



**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**TENDER NUMBER:**

**EAM 05-2022/23**

<b>TENDER DESCRIPTION:</b>	<b>TENDER FOR THE REPAIR OF VARIOUS BULK REFUSE CONTAINERS, AS AND WHEN REQUIRED OVER A 3 YEAR PERIOD.</b>
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**NAME OF BIDDER:** .....

**CSD NUMBER:** .....

**VENDOR NUMBER (WHERE APPLICABLE)** .....

Municipality

Prepared by:  
City of Tshwane Metropolitan  
Tshwane House  
320 Madiba Street  
Pretoria  
0002  
Tel: 012 358 9999

<b>BID CLOSING DATE</b>	<b>16 February 2023</b>
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Only bidders registered on the central supplier database (CSD) and with a CSD number will be considered for this tender, as this is a requirement from the National Treasury.

**Bidders are required to submit electronic copies of the bid either by memory stick/USB flash drive/CD/DVD together with the hard copy of the Bid/Proposals**



## CITY OF TSHWANE METROPOLITAN MUNICIPALITY

DEPARTMENT: ENVIRONMENTAL AND AGRICULTURAL MANAGEMENT

Bids are hereby invited from suppliers for the following bid:

Bid number	Description	Department	Contact person	Compulsory briefing session	Closing date
EAM 05-2022/23	TENDER FOR THE REPAIR OF VARIOUS BULK REFUSE CONTAINERS, AS AND WHEN REQUIRED OVER A 3 YEAR PERIOD.	ENVIRONMENTAL AND AGRICULTURAL MANAGEMENT	Louis Makhubele ( <a href="mailto:LouisMa@tshwane.gov.za">LouisMa@tshwane.gov.za</a> or 012 358 5616)	<u>Compulsory briefing session</u> <b>Venue:</b> No 1 Von Wielligh Street, Pretoria West 01 February 2023 at 10:00	<b>16 February 2023 at 10:00</b>

The document is downloadable from the e-Tender Portal and City of Tshwane website.

Bidders are required to submit electronic copies of the bid by memory stick/USB flash drive/CD/DVD together with the hard copy of the Bid/Proposals.

Each quotation shall be enclosed in a sealed envelope that bears the correct identification details and shall be placed in the tender box located at:

City of Tshwane Metropolitan Municipality  
Tshwane House  
320 Madiba Street  
Pretoria  
0002

Documents must be deposited in the bid box not later than **10:00 on 16 February 2023** when bids will be opened in public.

**Bidders must contact the following officials for any enquiries:**

- Technical enquiries: Louis Makhubele (LouisMa@tshwane.gov.za or 012 358 5616)
- Supply chain enquiries: Maureen Radingoana (maureenr@tshwane.gov.za or 012 358 6153)
- **Bids will remain valid for a period of 90 days after the closing date.**

**VALIDITY PERIOD**

a)The validity period for the tender after closure is 90 days. CoT shall have right and power to extend any tender validity period beyond any initial validity period set and subsequent extensions. SCM shall ensure that an extension of validity is requested in writing from all bidders before the validity expiry date. Extension of validity shall be finalised while the quotations/bids are still valid.

Bids received after the closing date and time will not be considered. The City of Tshwane does not bind itself to accept the lowest or any other bid in whole or in part.

## INDEX

Number	Details	Document	Page
1.	Very important notice on disqualifications		
2.	Certificate of authority for signatory		
3.	Scope of work		
4.	Pricing schedule		
5.	Invitation to bid	MBD 1	
6.	Pricing schedule: Firm prices (purchases)	MBD 3.1	
7.	Pricing schedule: non-firm prices (purchases)	MBD 3.2	
8.	Declaration of interest	MBD 4	
9.	Declaration for procurement above R10 million (all applicable taxes Included)	MBD 5	
10.	Preference points claimed form	MBD 6.1	
11.	Local Content	MBD 6.2	
12.	Contract form: rendering of services	MBD 7.2	
13.	Declaration of past supply chain management practice	MBD 8	
14.	Certificate of independent bid determination	MBD 9	
15.	General conditions of contract		
16.	Service-level agreement		
<b>LIST OF RETURNABLE DOCUMENTS THAT SHOULD FORM PART OF BID DOCUMENT</b>			
17.	Company registration certificate		
18.	Rates and taxes or lease agreement		
19.	Clearance certificate or unique PIN		
20.	BBBEE certificate		
21.	CSD summary report		

## VERY IMPORTANT NOTICE ON DISQUALIFICATIONS

A bid that does not comply with the peremptory requirements stated hereunder will be regarded as not being an “acceptable bid”, and such a bid will be rejected. An “acceptable bid” means any bid which, in all respects, complies with the conditions of the bid and the specifications as set out in the bid documents, including the conditions as specified in the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and related legislation as published in *Government Gazette 22549*, dated 10 August 2001, in terms of which provision is made for this policy.

1. If any pages have been removed from the bid document and have therefore not been submitted or if a copy of the original bid document has been submitted.
2. If the bid document is completed using a pencil. Only black ink must be used to complete the bid document.
3. The bidder attempts to influence or has in fact influenced the evaluation and/or awarding of the contract.
4. The bid has been submitted after the relevant closing date and time.
5. If any bidder who, during the last five years, has failed to perform satisfactorily on a previous contract with the municipality, municipal entity or any other organ of state after written notice was given to that bidder that performance was unsatisfactory.
6. The accounting officer must ensure that, irrespective of the procurement process followed, no award may be given to a person –
  - (a) who is in the service of the state;
  - (b) 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; or
  - (c) who is an advisor or consultant contracted to the municipality in respect of a contract that would cause a conflict of interest.
7. Bid offers will be rejected if the bidder or any of his/her directors are listed on the Register of Bid Defaulters in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) as a person prohibited from doing business with the public sector.
8. Bid offers will be rejected if the bidder has abused the City of Tshwane supply chain management system.
9. Failure to complete and sign the certificate of independent determination or disclosure of wrong information.

Failure to comply with the above will lead to immediate disqualification.

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**Bidder**

## **CERTIFICATE OF AUTHORITY FOR SIGNATORY**

Status of concern submitting tender (delete whichever is not applicable):

COMPANY/PARTNERSHIP/ONE-PERSON BUSINESS/CLOSE CORPORATION/JOINT VENTURE

### **A. COMPANY**

If the bidder is a company, a certified copy of the resolution of the board of directors that is personally signed by the chairperson of the board, authorising the person who signs this bid to do so and to sign any contract resulting from this bid, and any other documents and correspondence in connection with this bid or contract on behalf of the company, must be submitted with this bid.

An example is shown below:

By resolution of the board of directors on ..... 20.....,  
Mr/Ms ..... has been duly  
authorised to sign all documents in connection with  
Bid Number .....

**SIGNED ON BEHALF OF THE COMPANY:** .....

**IN HIS/HER CAPACITY AS** .....

**DATE:** .....

**SIGNATURE OF SIGNATORY:** .....

**WITNESSES:** 1. ....

2. ....

## B. PARTNERSHIP

The following particulars in respect of every partner must be furnished and signed by every partner:

Full name of partner	Residential address	Signature
.....	.....	.....
.....	.....	.....
.....	.....	.....

We, the undersigned partners in the business trading as ....., hereby authorise ..... to sign this bid as well as any contract resulting from the bid and any other documents and correspondence in connection with this bid or contract on our behalf.

.....	.....	.....
Signature	Signature	Signature

.....	.....	.....
Date	Date	Date

## C. ONE-PERSON BUSINESS

I, the undersigned, ....., hereby confirm that I am the sole owner of the business trading as .....

.....	.....
Signature	Date

#### **D. CLOSE CORPORATION**

In the case of a close corporation submitting a bid, a certified copy of the founding statement of such corporation shall be included with the bid with a resolution by its members, authorising a member or other official of the corporation to sign the documents and correspondence in connection with this bid or contract on behalf of the company.

An example is shown below:

By resolution of the members at the meeting on ..... 20..... at .....  
....., Mr/Ms ....., whose  
signature appears below, has been duly authorised to sign all documents in  
connection with Bid Number .....

**SIGNED ON BEHALF OF THE CLOSE CORPORATION:** .....

**IN HIS/HER CAPACITY AS:** .....

**DATE:** .....

**SIGNATURE OF SIGNATORY:** .....

**WITNESSES:**      1. ....

                         2. ....



## E. CERTIFICATE OF AUTHORITY FOR JOINT VENTURES

This returnable schedule is to be completed by joint ventures.

We, the undersigned, are submitting this bid offer in joint venture and hereby authorise Mr/Ms ..... , authorised signatory of the company..... , acting in the capacity of the lead partner, to sign all documents in connection with the bid offer and any contract resulting from it on our behalf.

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

## **ENVIRONMENT AND AGRICULTURE MANAGEMENT**

### **BID NAME**

**TENDER FOR THE REPAIR OF VARIOUS BULK REFUSE CONTAINERS,  
AS AND WHEN REQUIRED OVER A 3 YEAR PERIOD.**

### **BID NUMBER**

**EAM 05-2022-23**

## **1. INTRODUCTION**

The City of Tshwane (hereafter referred to as the CoT) is seeking service providers to submit tenders for the repair of various bulk refuse containers, as and when required over a 3 year period. This is a City wide tender for modification and repair of steel bulk containers which are in various regions

### **1.1 Workshop**

The bidders must have a functional workshop, preferably within Tshwane or neighbouring areas, where containers will be repaired. The bidders are expected to collect and return bins needing repairs from the City premises to their workshop as and when required. It is expected that the bidder should have vehicles which are compatible with the steel waste containers.

### **1.2 Quantity of bins to be repaired**

The city anticipates to repair more than 250 steel containers over a period of 3 years as and when required.

## **2. BACKGROUND**

As part of re-engineering waste management fleet in order to provide an efficient and effective bulk waste service, the City has procured hook lift trucks as opposed to chain lift trucks as part of its new fleet. Therefore, the new waste management fleet will require bin modification to be compatible with the hook-lift trucks. The City aims to modify 120 bins in a period of 6 months.

The City utilizes various waste containers in the delivery of bulk waste management services. These services are often offered to businesses, hospitals, shopping malls, and residential properties by using 4m<sup>3</sup>, 6m<sup>3</sup>, 9m<sup>3</sup>, 11m<sup>3</sup> and 22m<sup>3</sup> steel bulk waste containers.

### **3. DESCRIPTION OF SERVICES**

The bidders are expected to repair/ refurbish steel bulk containers as described below. This will include skips (4m<sup>3</sup>, 6m<sup>3</sup>, 9m<sup>3</sup> and 11 m<sup>3</sup>) and 22m<sup>3</sup> bulk steel containers.

The successful bidder must be able to collect the containers from the City, effect the necessary repairs and return the same within **14 days** from the time of issuing the order.

