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SBD 1

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (MUSINA MAKHADO SPECIAL ECONOMIC ZONE)					
BID NUMBER:	1224231	CLOSING DATE:	09 JULY 2026	CLOSING TIME:	11:00
DESCRIPTION	<i>APPOINTMENT OF A LAW FIRM TO PROVIDE A LEGAL OPINION ON THE LEGAL EFFECT OF THE LAPSE OF A PERFORMANCE GUARANTEE UNDER A GCC 2015 BULK SEWER CONTRACT</i>				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
<u>Supplychain@mmsez.co.za</u> and copy <u>a.kutama@mmsez.co.za</u>					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Aluwani Kutama		CONTACT PERSON	Mashile Mokono	
TELEPHONE NUMBER	072 247 9851		TELEPHONE NUMBER	066 484 1506	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	A.Kutama@mmsez.co.za		E-MAIL ADDRESS	<u>M.Mokono@mmsez.co.za</u>	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES	
<input type="checkbox"/> NO					
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES	

NO

DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?

YES NO

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?

NO

YES

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?

NO

YES

IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW. A6776666

**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

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 VERIFY THE TAXPAYER’S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
- 2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE.”

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

(Proof of authority must be submitted e.g. company resolution)

DATE:

APPOINTMENT OF A LAW FIRM TO PROVIDE A LEGAL OPINION ON THE LEGAL EFFECT OF THE LAPSE OF A PERFORMANCE GUARANTEE UNDER A GCC 2015 BULK SEWER CONTRACT

**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

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

ITEM QUANTITY DESCRIPTION BID PRICE IN RSA CURRENCY

NO. ** (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

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BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

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

Full Name	Identity Number	Name of State institution

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

2.2.1 If so, furnish particulars:

.....
.....

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

2.3.1 If so, furnish particulars:

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

3 DECLARATION

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

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

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

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

1. GENERAL CONDITIONS

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

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 To be completed by the organ of state

(delete whichever is not applicable for this tender).

- a) The applicable preference point system for this tender is the 80/20 preference point system.
- b) 80/20 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

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

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

1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS	20
Total points for Price and SPECIFIC GOALS	100

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

2. DEFINITIONS

- (a) **“Tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“Price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“Rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“Tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will

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result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and

(e) “**The Act**” means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

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

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

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

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

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

3.2.1. POINTS AWARDED FOR PRICE

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

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

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

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

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

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

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

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

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

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

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)	Means of verification
Black people ownership	5		Central Supplier Database (CSD) and company registration certificate.
Women equity	3		Central Supplier Database (CSD) and company registration certificate.
Youth equity	2		Central Supplier Database (CSD) and company registration certificate.
Disability	2		Medical certificate or equivalent
Promotion of small businesses	3		Latest Financial Statement
Enterprises located within Limpopo	3		Proof of address
Military Veterans (MVA)	2		MVA Force number

DECLARATION WITH REGARD TO COMPANY/FIRM

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

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One-person business/sole propriety
- Close corporation
- Public Company
- Personal Liability Company
- (Pty) Limited
- Non-Profit Company
- State Owned Company

[TICK APPLICABLE BOX]

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

APPOINTMENT OF A LAW FIRM TO PROVIDE A LEGAL OPINION ON THE LEGAL EFFECT OF THE LAPSE OF A PERFORMANCE GUARANTEE UNDER A GCC 2015 BULK SEWER CONTRACT

I acknowledge that:

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

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

TERMS OF REFERENCE

**APPOINTMENT OF A LAW FIRM TO PROVIDE A LEGAL OPINION
ON THE LEGAL EFFECT OF THE LAPSE OF A PERFORMANCE
GUARANTEE UNDER A GCC 2015 BULK SEWER CONTRACT**

BID NUMBER : 1224231

CLOSING DATE : 09 July 2026

CLOSING TIME : 11:00

VALIDITY PERIOD: 180 DAYS

1. INTRODUCTION

The **Musina-Makhado Special Economic Zone (MMSEZ)** is a State-Owned Company established under the Special Economic Zones Act and is a wholly owned subsidiary of the Limpopo Economic Development Agency. It serves as a flagship industrialization initiative of the Limpopo Provincial Government, aimed at promoting economic growth through beneficiation, value-added manufacturing, and investment attraction.

MMSEZ is designed to accelerate industrial development by attracting both local and international investors to resource-based industries. As a greenfield investment platform, it offers opportunities across various sectors, including light metals beneficiation, agro-processing, logistics, robotics, and general manufacturing.

