



enterprise ilembe
ECONOMIC DEVELOPMENT AGENCY

TERMS OF REFERENCE

FOR

**THE DESIGN OF INFRASTRUCTURE FOR THE KWASHUSHU HOTSPRING AND
NTUNJAMBILI MOUNTAIN TOURISM PROJECT SITES IN MAPHUMULO
MUNICIPALITY, INCLUDING THE CONSTRUCTION OF ABLUTION FACILITIES**

Closing Date: 24 May 2022

Time: 11h00

Venue: Sangweni Tourism Centre, Ballito

It is the intention of Enterprise iLembe to enter into a formal contract with a service provider or consortium to provide the services described herein. These Terms of Reference and the consultant's proposal will form the basis of the contract. The service provider will also be required to sign a JBCC Minor Works contract.

Service Provider Terms of Reference

SECTION 1: DETAILS

Province:	KwaZulu-Natal
Municipality:	iLembe District Municipality and Maphumulo Local Municipality
Contracting Agency:	Enterprise iLembe Economic Development Agency
Project Name:	The Design of Infrastructure for the Provision of Infrastructure for the KwaShuShu Hotspring & Ntunjambili Mountain Tourism Project Sites in Maphumulo Municipality, including the Construction of Ablution Facilities.

INTRODUCTION:

The iLembe District Municipality

The iLembe District Municipality is situated on the east coast of South Africa, in the KwaZulu-Natal Province. iLembe is one of the 11 district municipalities of KwaZulu-Natal province in South Africa and also the smallest District Municipality in the province, with a total population of approximately 657 000 (Stats SA, 2016). iLembe is located between two of Africa's busiest ports, Durban and Richards Bay, iLembe is therefore well situated not only to local but also international markets. Despite its strategic location, iLembe faces numerous economic challenges such as the high levels of poverty in the rural inland areas, which contrasts with rapid development along its coastal regions. The District has been proactive in trying to develop broad based interventions to facilitate local economic development in response to its challenges of high rates of unemployment and correspondingly high levels of poverty

Enterprise iLembe is an economic development agency wholly-owned by the iLembe District Municipality mandated to pursue and facilitate investment, economic development and empowerment in iLembe. The objective of Enterprise iLembe is to improve the competitiveness of the iLembe Region by creating an environment that will enable local business to compete successfully on the international stage.

Maphumulo Municipality (hereafter referred to as "the Municipality") is on the brink of penetrating a lucrative market in a rapidly growing industry. The current trend towards an increase in ADVENTURE

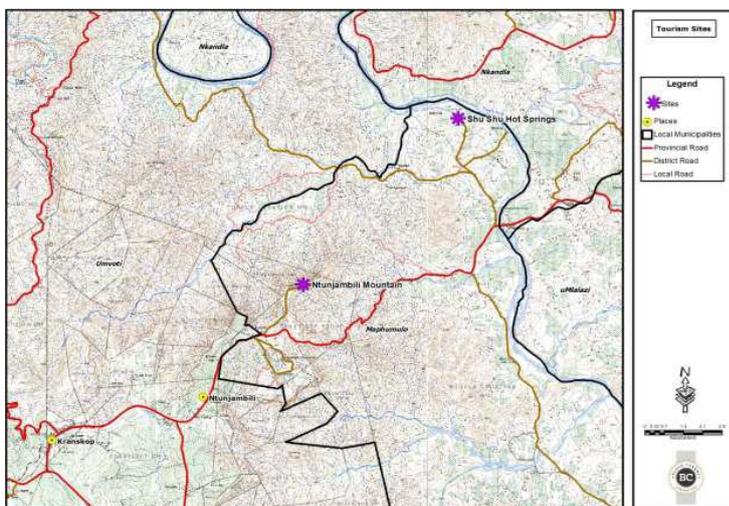
TOURISM and the number of tourists visiting the iLembe District presents an opportunity for the Municipality to penetrate the market by taking advantage of the natural physical characteristics of KwaShushu and Ntunjambili. The Municipality intends to transform its existing environmental assets, namely Itshe lika Ntunjambili and KwaShushu Hotsprings, to premier tourist attraction sites in the iLembe District. As part of this transformation, the services and products provided at the two sites will include a refinement of already existing services as well as the introduction of new, adventurous and exciting activities.