#### **3.1 MATERIAL**

The material must all be fabricated and rolled steel parts, A-grade quality mild steel, with 430 MPa to 500 MPa UTS (Ultimate Tensile Strength), and have the following through section dimensions:

- 1) Plate and pressed sections 4,5mm Mild Steel Plate.
- 2) Hinge bar 50mm.
- 3) Tip bar 40mm Mild Steel Round.
- 4) Rear hook bar 25mm diameter.
- 5) Tip bar lugs and backing plate 8mm Mild Steel Plate.
- 6) Lifting trunions- 65 Diameters. Forged Steel

#### **3.2 LIFTING LUGS**

The 4 (four) lifting lugs are forged steel. The lifting lug base is full welded to the outer face of the side plate. The vertical channel pressing is then fitted over the lug and full welded to the lifting lug. The outer wedge section of the lifting lug is fitted with the centre line of the wedge on a vertical plane, the small edge of the wedge uppermost. See drawings attached as Appendix A. The physical inspection of the bulk containers will be done during the tender briefing session.

#### **3.3 TIPPING BARS**

A 40mm diameter, solid steel tip bar is space welded into 4 (four) 150mm x 8mm steel brackets, these brackets are in turn full welded to 8mm steel cross bearing plates. The assembly is then fully welded to the end base section. These assemblies are then fully welded to the front and back face of the containers

#### **3.4 FLOOR SECTION**

The floor construction is the folded type with 5 (five) equal spaced pressed angle shapes along the longitudinal plane. This results in 15 (fifteen) reinforcing bends.

### **3.5 SIDES**

The sides are folded edges with the top sill section reinforced by a full pressed channel for strength. The side bottom section is folded under the floor plate thus reinforcing the bottom corners.

### **3.6 ENDS**

The ends are also folded type with folds on all 4 (four) sides which thus reinforces all the joining corners. The top is also reinforced with a fully pressed channel to double the strength.

### **3.7 UPPER –INNER CORNERS**

All upper inner corners of the bin are reinforced by a fully welded 140mm wide tapering angle gusset.

### **3.8 LIFTING HOOK**

A lifting hook is forged steel. The lifting hook base is full welded to the outer face of the front plate and is reinforced.

### **3.9 CONSTRUCTION AND WELDING**

The edge to edge method of construction is **NOT** allowed. The construction is space welded inside and outside, apart from the critical areas such as lift trunions and tipping brackets which are fully welded.

### **3.10 BRANDING**

The bidder should also include price for branding of each container in-case the city requires such service. The City's logo must be attached on a 30cm x 30cm branding area on the sides of the bins. The art work for the logo will be provided to the successful bidder upon appointment. However, pricing of the logo is also included in the pricing schedule.

## **4. EVALUATION CRITERIA**

The tender will be evaluated in five stages. The evaluation will be done as follows;

- Stage 1: Administrative compliance
- Stage 2: Mandatory Requirements
- Stage 3: Functionality Criteria
- Stage 4: Site Inspection
- Stage 5: Preferential Point System.

### **Stage 1: Administrative Compliance**

All the bids will be evaluated against the administrative responsiveness requirements as set out in the list of returnable documents.

*Non-submission of the documents will lead to disqualification. The bidder will not be evaluated further.*

### **Stage 2: Mandatory Requirements**

The bidder must submit:

1. An artisan trade certificate in welding issued by the Quality Council for Traders & Occupations (QCTO) of at least one of the people who will be responsible for the repairs and refurbishment of steel bins
2. Proof that the person whose certificate has been submitted is either the owner of the company (company registration document) or is employed by the bidder (employment contract for the duration of the contract).
3. Curriculum vitae of the person whose certificate has been submitted.
4. The bidder must have a fully functioning workshop.

*Non-submission of the documents will lead to disqualification. The bidder will not be evaluated further.*

### **Stage 3: Functionality Criteria**

Bidders complying with all the requirements on stage 1 and 2 will be evaluated against the Functionality Evaluation Criteria as set out in table 1 below. Bidders must score **60 points** or more out of a total 100 points allocated for the functionality criteria. Bidders that score less than **60 points** will not be evaluated further. Bidders who obtain the required threshold points of **60 points** or more will qualify for further evaluation.

**Table 1: FUNCTIONALITY CRITERIA**

	Criteria	Score (1-5)	Weight	Maximum Points
1	<p>Track record of the bidder in similar projects.</p> <ul style="list-style-type: none"> <li>• 3 or more reference letters</li> <li>• 2 reference letters</li> <li>• 1 reference letter (Submit signed client reference letter(s))</li> </ul>	<p>5</p> <p>3</p> <p>2</p>	8	40
2	<p>Experience of the key staff member(s) (artisan welder with trade certificate) who will be primarily responsible for the service</p> <ul style="list-style-type: none"> <li>• 4 years experience or more</li> <li>• 2 – 3 years experience</li> <li>• 6 months - 1 year experience</li> </ul> <p>(Curriculum vitae of the person whose certificate has been submitted)</p>	<p>5</p> <p>3</p> <p>1</p>	9	45
3	<p>Location of the bidder's workshop</p> <ol style="list-style-type: none"> <li>1. Located within CoT municipal area</li> <li>2. Located outside CoT but in Gauteng</li> <li>3. Located outside Gauteng in RSA</li> </ol> <p>(Any of the following documents will serve as proof of location of the business: the registration address in the company registration documents, a municipal account statement or a Lease Agreement)</p>	<p>3</p> <p>2</p> <p>1</p>	5	15
<b>Total</b>				<b>100</b>

#### **Stage 4: Site Inspection**

The tender may not necessarily be awarded to the highest scoring bidder, the preferred bidder must also meet the workshop requirements as stated below.

The City reserves the right to conduct an inspection as part of its evaluation process, to verify that the bidder's workshop meets the requirements for tools/equipment as specified in **Annexure A**, which will include *amongst other*.

- a) Industrial sandblaster, minimum pressure 9 bar.
- b) Electrical overhead crane, minimum capacity 5 tons.
- c) Industrial CO2 welding machine.
- d) Industrial air compressor no less than 9-bar with accessories for spray-painting.
- e) Heavy duty grinding machinery.
- f) An industrial workshop space under cover.
- g) Chassis bending equipment able to handle at least 3m long chassis.
- h) The spray booth and welding facility can accommodate a 30m<sup>3</sup> bulk containers.
- i) The City will also seek to verify that the bidder has a suitable vehicle with the capability to collect and return containers for repairs.

If the workshop does not meet any of these requirements, the bidder will be disqualified.

#### **Stage 5: Preference point system**

The preferential point system used will be the 80/20 points system in terms of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) Regulations 2017.

- 80 points for price.
- 20 points for B-BBEE status (service provider to submit the certified copy of the B-BBEE level rating certificate).

#### **5. VALIDITY PERIOD**

- a) The validity period for the tender after closure is 90 days. CoT shall have right and power to extend any tender validity period beyond any initial validity period set and subsequent extensions. SCM shall ensure that an extension of validity is requested in writing from all bidders before the validity expiry date. Extension of validity shall be finalised while the quotations/bids are still valid.

## 6. PRICING SCHEDULE

Bidders are requested to complete the below pricing schedule as part of their response to the tender.

ITEM	DESCRIPTION	UNIT	Unit Price
	<b>DISMANTELLING</b>		
	<b>4 Cubic Meter Container</b>		
1	Lifting Lugs	No	
2	Side Plate	m <sup>2</sup>	
3	Strengthen Pressed Channel	m	
4	Floor Plates	m <sup>2</sup>	
5	Tipping Bar Lugs and Backing Plate	No	
6	Tipping Bar	No	
7	Front and Back Angles	m <sup>2</sup>	
	<b>6 Cubic Meter Container</b>		
8	Lifting Lugs	No	
9	Side Plate	m <sup>2</sup>	
10	Strengthen Pressed Channel	m	
11	Floor Plates	m <sup>2</sup>	
12	Tipping Bar Lugs and Backing Plate	No	
13	Tipping Bar	No	
14	Front and Back Angles	m <sup>2</sup>	
	<b>11 Cubic Meter Container</b>		
15	Lifting Lugs	No	
16	Side Plate	m <sup>2</sup>	
17	Strengthen Pressed Channel	m	
18	Floor Plates	m <sup>2</sup>	
19	Tipping Bar Lugs and Backing Plate	No	
20	Tipping Bar	No	
21	Front and Back Angles	m <sup>2</sup>	
	<b>22 Cubic Meter Container</b>		
23	Lifting Lugs	No	
24	Side Plate	m <sup>2</sup>	
25	Strengthen Pressed Channel	m	
26	Floor Plates	m <sup>2</sup>	



27	Tipping Bar Lugs and Backing Plate	No	
28	Hinges	No	
29	Chassis straightening	m	
30	Spray painting	m <sup>2</sup>	
31	Closing mechanisms (ratchets)	No	
32	Wheels	No	
	<b>ASSEMBLING</b>		
	<b>4 Cubic Meter Container</b>		
33	Lifting Lugs	No	
34	Side Plate	m <sup>2</sup>	
35	Strengthen Pressed Channel	m	
36	Floor Plates	m <sup>2</sup>	
37	Tipping Bar Lugs and Backing Plate	No	
38	Tipping Bar	No	
39	Front and Back Angles	m <sup>2</sup>	
	<b>6 Cubic Meter Container</b>		
40	Lifting Lugs	No	
41	Side Plate	m <sup>2</sup>	
42	Strengthen Pressed Channel	m	
43	Floor Plates	m <sup>2</sup>	
44	Tipping Bar Lugs and Backing4Plate	No	
45	Tipping Bar	No	
46	Front and Back Angles	m <sup>2</sup>	
	<b>11 Cubic Meter Container</b>		
47	Lifting Lugs	No	
48	Side Plate	m <sup>2</sup>	
49	Strengthen Pressed Channel	m	
50	Floor Plates	m <sup>2</sup>	
51	Tipping Bar Lugs and Backing Plate	No	
52	Tipping Bar	No	
53	Front and Back Angles	m <sup>2</sup>	
	<b>22 Cubic Meter Container</b>		
54	Lifting Lugs	No	
55	Side Plate	m <sup>2</sup>	
56	Strengthen Pressed Channel	m	
57	Floor Plates	m <sup>2</sup>	
58	Tipping Bar Lugs and Backing Plate	No	
59	Tipping Bar	No	
60	Front and Back Angles	m <sup>2</sup>	
61	Hinges	No	

62	Chassis straightening	m	
63	Spray painting	m <sup>2</sup>	
64	Closing mechanisms (ratchets)	No	
65	Wheels	No	
	<b>SUPPLY AND INSTALLATION OF SERIAL NUMBERS (Made out of steel and of Arial font, font size 150mm) e.g. COT R01/35</b>		
66	4m <sup>3</sup> Container	No	
67	6m <sup>3</sup> Container	No	
68	11m <sup>3</sup> Container	No	
69	22m <sup>3</sup> Container	No	
	<b>SPRAY PAINTING OF SERIAL NUMBER</b>		
70	4m <sup>3</sup> Container	No	
71	6m <sup>3</sup> Container	No	
72	11m <sup>3</sup> Container	No	
73	22m <sup>3</sup> Container	No	
	<b>SPRAYPAINTING OF CITY LOGO (on a 30x30 cm branding space) WITH TELEPHONE NUMBERS (Arial font , font size 100mm)</b>		
74	Two sides of Containers	No	
	<b>SANDING OF CONTAINERS</b>		
75	4m <sup>3</sup> Container	No	
76	6m <sup>3</sup> Container	No	
77	11m <sup>3</sup> Container	No	
78	22m <sup>3</sup> Container	No	
	<b>DEGREASING AND SPRAY PAINTING OF CONTAINERS</b>		
79	4m <sup>3</sup> Container	No	
80	6m <sup>3</sup> Container	No	
81	11m <sup>3</sup> Container	No	
82	22m <sup>3</sup> Container	No	
	<b>SUPPLY AND INSTALLATION OF A HOOK (FOR A HOOK LIFT TRUCK)</b>		
83	22m <sup>3</sup> Container	No	
<b>SUB TOTAL Excl VAT</b>			
<b>VAT 15%</b>			

<b>TOTAL Incl VAT</b>	
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**The tender will be awarded to one service provider for all the items.**

## **7. MINIMUM REQUIREMENT FOR THE INTERESTED TENDERS AND SPECIAL CONDITIONS OF THE TENDER**

All tender conditions and/or instructions set out below must be strictly adhered to, failing which this tender submission may be declared non-responsive.

