

LEPELLE-NKUMPI LOCAL MUNICIPALITY



BID DOCUMENT

BID NO. LNM037/2023/24

TURNKEY PROJECT

FOR DESIGN AND INSTALLATION OF 4 HIGHMAST LIGHTS AT MALEMANG, LEBOWAKGOMO UNIT A, LEBOWAKGOMO CEMENTRY AND MPHAANENG

TECHNICAL ENQUIRIES	BIDDING RELATED ENQUERIES
TECHNICAL SERVICES Ms Mushaisano Ramusetheli LEPELLE-NKUMPI LOCAL MUNICIPALITY P/BAG X 07 CHUENESPOORT 0745 Tel: (015) 633 4552/4 Fax: (015) 632 4594	SUPPLY CHAIN MANAGEMENT Mr. KM Mashiane LEPELLE-NKUMPI LOCAL MUNICIPALITY P/BAG X 07 CHUENESPOORT 0745 Tel: (015) 633 4606/4616/4531 Fax: (015) 633 6896

NAME OF BIDDER (BIDDING ENTITY) :

CSD NUMBER :

CLOSING DATE : 20 MAY 2024

CLOSING TIME : 11H00

THE TOTAL OFFERED BID PRICE _____ (VAT INCLUSIVE)

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FORM A

BID NOTICE

BID: LNM037/2023/24

TURNKEY PROJECT FOR DESIGN AND INSTALLATION OF 4 HIGHMAST LIGHTS AT MALEMANG, LEBOWAKGOMO UNIT A, LEBOWAKGOMO CEMENTRY AND MPHAANENG

The Municipality will adjudicate and award bids in accordance with the revised PPPFA Regulation and Municipal's Supply Chain Management Policy, 80/20 point system, where 80 points will be allocated for price and 20 points will be allocated for Special goals.

Municipality reserves the right to negotiate further conditions of the bid and other requirements with the successful bidder. The municipality reserves the right to appoint or not to appoint and is not obliged to accept the lowest bid.

Bid documents will be available from the municipal website (www.lepelle-nkumpi.gov.za)/E-tenders portal, downloadable for free and official closing time for submission of bids is **11H00**. Bid document fully completed, priced, sealed in an envelope marked with the bid number and description should be deposited in the bid box at Municipal Offices (Civic Centre) 170 BA, Unit F Lebowakgomo, on or before closing date and time. The municipality will not take any responsibility for lost documents due to poor packaging.

Bids will remain valid for 90 days from the date of closing. In case the validity period of a bid is extended, failure to submit any withdrawal/rejection of bid validity extension on/before the stipulated time and date will be considered as acceptance of extension of validity period. No faxed/ e-mail bids will be accepted, service providers using courier services should ensure that their documents are deposited into the bid box on or before the closing date and time. It is not the responsibility of Municipal officials to accept bids from courier services and take to the bid box. All bidders must be registered on the National Treasury Central Supplier Database.

Enquiries relating to bid documents:

1. Supply Chain Management unit – Mr. KM Mashiane (015) 633 4602/4531/4616
2. Technical Service Department – Ms. Mushaisano Ramusetheli (015) 633 4556/4557

DIALE D.S
ACTING MUNICIPAL MANAGER

MBD1

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF MUNICIPALITY/ MUNICIPAL ENTITY)					
BID NUMBER:	LN037/2023/24	CLOSING DATE:	20 MAY 2024	CLOSING TIME:	11H00
DESCRIPTION	TURNKEY PROJECT FOR DESIGN AND INSTALLATION OF 4 HIGHMAST LIGHTS AT MALEMANG, LEBOWAKGOMO UNIT A, LEBOWAKGOMO CEMENTRY AND MPHAANENG				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).					

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

LEPELLE-NKUMPI LOCAL MUNICIPALITY
UNIT 170 BA, CIVIC CENTRE
LEBOWAKGOMO
0737

SUPPLIER INFORMATION

NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES 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 PART B:3]	
TOTAL NUMBER OF ITEMS OFFERED			TOTAL BID PRICE	R	
SIGNATURE OF BIDDER		DATE		

CAPACITY UNDER WHICH THIS BID IS SIGNED

BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO: TECHNICAL INFORMATION MAY BE DIRECTED TO:

DEPARTMENT	Lepelle Nkumpi Local Municipality	CONTACT PERSON	Mushaisano Ramusetheli
CONTACT PERSON	Kwena Mashiane	TELEPHONE NUMBER	015 633 4552
TELEPHONE NUMBER	015 633 4602/4531/4616	FACSIMILE NUMBER	(015) 633 6896
FACSIMILE NUMBER	(015) 633 6896	E-MAIL ADDRESS	Mushaisano.ramusetheli@misa.gov.za
E-MAIL ADDRESS	kwena.mashiane@lepelle-nkumpi.gov.za		

**PART B
TERMS AND CONDITIONS FOR BIDDING**

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

Form “B”

BID SPECIFICATION

1. SCOPE OF WORK

The employer’s objectives are to deliver public infrastructure using labour intensive methods in accordance with EPWP Guidelines

- **The scope of work comprise of the following:** Design and Installation of 4 high mast lights at (1) Malemang, (1) Lebowakgomo Unit A, (1) Lebowakgomo Cemetery and (1) Mphaaneng in Lepelle Nkumpi Local Municipality.

i. Professional services which entails all projects stages as per ECSA guidelines:

Stage 1 –Inception

Stage 2 – Concept and Viability

Stage 3 – Design Development

Stage 4 – Documentation (including BoQ)

Stage 5 – Contract Administration and Inspection

Stage 6 –Close-Out (including unbundling of assets as per GRAP Standards)

- Detailed Design as per Eskom standards and specification.
- Liaise with Eskom for energizing, this includes electrical applications and direct payments of Eskom invoices using the Municipal credentials.
- Design, facilitate proposals, construct, and monitor implementation of the project.
- Liaise with the Community through the ward councilor and the project CLO for the implementation of the project from commencement to completion.

ii. Construction

- 30M High mast lights with 9x LED lights (strictly Sectional Pole Spec) with single winch for maintenance.
- The scope of work comprise of the following:
 - Site establishment
 - Site clearance
 - Setting out
 - Trenching for foundation
 - Compaction
 - Pressure testing
 - Concrete Works for Mast Foundation
 - Concrete Strength Tests
 - Trenching for cables
 - Laying cables
 - Backfilling
 - Installation of Steel Masts
 - Installation of luminaires
 - Wiring the Mast
 - Testing and Commissioning
 - Energizing

FORM "C"

PRICING SCHEDULE

All bidders are expected to submit a priced summary of BOQ together with the bidding document. The bill of quantities should be inclusive of the following:

- Construction cost
- 5% Contingency amount
- Engineering fees as per ECSA guidelines (including all disbursements and project monitoring)
- 15% VAT

NB: The contract period will be six (6) months period for all design, construction and commissioning project phases.

FORM “D”

RESPONSIVENESS AND EVALUATION

All bids received shall be evaluated in terms of Supply Chain Management Regulations, Lepelle - Nkumpi Municipality Supply Chain Management Policy, The Preferential Procurement Policy Framework Act, and other applicable legislation.

The evaluation criteria consist of the following 3 phases-

Phase 1 - Administration compliance

Phase 2- Functionality

Phase 3- Price and special goals points

Bids in administrative compliance must meet the requirements of each phase in order to qualify for further evaluation

Bids in functionality phase must meet minimum points of 70 to qualify for further evaluation and below 70 points bidders will be disqualified.