SECTION 2: PURPOSE OF THE CONSULTING ASSIGNMENT

The Purpose of this tender is to request interested and experienced consulting firms to submit a complete proposal for the design and the construction supervision of ablution facilities as well as provision of electrical and water supply for the KwaShushu Hotsprings & Ntunjambili Mountain tourism project sites located within the Maphumulo Municipality. Bidders will be provided an opportunity to carry out a site visit of the projects sites in question during the site briefing to familiarise themselves with the extent of the scope of work. The Consulting Firm mentioned above will be required to render overall project management and principal agent services from inception to close-out. Project management services will be rendered from stage 1 – 6, principal agent services will start from stage 4-6. NB: This is a turnkey appointment.

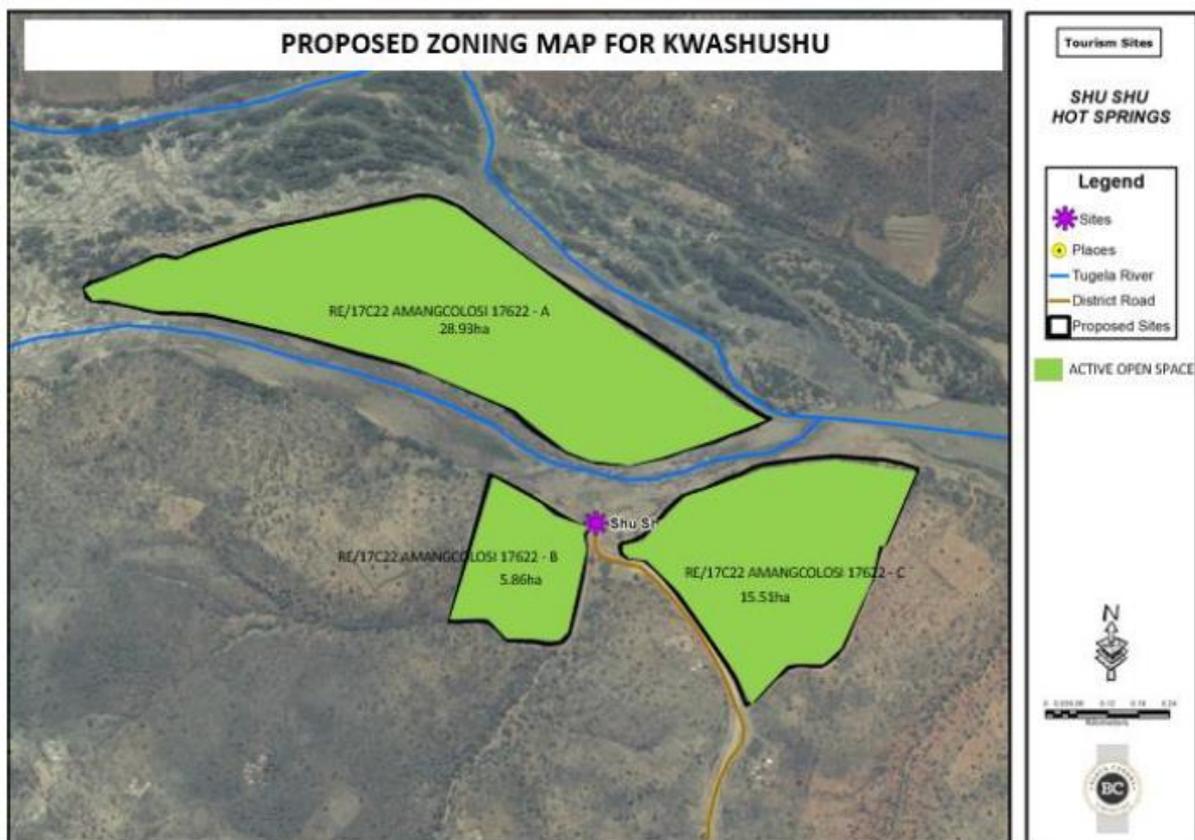
Project Location:

The project area is located within Maphumulo Local Municipality (KZ294), which is one of the four local municipalities located within the iLembe District Municipality (DC 29).



