

INDEX TABLE

PROPOSAL: WCPPT 02/22

PAGE NO.	DESCRIPTION
2 - 3	Invitation to bid (WCPP 1)
4 – 7	Bid Checklist
8 - 12	Bid conditions
13 - 26	Terms of reference
27 - 28	Application for Tax Clearance Certificate (WCPP 2)
29	Pricing schedule (WCPP 3.3)
30 - 37	Declaration of Interest (WCPP 4)
38 - 44	Preference Points Claim Form in terms of the Preferential Procurement Regulations 2017 (WCPP 6.1)
45 - 60	General conditions of Contract (GCC)

WCPP 1

INVITATION TO BID

You are hereby invited to bid for the requirements of the Western Cape Provincial Parliament

BID NUMBER: _____ WCPPT 02/2022

CLOSING DATE: _____ 12 August 2022

CLOSING TIME: _____ 11:00

VALIDITY PERIOD: _____ 90 DAYS (from closing date)

DESCRIPTION: _____ Cyber Security Managed services (Data protection)

The successful Bidder will be required to sign a written service level agreement

Kindly note that bids may either be posted (provided that such posted bid documents reach SCM before the deadline) or deposited in the bid box as follows:

Postal Address

Manager: SCM

Western Cape Provincial Parliament

PO Box 648

CAPE TOWN

8000

OR

in the bid box situated outside the Visitors' Centre, Ground Floor, 7 Wale Street, Provincial
Legislature Building, CAPE TOWN

Bid documents that are too bulky to be placed in the bid box may be delivered at SCM Section, 5th Floor, Provincial Legislature Building, 7 Wale Street, Cape Town.

Bidders should ensure that bids are delivered timeously to the correct address.

If a bid is late, it will not be accepted for consideration.

BIDDERS MUST MAKE USE OF THE OFFICIAL ATTACHED BID DOCUMENTS/ FORMS AND NO DOCUMENT/ FORM SHALL BE RETYPED. Photocopies of the documents/forms may however be used. A bid submitted in any other manner might invalidate the bid.

THIS BID IS SUBJECT TO THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.

CHECKLIST - GENERAL BID

BID OFFERS WITHOUT THE FOLLOWING DOCUMENTS WILL NOT BE CONSIDERED:

BID REQUIREMENT Please provide a tick (✓) in this instance. In the event of Yes/no option throughout this document please circle to select the appropriate option.	REFERENCE
BID OFFERS WITHOUT THE FOLLOWING DOCUMENTS <u>WILL NOT BE CONSIDERED</u>:	
Completed in full and signed WCPP 1 The Bid	WCPP 1
Valid, original SARS Tax Clearance Certificate in the name of the Bidder, alternatively the bidders' SARS pin. In the case of a Consortium, Joint Venture or Sub-Contracting arrangement all parties must submit a valid TCC pin.	WCPP 2
In the case of a Consortium or Joint Venture a Memorandum of Understanding, outlining the roles and responsibilities of all parties to the Joint Venture or Consortium, must be <u>signed</u> by all parties.	
Completed in full WCPP 3.3 Pricing Schedule.	WCPP 3.3
A fully completed Consolidated Declaration of Interest and Declaration of bidders past Supply Chain Management Practices. In the case of a Consortium or Joint Venture <u>both parties</u> must <u>complete and sign</u> the Declaration of Interest form.	WCPP 4
NON-ADHERENCE TO THE FOLLOWING WILL <u>NOT</u> INVALIDATE A BID:	
Preference points claim form in terms of the Preferential Procurement Regulations 2017.	WCPP6.1 (a)
An original or certified copy of a B-BBEE Status level of Contribution Certificate.	
To claim B-BBEE points in accordance with the submitted B-BBEE certificate, bidders must <u>claim</u> the points by <u>completing and signing</u> the claim form (WCPP 6.1 (a)) In the case of a Consortium or Joint Venture a <u>consolidated</u> B-BBEE Status Level of Contribution Certificate, <u>in the name</u> of the Joint Venture or Consortium must be submitted.	

I confirm that all documents requested are attached / not attached

Comments:

.....
.....

Signature.....Print.....

Date.....

Each bid must be addressed in accordance with the directives in the bid documents and must be lodged in a separate sealed envelope with the name and address of the Bidder, the bid number and the closing date indicated on the reverse side of the envelope.

WESTERN CAPE PROVINCIAL PARLIAMENT

CHECKLIST – GENERAL BIDS

BID REQUIREMENT Please provide a tick (✓) in this instance. In the event of Yes/no option throughout this document please circle to select the appropriate option.	REFERENCE	COMPLETED / ATTACHED
Completed and signed WCPP 1 The Bid	WCPP 1	
Valid and original SARS Tax Clearance Certificate (and or pin) in the name of the bidders	WCPP 2	
Completed WCPP 3.3 Pricing Schedule and Costing template.	WCPP 3.3	
Consolidated Declaration of Interest and Declaration of bidders past Supply Chain Management Practice.	WCPP 4	
Preference points claim form in terms of the Preferential Procurement Regulations 2017.	WCPP 6.1 (a)	
General Conditions of Contract	Annexure B	
Bidders must submit the technical proposal in their preferred format, but the proposal must at least adhere to the following: - All attachments to be named meaningfully to be able to navigate the content in a structured manner, when the Tender is evaluated and pre-fixed with the Bidder name. - Costing schedule for Year 1, Year 2 and Year 3 which is inclusive of VAT. - Draft Service Level Agreement to support the Contract being entered into. - Proper referencing on how the business requirements specification is being met. - Structured Onboarding and Implementation and Plan. - Proof of certification to deliver the services.		
BIDDERS MUST SUBMIT A B-BBEE CERTIFICATE, TO QUALIFY FOR PREFERENCE POINTS		

<p>I confirm that all documents requested are attached / not attached</p> <p>Comments:</p> <p>.....</p> <p>Signature.....Print.....Date.....</p> <p>..</p>	
<p>Each bid must be addressed in accordance with the directives in the bid documents and must be lodged in a separate sealed envelope with the name and address of the Bidder, the bid number and the closing date indicated on the reverse side of the envelope.</p>	
<p>FOR OFFICIAL USE:</p> <p>.....</p> <p>.....</p> <p>Checked by Verified by</p> <p>Date: Date:</p>	

THE FOLLOWING PARTICULARS MUST BE FURNISHED

(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

NAME OF BIDDER

POSTAL ADDRESS

STREET ADDRESS

TELEPHONE NUMBER CODENUMBER

CELLPHONE NUMBER

FACSIMILE NUMBER CODENUMBER

VAT REGISTRATION NUMBER

HAS A VALID, ORIGINAL TAX CLEARANCE CERTIFICATE (OR PIN) BEEN SUBMITTED? YES/NO

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS/SERVICES OFFERED BY YOU?