1. Administrative Compliance – Phase one

RESPONSIVENESS CRITERIA

1. The bid must be properly received in a sealed envelope clearly indicating the description of the service and the bid number for which the bid is submitted. The municipality will not take any responsibility of the lost documents due to poor packaging.
2. The bid must be deposited in the relevant bid box as indicated on the notice of the bid on or before the closing date and time of the bid.
3. The following MBD forms 1, 3.1, 4, 6.1, 8, and 9 must be completed in full. In case of a joint venture, MBD forms should be completed by an authorized JV representative. (Failure to do so will result in disqualification):
 - i. MBD 1 – Invitation to bid
 - ii. MBD 3.1- Pricing schedule (Firm price)
 - iii. MBD 4 – Declaration of interest
 - iv. MBD 6.1 – Preference points claim form
 - v. MBD 8 – Declaration of bidder’s past supply chain management practices
 - vi. MBD 9 – Certificate of independent bid determination

4. All pages must be initialized or signed. (failure to initialize will result in disqualification)

5. Alterations must be signed or initialized. (failure to do so will result in disqualification)

6. THE USE OF TIPPEX WILL AUTOMATICALLY DISQUALIFY YOUR BID

7. The bid document and attached annexure must be completed in indelible ink. (failure to do so will result in disqualification)

8. The bidder must attach following with the tender:

- i. Copy of the entity/company registration certificate must be submitted with the bid, if applicable.
- ii. Certified copies of IDs for all Director(s) must be attached (**Certification not older than 3 months before the closing date**)
- iii. Tax compliance pin/ CSD number must be completed in MBD form 1.
- iv. Authority for signatory - attach resolution in case of more than one director
- v. Bidder/s (Company and director/partner or sole propriety) must attach proof of municipal rates on municipality letterhead which are not older than 90 days. If the statement of municipal rates is not in the name of the bidder an affidavit from SAPS must be attached. **OR** Letter of traditional authority not older than 90 days for bidder/s. **OR** in case of a lease agreement, a signed lease agreement by both parties indicating who is liable in terms of municipal rates (lessor & lessee) must be attached.
- vi. Letter of good standing from Department of Labour.(failure to do so will result in disqualification)
- vii. Confirmation certificate/letter of 3EP or higher CIDB grading of the contractor. (failure to do so will result in disqualification)
- viii. In case of a Joint Venture, Association or Consortium a formal contract agreement must be signed by both parties and be attached and the following must be adhered to:
 - ix. For the purpose of management of this turnkey project, a consulting engineer cannot be a contractor at the same time.

NB: In case of a Joint Venture, Association or Consortium all of the above requirements listed under nine (9) must be for the both entities unless indicated otherwise.

NB: Failure to adhere to the above mentioned requirements will results to disqualification

2. Functionality – Phase two

The bidders who complied administratively are considered for further evaluation on ability to execute the project. The assessment of functionality will be done in terms of the evaluation criteria and minimum threshold as specified. Bidders are notified that a minimum of 70 points should be achieved in order to be evaluated further, a bid will be disqualified if it fails to meet the minimum threshold for functionality.

Functionality Evaluation	Points Allocation
<p>Engineer Company: Company experience from Government Entities in terms of electrification design completed (Designs) – attach appointment letter and completion certificate (Appointment letters for panels of service providers do not Qualify)</p> <p>1 Project = 5 points 2 Projects= 10 points 3 Projects = 15 points 4 Projects= 20 points 5 Projects= 25 points</p>	(Max 25)
<p>Contractor Company: Company experience from Government Entities in terms of electrification construction completed (construction) – attach appointment letter and completion certificate (Appointment letters for panels of service providers do not Qualify)</p> <p>1 Project = 5 points 2 Projects= 10 points 3 Projects = 15 points 4 Projects= 20 points 5 Projects= 25 points</p>	(Max 25)
<p>Management and key Staff copy of Qualifications to be attached with relevant experience as per attached CV:</p> <p>Engineer:</p> <ul style="list-style-type: none"> • Project Engineer registered with ECSA as Pr Engineering Technologist (Pr Tech Eng) or Professional Engineer (Pr Eng experience in Electrification projects) (Attach professional registration ECSA) 10 points • Minimum B-Degree/ B-Tech/ (NQF 7) Electrical Engineering qualification), with more than five years' experience as per attached CV. 10 points <p>Contractor:</p> <ul style="list-style-type: none"> • Project Supervisor with experience in Electrification construction projects. <ul style="list-style-type: none"> - National Diploma Electrical Engineering qualification with more than four years' experience as per attached CV. 10 points - Minimum N6 in Electrical Engineering qualification with more than three years' experience as per attached CV. 05 points • Safety Officer with an experience of working in Municipal projects. (Attach certified copies of certificate) <ul style="list-style-type: none"> - Certificate in OHS qualification with two to four years of relevant work experience as per attached CV. 05 points 	(Max 35)
<p>Letter of Intent</p> <p>Attached letter of intent from Registered financial institution with full details as guarantor in the amount of 10% as specified for surety purposes.</p>	Max (05) 05 points

Plant (attach certified copies of registration documents of plants or a signed letter of intent to rent) NB. In terms of hiring of Plant, a signed letter of intent to rent must be accompanied by certified copies of registration documents from the plant company. Required Plant: (a) One (1) Crane truck – 10 points	Max (10) 10
Total Points Achievable	100
Minimum Score required	70

The turnkey bidders is expected to score a minimum of 70 points in order to be evaluated further

3. Price and Preference Point system (Special goals) – Phase three

All bids received shall be evaluated in terms of the Supply Chain Management Regulations, Lepelle-Nkumpi Municipality Supply Chain Management Policy, the Preferential Procurement Policy Framework Act, amended PPR 2022 and other applicable legislations.

Evaluation on price and preference point system

Evaluation Criteria		Points
1.	Price	80
2.	Preference point (Special goals)	20
3.	Total	100

Special goals are awarded as per the following table:

The specific goals allocated points in terms of this tender	Number of points allocated Special goals: 20 points
100% Black Person owned as per CSD	04
People or Businesses residing within Lepelle-Nkumpi Local Municipality as per proof of residence	04
100% Women owned company as per CSD	04
People with disability for 100% disability owned company as per CSD	04
Youth(18 to 35 years) for 100% youth owned company as per CSD	04

The Council reserves the right to accept all, some, or none of the bids submitted – either wholly or in part – and it is not obliged to accept the lowest bid.

By submitting this bid, bidders authorizes the Council or its delegate(s) to carry out any investigation deemed necessary to verify the correctness of the statements and documents submitted and that such documents reasonably reflect the ability of the Bidder to provide the goods and services required by the Council.

**PRICING SCHEDULE – FIRM PRICES
(PURCHASES)**

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

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

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

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

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

- Required by:.....

- At:.....

- Brand and Model

- Country of Origin

- Does the offer comply with the specification(s)? *YES/NO

- If not to specification, indicate deviation(s)

- Period required for delivery

*Delivery: Firm/Not firm

- Delivery basis

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

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

*Delete if not applicable

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 or his or her representative:.....

3.2 Identity Number:

3.3 Position occupied in the Company (director, trustee, hareholder²):.....

3.4 Company Registration Number:

3.5 Tax Reference Number:.....

3.6 VAT Registration Number:

3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

3.8 Are you presently in the service of the state? **YES / NO**

3.8.1 If yes, furnish particulars.

.....

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 municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

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

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

3.9.1 If yes, furnish particulars.....

.....
Signature

.....
Date

.....
Capacity

.....
Name of Bidder

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

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

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

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to invitations to tender:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
 - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- 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.
- 1.2 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.

1.3 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

- 1.4 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.
- 1.5 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

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

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

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

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

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

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:

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

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
 - (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)
100% Black Person owned as per CSD	04	
People or Businesses residing with Lepelle-Nkumpi Local Municipality as per proof of residence	04	
Woman for 100% Woman owned company as per CSD	04	
People with disability for 100% disability owned company as per CSD	04	
Youth(18 to 35 years) for 100% youth owned company as per CSD	04	

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 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.