The SEZ comprises two development sites located within the Vhembe District:

- **North Site (Antonvilla)** – approximately 3,500 hectares near Musina, designated for light and medium manufacturing, logistics, and agro-processing industries.
- **South Site (Mopani)** – approximately 8,000 hectares near the Mopani railway station, designated for energy, metallurgical, and other heavy industries.

MMSEZ offers investors a strategic location near the Beitbridge Border Post, providing access to regional and continental markets through the Southern African Development Community (SADC) and the African Continental Free Trade Area (AfCFTA). The zone further enhances its competitiveness through investment incentives, customs and fiscal duty relief, a business-friendly environment, and access to established road and rail infrastructure linked to key regional and global markets.

MMSEZ hereby invites suitably qualified and experienced law firms to submit proposals for the appointment of a law firm to provide a legal opinion on the legal effect of the lapse of a performance guarantee under a GCC 2015 Bulk Sewer contract

2. BACKGROUND

MMSEZ awarded a Bulk Sewer Contract to a contractor in terms of GCC 2015 on 06 April 2023.

As a contractual requirement, the contractor furnished a Performance Guarantee issued by ABSA on 23 April 2023 in favour of MMSEZ.

Although the contract was awarded, MMSEZ has not issued an instruction to the contractor to commence construction works and no physical construction activities have commenced to date.

The Performance Guarantee subsequently lapsed on 30 April 2025.

MMSEZ requires an independent legal opinion from a suitably qualified law firm to determine the legal implications of the lapse of the Performance Guarantee and the resultant legal position of MMSEZ under GCC 2015 and applicable South African law.

APPOINTMENT OF A LAW FIRM TO PROVIDE A LEGAL OPINION ON THE LEGAL EFFECT OF THE LAPSE OF A PERFORMANCE GUARANTEE UNDER A GCC 2015 BULK SEWER CONTRACT

3. PURPOSE

The purpose of this appointment is to obtain a comprehensive legal opinion on the legal consequences arising from the lapse of the Performance Guarantee on 30 April 2025 in circumstances where:

- the Bulk Sewer Contract remains in place;
- the contractor was never instructed to commence the works; and
- no construction works have not commenced.

4. OBJECTIVES OF THE ASSIGNMENT

The legal opinion must provide MMSEZ with certainty regarding:

- Whether the existing contract remains capable of implementation despite the lapse of the performance guarantee;
- Whether MMSEZ may require the contractor to provide a replacement or renewed performance guarantee and proceed with the project;
- Whether the contract should be varied, reaffirmed, suspended, or terminated;
- The legal and procurement implications of each available option;
- The risks associated with continuing, amending, or terminating the contract; and
- The recommended way forward to enable project implementation.

5. SCOPE OF WORK

The appointed law firm shall undertake the following:

5.1 Review of Documentation

Review all relevant documentation including but not limited to:

- Letter of Award;
- the Contract Agreement
- GCC 2015 conditions of contract;
- the Performance Guarantee issued by ABSA dated 23 April 2023;
- any other relevant contractual documents.

5.2 Legal Analysis

The legal opinion must specifically address issues in the objectives of the assignment including the following:

a) Legal effect of the lapse of the performance guarantee.

Determine the legal effect of the expiry of the Performance Guarantee on 30 April 2025 in relation to Bulk Sewer award and whether the existing contract remains capable of implementation despite the lapse of the performance guarantee;

b) Impact on the Bulk Sewer contract

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Advise whether the lapse of the Performance Guarantee affects the validity, enforceability or continuation of the Bulk Sewer Contract.

c) Contractor obligations

Advise whether the contractor remains under an obligation to maintain a valid Performance Guarantee in terms of GCC 2015 even work there has not been commencement of construction works.

d) Replacement or renewal of the performance guarantee.

Advise whether MMSEZ may require the contractor to provide a replacement or renewed performance guarantee and proceed with the project.

e) Breach of Bulk Sewer contract

Advise whether the lapse of the Performance Guarantee constitutes a breach of Bulk Sewer contract and the legal consequences thereof and whether the contract should be varied, reaffirmed, suspended, or terminated;.

f) Available remedies

Identify the remedies available to MMSEZ under GCC 2015 and South African law.

g) Termination rights

Advise whether the lapse of the Performance Guarantee constitutes a lawful basis for cancellation or termination of the Bulk Sewer contract.

i) Legal risks

Identify and assess the risks associated with continuing, amending, or terminating the contract and the legal and procurement implications of each available option;

j) Recommendations

Provide clear recommendations regarding the most legally defensible and commercially appropriate course of action available to MMSEZ to enable project implementation.