YES/NO

(IF YES ENCLOSE PROOF)

SIGNATURE OF BIDDER

DATE

CAPACITY UNDER WHICH THIS BID IS SIGNED

IMPORTANT CONDITIONS

1. Failure on the part of the Bidder to sign this bid form (WCPP 1) and thus to acknowledge and accept the conditions in writing or to complete the attached forms, questionnaires and specifications in all respects, may invalidate the bid.
2. Bids should be submitted on the official forms and should not be qualified by the Bidder's own conditions of bid. Failure to comply with these requirements or to renounce specifically the Bidder's own conditions of bid, when called upon to do so, may invalidate the bid.
3. If any of the conditions on this bid form (WCPP 1) are in conflict with any special condition stipulations or provisions incorporated in the bid, such special conditions, stipulations or provisions shall apply.

BID CONDITIONS AND INFORMATION TO SERVICE PROVIDER

1. DESCRIPTION OF ASSIGNMENT

The Western Cape Provincial Parliament hereby invites bids for the Cyber Security Managed Services (Data protection).

2. COMPULSORY INFORMATION SESSION

A compulsory information session will take place on 02 August 2022 at 10:00, 7 Wale Street, Provincial Legislature Building, Cape Town.

3. DETAILS OF CONTACT PERSON

For further information, related to the technical specifications, please contact, Mr. Coby Skriker – email cskriker@wcpp.gov.za.

Telephonic request for clarification will not be considered. Any clarification required by a bidder regarding the meaning or interpretation of the Terms of Reference or any other aspects concerning the bid is to be requested in writing (letter, facsimile or email) from the above contact persons. The bid reference number should be mentioned in all correspondence.

4. FORMAT OF PROPOSAL

4.1 Bidders must complete and submit the following Bid documents:

- Bid – **WCPP1**;
- Valid, original Tax Clearance Certificates as per **WCPP 2**;
- Pricing schedule (Professional services) – **WCPP 3.3**;
- Declaration of interest – **WCPP 4**; and
- Preference points claim form in terms of the Preferential Procurement Regulations- **WCPP 6.1**.

5. VALIDITY

5.1 Proposals will be valid and open for acceptance for a period of 90 days from the closing date.

5.2 If the bid is withdrawn within this period, the prospective Bidder renders himself liable for damage if a less advantageous bid has to be accepted.

5.3 In exceptional circumstances, the WCPP may solicit the Bidder's consent to an extension of the period of the validity of the bid. The request and responses thereto shall be made in writing. A bidder that has been granted the request will neither be required nor permitted to modify the Proposal.

6. CLOSING DATE AND TIME

The deadline for the submission of the tender is 12 August 2022 at 11h00. **No late submissions will be accepted for consideration.**

7. EVALUATION CRITERIA

7.1 Bidder(s) must comply with the following minimum bidding criteria:

- a) Completion of **WCPP 3.3** Pricing schedule;
- b) Completion in full **WCPP 4** Declaration of interest form. This form must be certified by a Commissioner of Oaths. In the case of Joint Ventures and Consortia the respective parties must submit in full the WCPP 4 Declaration of interest form;
- c) Where applicable (Joint Ventures and Consortia) submission of a duly signed Memorandum of Understanding detailing the roles and responsibilities. In such cases all the parties must provide valid, original tax clearance certificates (and or pins in respect thereof); and

- d) In terms of regulation 8 of the Preferential Procurement Regulation (pending on threshold value) the 80/20 preference point system will be utilised (See Preference points claim form in terms of the Preferential Procurement Regulations 2017- **WCPP 6.1**);
- e) BEE Certification will be effected on a 80/20 principle; 80 in respect of pricing and the 20 in respect of BEE Certification;

8. PRICE

All prices **must** be quoted in **ZAR** and be **VAT inclusive**.

APPENDIX 1

PREVIOUS EXPERIENCE

(Bid Conditions: Paragraph 4)

1. Names and contact details of clients for which similar services were rendered

Name of company	Name of contact person	Contact telephone number

SIGNED: _____
(for the bidder)

DATE: _____

TERMS OF REFERENCE

A. TENDER DEFINITIONS

- a) "Contract" means the agreement that results from acceptance of a proposal.
- b) "Provincial Parliament" shall mean the Western Cape Provincial Parliament (WCPP).
- c) "Secretary" shall mean the Secretary to the Provincial Parliament.
- d) "Speaker" shall mean the Speaker of the Provincial Parliament.
- e) Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include partnerships and bodies corporate.
- f) Where in this document, reference is made to "the prior written approval of the Provincial Parliament be obtained" or words having a similar meaning, reference to the Provincial Parliament shall include reference to the Speaker or Secretary as the case may be.