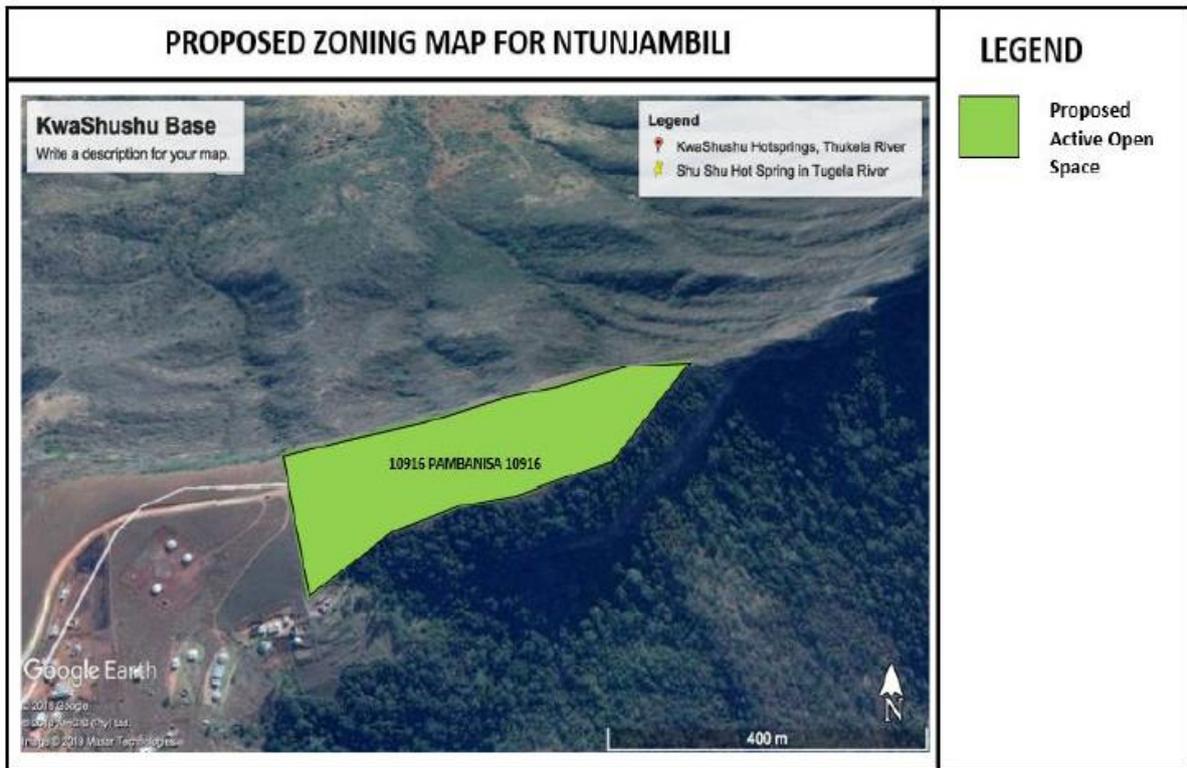
KwaShushu Hot Springs (also known as the Shushu Hot Springs) is a thermal spring located in the middle of the Tugela River about 140km (or a 2,5-hour drive) north-west of Ballito. The site is situated 20km from the town of Kranskop. The site itself and the surrounding area is flat with thorn trees and bushes and grasslands that is disturbed by cattle grazing with limited natural bush remaining. The site is currently undeveloped. There are semi-formal campsites located on an island along the riverbank and the area is a popular camping and caravan spot during the June-July holiday months however; there are no ablution facilities and it is not electrified nor is there tap water.

Map 1: Proposed Zoning Map of KwaShushu



Ntunjambili is a Zulu word that means “rock of two arches or openings”. The name is derived from a red sandstone peak feature which towers 1,175m above the Thukela River Valley. The name also refers to the area in the vicinity of the cliff north of Kranskop within Ward 1 of Maphumulo Municipality. The Nunjambili Mountain forms part of the Ngcolosi Traditional Council area and is accessible from the P15-1 linking Kranskop to the south and Nkandla and Eshowe to the north.

Map 2: Map 2: Proposed Zoning Map of Ntunjambili



SECTION 3: SCOPE OF WORK

The scope of work for this assignment entails the design and the construction supervision of ablution facilities as well as provision of electrical and water supply for the KwaShushu Hotsprings & Ntunjambili Mountain tourism project sites located within the Maphumulo Municipality.

The Project will be executed in 2 parts;

Part 1 will include:

- Earthworks as required, including to create a level platform for the sites
- The provision of water, electrical, sewerage reticulation to termination points for use on site as well as for further work during future phases
- Storm water reticulation

The necessary vehicular entrance and loading point to enable ease of access to the sites during the construction process.