6. DELIVERABLES

The appointed law firm shall provide:

6.1 Written Legal Opinion

A comprehensive written legal opinion addressing all matters contained in Section 4 and 5.

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6.2 Executive Summary

A concise summary highlighting:

- key legal findings;
- identified risks;
- available remedies; and
- recommended actions.

6.4 Presentation

Presentation of the legal opinion to MMSEZ Management, Board Committees and/or Board of Directors if requested

7. DURATION OF THE ASSIGNMENT

The assignment shall be completed within fifteen (15) working days from the date of appointment.

MMSEZ reserves the right to extend or terminate the appointment subject to operational requirements and applicable procurement prescripts.

6. MINIMUM REQUIREMENTS

Interested law firms must meet the following minimum requirements:

- Be a duly registered legal practice in South Africa;
- Be registered with the Legal Practice Council;
- Have a minimum of five (5) years' relevant experience in construction and engineering law;
- Demonstrated experience in GCC 2015 contracts;
- Provide CVs of key personnel who will render the services;

8. REPORTING

The appointed law firm will report to the Chief Executive Officer and work closely with the Senior Manager: Legal Services

9. EVALUATION CRITERIA

Proposals will be evaluated in accordance with the Preferential Procurement Policy Framework Act ("PPPFA"), the Preferential Procurement Regulations, and MMSEZ Supply Chain Management policies.

The evaluation criteria may include:

- Functionality;
- Experience and expertise of the firm;
- Experience of key personnel;
- Understanding of the scope of work;
- Pricing;

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- Compliance with mandatory requirements.

10. CONFIDENTIALITY

The appointed law firm shall maintain strict confidentiality regarding all information, documentation, and matters relating to MMSEZ, the Board, and its operations and shall not disclose any information without prior written consent from MMSEZ.

11. CONFLICT OF INTEREST

The appointed law firm must disclose any actual or potential conflict of interest and must not undertake any activity that may compromise its independence and professional obligations to MMSEZ.

12. SUBMISSION OF PROPOSALS

Interested law firms must submit the following:

- Company profile;
- Proof of registration with the Legal Practice Council;
- CSD registration report;
- Valid tax compliance status;
- B-BBEE certificate or sworn affidavit;
- Relevant experience and reference letters;
- CVs of proposed personnel;
- Technical proposal;
- Financial proposal.

Proposals must be submitted to MMSEZ on or before the date and time specified in the request for quotation or bid documentation.

13. RESERVATION OF RIGHTS

MMSEZ reserves the right to:

- Accept or reject any proposal received;
- Cancel the process at any stage;
- Request additional information from bidders;
- Negotiate with the preferred bidder where applicable.

14. EVALUATION OF BIDS

Bid proposals will be evaluated in accordance with the 80/20 preference point system as contemplated in the Preferential Procurement Regulations of 2022, and all bid offers received shall be evaluated based on the following criteria:

Preference points for this bid shall be awarded for:

<p><i>APPOINTMENT OF A LAW FIRM TO PROVIDE A LEGAL OPINION ON THE LEGAL EFFECT OF THE LAPSE OF A PERFORMANCE GUARANTEE UNDER A GCC 2015 BULK SEWER CONTRACT</i></p>
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- a. Administration Compliance
- b. Functionality 100
- c. Price & Specific Goals 80/20

a. Evaluation stage one: Administrative compliance

Compliance with administrative requirements as stated in the Standard Bidding Documents. In this evaluation stage, all bidders that fail to provide the required information and documentation will be disqualified from further evaluation:

Requirement	Comply/not comply	Disqualifying factor
Is the bidder tax compliant		No
Is the bidder registered on the National Treasury Central Supplier Database (CSD)		Yes
SBD Documents signed by an authorized person from the company (attached proof)		Yes
All SBD documents completed and signed by authorized person from the company		Yes

b. Evaluation stage two: Functionality criteria

The following criteria will be used for evaluating all bids/ proposals for functionality and bidders are expected to obtain a minimum of **70** out of 100 points to proceed qualify for further evaluation. Failure to obtain prescribed 70 points will automatically disqualify the bidder from proceeding to the next evaluation stage. Below is a table that shows how the 100 points of functionality will be allocated.