<p>.....</p> <p>SIGNATURE(S) OF TENDERER(S)</p> <p>SURNAME AND NAME:</p> <p>DATE:</p> <p>ADDRESS:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

DECLARATION OF BIDDER’S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury’s Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). 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	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)? 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.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

4.3.1	If so, furnish particulars:		
Item	Question	Yes	No
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

CERTIFICATION

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

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

.....
Signature

.....
Date

.....
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.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of 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:
 - i has been requested to submit a bid in response to this bid invitation;
 - ii could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - iii 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;
 - a. geographical area where product or service will be rendered (market allocation)
 - b. methods, factors or formulas used to calculate prices;
 - c. the intention or decision to submit or not to submit, a bid;

- d. 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.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Objections and complaints

Persons aggrieved by decisions or actions taken in the appointment of this tender or affected by the entire process of supply chain management system, may lodge within 14 days of the decision or action, a written objection or complaint against the decision or action to: The Municipal Manager, Private Bag X 07, Chuenespoort, 0745. To report any fraud; irregularities or corruption related incidents you may call our Anti-Fraud Hotline number: 0800 20 50 53

ANNEXURE “F”

GENERAL UNDERTAKINGS BY THE BIDDER

Definitions

- 1.1.1 “**Acceptable bid**” means any bid, which in all respects, complies with conditions of bid and specifications as set out in the bid document, including conditions as specified in the Preferential Procurement Policy Framework Act (Act 5 of 2000) and related regulations.
- 1.1.2 “**Chairperson**” means the chairperson of the Lepelle-Nkumpi Municipality Bid Adjudication Committee.
- 1.1.3 “**Municipal Manager**” means the Municipal Manager of the Municipality.
- 1.1.4 “**Committee**” refers to the Bid Evaluation and Adjudication Committee.
- 1.1.5 “**Council**” refers to Lepelle-Nkumpi Municipality.
- 1.1.6 “**Equity Ownership**” refers to the percentage ownership and control, exercised by individuals within an enterprise.
- 1.1.7 “**HDI equity ownership**” refers to the percentage of an enterprise, which is owned by individuals, or in the case of a company, the percentage shares that are owned by individuals meeting the requirements of the definition of a HDI.
- 1.1.8 “**Member**” means a member of the Bid Adjudication Committee.
- 1.1.9 “**Service providers**” refers to the bidders who have been successful in being awarded Council contracts.
- 1.1.10 “**SMME’s**”(Small, medium and Micro Enterprises) refers to separate and distinct business entities, including co-operative enterprises and NGO’s, managed by one owner or more, as defined in the National Small Business Act 102 of 1996.
- 1.1.11 “**Contract**” refers to legally binding agreement between Lepelle-Nkumpi Municipality and the service provider.
- 1.1.12 “**Bid**” means a written offer in a prescribed or stipulated form in response to an invitation by the Municipality for the provision of services or goods.
- 1.1.13 “**Contractor**” means any natural or legal person whose bid has been accepted by the Council.
- 1.1.15 “**Closing time**” means the date and hour specified in the bid documents for the receipt of bids.
- 1.1.16 “**Order**” means an official written order issued for the supply of goods or the rendering of a service in accordance with the accepted tender or price quotation.
- 1.1.17 “**Written**” or “**in writing,**” means hand written in ink or any form of mechanical writing in printed form.
- 1.1.18 “**Functionality**” means technical capability, financial and other resource availability that the service provider needs, to successfully and efficiently render the service and/or deliver in accordance with the specifications.

INTERPRETATION:

- 1.2.1 In this agreement clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention.
- 1.2.2 An expression which denotes:-

- 1.2.2.1 Any reference to any statute, regulation or other legislation or official policy shall be a reference to that statute, regulation or other legislation or national policy as at the signature date, and as amended or re-enacted from time to time;
- 1.2.3 When any number of day is prescribed, such shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding day which is a business day;
- 1.2.4 Where any term is defined within a particular clause, other than the interpretation clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in this agreement.

I/we hereby tender:

To supply all or any of the supplies and/or to render all or any of the services described in the attached documents {Forms, Schedule(s) and/or Annexure(s)} to the Lepelle-Nkumpi Municipality.

On the terms and conditions and in accordance with the specifications stipulated in the bid documents (and which shall be taken as part of and incorporated into this bid);

At the prices and on the terms regarding time for delivery and/or execution inserted therein.

I/we agree further that:

The offer herein shall remain binding upon me/us and open for acceptance by the Lepelle-Nkumpi Municipality during the validity period indicated and calculated from the closing time of the bid.

This bid and its acceptance shall be subject to the terms and conditions contained in the Forms, Scheduled(s) and/or Annexure(s) attached hereto with which I am /we are fully acquainted.

Notwithstanding anything to the contrary in the Form(s), Schedule(s) and /or Annexure(s) attached hereto:

If I/we withdraw my/our bid within the period for which I/we have agreed that the bid shall remain open for acceptance, or fail to fulfil the contract when called upon to do so, the Lepelle-Nkumpi Municipality may, without prejudice to its other rights, agree to the withdrawal of my/our tender or cancel the contract that may have been entered into between me/us and the Municipality;

In such event, I/we will then pay to the Municipality any additional expenses incurred by the Municipality for having either to accept any less favourable bid or, if new bids have to be invited, the additional expenditure incurred by the invitation of new bids and by the subsequent acceptance of any less favourable bid;

The Municipality shall also have the right in these circumstances, to recover such additional expenditure by set-off against monies which may be due or become due to me/us under this or any other bid or contract or against any guarantee or deposit that may have been furnished by me/us or on my/our behalf for the due fulfilment of this or any other bid or contract;

Pending the ascertainment of the amount of such additional expenditure the Municipality may retain such monies, guarantee or deposit as security for any loss the Municipality may sustain, as determined hereunder, by reason of my/our default.

Any legal proceedings arising from this bid may in all respects be launched or instituted against me/us and if/we hereby undertake to satisfy fully any sentence or judgment which may be obtained against me/us as a result of such legal proceedings and I/we undertake to pay the Lepelle-Nkumpi Municipality legal costs on an attorney and own client;

If my/our bid is accepted that acceptance may be communicated to me/us by letter or facsimiles and that proof of delivery of such acceptance to SA Post Office Ltd or the production of a document confirming that a fax has been sent, shall be treated as delivery to me/us.

The law of the Republic of South Africa shall govern the contract created by the acceptance to this tender.

I/we have satisfied myself/ourselves as to the correctness and validity of this tender, that the price(s) and rate(s) quoted cover all the work/items(s) specified in the tender documents and that the price(s) and rate(s) cover all my/our obligations under a resulting contract and that I/we accept that any mistakes regarding price(s) and calculations will be at my/our risk.

I/we accept full responsibility for the proper execution and conditions defaulting on me/us under this agreement as the principal(s) liable for the fulfilment of this contract.

ANNEXURE “G”

GENERAL CONDITIONS OF CONTRACT

Definitions

(1) The following terms shall be interpreted as indicated:

“**Closing time**” means the date and hour specified in the bidding documents for the receipt of bids.

“**Contracts**” means the written agreement entered into between the purchaser and the provider, as recorded in the contract form signed by the parties, including all attachments and appendixes thereto and all documents incorporated by reference therein.

“**Contract price**” means the price payable to the provider under the contract for the full and proper performance of his contractual obligations.

“**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.

“**Countervailing duties**” are imposed in cases where an enterprise abroad is subsidised by its government and encouraged to market its products internationally.

a) “**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 recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.

b) “**Day**” means calendar day.

c) “**Delivery**” means delivery in compliance of the conditions of the contract or order.

d) “**Delivery ex stock**” means immediate delivery direct from stock actually on hand.

e) “**Delivery into consignees store or to his site**” means delivered and unloaded in the specified store or depot on the specified site in compliance with the conditions of the contract or order, the provider bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

f) “**Dumping**” occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of country of origin and which have the potential to harm the local industries in the RSA.

g) “**Force Majeure**” means an event beyond the control of provider and not involving the provider’s fault or negligence and is 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.

h) “**Fraudulent practice**” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of 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 bidders of the benefits of free and open competition.

i) “**GCC**” means the General Conditions of Contract.

j) “**Goods**” means all of the equipment, machinery, and/or other materials that the provider is required to supply to the purchaser under the contract.

- k) **“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 provider or his subcontractors) and which costs are inclusive of the costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- l) **“Local Content”** means that portion of the bidding price, which is not included in the imported content provided that local manufacturing does take place.
- m) **“Manufacture”** means the products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- n) **“Order”** means an official written order issued for the supply of goods or works or the rendering of a service
- o) **“Project site,”** where applicable, means the place indicated in bidding documents.
- p) **“Purchaser”** means the Lepelle-Nkumpi Municipality.
- q) **“Republic”** means the Republic of South Africa.
- r) **“SCC”** means the Special Conditions of Contracts.
- s) **“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 provider covered under the contract.
- t) **“Written”** or “in Writing” means hand-written in ink or any form of electronic or mechanical writing.