### **Quality and guarantees**

If at any time on delivery the Waste Management Division is dissatisfied with the workmanship, the Contractor must immediately remedy any defect to the satisfaction of the Waste Management Division.

In the event that the Contractor delays remedial work longer than the time stipulated (14 days after being issued with a purchase order) by the Waste Management Division, the Municipality may have the work done at the Contractor's expense.

The Guarantee period for quality and workmanship shall be twelve (12) months. A Guarantee below 12 months will result in the tender to be disqualified.

Tenderers shall submit full details of their guarantee commitments, indicating in all respects the extent thereof, failing to do so, the tender will not be considered.

## **8. MANAGEMENT AND REPORTING**

The service provider/bidders will report to the representative of City Tshwane who will be the programme manager.

The appointed service provider will be expected to sign a service level agreement with the city of Tshwane.

## **9. AREA TO BE SERVICED**

The Service Provider shall be responsible for collection and delivery of waste containers at various waste management sites in the City, as stipulated in the list below. It should be noted that the Service Provider will be held liable for incidents during the transportation process.

<b>Region</b>	<b>Address</b>
Region 1	Rosslyn Depot – Piet Rautenbach Street, Back of fire Station  Phillip Nel Park Garden site, Sytza Wierda Rd, Phillip Nel Park, Pretoria

	Dorandia Garden Site, Daan De Wet Nel Ave, Pretoria North Mabopane Transfer station, Lukas Mangope Rd, Mapobane
Region 2	Magalieskruin Mini Dumping Site, Magalieskruin (Koorsboom str & Zambezi Rd)
Region 3	Waste Management Depot, 1 Von Wielligh Street, Pretoria West  Claudius, Second Ave, Laudium  Japie Peens St, Mountain View, Pretoria
Region 4	Lyttleton, Kruger Ave Mini Dumping site, Kruger avenue  Centurion, M37 Rooihuiskraal Road, Centurion
Region 5	Rayton, Municipality offices Corner Oakley and Montrose street
Region 6	Watloo Electrical Depot, Petroleum Street, Next to SPCA  Menlo Park Garden site, 26th Ave Menlo Park, Pretoria  Eersterus Garden Site, St. Joseph, Eersterust, Pretoria
Region 7	Bronkhorstspruit Depot, Commando Street, Next to Commando Complex

## 10. APPLICATION

The Specifications do not amend or replace the General Conditions of Contract and Special Conditions of Contract in any way, but complement them by providing more specific details and requirements and should therefore be read in conjunction with both documents above.

All quotations shall be inclusive of all transportation costs (AA rates shall apply)

## 11. APPROVAL

Waste Management will approve the workmanship by the service provider before payment. In case where there are defaults, the Division will request the service provider to rectify before approval is granted.

## 12. ALTERATIONS AND REPAIRS TO CONTAINERS

The service provider may only carry out alterations and repairs to containers as per written instruction provided in the order.

### **13. MEETING AND INSPECTIONS**

The Municipality reserves the right to carry out inspections at the workplaces of all tenderers to determine whether the tenderers have complied with the requirements.

### **14. MATERIALS**

The Contractor will be required to comply with all standard specifications and must, if ordered to do so, furnish the Waste Management Division with certificates indicating that the materials do comply. Where specified, materials must bear the official SABS mark.

### **15. DEFAULT**

Should it appear to the Divisional Head: Waste Management Division that the Contractor is not executing the contract in accordance with its true intent and meaning, or that he is refusing or delaying to carry out the contract, or that he is not carrying out the contract at a rate of progress to ensure delivery by the delivery date (14 days after receipt of purchase order), or that the time has expired within which delivery should have taken place, or in the event of any other failure or default by the Contractor, then the Divisional Head: Waste Management Division may give notice in writing to the Contractor to make good the failure or default. Should the Contractor fail to comply with the notice within (7 days), the Divisional Head: Waste Management Division will, without prejudice to any of the Municipality's rights under the contract, be at liberty forthwith to perform such service as the Contractor may have neglected to do, or take the contract wholly or in part out of the Contractor's hands and order from or contract with any other supplier. The Contractor will be responsible for any loss the Municipality may incur by reason of such action taken in terms of this clause.

### **16. RECORDS**

The contractor shall keep record of all containers repaired according to date, time, and serial number and according to the issued order. The contractor shall also supply the Municipality with these records as and when required.

### **17. PERFORMANCE CLAUSE**

**17.1** Performance clause will be based on section 21 of the general conditions of contracts.

**17.2** Bidders must note that the City reserves the right to appoint more than one service provider and failure to adhere to section 21 of the general conditions of contract will result in the Council appointing the other service provider to provide the service.

**17.3** In addition lead time (14 days after receipt of purchase order) as stipulated in the Purchase Order will be strictly adhered to and failure to deliver in time will result in the appointment of the next appointed service provider to render the service.

## **18. MARKET ANALYSIS**

The city of Tshwane reserves the right to conduct market analysis. Should the city exercise this option, Where a tenderer offers a price that is deemed not to be viable to supply goods or services as required, written confirmation will be made with the tenderer if they will be able to deliver on the price, if a tenderer confirm that they cannot, The tenderer will be disqualified on the basis of being non-responsive. If they confirm that they can deliver, a tight contract to mitigate the risk of non-performance will be entered into with the service provider. Further action on failures by the supplier to deliver will be handled in terms of the contract including performance warnings and listing on the database of restricted suppliers.

The city further reserves the right to negotiate a market related price with a tenderer scoring the highest points. If the tenderer does not agree to a market-related price, the city reserves the right to negotiate a market-related price with the tenderer scoring the second highest points, if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points. If a market-related price is not agreed, the city reserves the right to cancel the tender.

**MBD 1**

**PART A**

**INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CITY OF TSHWANE MUNICIPALITY</b>					
BID NUMBER:	EAM 05 2022/23	CLOSING DATE:	16 February 2023	CLOSING TIME:	10:00am
DESCRIPTION	TENDER FOR THE REPAIR OF VARIOUS BULK REFUSE CONTAINERS, AS AND WHEN REQUIRED OVER A 3 YEAR PERIOD.				
<b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).</b>					

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

<b>City of Tshwane Metropolitan Municipality</b>					
<b>Tshwane House</b>					
<b>320 Madiba Street</b>					
<b>Pretoria</b>					
<b>0002</b>					
<b>SUPPLIER INFORMATION</b>					
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:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes  <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		<input type="checkbox"/> Yes  <input type="checkbox"/> No

**[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]**

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER	.....	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>		<b>TECHNICAL INFORMATION MAY BE DIRECTED TO:</b>	
DEPARTMENT	Supply Chain Management	DEPARTMENT	Environmental And Agricultural Management
CONTACT PERSON	Maureen Radingoana	CONTACT PERSON	Louis Makhubele
TELEPHONE NUMBER	012 358 6153	TELEPHONE NUMBER	012 358 5616
EMAIL ADDRESS	<a href="mailto:Maureenr@tshwane.gov.za">Maureenr@tshwane.gov.za</a>	EMAIL ADDRESS	<a href="mailto:LouisMa@tshwane.gov.za">LouisMa@tshwane.gov.za</a>



## PART B

### TERMS AND CONDITIONS FOR BIDDING

<b>1. BID SUBMISSION</b>	
1.1	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2	<b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED—(NOT TO BE RE-TYPED) OR ONLINE</b>
1.3	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
<b>2. TAX COMPLIANCE REQUIREMENTS</b>	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3	APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
2.4	FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
2.5	BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.6	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.7	WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
<b>3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>	
3.1	IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? YES <input type="checkbox"/> NO <input type="checkbox"/>
3.2	DOES THE ENTITY HAVE A BRANCH IN THE RSA? YES <input type="checkbox"/> NO <input type="checkbox"/>
3.3	DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? YES <input type="checkbox"/> NO <input type="checkbox"/>
3.4	DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? YES <input type="checkbox"/> NO <input type="checkbox"/>
3.5	IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? YES <input type="checkbox"/> NO <input type="checkbox"/>
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.	

**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 3.1

#### PRICING SCHEDULE: FIRM PRICES (PURCHASES)

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

**IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT**

Name of Bidder.....	Bid Number .....
Closing Time .....	Closing Date .....

OFFER TO BE VALID FOR ..... DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
----------	----------	-------------	--

- Required by: .....
- At: .....  
.....
- Brand and Model .....
- Country of Origin .....
- Does the offer comply with the specification(s)? \*YES/NO
- If not to specification, indicate deviation(s) .....
- Period required for delivery .....  
\*Delivery: Firm/Not firm
- Delivery basis .....

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

\*\* "all applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

\* Delete if not applicable

**MBD 3.2****PRICING SCHEDULE: NON-FIRM PRICES (PURCHASES)**

**NOTE: PRICE ADJUSTMENTS WILL BE ALLOWED AT THE PERIODS AND TIMES SPECIFIED IN THE BIDDING DOCUMENTS.**

**IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT**

Name of Bidder .....	Bid number .....
Closing Time .....	Closing Date .....