B. ACRONYMS

- a) AD Active Directory
- b) BYOD Bring Your Own Device
- c) CVE Common Vulnerabilities and Exposures
- d) DB Database
- e) DLP Data Loss Prevention
- f) DLT Digital Linear Tape
- g) DR Disaster Recovery
- h) ECM Enterprise Content Management
- i) ERP Enterprise Resource Planning
- j) Hyper-V Microsoft's hardware virtualization product
- k) ICT Information & Communication Technology
- l) ISMS Information Security Management System
- m) KnowBe4 Security Awareness Vendor
- n) MDR Managed Detect & Response
- o) MFA Multi Factor Authentication
- p) NAS Network Attached Storage
- q) NIST National Institute of Standards and Technology
- r) OS Operating System

- s) RFP Request for Proposal
- t) RPO Recovery Point Objective
- u) RTO Recovery Time Objective
- v) SAN Storage Area Network
- w) SLA Service Level Agreement
- x) SOC Security Operations Centre
- y) SQL Structure Query Language
- z) VM Virtual Machine
- aa) WCPP Western Cape Provincial Parliament

C. TENDER CONDITIONS

1. TENDER ADJUDICATION PRINCIPLES

The tenders will be evaluated by the Bid Evaluation Committee and adjudicated by the Bid Adjudication Committees of the Western Cape Provincial Parliament taking into account terms and conditions of the tender and those set out in the Preference Certificate (In line with the PPPFA Regulations of 2017).

2. COMPULSORY BRIEFING VISIT

2.1 All prospective tenderers must attend the compulsory information session as follows:

Date	: 02 August 2022
Time	: 10h00
Venue	: Visitors Centre, Provincial Legislature Building No. 7 Wale Street
Name of Contact Person	: Messrs. N Diedericks or O Alexander
Telephone No.	:(021) 487-1736 and 487-1619

PLEASE PROVIDE PROOF OF IDENTITY WHEN ATTENDING COMPULSORY SITE VISIT (eg. IDENTITY BOOK, DRIVER'S LICENCE OR PASSPORT).

2.2 Failure to attend the compulsory briefing session will invalidate the tenderer's offer.

- 2.3 The Western Cape Provincial Parliament will make use of this opportunity to discuss the general approach/benefits, which it wants to achieve through the Contract for this service.

Prospective tenderers are therefore urged to ensure their attendance thereof. Furthermore, the Western Cape Provincial Parliament will not accept any liability/responsibility for providing any information discussed at this information session to a prospective tenderer who failed to attend the said meeting.

D. SERVICE

CYBER SECURITY MANAGED SERVICES – DATA PROTECTION

1. BACKGROUND

The Western Cape Provincial Parliament (WCPP) is one of the nine provincial legislatures in South Africa. Based in Cape Town, the WCPP is constitutionally mandated to pass legislation, provide a forum for public debate, involve the public in the law-making process, and oversee the activities of the provincial executive.

The WCPP ICT environment is considered a small size, with an approximate user base of 150 people. There are no remote sites. The Institution is currently operating a hybrid work environment (remote work model) with less than 350 endpoints (Laptops, Servers Printers and Cell Phones). The main office is situated at 7 Wale Street Cape Town.

The WCPP strategic goals are underpinned by a strong commitment to information security practices and the mitigation of risks associated with digital systems.

This RFP aims at reducing risk and promoting resilience by subscribing to data protection practices that are a well governed, through the acquisition of a Managed Services Model (People, Process and Technology).

OUR MISSION

Our mission is to acquire a data protection system to support high availability, backup and disaster recovery requirements of WCPP and to comply with the prescripts of the NIST framework, through a managed service.

The NIST FUNCTIONS are summarised below and the service provider must be guided by the controls of the framework.

Identify – Develop the organizational understanding to manage cybersecurity risk to systems, assets, data, and capabilities. The activities in the Identify Function are foundational for effective use of the Framework. Understanding the business context, the resources that support critical functions and the related cybersecurity risks enables an organization to focus and prioritize its efforts, consistent with its risk management strategy and business needs.

Protect – Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services. The activities in the Protect Function support the ability to limit or contain the impact of a potential cybersecurity event.

Detect – Develop and implement the appropriate activities to identify the occurrence of a cybersecurity event. The activities in the Detect Function enable timely discovery of cybersecurity events.

Respond – Develop and implement the appropriate activities to take action regarding a detected cybersecurity event. The activities in the Respond Function support the ability to contain the impact of a potential cybersecurity event.

Recover – Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to a cybersecurity event. The activities in the Recover Function support timely recovery to normal operations to reduce the impact from a cybersecurity event.

2. CURRENT INFRASTRUCTURE

The existing infrastructure in figure 1 are in scope for the services required.

- 100Mb uncontended fiber
- WCPP has primary and secondary datacenters with Site-Site connectivity.
- Microsoft Windows Virtualised Server Farm on a Hyper-V Cluster.
- HP SAN
- HP Servers
- HP Switches
- WCPP is currently using Microsoft Data Protection Manager, with a DLT tape library and Hyper-V replicas for failover in the DR site.

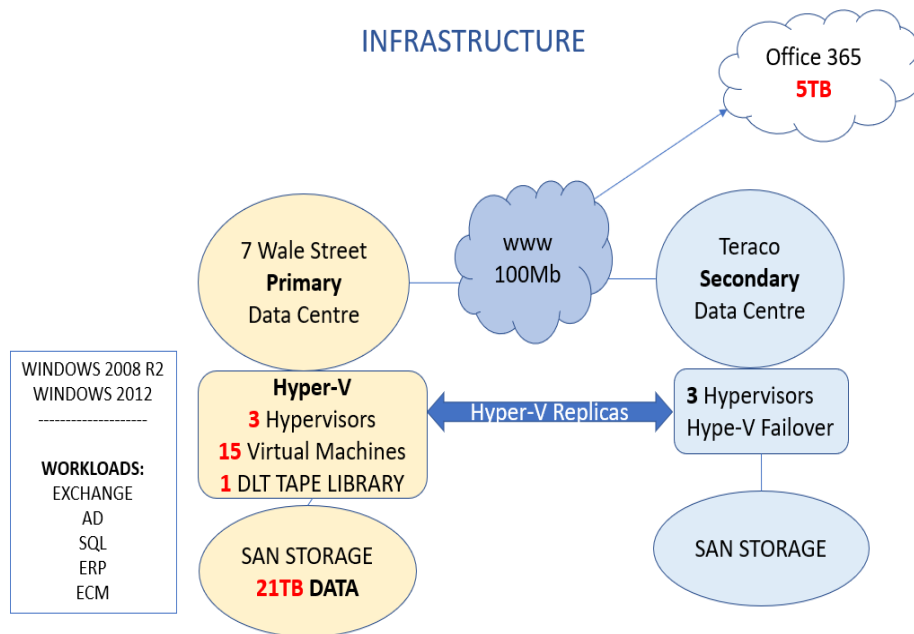


Figure 1

3. BUSINESS REQUIREMENT SPECIFICATION

MANAGED DATA PROTECTION SERVICE – FAILOVER, BACKUP & DR.