(2) **Application**

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

(3) **General**

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.
2. Invitations to bid are usually published in locally distributed news media and in the institution's website.

(4) Standards

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

(5) Uses of contract documents and information inspection

1. The provider 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 provider in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.

2. The provider 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.

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

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

(6) Patent rights

1. The provider 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.

2. When a provider developed documentation / projects for the municipality or municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the municipality or municipal entity.

(7) Performance Security

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 Special Conditions of Contract.

2. The process of the performance security shall be payable to the purchaser as compensation for any loss resulting from the provider's failure to complete his obligations under the contract.

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:

1. 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
2. A cashier's or certified cheque

7.4 The performance security will be discharged by the purchaser and returned to the provider not later than thirty (30) days following the date of completion of the provider's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

1 Inspections, tests and analyses

1.6 All pre-bidding testing will be for account of the bidder.

1.7 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 purchaser or an organisation acting on behalf of the purchaser.

1.8 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements with the testing authority concerned.

1.9 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.

(a) 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 accepted or not, the cost in connection with these inspections, tests or analysis shall be defrayed by the provider.

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.

8.1 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 provider, 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 provider's cost and risk. Should the provider fail to provide the substitute supplies forthwith, the purchaser may, without giving the provider further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the provider.

8.2 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.

(b) Packing

a The provider 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.

b 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 subsequent instructions ordered by the purchaser.

(c) **Delivery and documents**

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

(d) **Insurance**

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

(e) **Transportation**

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

(f) **Incidental services**

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

8. Performance or supervision of on-site assembly and/or commissioning of the supplied goods;

9. Furnishing of tools required for assembly and/or maintenance of the supplied goods;

10. Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

11. Performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this services shall not relieve the provider of any warranty obligations under contract; and

this

12. Training of the purchaser's personnel, at the provider's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Price charged by the provider 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 provider for similar services.

14. Spare parts

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

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

15. Warranty

a The provider 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 provider 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 provider, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

b This warranty shall remain valid for twelve (12) months, or any portion thereof as the case may be, after goods 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.

c The purchaser shall promptly notify the provider in writing of any claims arising under this warranty.

d Upon receipt of such notice, within the period specified and with all reasonable speed, repair or replace the defective goods or parts thereof, without cost to the purchaser.

e If the provider, 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 provider's risk and expense and without prejudice to any other rights which the purchaser may have against the provider under the contract.

16. Payment

a The method and conditions of payments to be made to the provider under this contract shall be specified.

b The provider shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilments of other obligations stipulated in the contract.

c 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 provider.

d Payments will be made in Rand unless otherwise stipulated.

17. Prices

17.1 Prices charged by the provider for goods delivered and services performed under the contract shall not vary from the prices quoted by the provider in his bid, with the exception of any price

adjustments authorised or in the purchaser's request for bid validity extension, as the case may be.

18. Increase/ decrease of quantities

18.1 In cases where the estimated value of the envisaged changes in purchase does not exceed 15% of the total value of the original contract, the contractor may be instructed to deliver the revised 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. Contract amendments

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

20. Assignment

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

1 Subcontracts

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

2 Delays in the provider's performance

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

16.2 If at time during performance of the contract, the provider or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the provider shall promptly notify the purchaser in writing of the act of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the provider's notice, the purchaser shall evaluate the situation and may at his discretion extend the provider'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.

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

16.4 Except as provided under GCC clause 25, a delay by the provider in the performance of its delivery obligations shall render the provider 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.

16.5 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quantity and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods not delivered later at the provider'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 provider.

23. Penalties

23.1 Subject to GCC clause 25, if the provider 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.

1 Termination for default

a The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the provider, may terminate this contract in whole or in part:

- i If the provider 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
- ii If the provider fails to perform any other obligation(s) under the contract;
- iii If the provider, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract

b In the event of the purchaser terminating 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 provider shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the provider shall continue performance of the contract to the extent not terminated.

2 Anti-dumping and countervailing duties and rights

a When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing rights are increased in respect of any dumped or subsidised import, the Municipality 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 are abolished, or where the amount of such provisional payments or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the provider to the purchaser or the purchaser may deduct such amounts from moneys (if any) which may otherwise be due to the provider in regard to supplies or services which he delivered or rendered, or is to be delivered or rendered in terms of the contract or any other contract or any other amount which may be due to him.

3 Force Majeure

a Notwithstanding the provisions of GCC clause 22 and 23, the provider 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.

b If a force majeure situation arises, the provider shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the provider 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.

4 Termination for insolvency

a The purchaser may at any time terminate the contract by giving written notice to the provider if the provider becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the provider, 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.

5 Settlement of disputes

a If any dispute or difference of any kind whatsoever arises between the purchaser and the provider 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.

b 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 provider 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.

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

d Notwithstanding any reference to mediation and/or court proceedings herein:

1 The parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

2 The purchaser shall pay the provider any monies due to the provider for goods delivered and / or services rendered according to the prescripts of the contract.

6 Limitation of liability

a Except in case of criminal negligence or wilful misconduct, and in the case of infringement pursuant to clause 6:

a The provider 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 provider to pay penalties and/or damages to the purchaser; and

b The aggregate liability of the provider 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.

7 Governing language

a 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.

8 Applicable laws

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

9 Notices

a Every written acceptance of a bid shall be posted to the provider 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 noticed later by him in writing and such posting shall be deemed to be proper services of such notice.

b 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.

10 Taxes and duties

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

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

c No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid SARS must have certified that the tax matters of the preferred bidder are in order.

11 Transfer of contracts

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

12 Amendment of contracts

a 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.

ANNEXURE “H”

C.1.2 Contract Data

CONTENTS

C.1.2.1 Part 1: Data provided by the Employer

C.1.2.1.1 Conditions of Contract

C.1.2.1.2 Contract-specific Data

C.1.2.1.2.1 Compulsory Data

C.1.2.1.2.2 Variations to the General Conditions of Contract

C.1.2.1.2.3 Additional clauses to the General Conditions of Contract

C.1.2.1 Part 1: Data provided by the Employer

C.1.2.1.1 Conditions of Contract

The Conditions of Contract are:

- the “General Conditions of Contract” as they appear in the commercially-available publication “General Conditions of Contract for Construction Works, Second Edition, 2010”, hereinafter referred to as “GCC 2010”; and
- specific data as contained in this Contract Data.

Each party to the Contract shall purchase its own copy of the GCC 2010 that applies to this Contract, available from its publisher:

South African Institution of Civil Engineering
Private Bag X200
Halfway House
1685
South Africa

Tel +27 (0)11 805 5947

The following Notes apply:

Note 1

The GCC 2010 makes several references to the Contract Data.

Each item of data below is cross-referenced to the clause in the Conditions of Contract to which it applies. Notwithstanding anything specified to the contrary, the Contract Data shall take precedence in the interpretation of any ambiguity or inconsistency between it and the GCC 2010.

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purpose of interpretation, the priority of the documents shall be in accordance with the following order of precedence:

- (a) the Form of Offer and Acceptance.
- (b) amendments to the General Conditions of Contract within the Contract Data.
- (c) additional conditions to the General Conditions of Contract within the Contract Data.
- (d) corrigenda to the General Conditions of Contract.
- (e) the General Conditions of Contract.
- (f) the Specifications, Drawings, Schedules and other documents forming part of the Contract (in that order) contained in the Scope of Work and the Site Information.

If any ambiguity or discrepancy is found in the documents, the Engineer needs to be contacted to issue any necessary clarification or instruction.

Note 2

Certain pro-forma forms and pro-forma agreements contained in the GCC 2010 have been adapted for this particular contract. Those pro-forma forms and pro-forma agreements contained in the GCC 2010 do not apply where replaced by similar pro-forma forms and pro-forma agreements in this document.