OFFER TO BE VALID FOR 90 DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
----------	----------	-------------	--

- Required by: .....
- At: .....
- Brand and model .....
- Country of origin .....
- Does the offer comply with the specification(s)? \*YES/NO
- If not to specification, indicate deviation(s) .....
- Period required for delivery .....
- Delivery: \*Firm/Not firm
- \*\* "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.
- \* Delete if not applicable

## MBD 3.2 PRICE ADJUSTMENTS

### A. NON-FIRM PRICES SUBJECT TO ESCALATION

1. IN CASES OF PERIOD CONTRACTS, NON FIRM PRICES WILL BE ADJUSTED (LOADED) WITH THE ASSESSED CONTRACT PRICE ADJUSTMENTS IMPLICIT IN NON FIRM PRICES WHEN CALCULATING THE COMPARATIVE PRICES
2. IN THIS CATEGORY PRICE ESCALATIONS WILL ONLY BE CONSIDERED IN TERMS OF THE FOLLOWING FORMULA:

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

Where:

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

3. The following index/indices must be used to calculate your bid price:

Index..... Dated.....	Index..... Dated.....	Index..... Dated.....
Index..... Dated.....	Index..... Dated.....	Index..... Dated.....

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

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

## MBD 3.2

### B. PRICES SUBJECT TO RATE OF EXCHANGE VARIATIONS

1. Please furnish full particulars of your financial institution, state the currencies used in the conversion of the prices of the items to South African currency, which portion of the price is subject to rate of exchange variations and the amounts remitted abroad.

PARTICULARS OF FINANCIAL INSTITUTION	ITEM NO	PRICE	CURRENCY	RATE	PORTION OF PRICE SUBJECT TO ROE	AMOUNT IN FOREIGN CURRENCY REMITTED ABROAD
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		

2. Adjustments for rate of exchange variations during the contract period will be calculated by using the average monthly exchange rates as issued by your commercial bank for the periods indicated hereunder: (Proof from bank required)

AVERAGE MONTHLY EXCHANGE RATES FOR THE PERIOD:	DATE DOCUMENTATION MUST BE SUBMITTED TO THIS OFFICE	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE	DATE UNTIL WHICH NEW CALCULATED PRICE WILL BE EFFECTIVE

ADJUSTMENT PERIODS	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE
1 <sup>st</sup> Adjustment	After 12 calendar months
2 <sup>nd</sup> Adjustment	After 24 calendar months

**NB: Unless prior approval has been obtained from Supply Chain Management, no adjustment in contract prices will be made**

## MBD 4

### DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
3. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
  - 3.1 Full Name of bidder or his or her representative: .....
  - 3.2 Identity Number: .....
  - 3.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>) .....
  - 3.4 Company Registration Number: .....
  - 3.5 Tax Reference Number: .....
  - 3.6 VAT Registration Number: .....
  - 3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.
  - 3.8 Are you presently in the service of the state? **YES / NO**
    - 3.8.1 If yes, furnish particulars. ....  
.....

<sup>1</sup> MSCM Regulations: "in the service of the state" means to be –

- (a) a member of –
  - (i) any municipal council;
  - (ii) any provincial legislature; or
  - (iii) the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

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

3.9 Have you been in the service of the state for the past twelve months? **YES/NO**

3.9.1 If yes, furnish particulars. ....

.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.10.1 If yes, furnish particulars. ....

.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.11.1 If yes, furnish particulars. ....

.....

3.12 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.12.1 If yes, furnish particulars. ....

.....

3.13 Are any spouse, child or parent of the company's directors trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars. ....

.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. **YES / NO**

3.14.1 If yes, furnish particulars: ....

.....



4. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	State Employee Number

.....

**Signature**

.....

**Date**

.....

**Capacity**

.....

**Name of Bidder**

**DECLARATION FOR PROCUREMENT ABOVE R10 MILLION (ALL APPLICABLE TAXES INCLUDED)**

For all procurement expected to exceed R10 million (all applicable taxes included), bidders must complete the following questionnaire:

1 Are you by law required to prepare annual financial statements **\*YES / NO**  
for auditing?

1.1 If yes, submit audited annual financial statements for the past three years or since the date of establishment if established during the past three years.

.....  
.....

2 Do you have any outstanding undisputed commitments **\*YES / NO**  
for municipal services towards any municipality for more than three months or any other service provider in respect of which payment is overdue for more than 30 days?

2.1 If no, this serves to certify that the bidder has no **\*YES / NO**  
undisputed commitments for municipal services towards any municipality for more than three months or other service provider in respect of which payment is overdue for more than 30 days.

2.2 If yes, provide particulars.

.....  
.....  
.....  
.....

3 Has any contract been awarded to you by an organ of state **\*YES / NO**

during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract?

3.1 If yes, furnish particulars

.....  
 .....

4.1 Will any portion of goods or services be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality / municipal entity is expected to be transferred out of the Republic? **\*YES / NO**

4.1 If yes, furnish particulars

.....  
 .....

# **CERTIFICATION**

**I, THE UNDERSIGNED (NAME) .....  
 CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM  
 IS CORRECT. I ACCEPT THAT THE STATE MAY ACT AGAINST ME SHOULD  
 THIS DECLARATION PROVE TO BE FALSE.**

.....	.....
Signature	Date

.....	.....
Position	Name of Bidder

## MBD 6.1

### PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.**

#### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value 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 The value of this bid is estimated **not exceed** R50 000 000 (all applicable taxes included) and therefore the **80/20** preference point system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contribution.

1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTION	20
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

1.5 Failure on the part of a bidder to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS), or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or a sworn affidavit confirming annual turnover and level of black ownership in case of an EME and QSE together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

## 2. DEFINITIONS

- (a) **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended by Act No 46 of 2013;
- (f) **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- (g) **“consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- (h) **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- (i) **“EME”** means an Exempted Micro Enterprise as defines by Codes of Good Practice issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (j) **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

- (k) **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- (l) **“non-firm prices”** means all prices other than “firm” prices;
- (m) **“person”** includes a juristic person;
- (n) **“QSE”** means a Qualifying Small Enterprise as defines by Codes of Good Practice issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 ( Act No. 53 of 2003);
- (o) **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- (p) **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (q) **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- (r) **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (s) **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

### 3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.

- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

#### 4. POINTS AWARDED FOR PRICE

##### 4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

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

Where

$P_s$  = Points scored for comparative price of bid under consideration  
 $P_t$  = Comparative price of bid under consideration  
 $P_{\min}$  = Comparative price of lowest acceptable bid

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

- 5.1 In terms of Regulation 5(2) and 6(2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

- 5.2 A bidder who qualifies as an EME in terms of the B-BBEE Act must submit a sworn affidavit confirming Annual Total Revenue and Level of Black Ownership.
- 5.3 A Bidder other than EME or QSE must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their

B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

## **6. BID DECLARATION**

- 6.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

## **7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 5.1**

- 7.1 B-BBEE Status Level of Contribution:      =      (maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or a sworn affidavit.

## **8. SUB-CONTRACTING**

- 8.1 Will any portion of the contract be sub-contracted?

*(Tick applicable box)*

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



8.1.1. If yes, indicate:

- i) What percentage of the contract will be subcontracted .....%
- ii) The name of the sub-contractor .....
- iii) The B-BBEE status level of the sub-contractor .....
- iv) Whether the sub-contractor is an EME.

**(Tick applicable box)**

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

## 9. DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of company/firm: .....

9.2 VAT number: .....

9.3 Company registration number: .....

### 9.4 TYPE OF COMPANY/ FIRM

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

### 9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

.....

### 9.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
  - ☐ Supplier
  - ☐ Professional service provider
  - ☐ Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]

### 9.7 MUNICIPAL INFORMATION

**Municipality where business is situated:** .....

**Registered Account Number:** .....

**Stand Number:** .....

9.8 Total number of years the company/firm has been in business .....

9.9 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

**WITNESSES**

1. ....

2. ....

.....

**SIGNATURE(S) OF BIDDERS(S)**

**DATE** .....

**ADDRESS:** .....

.....

.....

## MBD 7.2

### CONTRACT FORM: RENDERING OF SERVICE

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

#### **PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)**

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number **EAM 05 2022/23** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, viz
    - Invitation to bid;
    - Tax clearance certificate;
    - Pricing schedule(s);
    - Filled in task directive/proposal;
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2017;
    - Declaration of interest;
    - Declaration of Bidder's past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract; and
  - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.

5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

WITNESSES

1 .....

2 .....

DATE: .....

## MBD 8

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

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be rejected if that bidder, or any of its directors have:
  - a. abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
  - b. been convicted for fraud or corruption during the past five years;
  - c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 4 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). <b>The Database of Restricted Suppliers now resides on the National Treasury's website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</b>	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)? <b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

## CERTIFICATION

**I, THE UNDERSIGNED (FULL NAME) .....  
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM  
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**

## **MBD 9**

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

- 1 This Municipal Bidding Document (MBD) must form part of all bids<sup>1</sup> invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
  - a. take all reasonable steps to prevent such abuse;
  - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
  - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.

<sup>2</sup> 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.

**MBD 9**  
**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid: **EAM 05 2022/23**

**TENDER FOR THE REPAIR OF VARIOUS BULK REFUSE CONTAINERS, AS AND WHEN REQUIRED OVER A 3 YEAR PERIOD.**

(Bid Number and Description)

in response to the invitation for the bid made by:

**CITY OF TSHWANE MUNICIPALITY**

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 consortium<sup>3</sup> will not be construed as collusive bidding.

<sup>3</sup> Joint venture or consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.



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

# **THE NATIONAL TREASURY**

**Republic of South Africa**



---

**GOVERNMENT PROCUREMENT**

**GENERAL CONDITIONS OF CONTRACT**

**July 2010**

## GOVERNMENT PROCUREMENT

### GENERAL CONDITIONS OF CONTRACT

July 2010

#### NOTES

The purpose of this document is to:

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

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

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

## 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 analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
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. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

## General Conditions of Contract

### 1. Definitions

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

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

### **1. Application**

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

### **3. General**

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

- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)
- 4. Standards** 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information inspection.** 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent rights** 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance 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 in SCC.
- 8. Inspections, tests and analyses** 8.1 All pre-bidding testing will be for the account of the bidder.

- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

## **9. Packing**

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

## **10. Delivery and documents**

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



<b>11. Insurance</b>	11.1	The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
<b>12. Transportation</b>	12.1	Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
<b>13. Incidental services, services</b>	13.1	<p>The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:</p> <ul style="list-style-type: none"> <li>(a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;</li> <li>(b) furnishing of tools required for assembly and/or maintenance of the supplied goods;</li> <li>(c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;</li> <li>(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</li> <li>(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.</li> </ul>
	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.
<b>14. Spare parts</b>	14.1	<p>As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) in the event of termination of production of the spare parts: <ul style="list-style-type: none"> <li>(i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and</li> <li>(ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.</li> </ul> </li> </ul>
<b>15. Warranty</b>	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 in SCC.

- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.
- 16. Payment**
  - 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
  - 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
  - 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
  - 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
  - 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract**
  - 18.1 No variation in or modification of the terms of the contract shall be made **amendments** except by written amendment signed by the parties concerned.
- 19. Assignment**
  - 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
  - 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
  - 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
  - 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.
- 22. Penalties**
- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.
- 23. Termination for default**
- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
  - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated

fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

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

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

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

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

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

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

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

#### **25. Force Majeure**

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

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all

		reasonable alternative means for performance not prevented by the force majeure event.
<b>26. Termination for insolvency</b>	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.
<b>27. Settlement of Disputes</b>	27.1	If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
	27.2	If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
	27.3	Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
	27.4	Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
	27.5	Notwithstanding any reference to mediation and/or court proceedings herein, <ul style="list-style-type: none"> <li>(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and</li> <li>(b) the purchaser shall pay the supplier any monies due the supplier.</li> </ul>
<b>28. Limitation of liability</b>	28.1	Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6; <p>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</p> <p>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.</p>
<b>29. Governing language</b>	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.
<b>30. Applicable law</b>	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
<b>31. Notices</b>	31.1	Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties**
- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme**
- 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation
- 34. Prohibition of Restrictive practices**
- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

## **1 SERVICE LEVEL AGREEMENT**

entered into between

### **THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

(Hereafter referred to as the “**City**”)

Herein Represented by:

In his capacity as:

(Duly authorised hereto)

**AND**

(Hereafter referred to as the “**Service Provider**”)

Herein Represented by:

In his/her capacity as:

(Duly authorised hereto)

## **2 SERVICE LEVEL AGREEMENT**

entered into between

### **THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

a municipality as described in section 2 of the Local Government: Municipal Systems Act, 2000 and as contemplated in section 155 of the Constitution of the Republic of South Africa, 1996 as a category A municipality, or the Assignee, if applicable, herein represented by ..... in his capacity as City Manager duly authorised thereto under and by virtue of a resolution passed on 26 January 2012, and who by his signature hereto warrants that he is properly authorised to sign this Agreement.

(Herein referred to as the “**CITY**”)

**AND**

(Herein referred to as the “**SERVICE PROVIDER**”)



## CONTENT

<u><a href="#">1</a></u>	<u><a href="#">DEFINITIONS</a></u>	68
<u><a href="#">2</a></u>	<u><a href="#">INTERPRETATION</a></u>	70
<u><a href="#">3</a></u>	<u><a href="#">APPOINTMENT</a></u>	70
<u><a href="#">4</a></u>	<u><a href="#">PURPOSE OF THE AGREEMENT</a></u>	71
<u><a href="#">5</a></u>	<u><a href="#">RELATIONSHIP</a></u>	71
<u><a href="#">6</a></u>	<u><a href="#">DURATION</a></u>	71
<u><a href="#">7</a></u>	<u><a href="#">CONTACT PERSON</a></u>	71
<u><a href="#">8</a></u>	<u><a href="#">SCOPE OF GENERAL SERVICES</a></u>	72
<u><a href="#">9</a></u>	<u><a href="#">PRICE AND PAYMENT</a></u>	72
<u><a href="#">10</a></u>	<u><a href="#">SERVICE LEVELS</a></u>	74
<u><a href="#">11</a></u>	<u><a href="#">WITHHOLDING OF PERFORMANCE</a></u>	75
<u><a href="#">12</a></u>	<u><a href="#">ACCESS</a></u>	75
<u><a href="#">13</a></u>	<u><a href="#">DELIVERY OF GOODS</a></u>	76
<u><a href="#">14</a></u>	<u><a href="#">DEFECTIVE GOODS / LATENT PRODUCTS</a></u>	76
<u><a href="#">15</a></u>	<u><a href="#">INSPECTION</a></u>	77
<u><a href="#">16</a></u>	<u><a href="#">TRAINING</a></u>	78
<u><a href="#">17</a></u>	<u><a href="#">SERVICE PROVIDER'S WARRANTIES, INDEMNITIES AND LIMIT OF LIABILITY</a></u>	78
<u><a href="#">18</a></u>	<u><a href="#">SERVICE PROVIDER'S PERSONNEL</a></u>	81

<u><a href="#">19</a></u>	<u><a href="#">STATUTORY AND EMPLOYMENT ISSUES</a></u>	81
<u><a href="#">20</a></u>	<u><a href="#">SUB-CONTRACTING</a></u>	82
<u><a href="#">21</a></u>	<u><a href="#">CONFIDENTIALITY</a></u>	83
<u><a href="#">22</a></u>	<u><a href="#">INTELLECTUAL PROPERTY RIGHTS</a></u>	84
<u><a href="#">23</a></u>	<u><a href="#">FORCE MAJEURE</a></u>	85
<u><a href="#">24</a></u>	<u><a href="#">CESSION AND ASSIGNMENT</a></u>	86
<u><a href="#">25</a></u>	<u><a href="#">AMENDMENTS TO THE GCC</a></u>	86
<u><a href="#">26</a></u>	<u><a href="#">BREACH AND TERMINATION</a></u>	88
<u><a href="#">27</a></u>	<u><a href="#">EARLY TERMINATION</a></u>	89
<u><a href="#">28</a></u>	<u><a href="#">DISPUTES</a></u>	90
<u><a href="#">29</a></u>	<u><a href="#">LAWS AND JURISDICTION</a></u>	92
<u><a href="#">30</a></u>	<u><a href="#">NOTICES AND COMMUNICATIONS</a></u>	92
<u><a href="#">31</a></u>	<u><a href="#">GENERAL AND MISCELLANEOUS</a></u>	94
<u><a href="#">32</a></u>	<u><a href="#">EXECUTION</a></u>	95

**RECORDAL:**

**WHEREAS** the City requires the supply, repair and maintenance of electric actuators used in City Of Tshwane's Water Treatment Plants for a 3 (three) year period with effect from or the nearest date thereto;

**AND WHEREAS** the City wishes to appoint a Service Provider. The Service Provider to supply ,repair and maintenance of electric actuators used in City Of Tshwane's Water Treatment Plants("Services");

**AND WHEREAS** the Service Provider wishes to provide such Services;

**AND WHEREAS** the Service Provider has indicated that it has the necessary expertise, skills and capabilities to provide the Services;

**NOW THEREFORE** the Parties have agreed to enter into this Agreement, in terms of which, shall provide the Services in the Service Areas thereof, to the City in accordance with the terms and subject to the conditions of this Agreement:

## DEFINITIONS

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Agreement, including this introduction, bear the meanings ascribed to them hereunder:

**“Agreement”** means this Service Level Agreement and shall include the Government Procurement General Conditions of Contract (July 2010) (“GCC”), which is Annexure ..... hereto, any annexures and/or schedules and/or attachments and/or appendices and/or any addenda hereto or incorporated herein by reference, as amended from time to time. This Service Level Agreement shall constitute Special Conditions of Contract as envisaged by clause 1.23 and clause 2 of the GCC;

**“Business Day”** means any day from Monday to Friday excluding Public Holidays as defined in the Public Holidays Act 36 of 1994 (“Public Holidays Act”) as amended from time to time;

**“City”** means the City of Tshwane Metropolitan Municipality, a metropolitan municipality established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998;

**“Contact Persons”** means persons identified by the Parties as persons who are responsible for the execution of the Agreement and whose names are set out in clause 30 and who can be substituted in writing from time to time;

**“Contract Price”** shall mean the amount reflected as the Contract Price in clause 9 below, and the Appointment Letter dated , and the Payment Schedule attached herewith as Annexure respectively;

**“Contract Period”** means the Contract Period as reflected in clause 0 below;

**“Effective Date”** means the date of appointment being or nearest date as per the attached Appointment Letter marked as Annexure.

**“Equipment”** means the Service Provider’s electric actuators that will be supplied, repair and maintained at City Of Tshwane Water Treatment Plant

**“Electric Actuator”** means that the Service Provider will supply, repair and maintain electric actuators to the City in terms of this Agreement;

**“Goods”** shall mean, the electric actuators;

**“Intellectual Property”** means patents, designs, know-how, copyright and trademarks and all rights having equivalent or similar effect which may exist anywhere in the world, introduced and required by either Party to give effect to their obligations under this Agreement, owned in whole or in part by, or licensed to either Party prior to the Effective Date or developed after the Effective Date, and includes all further additions and improvements to the Intellectual Property, otherwise pursuant to this Agreement;

**“Month”** means a calendar month;

**“Parties”** means the City and the Service Provider and **“Party”** means either of them as the context requires;

**“Project Site”** means the premises on which the Temba Water Treatment Plant and Roodeplaats Water Treatment Plant and Rietvlei Water Treatment Plant is situated;

**“Services”** means the services to be provided by the Service Provider to the City in terms of this Agreement as detailed in clause 0 below;

**“Service Provider”** means a private company duly incorporated in accordance with the company laws of the Republic of South Africa with company registration number;

**“Signature Date”** means the date of signature of this Agreement by the Party signing last;

**“Subcontract”** means any contract or Agreement or proposed contract between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;

**“Subcontractor”** means the third party with whom the Service Provider enters into a Subcontract;

**“Tax Invoice”** means the document as required by section 20 of the Value Added Tax Act 89 of 1991, as amended from time to time; and

**“VAT”** means Value Added Tax as defined in terms of the Value Added Tax Act of 1991.

## **INTERPRETATION**

Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.

Unless the context clearly indicates a contrary intention, any word connoting:

Any singular shall be deemed to include a reference to the plural and vice versa;

Any one gender shall be deemed to include a reference to the other two genders;  
and

A natural person shall be deemed to include a reference to a legal or juristic person and vice versa.

The expiry or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after any such expiry or termination of this Agreement or those provisions which of necessity shall continue to be effective after such expiry or termination of this Agreement, notwithstanding that the clauses themselves do not expressly provide for this.

The rule of interpretation that a written agreement shall be interpreted against the Party responsible for the drafting or preparation of that Agreement shall not apply.

Where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail.

Any reference to any legislation is a reference to such legislation as at the Effective Date and as amended or re-enacted from time to time.

If any provision in a definition is a substantive provision conferring any rights or imposing any obligations on any Party, then notwithstanding that it is only in the definitions clause, effect shall be given to it as if it were a substantive provision in this Agreement.

In the event of a conflict between this Service Level Agreement and the GCC, this Service Level Agreement shall prevail.

## **APPOINTMENT**

The City hereby appoints the Service Provider, who accepts such appointment, as stated in the Appointment Letter dated , attached herewith as Annexure..... to provide the Services as set out in the Scope of Work attached herewith as Annexure..... and in accordance with the terms and subject to the conditions of this Agreement.

## **PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to:

Formalise and regulate the working relationship between the Parties;

Set out the roles and responsibilities of the Parties; and

Define process and procedures to be followed by the Parties in relation to the Services.

## **RELATIONSHIP**

Nothing in this Agreement shall constitute, or be deemed to constitute a partnership or joint venture between the Parties. Furthermore the Service Provider acknowledges and agrees that its status under this Agreement is that of an independent service provider and its status shall in no way be deemed to be that of an agent or employee of the City, for any purpose whatsoever. Neither Party shall have any authority or power to bind the other Party or to contract in the name of the other Party or create a liability against the other Party in any way or for any purpose.

## **DURATION**

This Agreement shall commence on the Effective Date, and shall subsist for a period of 3 (three) years, unless terminated earlier pursuant to clause 27 below.

## **CONTACT PERSON**

The work to be performed by the Service Provider hereunder will be supervised by the City's Contact Person.