- The successful bidder must be capable to provide all critical services related to redundancy in terms of failover, backup, recovery and comply with all the legal requirements of Data Protection.
- The successful bidder will manage the solution until the end of the contract.
- The Successful bidder must include all the hardware and software required to architect and deliver the service.

PERIOD: 36 Months from the last signature on the SLA.

BACKUP TOPOLOGY

The AS-IS backup solution topology is in figure 2.

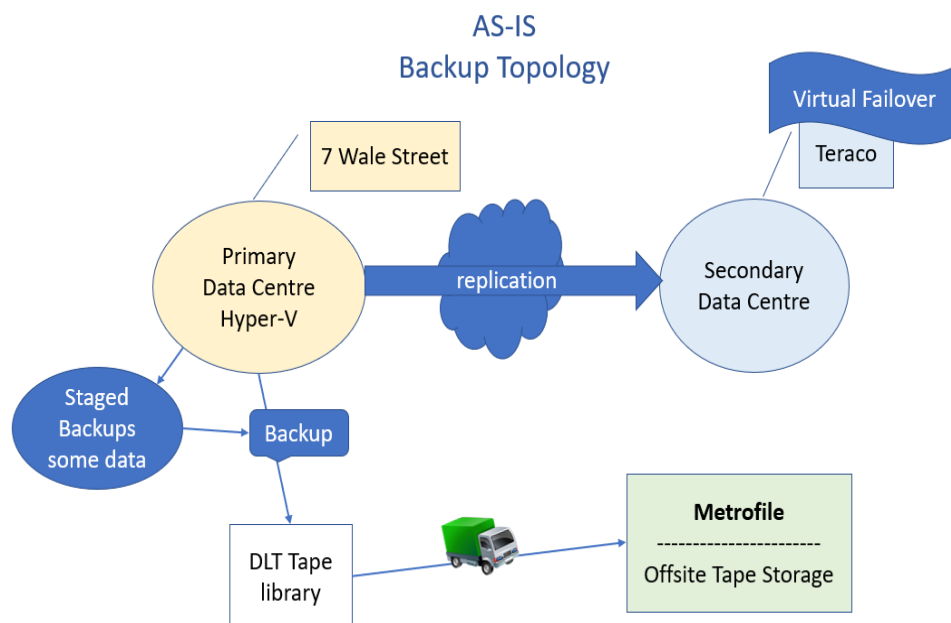


Figure 2

The TO-BE solution requirements (Figure 3).

Storage

Replace DLT with Nearline Storage.

Backups

Implement Backup and Recovery solution with nearline storage (NAS).

Daily, Weekly & Monthly Rotation - 30day retention on NAS

Backup SharePoint Online and OneDrive

Backup the specified on-prem workloads.

Backup set replication

Replicate the backups to an offsite archive for 5 years retention.

Offsite backup must be immutable.

VM replication

Replicate VM's to DR center for failover and failback when the primary datacenter fails.

Replicate data from DR to the Primary after failover mode is seized.

Recovery levels

Disaster Recovery Mode: RPO 24 hours, RTO 4hrs

VM Failover Mode: RPO 4hrs, RTO 1HR per VM

Ability to recover SQL DB, SharePoint Online and Individual Files

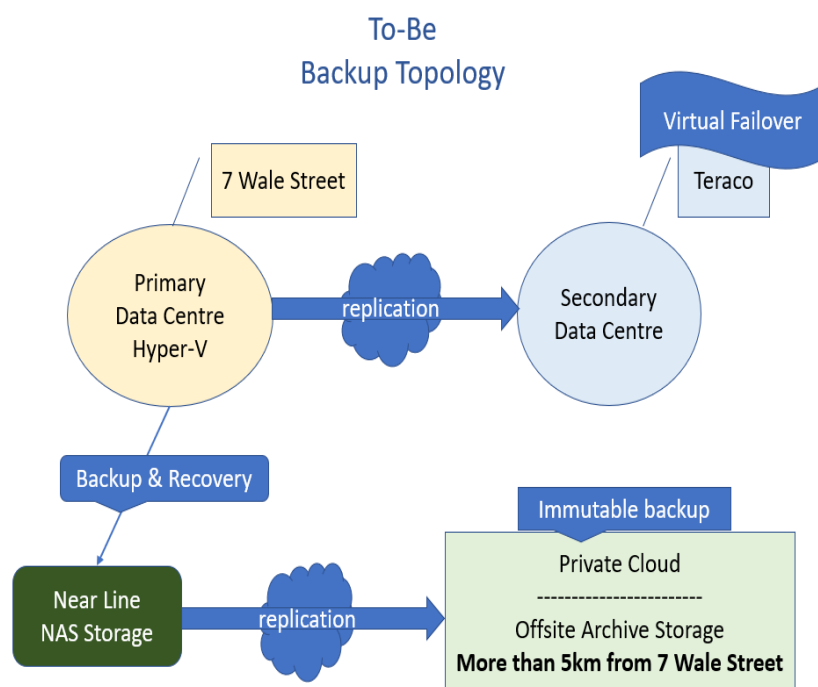


Figure 3

4. MANAGED SERVICES OBJECTIVES

PEOPLE

Provide the skillset(s) to manage the technical solution end to end.