C.1.2.1.2 Contract-specific Data

The following contract-specific data, referring to the General Conditions of Contract, are applicable to this Contract:

C.1.2.1.2.1 Compulsory Data

Clause	<i>Data</i>												
1.1.1.13	The Defects Liability Period is 12 months												
1.1.1.14	The time for achieving Practical Completion is 6 months												
1.1.1.15	The name of the Employer is Lepelle Nkumpi Local Municipality												
1.1.1.26	The Pricing Strategy of a Re-measurement Contract shall apply												
1.2.1.2	<p>The address of the Employer</p> <p>Address: P/BAG X 07 CHUENESPOORT 0745</p> <p>Contact Person: Mushaisano Ramusetheli</p> <p>Tel: (015) 633 4552/4 Fax: (015) 632 4594</p> <p>e-mail address: Mushaisano.ramusetheli@misa.gov.za</p>												
1.1.1.16	The name of the Engineer is:												
1.2.1.2	<p>The address of the Engineer is:</p> <p>e-mail address:</p> <p>Contact numbers: Corporate: Mobile: Fax:</p>												
3.1.3	<p>The Engineer shall obtain the specific approval of the Employer before executing any of his functions or duties according to the following table:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">GCC Clause No</th> <th style="text-align: center;">Description</th> <th style="text-align: center;">Requires EWA*</th> <th style="text-align: center;">Delegated to ER*</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">3.2.1</td> <td>Engineer's Representative's appointment and termination</td> <td style="text-align: center;">Y</td> <td></td> </tr> <tr> <td style="text-align: center;">3.2.4</td> <td>Engineer's Representative acting on Engineer's behalf</td> <td style="text-align: center;">Y</td> <td></td> </tr> </tbody> </table>	GCC Clause No	Description	Requires EWA*	Delegated to ER*	3.2.1	Engineer's Representative's appointment and termination	Y		3.2.4	Engineer's Representative acting on Engineer's behalf	Y	
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Clause	<i>Data</i>																																						
4.5.4	Payment for notices and fees	Y																																					
4.7.1	Fossils, etc on Site	Y																																					
5.7.2	Work at night	Y																																					
5.7.3	Acceleration of rate of progress	Y																																					
5.7.3	Payment for acceleration	Y																																					
5.9.1	Instructions and drawings on Commencement Date		Y																																				
5.11.1	Suspension of the Works		Y																																				
5.11.3	Proceeding with Works after suspension	Y																																					
5.12.4	Acceleration instead of extension of time	Y																																					
5.13.2	Reduction in penalty		Y																																				
6.3.1	Variation orders	Y																																					
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10.1.5	Ruling on Contractor's claim	Y	N																																				
3.1.4	Delete this clause.																																						
4.9.1	The Contractor shall deliver to the Engineer, on a monthly basis, a detailed inventory of Construction Equipment kept on Site, full particulars given for each day of the month. Distinction shall be made between Owned Equipment and Hired Equipment as well as Equipment in working order and Equipment out of order. Such inventory shall be submitted by the seventh day of the month following the month to be reported.																																						

Clause	<i>Data</i>
4.10.2	The Contractor shall deliver to the Engineer, on a monthly basis, a return in detail of supervisory staff and the number of categorized classes of labour employed each day for the said period by the Contractor for execution of the Contract. Such return shall be submitted by the seventh day of the month following the month to be reported.
5.3.1	<p>The documentation required before commencement with Works execution are:</p> <p>Health and Safety Plan (Refer to Clause 4.3)</p> <p>A signed Agreement between the Employer and the Contractor for the Works to be completed by the Contractor in terms of the provisions of Section 37(2) of the Occupational Health and Safety Act (Act No.85 of 1993) and the Construction Regulations promulgated thereunder (Refer to Clause 4.3).</p> <p>Proof of payment to the Employer, that the Contractor has paid all contributions required in terms of the Compensation for Occupational Injuries and Diseases Act, No 130 of 1993 (Refer to Clause 4.3).</p> <p>Initial programme (Refer to Clause 5.6).</p> <p>Security (Refer to Clause 6.2).</p> <p>Insurance (Refer to Clause 8.6).</p>
5.3.2	The time to submit the documentation required before commencement with Works execution is 14 Days .
5.4.2	The access and possession of Site shall not be exclusive to the Contractor but shall be as set out elsewhere in the Contract.
5.8.1	<p>The non-working Days are Sundays.</p> <p>The special non-working Days are:</p> <p>Statutory public holidays; and</p> <p>All annual year-end shutdown periods as recommended by the South African Federation of Civil Engineering Contractors (SAFCEC), and which commence after the Commencement Date and which commence before the Due Completion Date.</p>
5.13.1	The penalty for failing to complete the Works is 0,1 percent of contract price per calendar day.
5.16.3	The latent defect period is 10 years, commencing on the Day after the date of certification of Practical Completion.
6.5.1.2.3	The percentage allowance to cover overhead charges is: 50 per cent for labour; and 15 per cent for materials.
6.10.1.5	The percentage advance on materials not yet built into the Permanent Works is 80%. Proof of ownership is required.
6.10.3	The limit of retention money is 10% of the value of the Contract Price.
8.6.1.1.2	The value of Plant and materials supplied by the Employer to be included in the insurance sum is nil .
8.6.1.1.3	The amount to cover professional fees for repairing damage and loss to be included in the insurance sum is a maximum of 10% (ten percent) of the Contract Sum.
8.6.1.3	The limit of indemnity for liability insurance is equal to the contract amount.

Clause	<i>Data</i>
10.5.1	Dispute resolution shall be by standing adjudication, use GCC 2010, Appendix 5.
10.7.1	The determination of disputes shall be by arbitration.

C.1.2.1.2.2 Variations to the General Conditions of Contract

Clause	Data
2.5.1	<p>Cession</p> <p><i>Amend Clause 2.5.1 as follows:</i></p> <p><i>Delete the words “without the written consent of the other”</i></p>
5.14.5.1	<p>Consequences of Completion</p> <p><i>Amend Clause 5.14.5.1 as follows:</i></p> <p><i>In the second line, substitute the word ‘Guarantor’ with ‘Contractor’.</i></p>
6.2	<p>Security</p> <p><i>Replace Sub-Clauses 6.2.1 and 6.2.2 with:</i></p> <p>“The Contractor shall deliver to the Employer within such time as may be stated in the Contract Data, a Demand Guarantee, of an Insurance Company registered in terms of the Short-term Insurance Act (Act 53 of 1998) or of a registered Commercial Bank, in a sum equal to the amount stated in the Contract Data. The Demand Guarantee shall be issued by an entity subject to the approved of the Employer, and shall conform in all respects to the format contained in the Contract Data.</p> <p>The security to be provided by the Contractor shall be a Demand Gurantee of 10% of the Contract Sum.</p> <p>Wherever a joint venture constitutes the contracting party, the Demand Guarantee shall be issued on behalf of the joint venture.</p> <p>Failure to produce an acceptable Demand Guarantee within the period stated in the Contract Data, is a fundamental breach of Contract, entitling the Employer to cancel the Contract by due notice in terms of Clause 9.2 with specific reference to Sub-clause 9.2.2 as amended in the Contract Data.”</p>
6.3.1	<p>Variations</p> <p><i>Amend Clause 6.3.1, as follows:</i></p> <p><i>In the first paragraph, third line, after the words "or for any reason appropriate", add the phrase</i> <i>", including the limiting of contract expenditure so as not to exceed the Employer’s budgeted project funding, "</i></p> <p><i>Add the following phrase to the last paragraph of Clause 6.3.1.6, after the words "ascertaining the amount of the Contract Price":</i></p> <p><i>", and no such variation shall give reason for consideration of any claim in terms of Clause 6.11.”</i></p>
6.3.2	<p>Orders for Variations to be in writing</p> <p>Omit the words “Provided that” under Clause 6.3.2 and omit Clause 6.3.2.1.</p>