The Parties shall notify each other, in writing from time to time, of the details of their nominated Contact Person.

The Contact Persons shall liaise and update each other on the progress of the Services rendered and shall endeavour to resolve and remedy any problems or disputes that may arise in relation to the Services.

Either Party may substitute its Contact Person at its discretion provided that each Party shall give the other Party reasonable notice of such substitution and will provide replacement employees of equivalent ability.

Without derogating from the foregoing, should either Party replace a Contact Person for any reason whatsoever, it shall ensure, to the greatest extent possible in the circumstances, that the suitable period of hand-over and overlap takes place, at its cost, between the new and the encumbered Contact Person.

## **SCOPE OF GENERAL SERVICES**

The Service Provider shall, for the duration of this Agreement, provide the Services set out below:

Supply, repair and maintenance of electric actuators and

Supply of the City's requirements of electric actuators in accordance with the specification.

## **PRICE AND PAYMENT**

The City shall pay to the Service Provider a Contract Price in the amount, inclusive of VAT and 10% contingencies as stated in the Appointment Letter, attached herewith as Annexure... and in accordance with the Price Schedule, attached herewith as Annexure .....

The City shall pay to the Service Provider:

The electric actuator prices for that the Service Provider supplies to the City Water Treatment Plants.

The repair and maintenance in respect of the electric actuators as set out in price schedule.



The electric actuators price will be paid to the Service Provider in respect of the quantity of electric actuators that the Service Provider supplies to the City during a Month.

The electric actuators prices will be fixed and firm for the first 12 (twelve) Months of this Agreement. On each anniversary of the Effective Date, the Service Provider will escalate the electric actuator prices by furnishing the City with at least 30 (thirty) days' written notice of such escalation:

All payments under this Agreement shall be made by electronic funds transfer or other forms of payment as the Parties may agree from time to time, within 30 (thirty) days after the date of receipt by the City of the Service Provider's valid and undisputed Tax Invoices and month-end statements together with the supporting documentation. A Tax Invoice or an amount on a Tax Invoice will be regarded as "undisputed" or "not in dispute" if the City has not notified the Service Provider in writing within 15 (fifteen) days from the date of receipt of the Tax Invoice of any bona fide dispute that it wishes to raise in respect of the Tax Invoice, or an amount on a Tax Invoice. Should the City timeously notify the Service Provider of a dispute, it shall include in its notice its detailed reasons for such dispute.

All amounts and other sums payable in terms of this Agreement and Schedules hereto will be stipulated exclusive of VAT, unless expressly stated otherwise.

Where the payment of any valid and undisputed Tax Invoice, or any part of the said Tax Invoice which is not in dispute, is not made by the due date, the Service Provider, without prejudice to any other rights or remedies that the Service Provider has under this Agreement or in law, shall be entitled to:

After furnishing the City with written notice, suspend the Services without incurring any liability of whatever nature until the City has paid all overdue undisputed amounts; and/or

Charge interest on the outstanding amount, at the Bank prime rate of interest in force, for the period from the due date of payment until the outstanding amount is fully paid.

There shall be no interest levied on a Tax Invoice, or an amount thereon, that is in dispute between the Parties.

All Tax Invoices shall be addressed to the City's Contact Person.

All payments shall be transferred, by the City to the Service Provider electronically into the Service Provider's bank account, the details of which are set out below:

Payment will only be deemed to have been effected to the Service Provider once its bankers have confirmed receipt of the payment.

The City shall not be entitled, for any cause whatsoever, to withhold (except in relation to a disputed amount), deduct from or defer any amount due by it to the Service Provider. All payments shall be free of demand, exchange and set off.

To the extent that the payment terms afforded to the City constitute the granting of credit facilities to the City:

The Service Provider reserves the right to suspend or withdraw the City's credit facilities at any time if the City is in default under this Agreement;

The Service Provider reserves the right to reduce or increase the credit limit under the aforesaid credit facilities;

Whatever credit limit is granted to the City will not be deemed to be a limit of the City's indebtedness to the Service Provider under this Agreement.

## **SERVICE LEVELS**

The Service Provider recognises that the City has entered into this Agreement relying specifically on the Service Provider's following representations regarding service levels including, *inter alia* -

All work to be performed and Services rendered under this Agreement shall comply with industry norms and best practice acceptable within the industry and shall be executed by the Service Provider in accordance with the provisions of this Agreement.

The Service Provider shall provide suitably qualified and trained employees to provide the Services to the City in terms of this Agreement, and shall allocate, in its discretion employee resources in accordance with the technical skill and knowledge required, provided that any exercise of such discretion by the Service Provider shall not negatively impact on the provision of the Services by the Service Provider to the City.

Amongst others, the Service Provider shall comply with and provide the Services as set out in clause 0 above.

## **WITHHOLDING OF PERFORMANCE**

The Service Provider may not under any circumstances, including, without limitation, non-payment by the City, withhold any Services or Vehicles from the City during the currency of this Agreement, unless it validly terminates this Agreement in terms of clause 26 below.

## **ACCESS**

The City shall allow the Service Provider reasonable access to the Project Site, provided that:

Access is related to the Services to be provided by the Service Provider; and

The Service Provider adheres to all rules, regulations and instructions applicable at the Project Site that are notified to the Service Provider in writing with sufficient advance notice so that it can comply with same.

The City shall grant the Service Provider and its employees who perform any aspect of the Services access to the Project Site to perform the Service Provider's obligations in terms of this Agreement.

The Service Provider and its employees shall at all time when entering the Project Site comply with all rules, laws, regulations and policies of the City which are notified in writing to the Service Provider with sufficient advance notice so that the Service Provider can comply with same.

Notwithstanding any provision to the contrary contained in this Agreement, the Service Provider's obligation to comply with the rules, laws, regulations and policies of the City ("Rules") shall be subject to the following:

The Rules shall at all times be subject to the provisions of this Agreement; and

In the event that the Rules require the Service Provider to take any steps which are not required in terms of law or which do not form part of the Service Provider's normal practice, the City shall reimburse the Service Provider the reasonable costs that it incurs in complying with such Rules.

## **DELIVERY OF GOODS**

The Service Provider will, subject to being given access to the Project Site, deliver the electric actuators to the City within 14 (fourteen) Business Days from receipt of the City's written order. If the City requires that the Service Provider first be issued with a written order before it can effect delivery of the electric actuators, the City acknowledges that any delay in issuing the order to the Service Provider will delay delivery of the electric actuators and in such circumstances, notwithstanding any provision contained in this Agreement to the contrary, the Service Provider shall not be in breach of or default under this Agreement and the City shall have no claim of any nature against the Service Provider for or arising from such delay and any consequences arising therefrom.

Should the Service Provider be unable to deliver the electric actuators in accordance with clause 0 above, the Service Provider shall inform the City of its inability to deliver the electric actuators, the reason thereof, and shall provide the City with a reasonable alternative delivery date which in any event shall not be more than 14 (fourteen) days from the original delivery date.

A Force Majeure event;

Solely attributable to the default of the Service Provider;

The suspension of deliveries in terms of clause 0 above; or

Upon delivery of the electric actuators by the Service Provider, the City's contact person shall sign the delivery document provided by the Service Provider as acknowledgement of receipt of the supply and services. Such acknowledgement of receipt shall not constitute an acceptance:

That the electric actuators complied with the agreed specifications on the delivery date; and/or

Of any terms and conditions of the delivery document.

## **DEFECTIVE GOODS / LATENT PRODUCTS**

The Service Provider undertakes that:

As at the date of delivery, the electric actuators will comply with the agreed specifications; and

The electric actuators will be free from defects in respect of design, materials and workmanship that may develop under normal use provided that the City follows the Service Provider's specified procedures in respect of the electric actuators and that any damage to the Equipment or any maintenance or repairs are not occasioned by the negligence or any act or omission or error of the City, its employees, its contractors or any other Party.

In the event that the City realises that the Goods do not comply with the provisions of clause 0 above, the City shall inform the Service Provider in writing as soon as it becomes aware of same (but not later than 48 (forty eight) hours after it has or should have become aware of same). In respect of:

In respect of the electric actuators, the Service Provider will attend the Project Site within 1 (one) Business Day after receiving the City's notification to repair or replace the electric actuators or any part thereof. Thereafter the Service Provider will investigate the City's complaint and will notify the City of the outcome of its investigation. If the defect to the Equipment was caused by the City not having followed the Service Provider's specified procedures in respect of the Equipment or as a result of the negligence or any act or omission or error of the City, its employees, its contractors or any other party, the City shall be liable to pay the Service Provider for its engineering call-out and its cost of repairs and all charges levied by the Service Provider in respect of the Equipment. In all other circumstances, the City will not be liable for these charges.

## **INSPECTION**

The City may at any time during the currency of this Agreement inspect the service levels of the Service Provider in terms of this Agreement.

To enable the City to determine whether the Service Provider has complied with the service levels recorded in this Agreement, the Service Provider shall:

Provide the City with such information directly relating to the Services as it may reasonably require;

Allow the City to inspect and take copies of the records of the Service Provider that relate to the Services;

It necessary, allow the City or its authorised representatives to conduct interviews with those of the Service Provider's employees who are directly involved in performance of the Services, subject to reasonable notice being given to the Service Provider.

The cost of any inspection contemplated in terms of this clause 0 shall be for the account of the City unless the City shows any material irregularity or failure on the part of the Service Provider by way of such inspection.

The foregoing rights of inspection shall be subject to:

The Service Provider being given at least 14 (fourteen) days' prior written notice of such inspection;

The inspection only taking place during the Service Provider's business hours;

The inspection not interfering with the conduct of the Service Provider's business; and

Any information that the City or its representatives have access to by way of such inspection being treated as the Service Provider's confidential information and therefore being subject to the provisions of clause 0 below.

## **TRAINING**

If reasonably required, the Service Provider shall after delivery and installation of the electric actuators, ensure that the City's nominated employees, from time to time, receive the required and necessary training relating to the nature, purpose and appropriate use of the Goods.

## **SERVICE PROVIDER'S WARRANTIES, INDEMNITIES AND LIMIT OF LIABILITY**

### **Service Warranties**

The Service Provider warrants that in relation to the Services provided in terms of this Agreement:

It has full capacity and authority to enter into and perform this Agreement, and that this Agreement is executed by duly authorised representatives of the Service Provider;

It possesses or has access to the requisite knowledge, skill and experience to provide the Services in an expert manner;

It will discharge its obligations under this Agreement and any annexure..., appendix or Schedule hereto with all due skill, care and diligence;

All work performed and Services rendered under this Agreement shall comply with prevailing practice, standards and specifications within the gas industry;

It will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;

The use or possession by the City of the Goods will not subject the City to any claim for infringement of any Intellectual Property Rights of any third party;

It will perform the Services with promptness and diligence and in a skilful manner and in accordance with the practices and professional standards applicable to the gas industry;

The Services will in all aspects comply with industry norms and best practice with regard to materials and workmanship;

The Service Provider will use and adopt the standards, processes and procedures required under this Agreement;

It shall employ suitably qualified and trained employees to provide the Services to the City and it shall allocate employees in accordance with the technical skill and knowledge required;

Ensuring that all applicable laws are observed.