CRITERIA	SUB-CRITERIA	RATING	POINTS	MAX POINTS
LEGAL PROFESSIONAL LAW FIRM'S EXPERIENCE	The Legal Professional law firm must demonstrate and provide detailed experience in Construction and engineering law services undertaken.	Five (5) matters and more in construction and engineering law services undertaken in the last ten (10) years	35	35
	The project details must cover the following: <ul style="list-style-type: none"> • Details of the work undertaken and outcome. • Duration of the matter. • Brief details of the client. 	Four (4) matters in construction and engineering law services undertaken ten (10) years	25	
		Three (3) matters in construction and engineering law services undertaken in the last	15	

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CRITERIA	SUB-CRITERIA	RATING	POINTS	MAX POINTS
		ten (10) years		
		Two (2) matters or less in construction and engineering law services undertaken in the last ten (10) years	10	
		No brief on matters undertaken in the last ten (10) years	0	
LEAD LEGAL PROFESSIONAL'S QUALIFICATIONS & EXPERIENCE NB: The following is a precondition for the Lead Legal Professional to be considered for scoring. 1) Proof of admission as an Attorney and registration with the professional body.	Lead Legal Professional's Experience The Legal Professional must attach a brief Curriculum Vitae (CV) for the Lead Legal Professional's role indicating relevant ten (10) years post admission experience in construction and engineering law.	Ten (10) years of experience in construction and engineering law services and experience in PFMA and related legislation and legal advisory services to State-Owned Entities post admission.	20	20
		Five (5) years of experience in construction and engineering law services and experience in PFMA and related legislation and legal advisory services to State-Owned Entities post admission	15	
		Two (2) years of experience in construction and engineering law services and experience in PFMA and related legislation and legal advisory services to State-Owned Entities post admission.	10	
	(Clearly documented brief CV of the Lead Attorney must be provided to obtain scores)	No experience provided.	0	
TWO KEY SUPPORT PERSONNEL: LLB or BCom law, a minimum of 3 years' experience and registered with related professional body	Attach copies of CV, certified Qualifications and Professional certificates	Minimum of 3 years' experience plus Copy of CV and certified qualifications and professional certificates	20	20

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CRITERIA	SUB-CRITERIA	RATING	POINTS	MAX POINTS
		Less than 3 years' experience plus Copy of CV and certified qualifications and professional certificates	10	
		No experience provided and no Copy of CV and certified qualifications and professional certificates	0	
CLIENT REFERENCES Legal Professional Law Firm's proven experience in undertaking similar matters	<p>The Legal Professional must submit written contactable reference letters and/or appointment letters of recent and current matters from entities who have acquired the same or similar type of services.</p> <p>The reference letters should entail the following details:</p> <ul style="list-style-type: none"> • Name of department/organization; • Nature of work; • Duration of the contract; • Contact person, contact details and email address; and • Signed by the appropriate client delegated authority. <p>(Reference Letters must be provided on the client's letterhead and must not be older than five (5) years to obtain scores)</p>	More than three (3) relevant reference letters provided	25	25
		Three (3) relevant reference letters provided	15	
		Two (2) relevant reference letters provided	5	
		No reference letters provided	0	
	TOTAL	100 points		

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c. Evaluation stage three: Price and specific goals.

Only qualifying bids that met the mandatory requirements will be evaluated for price and specific goals applying the 80/20 preference points system in accordance with the PPPFA Regulations of 2022, using the following formula to calculate points for price:

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

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

15. PROPOSAL RESPONSES

The format of the bid proposals to be submitted shall comprise cover letter and the following documents:

1. Returnable bid document with all the required documents fully completed and signed;
2. Company profile that illustrates the core business, services offered, company profile and staff compliment;
3. A list of qualified professionals that will be assigned to the project with brief CV's illustrating experience and qualifications(attached);
4. Fidelity Fund Certificate;
5. Declaration of interest;
6. Attached Certificates of previously completed projects;
7. List of contactable references;
8. Comprehensive implementation plan;
9. Attached EAAB certificates or any Professional Body certificate.

16. SPECIAL CONDITIONS

- a. Musina Makhado SEZ reserves the right to appoint the bidder that proves to be fully capable and qualified to handle and execute the job.
- b. Bids submitted must be in line with the detailed specification. Failure to bid accordingly will automatically disqualify the submitted bid.