Part 2 of the project will include

- The design, construction and supervision of the ablution facilities including all fittings and finishes

3.1 DESCRIPTION OF WORK

This tender is for the appointment a Service Provider/ Bidder that will act as a principal agent responsible for acquiring the necessary project team required to conduct studies, investigations, and assessments to undertake stages 1 to 6 as per Professional Service Provider Guidelines for the required disciplines in the Built Environment (i.e. Inception, Concept and Viability, Design Development, Documentation and Procurement, elementary costings, construction supervision and Close Out) for the design and the construction supervision of ablution facilities as well as provision of electrical and water supply for the KwaShushu Hotsprings & Ntunjambili Mountain tourism project sites, including applicable additional fees according to services required in terms of the Framework for the professional Fees Guideline in respect of services provided by person(s) registered in terms of the Architectural Profession Act 44 of 2000 Board notice 121 of 2015 unless otherwise varied below.

The project site requirements for each site are as follows:

- The design and construction of ablution facilities (male and female) for future camp site area and general recreational area
- Provision of the water and wastewater conveyance for the future camp site area, future chalet area, picnic area, ablutions and general areas.
- Provision of electrical services and lighting for the future camp site area, future chalet area, picnic area, ablutions and general areas

3.2 STAGES

Stage 1 – Inception

The inception stage of this particular project will involve determining, with the input of Enterprise iLembe, the scope of the construction contract required to meet the level of services needed and to be within the budgetary constraints of this project. Any further investigations and/or for testing should be identified at this stage.

Desired Outcome: Inception Report

Stage 2 – Concept and Viability (preliminary design)

The Service Provider shall collect all data relevant to the required improvements, identify and investigate options for effective performance and produce concept designs in keeping with this Scope of Work and the required level of services, standard and norms. A design report on the information collected, the preliminary design, cost estimates and an implementation programme must be presented for Enterprise iLembe's approval.

Desired outcome: approved Concept design

Stage 3 – Design Development (Detailed Design)

The Service Provider shall undertake detailed design of the project and associated requirements, plan the construction of the project, produce drawings and specifications.

Enterprise iLembe shall make the final decision on the choice of appropriate contract on recommendation from the Service Provider

The Service Provider shall liaise with Enterprise iLembe during the preparation of the contract document to determine any other specific requirements that Enterprise iLembe may have in this regard. A set of draft plans and draft tender/contract documents shall be submitted to Enterprise iLembe for comment and approval prior to finalization. All drafts must be thoroughly checked by the Service Provider's project leader prior to submission.

The Service Provider shall be responsible for all initial service enquiries, way leave applications and obtaining all conditions from the relevant Service Authorities that are necessary to carry out all work in terms of this project. All applications in this respect must be carried out timeously so that all way leave conditions can be incorporated into the detail design. On approval of the detail design drawings, three sets of paper prints must be submitted to the Employer for signature. Two sets will be kept by the Employer and the other returned to the Service Provider. All other prints issued henceforth shall carry the word "Initial version signed on (date)" at the signature location in the title block.

Desired outcome: Council approval, Design compliance in with heritage regulations/site.

Stage 4 – Documentation and Procurement (Principal Agent Services)

The Service Provider shall finalize Detail designed drawings and incorporating any comments of the Employer. Once finalized, two sets of paper prints must be submitted to the Employer for signature by the service provider. One set will be kept by the Employer and the other returned to the Service

Provider. All other prints issued henceforth shall carry the words “Initial version signed on (date)” at the signature location in the title block.

The Service Provider shall prepare any further plans, designs and drawings which may be necessary for the execution of the works.

The Service Provider shall be responsible for providing the Employer with the required number of copies of plans and tender documents for tender purposes (both hard copy and on compact disc). The service provider will prepare the Bills of Quantities and will be expected to appoint and manage their own contractor/s for the construction of the ablution facilities in line with CIDB requirements. Payments will be made to the Service Provider who will be responsible for payments to the contractor/s.

Desired outcome: Appointment of the contractor and Site handover to the contractor.

Stage 5 – Construction and Supervision

Contract administration shall require the performance of all general field services required on a construction projects such as co-ordination, supervision of construction services, continuous monitoring of the project, approval and corrections of construction drawings, convening of site meetings per the JBCC contract, valuation for progress payment certifications, periodic reporting of progress, preparing progress payment certificates, review and recommendation of claim, administer variation orders, conduct quality inspections, manage health and safety, project cost control, preparation of final account, etc. The service provider shall ensure construction compliance in terms heritage legislations.

Desired outcome: Issue practical completion certificate.

