municipality jurisdiction
- 5 points Nkangala District area
- 3 points Mpumalanga Province
- 2 points other Provinces

4. WATER TANKERS REGISTERED WITHIN THE MUNICIPALITY JURISDICTION AREA LOCAL LICENSING TRAFFIC AUTHORITY:(ATTACH PROOF)

- 20 points Water trucks registered within the Municipality licensing traffic Authority
- 10 points Nkangala District area
- 6 points Mpumalanga Province
- 4 points other Provinces

5. TEAM CAPABILITY - OFFICE PERSONNEL AND SITE PERSONNEL:

10 points will be allocated provided the supporting documents are attached or 0 point for not submitting the supporting documents,

Proposed organigram for the project, office and site personnel, cv's and qualifications.

NB! Bidders are requested to attached supporting documents, pictures, cv's, company organogram, Business card, vehicles registration certificates, proof of address for the Business and the supporting documents for the proposed Technological innovations to be eligible to claim the functionality points failure to submit the supporting documents will nullify their bid document.

.

SELF COMPLIANCE CHECK SHEET

Ref no	Question	ELM'S Requirement	Bidder's Response
		YES *	YES / NO
1	Have you initialed all the pages of the bid document?		
2	Have you completed and signed the Returnable Schedules required?		
3	Have you completed and signed the MBD 4 form - Declaration of Interest?		
4	Have you completed and signed the MBD 6.1 form - Preference points claim form in terms of the Preferential Procurement Regulations 2022?		
5	Have you completed and signed the MBD 8 - Declaration of bidder's past Supply Chain Management Practices and MBD 9 - Certificate of Independent Bid Determination?		
6	Is the Company registered with the Central Supplier Database (CSD) of the National Treasury in terms of the category required in this Specification? Have you submitted a copy of your CSD Report?		
7	Have you completed and signed the Bill of Quantities?	N/A	
8	Do you understand the Scope of Work that includes the Standard Specifications / Project Specifications and Particular Specifications?		
9	Is the Company registered with the Construction Industry Development Board (CIDB) in terms of the category required in this Specification? Have you submitted a copy of your CIDB Certificate?	N/A	



EMALAHLENI LOCAL MUNICIPALITY

TECHNICAL SERVICES

WATER AND SANITATION SECTION

GENERAL CONDITIONS OF CONTRACT

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information inspection
6. Patent Rights
7. Performance security
8. Inspections, tests, and analyses
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental Services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Variation orders
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Anti-dumping and countervailing duties and rights
25. Force Majeure
26. Termination for insolvency
27. Settlement of Disputes
28. Limitation of Liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. Transfer of contracts
34. Amendments of contracts
35. Prohibition of restrictive practices

1. Definitions- The following terms shall be interpreted as indicated:

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

- 1.14. "GCC" means the General Conditions of Contract.
- 1.15. "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16. "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the 47 supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the goods covered by the bid will be manufactured.
- 1.17. "Local content" means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.
- 1.18. "Manufacture" means the production of products in a factory using labour, materials, components, and machinery and includes other related value-adding activities.
- 1.19. "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20. "Project site," where applicable, means the place indicated in bidding documents.
- 1.21. "Purchaser" means the organization purchasing the goods.
- 1.22. "Republic" means the Republic of South Africa.
- 1.23. "SCC" means the Special Conditions of Contract.
- 1.24. "Services" means those functional services ancillaries to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance, and other such obligations of the supplier covered under the contract.
- 1.25. "Supplier" means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.
- 1.26. "Tort" means Delict.
- 1.27. "Turnkey" means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.
- 1.28. "Written" or "in writing" means hand-written in ink or any form of electronic or mechanical writing.

2. Application

- 2.1. These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services (excluding professional services related to the building

and construction industry), sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2. Where applicable, special conditions of contract are also laid down to cover specific goods, services or works.

2.3. Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

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

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

4. Standards

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

5. Use of contract documents and information inspection

5.1. The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2. The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3. Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser

5.4. The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent Rights

- 6.1. The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 6.2. When a supplier develops documentation / projects for the municipal owned entity (MOE), the MOE shall retain ownership of any written opinion, advice, presentation or other deliverable that the supplier produces for the MOE in its tangible form on payment of all fees due, owing and payable to the supplier. The ownership of the intellectual property rights in the services, products of the services and the methodology and technology used to perform the services and all its working papers shall be retained by the supplier.

7. Performance security

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

8. Inspections, tests, and analyses

- 8.1. All pre-bidding testing will be for the account of the bidder.
- 8.2. If it is a bid condition that goods to be produced or services to be rendered should at any stage be subject to inspections, tests and analyses, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or organization acting on behalf of the purchaser.
- 8.3. If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

- 8.4. If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5. Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6. Goods and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7. Any contract goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods, which do comply with the requirements of the contract. Failing such removal, the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.
- 8.8. The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.

9. Packing

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

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental Services

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

14. Spare parts

- 14.1. As specified, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and;
 - b) in the event of termination of production of the spare parts:

- i. advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
- ii. following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

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

16. Payment

- 16.1. The method and conditions of payment to be made to the supplier under this contract shall be specified.
- 16.2. The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.
- 16.3. Payment shall be made within 30 days of receipt of the supplier statement, provided the statement submitted is correct and submitted to Johannesburg Water before the end of

the month. The invoice for which payment is required must be correct, must be reflected on the statement referred to above and also be submitted by no later than the end of the month.

16.4. Payment will be made in Rands unless otherwise stipulated.

17. Prices

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

18. Variation in contractual hours

18.1. In the event that work to be performed in terms of this contract be completed in less than the envisaged time, or in the event that the duration of such work exceeds the envisaged time pursuant to the approval by JW of an exception report referred to in clause 8 of the Scope of Work, the rate per hour payable to the contractor shall remain the same.

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

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

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

- 21.3. The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the goods are required, or the supplier's services are not readily available.
- 21.4. Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of penalties.
- 21.5. Upon any delay beyond the delivery period in the case of a goods contract, the purchaser shall, without cancelling the contract, be entitled to purchase goods of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

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

23. Termination for default

- 23.1. The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
 - b) if the supplier fails to perform any other obligation(s) under the contract; or
 - c) if the supplier, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2. In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner, as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for

any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3. Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4. If a purchaser intends to impose a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.

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

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

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

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

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

24. Antidumping and countervailing duties and rights

24.1. When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State

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

25. Force Majeure

- 25.1. Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2. If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

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

27. Settlement of Disputes

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

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

28. Limitation of Liability

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

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

29. Governing language

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

30. Applicable law

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

31. Notices

31.1. Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.

31.2. The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties

32.1. A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

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

33. Transfer of contracts

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

34. Amendment of contracts

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

35. Prohibition of restrictive practices

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