Clause	Data
6.9.2	<p>Definition of “materials”</p> <p><i>Amend Clause 6.9.2, as follows:</i></p> <p><i>Substitute the word ‘plant’ with ‘Plant’.</i></p>
6.10.1	<p>Interim Payments</p> <p><i>Amend Clause 6.10.1.5 as follows:</i></p> <p><i>In the third line, add the words ‘not yet’ before the words ‘built into’</i></p>
6.10.5	<p>Payment of retention money</p> <p><i>Amend Clause 6.10.5 as follows:</i></p> <p><i>In the second line, add the words ‘, if any,’ after the words ‘Defects Liability Period’</i></p>
6.10.6	<p>Set-off and delayed payments</p> <p><i>Amend Clause 6.10.6.2 as follows:</i></p> <p><i>Delete the words ‘simple interest’ and substitute with the words ‘interest compounded monthly’.</i></p> <p><i>Delete the words ‘Contractor’s Bank’ and substitute with the words ‘Employer’s Bank’</i></p>
6.11	<p>Variations exceeding 15 per cent</p> <p><i>Replace the marginal heading with:</i></p> <p>“Variations exceeding 20 per cent”</p> <p><i>Replace “15 per cent” with “20 per cent” in the text of this Sub-Clause</i></p>
7.4.4	<p>Cost of test specimens and tests</p> <p><i>Amend Clause 7.4.4.2 as follows:</i></p> <p><i>In the <u>second</u> line of paragraph two, add the words ‘the requirements of’ before the words ‘the Contract’</i></p>
7.8.2	<p>Cost of making good of defects</p> <p><i>Amend Clause 7.8.2.1 as follows:</i></p> <p><i>In the first line, correct the spelling of ‘therefore’.</i></p>
8.1.3	<p>Excessive loads and traffic</p> <p><i>In the third line, add a comma after the word ‘Site’ as follows: ‘in the vicinity of the Site, from’.</i></p>
8.3.1	<p>Excepted risks</p>

Clause	Data
	<p><i>Amend Clause 8.3.1.10 as follows:</i></p> <p><i>In the second line, delete the words 'Employer or any of their' and substitute with 'or any of its'.</i></p>
8.6.6	<p>Contractor to produce proof of payment</p> <p>"The Contractor shall before commencement of the Works produce to the Engineer:</p> <p>8.6.6.1 The policies by which the insurances are effected,</p> <p>8.6.6.2 Proof that due payment of all premiums there under, covering the full required period has been made, and</p> <p>8.6.6.3 Proof of continuity of the policies for the required period.</p>
	<p>Should, during the currency of the Contract, the required period of insurance be extended for any reason, the Contractor shall timeously extend (so as to maintain) the said insurances for the full extended duration.</p> <p>The Engineer shall be empowered to withhold all payment certificates until the Contractor has complied with his obligations in terms of this Clause 8.6.6."</p>
8.6.7	<p>Remedy on Contractor's failure to insure</p> <p><i>Delete sub-clause 8.6.7 and substitute with:</i></p> <p>"Failure on the part of the Contractor to effect and keep in force any of the insurances referred to in Clause 8.6.1 and its sub-clauses, is a fundamental breach of Contract, entitling the Employer to cancel the Contract by due notice in terms of Clause 9.2 and with specific reference to sub-clause 9.2.2, as amended in the Contract Data."</p>
9.1.2	<p>State of emergency</p> <p><i>In the fourth line, delete the words 'supply of' and substitute with 'availability of'.</i></p>
9.2	<p>Termination by Employer</p> <p><i>Delete the contents of Clause 9.2 and substitute with:</i></p> <p>"9.2.1 The Employer may terminate the Contract by written notice to the Contractor if:</p> <p>9.2.1.1 Sequestration of the Contractor's estate is ordered by a Court with due jurisdiction, or</p>
	<p>9.2.1.2 The Contractor publishes a notice of surrender or presents a petition for the surrender of his estate as insolvent, or makes a compromise with his creditors, or assigns in favour of his creditors, or agrees to carry out the Contract under the supervision of a committee representing his creditors, or (being a company) goes into liquidation, whether provisionally or finally (other than a voluntary liquidation for the purpose of amalgamation or reconstruction), or if the Contractor assigns the Contract without having first obtained the Employer's consent in writing, or if execution is levied on his goods, or</p>
	<p>9.2.1.3 The Contractor, or anyone on his behalf, or in his employ, offers to any person in the employ of the Employer or the Engineer, a gratuity or reward or commission, or</p>

Clause	<i>Data</i>
	<p>9.2.1.4 The Contractor furnished materially inaccurate information in his Tender, which had a bearing on the award of the Contract, or</p>
	<p>9.2.1.5 The Contractor has abandoned the Contract.</p> <p>9.2.2 If the Contractor:</p> <p>9.2.2.1 Has failed to commence the Works in terms of Clause 10 hereof, or has suspended the progress of the Works for fourteen (14) days after receiving from the Engineer written notice to proceed, or</p> <p>9.2.2.2 Has failed to provide the Guarantee in terms of Clause 7 within the time stipulated in the Contract Data, or</p> <p>9.2.2.3 Has failed to proceed with the Works with due diligence, or</p> <p>9.2.2.4 Has failed to remove materials from the Site or to pull down and replace work within fourteen (14) days after receiving from the Engineer written notice that the said materials or work have been condemned and rejected by the Engineer in terms of these conditions, or</p> <p>9.2.2.5 Is not executing the Works in accordance with the Contract, or is neglecting to carry out his obligations under the Contract, or</p> <p>9.2.2.6 Has, to the detriment of good workmanship or in defiance of the Engineer's instructions to the contrary, sublet any part of the Contract, or</p> <p>9.2.2.7 Has assigned the Contract or any part thereof without the Employer's consent in writing,</p> <p>then the Employer may give the Contractor 14 days notice to rectify the default, and if the Contractor fails to rectify the default in said 14 days, then, without further notice, notify the Contractor in writing of the termination of the Contract and expel the Contractor and order the Contractor to vacate the site within 24 hours of issue of the Notice of Termination and to hand the Site over to the Employer, and the Employer may then enter upon the Site and the Works without affecting the rights and powers conferred on the Employer or the Engineer by the Contract and the Employer may himself complete the Works or may employ another contractor to complete the Works, and the Employer or such other contractor may use for such completion so much of the Construction Equipment, Temporary Works and materials brought onto the Site by the Contractor as the Employer may think proper, and the Employer may at any time sell any of the said Construction Equipment, Temporary Works and unused materials and apply the proceeds of sale towards payment of any sums that may be due or become due to the Employer by the Contractor under the Contract. In such circumstances the Contractor shall forthwith vacate the Site and shall not be entitled to remain on the Site on the grounds that he is entitled to do so on a right of retention until amounts due to him have been paid, neither will the Contractor be entitled to any further payments in terms of this Contract.</p>
	<p>9.2.3 If the Contractor, having been given notice to rectify a default in terms of 9.2.2 above, rectifies said default, but later repeats the same or substantially the same default, then the Employer may notify the Contractor of the immediate termination of the Contract, and proceed as stated in the paragraph following the word 'writing' in Clause 9.2.2.7 above.</p>

Clause	<i>Data</i>
	<p>9.2.4 Should the amounts that the Employer must pay to complete the Works, exceed the sum that would have been payable to the Contractor on due completion by him, then the Contractor shall upon demand pay to the Employer the difference, and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly. Provided that should the Contractor on demand not pay the amount of such excess to the Employer, such sum may be determined and deducted by the Employer from any sum due to or that may become due to the Contractor under this or any previous or subsequent contract between the Contractor and the Employer.”</p>

C.1.2.1.2.3 Additional clauses to the General Conditions of Contract:

Clause	Data
<p>1.1</p> <p>1.1.1.35</p> <p>1.1.1.36</p>	<p>Definitions</p> <p><i>Add the following at the end of Sub-Clause 1.1.1:</i></p> <p>“Client”, as used in the Occupational Health and Safety Act - Construction Regulations, means Employer.</p> <p>“Principal Contractor”, as used in the Occupational Health and Safety Act - Construction Regulations, means Contractor.</p>
<p>4.12</p>	<p>Contractor’s superintendence</p> <p><i>Add the following sub-clause 4.12.4 to Clause 4.12:</i></p> <p>“Where a form is included in the Contract Data for this purpose, the Tenderer shall fill in the name of the person he proposes to entrust with the post of Contractor’s Site Agent on this Contract in the space provided therefore. Previous experience of this person on work of a similar nature during the past five (5) years is to be entered on the form.</p> <p>The Contractor’s Site Agent shall be on Site at all times when work is being performed.</p> <p>The person shall be subject to approval of the Engineer in writing and shall not be replaced or removed from Site without the written approval of the Engineer.”</p>
<p>5.6</p>	<p>Programme</p> <p><i>Add the following sub-clause 5.6.6 to Clause 5.6:</i></p> <p>“Failure on the part of the Contractor to deliver to the Engineer, the</p> <ul style="list-style-type: none"> • programme of the Works in terms of Clause 5.6.1 and • supporting documents in terms of Clause 5.6.2 <p>Within the period stated in the Contract Data, shall be sufficient cause for the Engineer to retain 25 per centum of the value of the Fixed Charge and Value-related items in assessment of amounts due to the Contractor, until the Contractor has submitted aforementioned first Programme of the Works and Supporting Documents”.</p>
<p>5.9.7</p>	<p>Engineer to approve Contractor’s Designs and Drawings</p> <p><i>Add the following sub-clause 5.6.6 to Clause 5.6:</i></p> <p>“All designs, calculations, drawings and operation and maintenance manuals shall be fully endorsed by a third party registered engineer, accomplished in such specific field of practice and the cost thereof shall be borne solely by the Contractor.</p> <p>Once the alternative design has been approved, the Contractor shall indemnify and hold harmless the Engineer, the Employer, their agents and assigns, against all claims howsoever arising out of the said design, whether in contract or delict”.</p>

Clause	Data
5.11	<p>Suspension of the Works</p> <p><i>Add the following sub-clause 5.11.4 to Clause 5.11:</i></p> <p>“If the Contractor does not receive from the Employer the amount due under an Interim Payment Certificate within 28 days after expiry of the time stated in sub-clause 6.10.4 within which payment is to be made (except for deductions in accordance with sub-clauses 6.10.1.6 and 6.10.1.7), the Contractor may, after giving 14 days’ notice to the Employer, suspend the progress of the Works.</p> <p>The Contractor’s action shall not prejudice his entitlements to a claim in terms of Clause 10.1 and to cancellation of the Contract in terms of Clause 9.3.</p> <p>If the Contractor subsequently receives full payment of the amount due under such Interim Payment Certificate before giving a notice of cancellation of the Contract, the Contractor shall resume normal working as soon as is reasonably practicable.”</p>
5.12	<p>Extension of Time for Practical Completion</p> <p><i>Add the following at the end of Sub-Clause 5.12.2.2:</i></p> <p>“The extension of time to be allowed due to abnormal rainfall shall be calculated separately for each calendar month or part thereof in accordance with the following formula:</p> $V = (Nw - Nn) + \frac{Rw - Rn}{x}$ <p>where</p> <p>V = Extension of time in calendar days for the calendar month under consideration</p> <p>Nw = Actual number of days during the calendar month on which a rainfall of 10 mm or more has been recorded</p> <p>Nn = Average number of days for the calendar month on which a rainfall of 10 mm or more has been recorded, as derived from existing rainfall records</p> <p>Rw = Actual recorded rainfall for the calendar month</p> <p>Rn = Average rainfall for the calendar month, as derived from existing rainfall records</p> <p>x = 20</p>
	<p>The rainfall records which shall provisionally be accepted for calculation purposes are:</p> <p>Based on records taken at: Rainfall Station : Polokwane Years of record: 1977 – 2010</p>

Clause	<i>Data</i>		
	<p align="center">Month</p>	<p align="center">Average rainfall for calendar month Rn</p>	<p align="center">Average number of days for calendar month on which a rainfall of 10 mm or more were recorded Nn</p>
		(mm)	(days)
	January	91	3
	February	72	2
	March	61	2
	April	3	1
	May	22	0
	June	4	0
	July	5	0
	August	4	0
	September	14	1
	October	41	1
	November	80	3
	December	91	3
	<p>The factor (Nw - Nn) shall be considered to represent a fair allowance for days during which rainfall exceeds 10 mm and the factor (Rw - Rn)/x shall be considered to represent a fair allowance for those days when rainfall does not exceed 10 mm but wet conditions prevent or disrupt work.</p> <p>The total extension of time shall be the algebraic sum of all monthly totals for the contract period, but if the algebraic sum is negative the time for completion shall not be reduced due to subnormal rainfall. Extensions of time for a part of a month shall be calculated using pro rata values of Nn and Rn.”</p> <p>For this project the rainfall formula will only apply as background information, or dispute resolution. Extension of time for rainfall will only be granted on Actual Delays experienced; noted and agreed upon by the engineer.</p>		
6.10	<p>Payments</p> <p><i>Add the following at the end of Sub-Clause 6.10.1:</i></p> <p>“The Contractor shall complete the ‘Contractor’s Monthly Report Schedule’, which pro forma documentation is obtainable from the Engineer. Pursuant to Sub-Clause (1), these, duly signed by all concerned, together with the Contractor’s statement and a VAT invoice in original format are to be submitted to the Engineer. Issue by the Engineer to the Employer and Contractor of any signed payment certificate is conditional to this information being fully endorsed, accurately and timeously submitted to the Engineer”.</p>		
	<p><i>Add the following at the end of Sub-Clause 6.10.1.5:</i></p>		

Clause	<i>Data</i>
	<p>“All documentary evidence of such materials shall be unambiguous with respect to ownership having fully passed to the Contractor on or before the date of submittal of the Contractor’s monthly statement.</p> <p>Should the Contractor fail to supply unambiguous documentary evidence, he shall, prior to submittal of his monthly statement, deliver to the Employer a Guarantor Guarantee in the form contained in the Appendices to the Contract Data.”</p>
9.3	<p>Termination by the Contractor</p> <p><i>Add the following at the end of Sub-Clause 9.3:</i></p> <p>9.3.5 “In addition to, or as an alternative to the rights to termination contained in this Clause 9.3, the Contractor may notify the default to the Employer, with a copy to the Engineer, and if the default is not rectified within 10 days the Contractor may suspend progress of the works until a date 7 days after the default is rectified. The Contractor shall be entitled to extension of time to the extent of delay caused by or resulting from such suspension, and to payment of additional costs caused by or resulting from the suspension. Such extension of time and additional costs shall be promptly ascertained by the Engineer, who shall then grant the extension of time and include the additional costs in all future payment certificates. Such suspension, extension of time and/or payment of additional costs, shall not prejudice the Contractor’s rights to cancel the contract.”</p>

C.1.1.2Part 2: Data provided by the Contractor

The General Conditions of Contract, as specified in Part 1, shall be used as a basis for this Data which is required to be completed.

Each item of data given below is cross-referenced to the clause in the Conditions of Contract to which it mainly applies.

Clause	Data
1.1.1.9	The Name of the Contractor is:
1.2.1.2	The address of the Contractor is: Physical address:
1.2.1.2	Postal address: e-mail address: Contact numbers: Corporate: Direct: Mobile: Fax:

EXPANDED PUBLIC WORKS PROGRAMME

Labour-intensive works shall be constructed/maintained using local workers who are temporarily employed in terms of this Scope of Work

Competencies of LI Management and Supervisory staff

Contractors shall engage supervisory and management staff in labour-intensive works that have completed the skills programme including Foremen/Supervisors at NQF "National Certificate: Supervision of Civil Engineering Construction Processes" and Site Agent/Manager at NQF level 4 "Manage labour-intensive Construction Processes" or equivalent QCTO qualifications.

Wage Disputes

Any dispute between the Contractor and labourers, regarding delayed payment or default in payment of fair wages, if not resolved immediately may compel the Employer to intervene.

The Employer may, upon the Contractor defaulting payment, pay the moneys due to the workers not honoured in time, out of any moneys due or which may become due to the Contractor under the Contract.