Stage 6 – Project Close-Out

The service provider shall fulfil and complete the project close-out report including necessary documentation to facilitate effective completion, handover and operation of the project. This includes inspection and verify the rectification of defects, approve relevant payment valuation and completion certificates, facilitate final operating and maintenance.

Desired outcome: Official project close out report.

The professional team to be established **must** comprise of the following team members, at a minimum:

- Professional Architect (Principal Agent)
- Civil Engineering Service (CE);
- Electrical Engineering Services (EE) and;
- Quantity Surveyor (QS);

In addition, the following may be considered as part of the professional team, as per the discretion of the bidder:

- Landscape Architect (LA);
- Structural Engineering Services (SE);
- Mechanical Engineering Service (ME);
- Safety Consultant (SC);
- Heritage Architectural Design Specialist.

The timeframe for completion of this project is six (06) months from official date of appointment of the service provider.

SECTION 4 : TECHNICAL REQUIREMENTS OF THE PROPOSAL

Proposals must be clear and concise, comprehensive, and directly address the specifics of the proposed scope. The Service Provider will, in combination with their capability descriptions and candidate resumes, demonstrate their experience in providing similar services on prior assignment by providing references from other clients.

Methodology & Approach

- The service provider is expected to demonstrate a comprehensive understanding of the project risk by including into the proposal the project specific risk management plan/strategy for the project. This plan/strategy should give a high-level understanding of what are the project risks are and what controls will be in place to mitigate such risk.
- The service provider is expected to demonstrate technical ability by including into the proposal a project specific technical plan/strategy for the project. This plan should show how

will the bidder will ensure that project deliverables will be met through technical competencies such as composition of the project team, technologies utilised etc.

- The service provider is expected to demonstrate technical ability by including into the proposal a project specific Quality management plan/strategy for the project. This plan should indicate what quality management system/quality assurance is in place throughout the bidding organisation and how will quality be managed throughout project execution.

Cost Controls

- The service provider is expected to demonstrate competence in the management of project costs by including into the proposal a project specific cost control plan/strategy for the project.
- The plan/strategy should include what cost controls will the bidders put in place during project execution.
- Payments will be made on invoices submitted by the successful service provider for work completed per achieved milestone. On receipt of invoices rendered, the service provider should allow at least 4 weeks for the payments to be processed. Please note that no payments will be made to third parties.

Reporting

- The service provider to arrange an inception meeting with the client to discuss the lines of communication, reporting structures, service level agreement and project management. The Inception report to be submitted within three (3) weeks of appointment.
- The service provider will work in close co-operation with Enterprise iLembe management.
- The service provider will be expected to keep financial records and other appropriate records.
- The service provider will be required to provide weekly progress reports, electronically, in the prescribed format to Enterprise iLembe
- The service Provider will be also be required to provide monthly progress reports, which may include financials to Enterprise iLembe and present such status updates to the Project Steering Committee for which dates will be communicated in advance. Meeting notes from the PSC should be made available by the service provider within seven (7) days of the meeting.
- The service provider must provide a close-out report at the end of the contract period, in the prescribed format as agreed to with Enterprise iLembe together with all supporting documentation. There should be one electronic copy and two hard-copy close-out reports.

SECTION 5: REQUIREMENTS RELATED TO THIS BRIEF

Please note that the validity period of this bid is 90 days from the date of bid closure.

Compulsory Site Inspection:

A compulsory site inspection will take place on Wednesday, **10 May 2022 at 10h00**.

Failure to attend the site inspection briefing and sign the attendance register, will result in your proposal being disqualified.

Submission of Proposals:

Failure to submit required registration and compliance documentations as per Annexure List below may result in your proposal being disqualified.

Please place your completed proposal in a sealed envelope endorsed **“PROPOSAL FOR THE KWASHUSHU HOTSPRING AND NTUNJAMBILI MOUNTAIN TOURISM SITES PROJECT.”** in the Tender Box at Sangweni Tourism Centre, Cnr Link Road & Ballito Drive, Ballito on or before **24 May 2022 at 11h00**.

No submissions will be accepted after the closing date and time, as stipulated above.

Enterprise iLembe does not bind itself to accept the lowest or any of the proposals received and reserves the right to accept the whole or part of the proposal.

Please note that no awards will be made to bidders who are in service of the state as per the CSD verification that will be performed during the course of the bid evaluation process.