- c.** Musina Makhado SEZ reserves the right to cancel or withdraw this bid if:
- d.** Due to changed circumstances, there is no longer a need for this services; or
 - i. Funds are no longer available to cover the total envisaged expenditure; or
 - ii. No acceptable bids are received; or
 - iii. There is a material irregularity in the tender process.
- e.** In the case of sub-contracting or joint venture agreement, Musina Makhado SEZ will enter into a single contract with the principal bidder.
- f.** Musina Makhado SEZ reserves the right to call interviews with short-listed bidders before final selection.
- g.** Musina Makhado SEZ reserves the right to conduct supplier due diligence prior to final award or at any time during the contract period. This may include surprise site visits.
- h.** Bidders who are not registered on Central Supplier Database (CSD) must register before submission of bids.
- i.** Any completion of the bid document in pencil or erasable ink will not be acceptable and will automatically disqualify the submitted bid.
- j.** Successful bidder will be required to sign a Service Level Agreement (SLA).
- k.** Notwithstanding shortcomings and/or inconsistencies, if any, in this specification, which is only a minimum specification, a bidder shall make provision for a complete solution that will deliver the required service efficiently and cost-effectively.
- l.** Bid documents should be Emailed to Supplychain@mmsez.co.za and Copy A.kutama@mmsez.co.za on or before **09 July 2026** at 11h00 which is the closing date for this bid.
- m.** Bids received after the closing date and time will not be accepted for consideration.
- n.** This request for bid document contains confidential information about Musina Makhado SEZ, which has been provided to supply potential bidders with the data necessary to provide a holistic response.
- o.** No part of the contents may be used, copied, disclosed or conveyed in whole or in part to any party, in any manner whatsoever without the prior written permission of Musina Makhado SEZ.
- p.** Any reproduction or transmission of information contained in this document except for the sole purpose of responding to this bid is strictly prohibited.
- q.** References to Musina Makhado SEZ must not be made in any literature, promotional material, and brochures or sales presentations without the express written consent of Musina Makhado SEZ.

17. CLARIFICATION / QUERIES

- a.** The process of clarification required by a bidder regarding the meaning or interpretation of the specification or any other aspects concerning the bid will be done in writing (letter, or e-mail).
- b.** Telephonic requests for clarification will not be considered.
- c.** The cut-off date for queries is **07 July 2026 at 14:00 pm.**
- d.** The bid reference number should be quoted in all correspondence.
- e.** Technical queries must be directed to M.Mokono@mmsez.co.za and administrative queries must be directed to A.Kutama@mmsez.co.za

Queries received will be responded to within one (2) working days of receiving them.

**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

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8. Inspections, tests and analysis
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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 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 with 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 consignee's 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 markets its goods on its own initiative in the RSA at a lower price than that of the country of origin and which has 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 are 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

APPOINTMENT OF A LAW FIRM TO PROVIDE A LEGAL OPINION ON THE LEGAL EFFECT OF THE LAPSE OF A PERFORMANCE GUARANTEE UNDER A GCC 2015 BULK SEWER CONTRACT

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 m Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.

1.17. “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

1.18. “Order” means an official written order issued for the supply of goods or works or the rendering of a service.

1.19. “Project site,” where applicable, means the place indicated in bidding documents.

1.20. “Purchaser” means the organization purchasing the goods.

1.21. “Republic” means the Republic of South Africa.

1.22. “SCC” means the Special Conditions of Contract.

1.23. “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.

1.24. “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

2. Application

2.1. These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

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

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

3. General

3.1. Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for

any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2. With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

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

5. Use of contract documents and information; inspection.

5.1. The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract.

Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

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

5.3 Any document, other than the contract itself mentioned in GCC clause 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 inspections 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

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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 analysed 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. Packaging

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

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

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental

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

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

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

14. Spare parts

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

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

15. Warranty

- 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any 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 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 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. Contracts Amendments

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

19. Assignment

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

20. Subcontracts

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under these 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 cancelling

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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.

23.1 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.

23.2 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.

23.3 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.

23.4 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.

23.2 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.

23.3 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.

26. Termination for Insolvency

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

27. Settlement of Disputes

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

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

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

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

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

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

(b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

28.1 Except in cases of criminal negligence or 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. Governance language

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

30. Applicable law

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

APPOINTMENT OF A LAW FIRM TO PROVIDE A LEGAL OPINION ON THE LEGAL EFFECT OF THE LAPSE OF A PERFORMANCE GUARANTEE UNDER A GCC 2015 BULK SEWER CONTRACT

31. Notices

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

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

32. Taxes and duties

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

32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

33. National Industrial Participation (NIP) Programme

33.1. The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation

34. Prohibition of restrictive practices

34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).

34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

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