Provision of Hand Tools

The Contractor shall provide his labour force with hand tools of adequate quality, sufficient in numbers and make the necessary provisions to maintain the tools in good and safe working conditions

Reporting requirement of the Contractor

The Contractor should submit the following at the beginning of the Contract:

- (a) Contracts of all the workers employed on the contracts including their certified identity documents;
- (b) Proof of Registration for COIDA and UIF;
- (c) OHS Files

The Contractor shall submit monthly returns/reports as specified below:

- (a) Signed Muster rolls/pay sheets of temporary workers and permanent staff detailing the number, category, gender, rate of pay and daily attendance.
- (b) Copies of certified identity documents of workers
- (c) Number of persons who have attended training including nature and duration of training provided
- (d) Assets created, rehabilitated or maintained in accordance with indicators in the EPWP M&E framework
- (e) Plant utilization returns
- (f) Progress report detailing production output compared to the programme of works

- As much as is economically feasible all work shall be implemented by employing Labour Intensive Construction methods. Over and above the normal Building and Allied works to be implemented by employing skilled and unskilled labour the works specified in the “Guidelines for the Implementation of Labour-Intensive Infrastructure Projects under the Expanded Public Works Programme (EPWP)” shall be undertaken using Labour Intensive Construction methods Name Boards

One name board shall be provided in positions as ordered by the Engineer. The Engineer will provide the lettering required once the tender is awarded.

The name board to include EPWP Logo

- Daily Records

Daily records of resources (equipment and people employed) must be kept and must be available on site at all times. These records will include i.e. site instruction book, site diary, site visit register, contractual documentation and minutes of all project meetings. Labour information should be kept updated at all times.

Contractor must ensure that to submit the following documents when submitting the claim for work done to be verified by the Engineer:

- EPWPRS-Data tool template obtained from the Lepelle-Nkumpi Municipality
- Signed temporary contracts for all temporary workers on site
- Certified ID copies for all temporary workers
- Signed daily attendance registers by all temporary workers
- Signed monthly payment register by all temporary workers

Employment of unskilled and semi-skilled workers in labour-intensive works – According to SANS 1914-5.

1. Requirements for the sourcing and engagement of labour.

- 10.1 Unskilled and semi-skilled labour required for the execution of all labour intensive works shall be engaged strictly in accordance with prevailing legislation and SANS 1914-5, Participation of Targeted Labour.
- 10.2 The rate of pay set for the EPWP per task or per day is **R/day or/task** as set out by the Lepelle-Nkumpi Municipality.
- 10.3 Tasks established by the contractor must be such that:
- a) the average worker completes 5 tasks per week in 40 hours or less; and
 - b) the weakest worker completes 5 tasks per week in 55 hours or less.
- 10.4 The contractor must revise the time taken to complete a task whenever it is established that the time taken to complete a weekly task is not within the requirements of 10.3.

10.5 The Contractor shall, through all available community structures, inform the local community of the labour intensive works and the employment opportunities presented thereby. Preference must be given to people with previous practical experience in construction and / or who come from households:

- a) where the head of the household has less than a primary school education;
- b) that has less than one full time person earning an income;
- c) where subsistence agriculture is the source of income.
- d) those that are not in receipt of any social security pension income

10.6 The Contractor shall endeavour to ensure that the expenditure on the employment of temporary workers is in the following proportions:

- a) 60 % women;
- b) 55% youth who are between the ages of 18 and 35; and

2% on persons with disabilities.

10.7 Specific provisions pertaining to SANS 1914-5

10.7.1 Definitions

Targeted labour: Unemployed persons who are employed as local labour on the project.

10.7.2 Contract participation goals

10.7.2.1 There is no specified contract participation goal for the contract. The contract participation goal shall be measured in the performance of the contract to enable the employment provided to targeted labour to be quantified.

10.7.2.2 The wages and allowances used to calculate the contract participation goal shall, with respect to both time-rated and task rated workers, comprise all wages paid and any training allowance paid in respect of agreed training programmes.

10.7.3 Terms and conditions for the engagement of targeted labour

Further to the provisions of clause 3.3.2 of SANS 1914-5, written contracts shall be entered into with targeted labour.

10.7.4 Variations to SANS 1914-5

10.7.4.1 The definition for net amount shall be amended as follows:
Financial value of the contract upon completion, exclusive of any value added tax or sales tax which the law requires the employer to pay the contractor.

10.7.4.2 The schedule referred to in 10.6 shall in addition reflect the status of targeted labour as women, youth and persons with disabilities and the number of days of formal training provided to targeted labour.

10.7.5 Training of targeted labour

10.7.5.1 The contractor shall provide all the necessary on-the-job training to targeted labour to enable such labour to master the basic work techniques required to undertake the work in accordance with the requirements of the contract in a manner that does not compromise worker health and safety.

- 10.7.5.2 The cost of the formal training of targeted labour will be funded by the provincial office of the Department of Labour. This training should take place as close to the project site as practically possible. The contractor must access this training by informing the relevant provincial office of the Department of Labour in writing, within 14 days of being awarded the contract, of the likely number of persons that will undergo training and when such training is required. The employer must be furnished with a copy of this request.
- 10.7.5.3 A copy of this training request made by the contractor to the Department of Employment and Labour provincial office must also be faxed to the EPWP Training Director in the Department of Public Works and Infrastructure– Cinderella Makunike, Fax Number 012 328 6820 or email cinderella.makunike@dpw.gov.za Tel: 083 677 4026.
- 10.7.5.4 The contractor shall be responsible for scheduling the training of workers and shall take all reasonable steps to ensure that each beneficiary is provided with a minimum of six (6) days of formal training if he/she is employed for 3 months or less and a minimum of ten (10) days if he she is employed for 4 months or more.
- 10.7.5.5 The contractor shall do nothing to dissuade targeted labour from participating in training programmes.
- 10.7.5.6 An allowance equal to 100% of the task rate or daily rate shall be paid by the contractor to workers who attend formal training, in terms of 10.7.5.1 to 10.7.5.5 above.
- 10.7.5.7 Proof of compliance with the requirements of 10.7.5.1 to 10.7.5.5 must be provided by the Contractor to the Employer prior to submission of the final payment certificate.

ANNEXURE “J”

SPECIAL CONDITIONS OF THE CONTRACTS:

1. It is emphasized that a contract will not necessarily result from the responses received to this request for proposal. LEPELLE-NKUMPI MUNICIPALITY reserves the right to enter into negotiations with any one or more of the respondents, should it be decided to proceed with the contract.
2. LEPELLE-NKUMPI MUNICIPALITY reserves the right not to evaluate and /or consider any proposal that does not comply strictly with the requirements as set out in this request.
3. LEPELLE-NKUMPI MUNICIPALITY reserves the right to make a decision/ selection based solely on the information received in the proposal to this request.
4. The bid price must remain valid for a period of 90 days calculated from the closing date.
5. The employer will not compensate the bidder for any costs incurred in the preparation and submission of a bid offer, including the costs to demonstrate that aspects of the offer satisfy requirements.
6. The Municipality may accept or reject any variation, deviation, bid offer or alternative bid offer, and may cancel the bid process and reject all bid offers at any time before the formation of a contract. The employer shall not accept or incur any liability to a bidder for such cancellation and rejection but will give written reasons for such action upon written request to do so.
- 7. The Municipal Manager may reject the bid or quote of any person if that person or any of its directors has:**
 - i. Failed to pay municipal rates and taxes or municipal service charges and such rates, taxes and charges are in arrears for more than three months;
 - ii. Failed, during the last five years, to perform satisfactorily on a previous contract with the Lepelle-Nkumpi Municipality or any other organ of State after written notice was given to that bidder that performance was unsatisfactory;
 - iii. Abused the supply chain management system of the Municipality or have committed any improper conduct in relation to this system;
 - iv. Been convicted of fraud or corruption during the past five years;
 - v. Willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - vi. 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) or has been listed on National Treasury's database as a person prohibited from doing business with public sector.

8. The Municipal Manager may cancel a contract awarded to a person if:

- The person committed a corrupt or fraudulent act during the procurement process or in the execution of the contract, or
- An official or other role player committed any corrupt or fraudulent act during the procurement process or in the execution of the contract that benefited that person.

9. No bids will be considered from persons in the service of the state (as defined in regulation 1 of the local government: municipal supply chain management regulations)