PROCESS

- Ensure compliance with daily backup procedures.
- Ensure all operating procedures are in place and documented for consistent and reliable Restores, DR and Failover at the Teraco Disaster Recovery facility.
- Draft or amend all related WCPP SOP's to align to the operations of the proposed solution.
- Comply with the Data Retention, RPO and RTO objectives.
- Do test restores from at least two datasets on a monthly basis.
- Provide evidence of monthly restores.
- Do two disaster recovery failover simulations/ tests per year.
- Write a disaster simulation/test report

TECHNOLOGY

Ensure reliable replication and backup technologies are in place to produce the desired outcomes.

Ensure the required hardware are in place and the following level of back must be supported.

Levels

- File backup
- Image backup
- Applications backup
- Network shares backup
- Backup to cloud storage
- Backup to local storage
- Remote assistance

OWNERSHIP

- The successful bidder must license the acquired software in the name of WCPP.
- WCPP will retain all the required software that enables the complete solution at the end of the contract and will remain compliant in terms of licensing for continued use of the system.
- WCPP will take ownership of the near line storage device at the end of the contract.

5. TECHNICAL ADMINISTRATION

The service provider must operate with full transparency in managing the platform. Ensure role-based security is optimally configured, with WCPP ICT retaining full administrative control over the technology stack in DR and On-Prem.

Ensure WCPP staff is trained on the solution even though it is a managed service, which excludes the offsite proprietary storage.

6. SERVICE PROVIDER EXPERIENCE & COMPETENCIES

The successful bidder must provide evidence of the following minimum requirements;

Minimum 10 Years specialised Backup System Architecture, Replication and Data Archiving expertise.

- Evidence that the core of business is Data Protection, Backup, Restores, and Disaster Recovery
- A Proven record of supplying managed backup solutions - At least 100 concurrent sites utilizing the managed backup/restore services.
- Must have a team of certified, experienced technicians available in South Africa to manage the solution.

7. SERVICE MANAGEMENT

Name of the proposed key account manager with summarised CV

Name of the proposed service delivery manager with summarised CV

List of services that will be provided against the business requirements

List of support staff and certifications

Clear roles and responsibilities

Proposed service level agreements against all services.

Monthly report pack

Performance against all proposed services and SLA targets.

Presented in a monthly meeting and reviewing service delivery.

Project Management.

Dedicated project manager.

Detailed project plan with indicative timelines

8. BID REQUIREMENTS SPECIFICATION COMPLIANCE

The bidder must complete the following tables: By indicating the page reference in the proposal, where the bidder confirms that they will meet the specified deliverable as per the business requirements specification (Tender: attachment name and page number).

	Functional requirement	Bidder Attachment & Page Reference
	Minimum 10 years in business, specialised in Backup System Architecture, Replication and Data Archiving.	
	An Auditor's confirmation of a proven record of supplying managed backup solutions - At least 100 concurrent sites utilizing the managed backup/restore services.	
	The successful bidder will provide a managed data protection service - Failover, Backup & Disaster Recovery.	
	Full compliance with the backup sizing requirement for the on premises data centre and online Microsoft 365 workloads,	
	Enablement of Replication technology, Failover and Disaster Recovery capability at the Teraco site.	
	Provision of a nearline network attached storage device (NAS) to facilitate 30 retention requirement for backup and restore functions.	
	Compliance with the offsite Backup Archive requirement (5 years retention)	
	Perform the monthly restore tests as directed by WCPP in terms of the specific data sources and levels that will change on a month to	
	Perform the Bi-Annual Disaster Recovery Simulation Tests (two tests per annum). This must include weekends.	
	All the levels of backup and restore functions can be supported by the relevant software.	
	Administrative Support for Policies and Procedures	
	Compliance with Technical Administration Requirement.	
	Evidence of staff certification	
	Compliance with the Monthly deliverables	

9. Technical and Financial proposals should be submitted in two separate sealed envelopes.

The submission should be as follows:

Technical	Financial
One (1) original	One (1) original
One (1) electronic copy (flash drive)	One (1) electronic copy (flash drive)

a. Critical Infrastructure Protection Act

It is expected of the Bidder to have or have obtained (taking application time- frames into account) State Security Agency (SSA) clearance to be able to work in a site declared critical infrastructure as per the Critical Infrastructure Protection Act, Act 8 of 2019.

The Critical Infrastructure Protection Act 8 of 2019 aims:

- To provide for the identification and declaration of infrastructure as critical infrastructure;
- To provide for guidelines and factors to be taken into account to ensure transparent identification and declaration of critical infrastructure;
- To provide for measures to be put in place for the protection, safeguarding and resilience of critical infrastructure;
- To provide for the establishment of the Critical Infrastructure Council and its functions;
- To provide for the administration of the Act under the control of the National Commissioner as well as the functions of the National Commissioner in relation to the Act;

10. EVALUATION CRITERIA

The criteria to be used in the adjudication process will be in accordance with the WCPP Supply Chain Management Policy, which incorporates, amongst others, the provisions of the Preferential Procurement Policy Framework Act of 2000 and Regulations of 2017. A two (2) phase evaluation process will be considered in evaluating the proposals:

10.1. PHASE 1: FUNCTIONAL/ TECHNICAL EVALUATION

10.1.1 "Functionality" means the measurement according to predetermined norms of a service or commodity designed to be practical and useful, working or operating, taking into account quality, reliability, viability and durability of a service or commodity. The need to invite and evaluate bids on the basis of functionality depends on the nature of the required commodity or service.

10.1.2 Only bidders that have met the pre-qualification criteria will be evaluated for functional evaluation. In this phase the evaluation will be based on the bidders' responses in respect of the bid proposal (evaluated on the minimum functional specifications). Prospective bidders who score a minimum of 80 points or more will be considered for phase 2 (Price and B-BBEE status level contributor).