## **Indemnity**

Each Party hereby indemnifies the other Party against any claim which may be brought against the other Party by the first Party's personnel or a third party arising from the first Party's breach of any of the provisions of this Agreement, provided that the other Party shall notify the first Party in writing within a reasonable time, and in any event not less than 14 (fourteen) Business Days of the other Party becoming aware of any such claim to enable the first Party to take steps to contest it and shall provide the first Party with such reasonable assistance as may be necessary to enable the First Party to defend the claim to the extent only that it is in a position to render such assistance. The first Party may, within 5 (five) Business Days of receipt of written notice from the other Party, elect in writing to contest such a claim in the name of the other Party and shall be entitled to control the proceedings in regard thereto, provided that the first Party indemnifies the other Party against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the other Party as a consequence of the defence of the claim.

## **Limit of Liability**

Notwithstanding any other provision contained herein to the contrary (including, without being limited to, any indemnity or insurance provision):

The total aggregate liability of the Service Provider under or in terms of this Agreement, whether arising in contract, delict or otherwise, shall not exceed the sum of R1 000 000.00 (one million Rand), provided that this limitation shall not apply to the cost of repairing or replacing defective Equipment should the Service Provider be liable for such cost under this Agreement;

The Service Provider shall not be liable to the City or any other party for any indirect, special, consequential or incidental loss or damages, howsoever arising.



## **THE SERVICE PROVIDER'S PERSONNEL**

### **Liability for Criminal Acts of Employees**

The Service Provider shall be liable to the City for any loss that the City or any third party may suffer as a result of any theft, fraud or other criminal act of any employee of the Service Provider which arises within the course and scope of such employees' employment with the Service Provider.

### **Character of Employees**

Due to the confidential nature of certain aspects of the Services and the position of trust which the Service Provider's employees will fulfil, the Service Provider hereby undertakes to use its reasonable commercial endeavours to ensure that it only assigns to the City employees who are fit and proper persons and who display the highest standards of personal integrity and honesty and who have not, to their knowledge, been convicted of any crime.

The Service Provider shall, at its own cost, conduct all reasonable background checks into members of its employees prior to utilizing same to provide the Services in terms of this Agreement.

The City shall conduct all reasonable background checks into the Service Provider's employees from time to time, where it deems it necessary to do so should it obtain the written consent of such employees.

## **STATUTORY AND EMPLOYMENT ISSUES**

### **The Service Provider shall comply with all employment legislation**

The Service Provider warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its personnel and its relationship with the City. This includes, but is not limited to, the Labour Relations Act, the Basic Conditions of Employment Act, 1977, the Employment Equity Act, 1998 and any other applicable employment legislation currently in force.

The Service Provider warrants further that it will not contravene of any of the provisions of any such legislation and in the event of such

contravention, the Service Provider shall immediately take all steps to remedy such contravention. If the City advises the Service Provider of any contravention of such legislation in writing in respect of the employees who perform the Services, the Service Provider shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep the City informed regarding the steps taken and the implementation and the result thereof.

### **No employment**

The Service Provider warrants that none of its personnel shall be regarded as employees of the City. The Service Provider shall assist to defend and bear all reasonable costs in the event that the City is required to defend a claim, whether civil or employment related, in terms of which the Service Provider's personnel claim to be employees of the City by virtue of this Agreement, instituted against it by the Service Provider's personnel. Should the City defend the matter, the Service Provider hereby indemnifies the City against all reasonable costs which may be incurred by or awarded against the City as a consequence of the defence of the claim.

### **Occupational Health and Safety Act, 1993**

The Service Provider shall be responsible for ensuring compliance with all the provisions of the Occupational Health and Safety Act, 1993 and it indemnifies the City against any claim which may arise in respect of such Act by its personnel against the City unless such claim is a consequence of any act or omission by the City, its personnel or its contractors or any other person whose activities it is liable for in law.

### **SUB-CONTRACTING**

The Service Provider may not Subcontract the whole of or any portion of the Services in terms of this Agreement to any third party without the prior written consent of the City.

In the event the Service Provider wishes to Subcontract the whole of or any portion of the Services in terms of this Agreement, it shall apply to the City in writing for consent to do so.

In its application, the Service Provider shall give the name of the Subcontractor, the Subcontractor's obligations, the proposed date of commencement of the Subcontract which shall include the fees payable to the Subcontractor, and a report of the background security check on the Subcontractor's suitability, financial and otherwise.

The City may, in its sole and absolute discretion refuse consent to Subcontract. In the event the City approves the Subcontracting of the whole of or any portion of the Services in terms of this Agreement, then:

The Service Provider shall ensure that the Subcontractor's B-BBEE level is equal or better than that of the Service Provider, their price is competitive and they have the capacity to provide the Service;

Such Subcontracting shall not absolve the Service Provider from responsibility for achieving the Service Levels or complying with its obligations in terms of this Agreement and the Service Provider hereby indemnifies and holds the City harmless against any loss, harm or damage which the City may suffer as a result of such Subcontracting;

The Service Provider shall at all times remain the sole point of contact for the City in respect of the acquisition of Services by the City; and

No such Subcontracting shall have any effect on the Contract Price and charges payable by the City to the Service Provider in terms of this Agreement.

## **CONFIDENTIALITY**

Each Party acknowledges that all information relating to the other Party, its business and technical information, data, documents or other information necessary or useful for the carrying on by the City of its business which shall include, but shall not be limited to operating procedures, quality control procedures, approximate operation personnel requirements, descriptions and trade names and trademarks, know how, techniques, technology, information relating to clients, customers, suppliers, relevant authorities, copyright, trade secrets and all goodwill relating to the business and any other intellectual property rights, technical data and documents in whole or in part, used by the other Party in respect of its business ("**Confidential Information**"), shall remain confidential

and shall not be made known unless the other Party has given written consent to do so.

The information provided by the disclosing Party in the context of this Agreement is Confidential Information and the receiving Party shall take all reasonable measures to keep the information confidential and will only use the information for the purpose for which it was provided.

The receiving Party undertakes to not disclose any such Confidential Information. However, there will be no obligation of confidentiality or restriction on use where:

The information is publicly available, or becomes publicly available otherwise than by action of the receiving Party; or

The information was already known to the receiving Party (as evidenced by its written records) prior to its receipt under this or any previous agreement between the Parties or their affiliates; or

The information was received from a third party not in breach of an obligation of confidentiality.

## **INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights of the Service Provider and/or third party vest in the Service Provider and/or third party, as appropriate.

All rights in the City name and logo remain the absolute property of the City.

The Service Provider warrants that no aspect of the Services provided in terms thereof will infringe any Intellectual Property Rights of any third party.

The Service Provider shall promptly notify the City, in writing, of any infringement or apparent or threatened infringement or any circumstances which may potentially give rise to an infringement, or any actions, claims or demands in relation to any Intellectual Property Rights.

In the event the City becomes aware of any such infringement, the Service Provider shall, at its cost, defend the City against any claim that the Services infringe any such third party Intellectual Property Rights, provided that the City gives notice to the Service Provider of such claim and the Service Provider controls the defence thereof. The Service Provider further indemnifies the City against, and

undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the City in any action which is attributable to such claim and will reimburse the City with all costs reasonably incurred by the City in connection with any such action.

Should any claim be made against the City by any third party in terms of clause 22.1 above, the City shall give the Service Provider written notice thereof within 3 (three) days of becoming aware of such claim to enable the Service Provider to take steps to contest it.

Should any third party succeed in its claim for the infringement of its Intellectual Property Rights in relation to the Services, the Service Provider shall, at its discretion and within 30 (thirty) days of the Services having been found to infringe, at its own cost:

Obtain for the City the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or

Replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement; or

Alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or

Withdraw the subject of infringement.

## **FORCE MAJEURE**

For the purposes hereof, Force Majeure shall mean civil strife, riots, insurrection, sabotage, national emergency, acts of war of public enemy, rationing of supplies, strikes, lockout or any industrial action, flood, storm, fire or any other like forces of nature, which event or circumstances are beyond the reasonable control of the Party claiming Force Majeure.

In the event of circumstances arising which the other Party believes constitute a Force Majeure ("the Affected Party") then such Affected Party shall send, within 5 (five) days from the interrupting circumstances, a written notice of the interrupting circumstances specifying the nature and date of commencement of the

interrupting event to the other Party. The Parties shall agree, in writing, to suspend the implementation of this Agreement for a specific period ("Agreed Period").

In the event that the Force Majeure has continued for more than 30 (thirty) consecutive days and both Parties reasonably believe that the Affected Party shall be unable to continue to perform its obligations after the Agreed Period, then either Party shall be entitled to terminate this Agreement in writing to the other Party.

The Party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such Party shall give notice to that effect with a written notice of the interrupting circumstances as provided above, to extend the period of this Agreement by a period equal to the time that its performance is so prevented.

## **CESSION AND ASSIGNMENT**

Neither Party shall be entitled to cede or assign or transfer in any other way and/or alienate its rights or obligations in terms of this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld.

## **AMENDMENTS TO THE GCC**

GCC clause 5.4 is amended by inserting the following at the end thereof:

*"The foregoing right of inspection and audit is subject to: (i) the supplier must be given at least 14 days' prior written notice of such inspection or audit; (ii) the inspection or audit shall only take place during the supplier's business hours; (iii) the inspection or audit shall not interfere with the conduct of the supplier's business; and (iv) any information that the purchaser has access to by way of such inspection or audit shall be treated as the supplier's confidential information."*

GCC clause 7 is deleted in its entirety.

GCC clause 8.7 is amended by inserting the following at the end thereof:

*"The foregoing is subject to the supplier being able to conduct its own tests in respect of the rejected goods. If the supplier's tests indicate that the goods did not comply with the requirements of the contract, it will credit the purchaser's account for any charges levied in respect of those goods. However if the tests*

*indicate that the goods did comply with the requirements of the contract, then the purchaser will be liable to pay the supplier the charges levied in respect of those goods and the costs of the supplier's testing and the supplier will not be liable to compensate the purchaser for supplies it may have purchased from another party."*

GCC clause 9.2 is amended by deleting ", and in any subsequent instructions ordered by the purchaser" from the end thereof.

GCC clause 11.1 is replaced in its entirety with the following:

*The purchaser will obtain and maintain suitable insurance to cover the current replacement cost of the Equipment that forms part of the goods for the period that the Equipment is in the possession or under the control of the purchaser. The purchaser shall provide the supplier upon request with proof of such insurance and that the premiums in respect of such insurance are up to date. If the purchaser fails to insure, or adequately insure, the Equipment, it will still be liable to the supplier as provided in the contract in the event that the Equipment is lost and/or damaged and/or destroyed while in its possession or under its control."*

GCC clauses 15.1 and 15.2 are deleted in their entirety.