SECTION 6: ADJUDICATION CRITERIA

Procurement Policy

Proposals will be evaluated in terms of the SCM Policy of Enterprise iLembe and shall be applied as follows:-

- All proposals received shall firstly be evaluated on functionality and thereafter only those who qualify for the next stage of evaluation will be evaluated in terms of the **80/20 Points Scoring System** together with the 2011 B-BBEE Regulations.

- Any proposal that fails to achieve a minimum of 72 points of the total of 120 (i.e. 60%) and a score greater than zero in categories marked with an asterisk (*) on the functionality evaluation shall not be evaluated further and will be deemed to be non-responsive.

5.1 **Functionality Evaluation**

The functionality evaluation points will be applied as per the table that follows:

#	Competency	Point Allocation	Maximum Points										
1	<p>Methodology and Approach Bidders are requested to submit their detailed methodology and approach for this project. The following points must be addressed, inter alia, in the proposed Methodology and Approach for the project:</p> <ul style="list-style-type: none"> Project Specific Risk Management Strategy/ Plan Technical Strategy/ Plan Quality Management Strategy/ Plan Cost Control Strategy/ Plan 	<ul style="list-style-type: none"> Project Specific Risk Management Strategy/ Plan – 7.5 points Technical Strategy/ Plan – 7.5 points Quality Management Strategy/ Plan – 7.5 points Cost Control Strategy/ Plan – 7.5 points 	30										
2	<p>Experience in Project Management with similar building projects (*)</p> <p>NB.: Bidders are required to submit a list of similar projects undertaken relevant to this competency in the tabular format below.</p>	<table> <tr> <td>0 years-</td> <td>0 points</td> </tr> <tr> <td>1 – 5 years-</td> <td>10 points</td> </tr> <tr> <td>>5 – 10 years-</td> <td>20 points</td> </tr> <tr> <td>Above 10 years-</td> <td>30 points</td> </tr> </table>	0 years-	0 points	1 – 5 years-	10 points	>5 – 10 years-	20 points	Above 10 years-	30 points	30		
0 years-	0 points												
1 – 5 years-	10 points												
>5 – 10 years-	20 points												
Above 10 years-	30 points												
3	<p>Traceable References of the business for completion of similar building projects/ construction projects (*)</p> <p>The bidder must provide a minimum of two (2) traceable reference letters for similar projects completed (i.e. Architectural Design/ Project Management with similar building projects/ construction projects)</p>	<table> <tr> <td><2 letters –</td> <td>0 points</td> </tr> <tr> <td>2 Letters –</td> <td>15 points</td> </tr> <tr> <td>3 Letters –</td> <td>20 points</td> </tr> <tr> <td>4 Letters –</td> <td>25 points</td> </tr> <tr> <td>5 Letters –</td> <td>30 points</td> </tr> </table>	<2 letters –	0 points	2 Letters –	15 points	3 Letters –	20 points	4 Letters –	25 points	5 Letters –	30 points	30
<2 letters –	0 points												
2 Letters –	15 points												
3 Letters –	20 points												
4 Letters –	25 points												
5 Letters –	30 points												

	(Please submit relevant reference letters to claim points for this. Reference letter must contain the following: <i>Contact name, telephone number, email address and should be on the referee's letter head</i>)		
4	<p>Proposed Team Members Allocated to this project (*)</p> <p><i>Please submit the resumes for all proposed personnel who will be assigned to perform the scope of services contained in this RFP in order to claim points for this competency</i></p>	<ul style="list-style-type: none"> Professional Architect (Principal Agent) – 7.5 points Civil Engineer (CE) – 7.5 points Electrical Engineer (EE) – 7.5 points Quantity Surveyor (QS) – 7.5 points 	30

In order to be awarded points for **competency 2 listed above**, please submit the following:

- A list of **contactable references** for similar projects undertaken in the following format:

Client Name	Nature of Work Undertaken	Commencement Date	Date of Completion	Client Contact Person	Tel No.

Only bidders who achieve a minimum of 72 points of the total of 120 and a score greater than zero in categories marked with an asterisk (*) on the functionality evaluation shall be evaluated in terms of the 80/20 points scoring system.

5.2 The 80/20 Point Scoring System

The 80/20 points scoring system will be applied as follows:

COMPONENT	80/20
B-BBEE Status Level	20
Price	80
Total	100

The points for price will be calculated as per the formula below:

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Bidders wishing to claim points must attach a valid B-BBEE certificate/ Affidavit.