10.1.3 Functionality evaluation criteria:

Evaluation criteria - evidence for the evaluation to be provided here, with reference to the page number in the bidder's proposal	Max Weight		Bidder Attachment & Page reference
Team Leader & Support Staff Experience Considers the technical and professional skills of the managed services team. Abbreviated Curriculum Vitae/ Resumes of personnel to be involved in delivering the service. Their qualifications/certifications and experience in doing similar jobs. CV's of all the managed services support team and relevant experience is attached. All staff of the managed services support team is adequately certified		[20]	
	10		
	10		

Evaluation criteria - evidence for the evaluation to be provided here, with reference to the page number in the bidder's proposal	Max Weight		Bidder Attachment & Page reference
Project Planning Well-written project plan to enable the service end to end, which includes the configuration and onboarding of systems to an operational managed service, which includes all dependencies. Risks / Scope / Timelines and Milestones / Dependencies / Roles	25	[25]	
Contactable References *Note: References should be presented in a form of a written signed letter on an official letterhead and from clients where the services have been provided/rendered. References should not be older than 6 months. Failure to submit written signed reference letters on an official letterhead will result in 0 scoring. # Three or more # Qualitative content – measured against the services and contactable references from ICT Management.	10 10	[20]	
Service Management Proposed draft service level agreement is attached for negotiation with WCPP. Clearly defined roles and responsibilities of the managed services support staff.	25 10	[35]	
Total [100]			

10.2 PHASE 2: THE 80/ 20 PRINCIPLE BASED ON PRICE AND B-BBEE STATUS LEVEL CONTRIBUTOR – refer to WCPP 6.1, page 43 – 49 of the bid document.

11. PAYMENT TERMS

- 11.1 The WCPP undertakes to pay valid tax invoices in full within thirty (30) days from receipt date for services rendered;
- 11.2 All supporting documents for services rendered should be submitted together with the tax invoices; and
- 11.3 Valid Tax Invoices for all services rendered are to be submitted to the Office of the Chief Financial Officer at the WCPP's Finance Section at the address on page 2 above or email to invoice@WCPP.GOV.ZA .

TAX CLEARANCE REQUIREMENTS

IT IS A CONDITION THAT: -

1. The taxes of the successful Bidder **MUST** be in order, or that satisfactory arrangements have been made with the Receiver of Revenue to meet his/her tax obligations – refer to the **PPPFA (Act 5 of 2000)** and **FMPPLA (Act 10 of 2009) Section 40 (e)**.
2. The attached form "Application for Tax Clearance Certificate (in respect of bidders)" must be completed in all respects and submitted to the Receiver of Revenue where the Bidder is registered for tax purposes. The Receiver of Revenue will then furnish the Bidder with a Tax Clearance Certificate (or a PIN) that will be valid for a period of twelve (12) months from date of issue. The Tax Clearance Certificate must be submitted in the original together with the bid. Failure to submit the valid original Tax Clearance Certificate at the closing time of the bid will invalidate the bid.
3. In bids where Consortia/Joint Ventures/Sub-contractors are involved each party must submit a separate valid, original Tax Clearance Certificate. Copies of the application for Tax Clearance Certificate are available at any Receiver's Office.

APPLICATION FOR TAX CLEARANCE CERTIFICATE

(IN RESPECT OF BIDDERS)

1.NAME OF TAXPAYER / BIDDER: _____

2.TRADENAME: _____

3. IDENTIFICATION NO: (If applicable) / / / / / / / / / / / / /

4. COMPANY / CLOSE CORPORATION REGISTRATION NO. / / / / / / / / / / /

5. INCOME TAX REFERENCE NO: / / / / / / / / / / /

6. VAT REGISTRATION NO: (If applicable) / / / / / / / / / / /

7. PAYE EMPLOYER'S REGISTRATION NO: (If applicable) / / / / / / / / / / /

Signature of contact

person requiring Tax :

Clearance Certificate

Name :

Telephone Number :

Address :

Date :

PLEASE NOTE THAT THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICES (SARS) WILL NOT EXERCISE HIS DISCRETIONARY POWERS IN FAVOUR OF ANY PERSON WITH REGARD TO ANY INTEREST, PENALTIES AND/OR ADDITIONAL TAX LEVIABLE DUE TO THE LATE- OR UNDERPAYMENT OF TAXES, DUTIES OR LEVIES OR THE RENDITION RETURNS BY ANYPERSON AS A RESULT OF ANY SYSTEM NOT BEING YEAR 2000 COMPLAINT.

NB: USE ONLY BLACK OR RED INK OR BLACK OR RED TYPEWRITER RIBBON TO FILL IN THIS FORM						
(IMPORTANT: This form must be completed in full. *Delete which is not applicable.) CLOSING TIME 11:00 ON 12 August 2022 NAME OF TENDERER: VALIDITY: 90 DAYS (from closing date)			TENDER NO. WCPPT 02/2022 _____ _____			
ITEM NO.	DESCRIPTION	TENDER PRICE IN SA CURRENCY	TENDER PRICE MUST BE INCLUSIVE OF VAT			
1	Cyber Security Managed services (Data protection)	R _____				
1.1	Year 1	_____				
1.2	Year 2	_____				
1.3	Year 3	_____				
Has a representative of your organisation attended the compulsory information session held on _____ (see paragraph 2 under tender conditions of the attached specification)?			A	*	YES	NO
Name of representative who attended the information session.			B			
Are you registered in terms of section 23(1) or 23(3) of the Value Added Tax Act, 1991 (Act No. 89 of 1991), and if so state your VAT registration number?			C	*	YES	NO
Is a similar service presently rendered which may be inspected (preferably in Cape Town)?			D	*	YES	NO
Contact person and telephone number should any further information be required.			E			

DECLARATION OF INTERESTS, BIDDERS PAST SCM PRACTICES AND INDEPENDENT BID DETERMINATION

1. To give effect to the requirements of FMPPA (Act 10 of 2009) Section 46 (b) with specific reference to the Western Cape Provincial Parliament, the Western Cape Procurement (Business Interest of Employees) Act No 8 of 2010, Practice Note 4 of 2006 Declaration of Bidders Past SCM Practices- (WCPP 4), Instruction note Enhancing Compliance Monitoring and Improving Transparency and Accountability in Supply Chain Management WCPP 4 Declaration of Interest, Practice Note 2010 Prohibition of Restrictive practices, Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998 as amended together with its associated regulations, the Prevention and Combating of Corrupt Activities Act No 12 of 2004 and regulations pertaining to the tender defaulters register, Paragraph 16A9 of the National Treasury Regulations and/or any other applicable legislation.
2. All prospective bidders intending to do business with the Institution must be registered on the Western Cape Evidence Bank or CSD (Central Supplier Database).