GCC clause 15.4 is amended by inserting "*unless same have been caused by the negligence or any act or omission or error of the purchaser, its employees, its contractors or any other party, in which case the purchaser shall be liable for the supplier's engineering call-outs and costs of repairs, including spare parts for the Equipment*" at the end thereof.

GCC clause 15.5 is replaced in its entirety with the following:

*"Subject to GCC clause 8.7 above, if the supplier, having been notified, fails to remedy the defect(s) within a reasonable period, the purchaser will not be liable to pay the supplier the charges that it levies in respect of the defective goods from the supplier's receipt of the purchaser's notification until the supplier has remedied the defects."*

GCC clause 21.2 is amended by replacing the last sentence thereof with the following:

*"As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at its discretion either: (i) extend the supplier's*

*time for performance, in which case the extension shall be ratified by the Parties by amendment of contract; or (ii) cancel the order and source that order from another supplier.”*

GCC clauses 21.5 and 21.6 are deleted in their entirety.

GCC clause 22 is deleted in its entirety.

GCC clause 23.1 is replaced in its entirety with the following:

**3** *“A party (“**aggrieved party**”), without prejudice to any other remedy for breach of contract, by written notice of default sent to the other party (“**defaulting party**”), may terminate this contract in whole or in part if the defaulting party has engaged in corrupt or fraudulent practices in relation to the conclusion or execution of the contract.”*

GCC clause 23.2 is deleted in its entirety.

GCC clause 28.1(a) is amended by deleting “, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser” from the end thereof.

GCC clause 28.1(b) is deleted in its entirety.

## **BREACH AND TERMINATION**

Should either Party commit a breach of any term of this Agreement (“the Defaulting Party”) then the affected party (“Aggrieved Party”) shall be entitled to inform the Defaulting Party in writing to remedy such failure or default within 10 (ten) Business Days and should the Defaulting Party fail to remedy the breach within 10 (ten) Business Days after receipt of the notice, the Aggrieved Party shall be entitled, without prejudice to any of its rights under this Agreement or law, to:

Immediately terminate this Agreement in writing and claim damages (which shall include legal costs on an attorney/client scale); or

Request specific performance and claim damages (which shall include legal costs on an attorney/client scale).

Termination of this Agreement, for any reason whatsoever, will result in:



The City being obliged to allow the Service Provider to remove the Equipment from the Project Site; and/or

The City paying the Service Provider the current replacement cost of the Equipment not made available to the Service Provider for collection and the repair cost of any damaged Equipment returned the Service Provider; and/or

The City paying the Service Provider the Equipment rental that would have been payable to the Service Provider for the remaining balance of the 3 (three) year period of this Agreement except if this Agreement was terminated by the City in terms of clause 0 above;

Should the City fail to allow the Service Provider to remove the Equipment from the Project Site, in addition and without prejudice to any other claims that the Service Provider may have against the City pursuant thereto, the City being liable, until the Equipment is made available to the Service Provider for collection, to continue paying the Equipment rental to the Service Provider in respect of such Equipment as if this Agreement had not been so terminated and the Service Provider's acceptance of these payments shall not in any manner affect its rights or remedies relating to the termination of this Agreement.

A certificate signed by any manager of the Service Provider, whose authority, appointment and signature it will not be necessary to prove, that certifies any indebtedness by the City to the Service Provider, the delivery of the Gas to the City, the Service Provider's ownership of the Equipment, the current replacement cost of any outstanding Equipment and any other fact will constitute rebuttable evidence of such indebtedness, delivery, ownership, replacement cost and any other such fact, as the case may be.

## **EARLY TERMINATION**

The City shall have the right to terminate this Agreement by giving 30 (thirty) days' notice in writing to the Service Provider of its intention to terminate the Agreement. In such circumstances, the City shall be liable to pay the Service Provider the Equipment rental that would have been payable to the Service Provider for the remaining balance of the 3 (three) year period of this Agreement as well as the amounts referred to in clause 0 above, if applicable.

## DISPUTES

Save for clause 26 above or any other clause in this Agreement which provides for its own remedy, should any dispute arise between the Parties in respect of or pursuant to this Agreement, including, without limiting the generality of the foregoing, any dispute relating to:

The interpretation of the Agreement;

The performance of any of the terms of the Agreement;

Any of the Parties' rights and obligations;

Any procedure to be followed;

The termination or cancellation or breach of this Agreement; or

The rectification or repudiation of this Agreement; then any Party may give the other Party written notice of such dispute, in which event the provisions below shall apply.

Within 7 (seven) days of the declaration of such dispute, the Parties representatives or their nominated persons shall meet in the spirit of goodwill and endeavour to resolve the dispute, failing which (and without prejudice to any other alternative dispute resolution to which the Parties may agree, either prior to or concurrently with arbitration) the provisions of this clause 0 shall apply.

If the Parties are unable to resolve the dispute within 14 (fourteen) days of the notice of the dispute (or such longer period as they may have agreed to in writing), then either Party may, on written notice to the other Party, require that the dispute be submitted to and decided by arbitration, in terms of the Arbitration Act, 42 of 1965 of South Africa ("the Arbitration Act").

The arbitration shall be held under the provisions of the Arbitration Act provided that the arbitration shall be:

At any place which the Parties agree, in writing, to be mutually convenient.

In accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual

formalities of procedure, pleadings and/or discovery or respect rules of evidence.

If the arbitration is:

A legal matter, then the arbitrator shall be a practising advocate or a practising attorney of not less than 10 (ten) years' standing;

An accounting matter, then the arbitrator shall be a practising chartered accountant of not less than 10 (ten) years' standing;

Any other matter, then the arbitrator shall be any independent person agreed upon between the Parties.

Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the Parties, by the president for the time being of the Legal Practice Council, or its successor.

Should the Parties fail to agree whether the dispute is of a legal, accounting or other nature within seven (7) days after the arbitration has been demanded, then it shall be deemed to be a dispute of a legal nature.

The arbitrator may:

investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose, shall have the widest powers of investigating all documents and records of any party having a bearing on the dispute;

Interview and question under oath the Parties or any of their representatives;

Decide the dispute according to what he considers just and equitable in the circumstances; and

Make such award, including an award for specific performance, damages or otherwise, as he in his discretion may deem fit and appropriate. The arbitration shall be held as quickly as possible after it is requested, with a view to it being completed within thirty (30) days after it has been so requested.

The arbitrator's decision and award shall be in writing with reasons and shall be final and binding upon the Parties.

The arbitrators award may, on application by either Party to a court of competent jurisdiction and after due notice is given to the other Party, be made an order of court.

Notwithstanding the provisions of clause 0, 28.2, 28.3, 28.4, 28.5, 28.6, and 0 above, in the event of either Party having a claim against the other Party for a liquidated amount or an amount which arises from a liquid documents, or for an interdict or other urgent relief, then the Party having such a claim shall be entitled to institute action therefore in a court of law rather than in terms of the above clauses, notwithstanding the fact that the other Party may dispute the claim.

A Party that successfully enforces or defends its rights under this Agreement will be entitled to recover its legal costs from the other Party on the scale as between attorney and client, including costs of counsel on brief.

The provisions of this clause 0 are severable from the rest of this Agreement and shall remain in effect even where this Agreement is terminated or cancelled for any reason.

## **LAWS AND JURISDICTION**

This Agreement shall be governed by and interpreted according to the Laws of the Republic South Africa.

Each Party submits to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with this Agreement including its termination. Each Party further consents to the jurisdiction of the High Court of South Africa (North Gauteng High Court (Pretoria)).

## **NOTICES AND COMMUNICATIONS**

The Parties choose as their respective *domicilium citandi et executandi* (hereinafter referred to as the "*domicilium*") and for the delivery of any notices arising out of the Agreement or its termination or cancellation, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the address set out below:

**THE CITY:**

Office of the City Manager  
Tshwane House  
2nd Floor, Block D  
320 Madiba Street  
Pretoria, 0001  
P O Box 440  
Pretoria, 0001  
Fax: 086 214 9544  
Attention: Sipho Madhlabane  
Telephone: 012 358 3994  
Email: siphomadh@tshwane.gov.za

**THE SERVICE PROVIDER:**

Each Party shall be entitled from time to time, by written notice to the other Party, to vary its *domicilium* to any other address which is not a Post Office Box or a Poste Restante.

Any notice given by any Party to another Party (hereinafter referred to as “the addressee”) which:

Is delivered by hand during normal business hours of the addressee at the addressee’s *domicilium*, shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

Is posted by prepaid registered post to the addressee at the addressee’s *domicilium* shall be deemed, until the contrary is proved by the addressee, to have been received on the 10<sup>th</sup> (tenth) day after the date of posting; or

Is sent by email or facsimile machine shall be deemed, until the contrary is proven by the addressee, to have been received within 1 (one) hour of transmission where it is transmitted during business hours of the receiving instrument and at noon on the following business day

(excluding Saturdays) where it is transmitted outside such business hours.

Any notice or communication required or permitted in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by facsimile or by email.

Notwithstanding anything to the contrary in this Agreement a notice or communication actually received by one Party shall be an adequate notice or communication notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi*.

## **GENERAL AND MISCELLANEOUS**

### **SOLE RECORD OF AGREEMENT**

This Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

### **NO AMENDMENT EXCEPT IN WRITING**

No addition to, variation of, or agreed cancellation of, this Agreement or any part thereof shall be of any force or effect unless in writing and signed by or on behalf of the Parties. Any alleged waiver of this requirement must itself be reduced to writing and signed by the relevant Party to be of any effect.

### **WAIVERS**

No relaxation or indulgence which any Party may grant to any other shall constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in future.

### **SURVIVAL OF OBLIGATIONS**

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

### **APPROVALS AND CONSENTS**

An approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other Party from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement. Any alleged waiver of the requirement that the approval or consent must be in writing must itself be reduced to writing and signed by the relevant Party to be of any effect.

#### **DOCUMENTATION IN ELECTRONIC FORM**

The City hereby consents to receiving documents and information including, without being limited to, invoices, credit notes, statements and proof of delivery, from the Service Provider in electronic form, which the City will accept as being the original form of such documents and information.

#### **DISCLOSURE OF INFORMATION**

The City hereby consents to information being supplied to the Service Provider by third parties, including credit bureaux, for the purposes of this Agreement and consents to the furnishing and publication of credit and trading information pertaining to it by the Service Provider to such third parties.

#### **EXECUTION**

This Agreement may be executed in several counterparts, which shall each be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or email shall constitute a valid counterpart for all purposes hereunder.

The signatories to this Agreement by their signature warrant their authority to enter into this Agreement and the capacity of their principal, if signing in a representative capacity, to enter into this Agreement.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_

**THE CITY OF TSHWANE**

**METROPOLITAN MUNICIPALITY**

Duly represented by: .....

In his capacity as: **City Manager**

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_

For and on behalf of

Duly represented by:.....

In his capacity as:.....