Up to 20 points will be allocated based on B - BBEE status level of contribution of the bidder and shall be allocated as per table below: -

Status Level of Contributor	Points on scorecard (80/20 System)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-contributor	0

REQUIRED ANNEXURES:

1. **Annexure A: Compulsory Information Sheet (see below)**
2. **Service Providers Proposal together with Cost implications (Compulsory)**
3. **Registration details & Compliance**
 - All interested bidders must be registered on the Central Supplier Database for Government. Proof of registration on the CSD must be included in the bidder's proposal (i.e. either the CSD Supplier Number or the CSD Report). **(Compulsory). Please visit <https://secure.csd.gov.za/> to register on the Central Supplier Database.** The CSD will be used to verify tax compliance status of the bidder. NB: Bidders who are in service of the state as per CSD will be disqualified from further evaluation unless supporting documents proving the supplier is not a government employee is submitted as part of the proposal.
 - All bidders must submit a Tax Compliance Status (TCS) Pin Number (Compulsory). In line with the latest circular from SARS (South African Revenue Services), bidders can now submit a **UNIQUE PIN** to enable the entity to verify the bidder's tax compliance status online via E-filing or via the CSD. No awards will be made to bidder's whose tax matters are not in order and who fail to rectify their tax status at the time of adjudication of the bid.
 - Annexure A, MBD 1, 4, 8 and 9 Forms which can be found from page 30 of this document **(Compulsory)**. Please note that the SBD forms will not be accepted.
 - Budget Activity Schedule (Cost implications)
 - All documents as per the competency table on pages 12-13 of this document.
 - Bank confirmation letter.
 - Company registration documents showing all active members/ directors/ shareholders/ owners etc.
 - Power of Attorney/ Signing authority where applicable
 - B-BBEE Verification Certificate / Affidavit (Please attach the approved B-BBEE accreditation certificate/ affidavit if available in order to claim points for this.)

Points to note regarding the B-BBEE Status Level:

- Bidders other than EMEs must submit 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.
- 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.

- 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.
- 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.

The following rules are applicable ONLY to consortia / joint ventures / sub-contracting and MUST be adhered to:

- In bids where Consortia / Joint Ventures / Sub-contractors are involved; each party must **submit separate** MBD 4 forms, B-BBEE Certificate/ Affidavits, SARS tax compliance status (TCS) pins AND Central Supplier Database (CSD) registration number (**compulsory**).
- In addition, the relevant agreement between all parties involved, which clearly outlines the roles and responsibilities specific to this tender must be submitted (**compulsory**).
- 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 Exempt Micro Entity that has the capability and ability to execute the sub-contract.
- 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.

GENERAL CONDITIONS OF CONTRACT (ISSUED BY NATIONAL TREASURY)

TABLE OF CLAUSES

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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 tender documents for the receipt of Tenders.
- 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7 "Day" means calendar day.
- 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
- 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods are so delivered and a valid receipt is obtained.
- 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among Bidders (prior to or after Tender submission) designed to establish Tender 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 tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the goods covered by the Tender will be manufactured.
- 1.17 "Local content" means that portion of the tender 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 tender documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 "Supplier" means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.
- 1.26 "Tort" means in breach of contract.
- 1.27 "Turnkey" means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.
- 1.28 "Written" or "in writing" means hand-written in ink or any form of electronic or mechanical writing.

2. **Application**

- 2.1 These general conditions are applicable to all Tenders, contracts and orders including Tenders for functional and professional services (excluding professional services related to the building and construction industry), sales, hiring, letting and the

granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the tender documents.

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

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

3. **General**

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

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

4. **Standards**

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

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

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

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

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

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

6. Patent Rights

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

7. Performance security

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

8. Inspections, tests and analyses

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

arrangements, including payment arrangements with the testing authority concerned.

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

9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size 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, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental Services

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

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

14. Spare parts

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

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

15. Warranty

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

16. Payment

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

17. Prices

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

18. Variation orders

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

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

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

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

21.4 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties,

pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of penalties.

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

22. Penalties

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

23. Termination for default

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

24. Antidumping and countervailing duties and rights

- 24.1 When, after the date of Tender, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or antidumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or

for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the supplier to the purchaser or the purchaser may deduct such amounts from moneys (if any) which may otherwise be due to the supplier in regard to goods or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

25. Force Majeure

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

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

26. Termination for insolvency

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

27. Settlement of Disputes

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

28. Limitation of Liability

28.1 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

28.2 Notwithstanding any reference to mediation and/or court proceedings herein,

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

28.3 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6;

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

29. Governing language

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

30. Applicable law

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

31. Notices

31.1 Every written acceptance of a Tender 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 Tender 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 Tender SARS must have certified that the tax matters of the preferred bidder are in order.
- 32.4 No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.