3. Definitions

"Bid" includes a price quotation, advertised competitive bid, limited bid or proposal

"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

"business interest" means —

- (a) a right or entitlement to share in profits, revenue or assets of an entity;
- (b) a real or personal right in property;
- (c) a right to remuneration or any other private gain or benefit, and includes any interest contemplated in paragraphs (a), (b) or (c) acquired through an intermediary and any potential interest in terms of any of those paragraphs;

"Consortium or Joint Venture" means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;

"a person in the employ of the state" means

- (a) a member of the board of directors of any municipal entity;
- (b) an official of any municipality or municipal entity;
- (c) 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;

- (d) a member of the accounting authority of any national or provincial public entity; or
- (e) an employee of Parliament or a provincial legislature

"entity" means any —

- (a) association of persons, whether or not incorporated or registered in terms of any law, including a company, corporation, trust, partnership, close corporation, joint venture or consortium; or
- (b) sole proprietorship;

"entity conducting business with the Institution" means an entity that contracts or applies or tenders for the sale, lease or supply of goods or services to the Province

"Family member" means a person's —

- (a) spouse; or
- (b) child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption;

"intermediary" means a person through whom an interest is acquired, and includes—

- (a) a person to whom is granted or from whom is received a general power of attorney; and
- (b) a representative or agent;

"Institution" means —

Western Cape Provincial Parliament (WCPP)

Western Cape Provincial Parliament (WCPP) means - the legislature of the Western Cape

"Private work" means —

Remunerative Work Outside the WCPP

"spouse" means a person's —

- (a) partner in marriage;
- (b) partner in a customary union according to indigenous law; or
- (c) partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;

4. Any legal person, including persons employed by the Institution, or their family members, 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 employed by the PG, or to their family member, it is required that the Bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where the Bidder is employed by the Institution; and/or
5. The bid of any bidder may be disregarded if that Bidder or any of its directors have abused the institution's supply chain management system; committed fraud or any other improper conduct in relation to such system; or failed to perform on any previous contract.

6. 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). Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
7. Communication between partners in a joint venture or consortium will not be construed as collusive bidding.
8. 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.

SECTION A: DETAILS OF THE ENTITY

A1.	<i>Name of the Entity</i>	
A2.	<i>Entity registration Number (where applicable)</i>	
A3.	<i>Entity Type</i>	
A4.	<i>Tax Reference Number</i>	
A5. Full details of directors, shareholder, member, partner, trustee, sole proprietor or any persons with a right		

or entitlement to share in profits, revenue or assets of an entity, of the entity should be disclosed in the Table A below.

TABLE A

FULL NAME	DESIGNATION (Where a director is a shareholder, both should be confirmed.)	IDENTITY NUMBER	PERSONAL TAX REFERENCE NO.	PERCENTAGE INTEREST IN THE ENTITY

SECTION B: DECLARATION OF THE BIDDER'S INTEREST

*To disclose relationships between the bidding entity and persons listed in Table A and any employees of the Institution; and to restrict business interest of Institution employees' in terms of FMPLA regulation Section 46 (d), bidding entity must give the following details. An Institution employee not involved in the bidding process as per Section 46 (d), taking remunerative work outside the WCPP, should first obtain necessary approval in terms of the **WCPP code of conduct paragraph 7**, failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.*

B1.	Are any persons listed in Table A employees of the Institution? (If yes, complete Table B and attach "Private work")	<input type="checkbox"/> NO	<input type="checkbox"/> YES
B2.	Are any employees of the entity also employees of the Institution? (If yes complete Table B and attach "Private work")	<input type="checkbox"/> NO	<input type="checkbox"/> YES

B3.	Are any family members of the persons listed in Table A employees of the Institution? <i>(If yes complete Table B)</i>	<input type="checkbox"/> NO	<input type="checkbox"/> YES
------------	---	-----------------------------	------------------------------

TABLE B

Details of persons connected with the Bidder who are employees of the Institution as defined should be disclosed in Table B below.

FULL NAME OF INSTITUTION EMPLOYEE	IDENTITY NUMBER	PROVINCIAL DEPARTMENT/ ENTITY OF EMPLOYMENT	DESIGNATION / RELATIONSHIP TO BIDDER**	INSTITUTION EMPLOYEE NO./PERSAL NO. (Indicate if not known)	PERCENTAGE INTEREST.

SECTION C: PERFORMANCE MANAGEMENT AND BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

To enable the prospective Bidder to provide evidence of past and current performance with the Institution.

C1.	Did the entity conduct business with the Institution in the last twelve months? <i>(If yes complete Table C)</i>	<input type="checkbox"/> NO	<input type="checkbox"/> YES
------------	---	-----------------------------	------------------------------

C2. Table C

Complete the below table to the maximum of the last 5 contracts.

NAME OF CONTRACTOR	PROVINCIAL DEPARTMENT OR PROVINCIAL ENTITY	TYPE OF SERVICES OR COMMODITY	CONTRACT / ORDER NUMBER	PERIOD OF CONTRACT	VALUE OF CONTRACT

C3.

Is the entity or its principals listed on the National Database as companies or persons prohibited from doing business with the public sector in line with **FMPPLA Regulation 5 (5) (b)**?

NO	YES
----	-----

C4.

Is the entity or its principals listed on the National Treasury Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004) and further read with **FMPPLA Regulation 5 (5) (b)**?
(To access this Register enter the National Treasury's website, www.treasury.gov.za, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445.)