33. Transfer of contracts

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

34. Amendment of contracts

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

35. Prohibition of restricted practices

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

ANNEXURE A – MANDATORY INFORMATION

Name of Company: _____

Contact Person/s: _____

Contact Number/s: _____

E-mail address:

Details	Response (Please indicate where the information can be found in your proposal)
Methodology and Approach	
Experience in Project Management with <u>similar building projects</u> in the tabular format as per page 13 of this document	
Traceable Reference Letters of the business for completion of works	
Proposed Team Members Allocated to this project	
Price (Including VAT)	

Above information certified correct:

Signature: _____

Date: _____

NB: By signing this annexure, the bidder accepts the clauses contained within these Terms of Reference.

MBD1: INVITATION TO BID (COMPULSORY SUBMISSION)

PART A

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF ENTERPRISE iLembe

Bid Number	T08-2022	Closing Date		Closing Time	11h00
Description					

THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX
SITUATED AT

**ENTERPRISE iLEMBE
SANGWENI TOURISM CENTRE
CNR. LINK ROAD & BALLITO DRIVE
BALLITO
4420**

SUPPLIER INFORMATION

Name of Bidder					
Postal Address					
Street Address					
Telephone Number	Code		Number		
Cellphone Number					
Facsimile Number	Code		Number		
E-Mail Address					
Vat Registration Number					
Tax Compliance Status	TCS PIN:		OR	CSD No:	
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 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:
--------------------------------------	-------------------------

Signature of Bidder	Date:
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Capacity under which this bid is signed:

PART B
Terms and Conditions for Bidding

1. BID SUBMISSION:

- 1.1. Bids must be delivered by the stipulated time to the correct address. Late bids will not be accepted for consideration.
- 1.2. **All bids must be submitted as prescribed in the terms of reference**
- 1.3. This bid is subject to the Preferential Procurement Policy Framework Act, the Municipal Supply Chain Management Regulations the GCC contract, the JBCC Minor Works contract
- 1.4. and, if applicable, any other special conditions of contract.

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 Bidders must ensure compliance with their tax obligations.
- 2.2 Bidders are required to submit their unique Personal Identification Number (Pin) issued by SARS to enable the organ of state to view the taxpayer’s profile and tax status.
- 2.3 Application for the Tax Compliance Status (TCS) certificate or Pin may also be made via e-filing. In order to use this provision, taxpayers will need to register with SARS as e-filers through the **website www.sars.gov.za**.
- 2.4 Foreign suppliers must complete the Pre-Award Questionnaire in part B:3.
- 2.5 Bidders may also submit a printed TCS certificate together with the bid.
- 2.6 In bids where consortia / joint ventures / sub-contractors are involved each party must submit a separate TCS certificate / Pin / CSD number.
- 2.7 Where no TCS is available but the bidder is registered on the Central Supplier Database (CSD), a CSD number must be provided.

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- 3.1. Is the entity a resident of the Republic of South Africa (RSA)? Yes No
- 3.2. Does the entity have a branch in the RSA? Yes No
- 3.3. Does the entity have a permanent establishment in the RSA? Yes No
- 3.4. Does the entity have any source of income in the RSA? Yes No
- 3.5. Is the entity liable in the RSA for any form of taxation? Yes No

If the answer is “no” to all of the above, then it is not a requirement to register for a Tax Compliance Status System Pin Code from the South African Revenue Service (SARS) and if not register as per 2.3 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 4: DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
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/ Representative	
3.2	Identity Number	
3.3	Position occupied in the Company (director, trustee, shareholder ²)	
3.4	Company Registration Number	
3.5	Tax Reference Number	
3.6	Tax Reference 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.		

¹MSCM 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 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.

²"Shareholder"³ 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 a 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, managers, principal 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, managers, principal 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, principal 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

Name of Bidder			
Signature		Name (print)	
Capacity		Date	

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.**

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

4.2	<p>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)?</p> <p>The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	<p>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?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	<p>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?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	<p>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?</p>	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

.....

Position

.....

Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Municipal Bidding Document (MBD) must form part of all bids¹ invited.

- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *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:

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

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

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I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Municipality / Municipal Entity)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However

communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.

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

3. 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.

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

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Signature

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Date

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Position
Bidder

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Name of