NO	YES
----	-----

C5.

If yes to C3 or C4, were you informed in writing about the listing on the database of restricted suppliers or Register for Tender Defaulters by National Treasury?

NO	YES
----	-----

C6.	Was the entity or persons listed in Table A convicted for fraud or corruption during the past five years in a court of law (including a court outside the Republic of South Africa)?	<table border="1"> <tr> <td data-bbox="1294 206 1374 297">NO</td> <td data-bbox="1374 206 1449 297">YES</td> </tr> </table>	NO	YES
NO	YES			
SECTION D: DULY AUTHORISED REPRESENTATIVE TO DEPOSE TO AFFIDAVIT <i>The form should be signed by a duly authorised representative of the entity before a commissioner of oaths.</i>				
	<p>I, hereby swear/affirm;</p> <p>i. that the information disclosed above is true and accurate;</p> <p>ii. that I understand the content of the document;</p> <p>iii. the entity undertakes to independently arrive at any offer at any time to the Institution without any consultation, communication, agreement or arrangement with any competitor. In addition, that there will be 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 the Institution.</p> <p>iv. that the entity or its representative are aware of and undertakes not to disclose the terms of any bid, formal or informal, directly or indirectly, to any competitor, prior to the awarding of the Contract.</p> <p style="text-align: right;">_____ DULY AUTHORISED REPRESENTATIVE'S SIGNATURE</p>			
	<p>I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:</p> <p>1.1 Do you know and understand the contents of the declaration? ANSWER:</p> <p>1.2 Do you have any objection to taking the prescribed oath? ANSWER:</p>			

1.3 Do you consider the prescribed oath to be binding on your conscience?

ANSWER:

1.4 Do you want to make an affirmation?

ANSWER:

2. I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration, which was sworn to/affirmed before me and the deponent's signature/thumbprint/mark was place thereon in my presence.

.....

SIGNATURE

FULL NAMES

Commissioner of Oaths

Designation (rank)ex officio: Republic of South Africa

Date:Place

Business Address:

Bid no.

(To be inserted by Bidder)

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

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

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

1. GENERAL CONDITIONS

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

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

1.2

- a) The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable; or
- b) The 80/20 preference point system will be applicable to this tender

1.3 Points for this bid shall be awarded for:

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

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

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

- 1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **"B-BBEE status level of contributor"** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **"EME"** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **"functionality"** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.

(g) **"prices"** includes all applicable taxes less all unconditional discounts;

(h) **"proof of B-BBEE status level of contributor"** means:

B-BBEE Status level certificate issued by an authorised body or person;

1) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;

2) Any other requirement prescribed in terms of the B-BBEE Act;

(i) **"QSE"** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;

(j) **"rand value"** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

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

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

80/20

or

90/10

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

P_{\min} = Price of lowest acceptable bid

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

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

5. BID DECLARATION

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

6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

6.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

7.1 Will any portion of the Contract be sub-contracted?

(Tick applicable box)

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

7.1.1 If yes, indicate:

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

(Tick applicable box)

YES		NO	
-----	--	----	--

- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME	QSE
	√	√
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

- 8.1 Name of company/firm:.....
- 8.2 VAT registration number:.....
- 8.3 Company registration number:.....
- 8.4 TYPE OF COMPANY/ FIRM

☐ Partnership/Joint Venture / Consortium

- ☐ One person business/sole propriety
- ☐ Close corporation
- ☐ Company
- ☐ (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

8.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
- ☐ Supplier
- ☐ Professional service provider
- ☐ Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

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

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the Contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of Contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

- (a) disqualify the person from the bidding process;
- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- (c) cancel the Contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the Bidder or Contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

WITNESSES

1.

2.

.....
SIGNATURE(S) OF BIDDERS(S)

DATE:

ADDRESS

.....

.....

WESTERN CAPE PROVINCIAL PARLIAMENT (WCPP)

GENERAL CONDITIONS OF CONTRACT

NOTES

The purpose of this document is to:

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

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

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

2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties

General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:

- 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3 "Contract price" means the price payable to the supplier under the Contract for the full and proper performance of his contractual obligations.
- 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidised by its government and encouraged to market its products internationally.
- 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7 "Day" means calendar day.
- 1.8 "Delivery" means delivery in compliance of the conditions of the Contract or order.
- 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the Contract or order, the

supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

- 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12 " Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the Contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.

- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organisation purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the Contract.
- 1.25 "Written" or "in writing," means handwritten in ink or any form of electronic or mechanical writing.

2. Application

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

3. General

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

4. Standards

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

5. Use of contract documents and information; inspection.

- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the Contract.
- 5.3 Any document, other than the Contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the Contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

7. Performance security

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

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the Bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the Bidder or Contractor shall be open, at all reasonable hours, for inspection by a representative of the Western Cape Provincial Parliament or an organisation acting on behalf of the Western Cape Provincial Parliament.

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

9. Packing

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

and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

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

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental services

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this Contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

14. Spare parts

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

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

15. Warranty

15.1 The supplier warrants that the goods supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The supplier further warrants that all goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the

Contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the Contract.

16. Payment

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

17. Prices

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

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the Contract.
- 21.2 If at any time during performance of the Contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of Contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

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

22. Penalties

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

23. Termination for default

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

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the Contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

23.2 In the event the purchaser terminates the Contract in whole or in part, the purchaser may procure, upon such terms and in such manner, as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such

similar goods, works or services. However, the supplier shall continue performance of the Contract to the extent not terminated.

24. Anti-dumping and countervailing duties and rights

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

25. Force Majeure

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

26. Termination for insolvency

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

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in Contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
 - (b) the aggregate liability of the supplier to the purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing language

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

30. Applicable law

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

31. Notices

- 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties

- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Western Cape Provincial Parliament must be in possession of a tax clearance certificate, submitted by the Bidder. This certificate must be an original issued by the South African Revenue Services.