

|                                                                                   |                                               |
|-----------------------------------------------------------------------------------|-----------------------------------------------|
|  | <b>Supply Chain Management</b>                |
| Document Number:                                                                  | SCM009                                        |
| Document Title:                                                                   | Standard Conditions of Tender                 |
| Version:                                                                          | 01                                            |
| Purpose:                                                                          | Standard Conditions applicable to all tenders |

Reference: CIDB Standard Conditions of Tender - latest edition

---

# **CONSTRUCTION INDUSTRY DEVELOPMENT BOARD**

---

## **STANDARD FOR UNIFORMITY IN ENGINEERING AND CONSTRUCTION WORKS CONTRACTS**

---

**AUGUST 2019**

This standard is issued in terms of sections 4(f), 5(3)(c) and 5(4)(b) of the Construction Industry Development Board Act 38 of 2000 read with Regulation 24 of the Construction Industry Development Regulations, (as amended) issued in terms of section 33.

The Standard for Uniformity in Construction Procurement was first published in Board Notice 62 of 2004 in Government Gazette No 26427 of 9 June 2004. It was subsequently amended in Board Notice 67 of 2005 in Government Gazette No 27831 of 22 July 2005, Board Notice 99 of 2005 in Government Gazette No 28127 of 14 October 2005, Board Notice 93 of 2006 in Government Gazette No 29138 of 18 August 2006, Board Notice 9 of 2008 in Government Gazette No 30692 of 1 February 2008, Board Notice 11 of 2009 in Government Gazette No 31823 of 30 January 2009, Board Notice 86 of 2010 in Government Gazette No 33239 of 28 May 2010 and Board Notice 136 of 2015 in Government Gazette 38960 of 10 July 2015.

### **Contents**

- 1 Scope
- 2 Normative references
- 3 Definitions
- 4 Requirements
  - 4.1 General
  - 4.2 Solicitation of tender offers
    - 4.2.1 General
    - 4.2.2 Activities associated with the solicitation of tender offers
    - 4.2.3 Competitive selection procedures
  - 4.3 The evaluation of tenders on functionality
    - 4.3.1 Process for evaluation of Tenders on Functionality
    - 4.3.2 Functionality in different contracting strategies
  - 4.4 Procurement documents
    - 4.4.1 General
    - 4.4.2 Tender Data
    - 4.4.3 Contract data
    - 4.4.4 Submission Data
    - 4.4.5 Subcontracting as a condition to tender
    - 4.4.6 Scope of work
- 4.4 Applying the cidb register of contractors to public contracts

- Annex A: Standard Tender Notice and Invitation to Tender
- Annex B: Form of Offer and Acceptance
- Annex C: Standard Conditions of Tender
- Annex D: Standard Conditions for the calling for Expressions of Interest
- Annex E: Standard Notice and Invitation to submit an Expression of Interest
- Annex F: Record of Addenda to Tender Documents
- Annex G: Compulsory Enterprise Questionnaire

# **STANDARD FOR UNIFORMITY IN ENGINEERING AND CONSTRUCTION WORKS CONTRACTS**

## **1. Scope**

This standard establishes requirements for engineering and construction works contracts aimed at bringing about standardisation and uniformity in construction contracts documentation, practices and procedures.

## **2. Normative references**

The following referenced documents are for the application of this standard.

For undated references, the latest edition of the referenced document (including any amendments) applies.

- 2.1** Conditions of Contract for Construction for Building and Engineering Works designed by the Employer ("Red Book") as published by the International Federation of Consulting Engineers (FIDIC).
- 2.2** Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works, designed by the Contractor ("Yellow Book") as published by the International Federation of Consulting Engineers (FIDIC).
- 2.3** Conditions of Contract for EPC Turnkey Projects ("Silver Book") as published by the International Federation of Consulting Engineers (FIDIC).
- 2.4** Conditions of Contract for Design, Build and Operate Projects ("Gold Book") as published by the International Federation of Consulting Engineers (FIDIC).
- 2.5** General Conditions of Contract for Construction Works as published by the South African Institution of Civil Engineering.
- 2.6** JBCC Series 2000 Principal Building Agreement as published by the Joint Building Contracts Committee.
- 2.7** JBCC Series 2000 Minor Works Agreement as published by the Joint Building Contracts Committee.
- 2.8** NEC3 Engineering and Construction Short Contract as published by the Institution of Civil Engineers.
- 2.9** NEC3 Engineering and Construction Contract as published by the Institution of Civil Engineers.
- 2.10** Short Form of Contract ("Green Book") as published by the International Federation of Consulting Engineers (FIDIC).
- 2.11** Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017 (as amended).
- 2.12** South African Bureau of Standards, SANS 10845-1, Construction procurement – Part 1: Processes, methods and procedures.
- 2.13** South African Bureau of Standards, SANS 10845-2, Construction procurement – Part 2: Formatting and compilation of procurement documentation.

- 2.14** South African Bureau of Standards, SANS 10845-3, Construction procurement – Part 3: Standard conditions of tender.
- 2.15** South African Bureau of Standards, SANS 10845-4, Construction procurement – Part 4: Standard conditions for the calling for expressions of interest.

### **3. Definitions**

For purposes of this standard, the following definitions apply:

- 3.1 black people** means Africans, Coloureds and Indians -
- (a) who are citizens of the Republic of South Africa by birth or descent; or
  - (b) who became citizens of the Republic of South Africa by naturalisation -
    - (i) before 27 April 1994; or
    - (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.
- 3.2 capability** means the abilities necessary to perform at the required level;
- 3.3 capacity** means the resources (human capital, financial, physical assets, systems, procedures) which a tenderer puts at the disposal of the project to select, fund and execute the work;
- 3.4 conflict of interest** means any situation in which someone in a position of trust has competing professional or personal interests which make it difficult for him to fulfill his duties impartially, an individual or the tenderer is in a position to exploit a professional or official capacity in some way for his personal or for corporate benefit, or incompatibility or contradictory interests exist between an employee and the tenderer who employs that employee;
- 3.5 contracting strategy** means strategy that defines the nature of the relationship which the employer wishes to foster with the contractor, which in turn determines the risks and responsibilities between the parties to the contract and the methodology by which the contractor is to be paid;
- 3.6 contract data** means document that identifies the applicable conditions of a contract and states the associated contract-specific data;
- 3.7 design and build** means contract in which a contractor designs a project based on a brief provided by the employer and constructs it;
- 3.8 develop and construct** means contract based on a scheme design prepared by the employer under which a contractor produces drawings and constructs it;
- 3.9 design by employer** means contract under which a contractor undertakes only construction based on full designs issued by the employer;
- 3.10 employer** means an organ of state entering into a contract with a contractor for the provision of engineering and construction works;
- 3.11 expression of interest** means a request for respondents to register their interest in undertaking a specific contract or to participate in a project or programme and to submit their credentials, so they may, in terms of the employer's procurement procedures, be invited to submit a tender offer should they qualify or be selected to do so;
- 3.12 financial offer** means the cost of the procurement in monetary terms;

- 3.13 form of offer and acceptance** means the documents that formalize the legal process of offer and acceptance;
- 3.14 functionality** means the ability of a tenderer to provide engineering and construction works in accordance with specifications as set out in the tender documents;
- 3.15 invitation to tender** means formal invitation to qualified tenderers to make a written offer for construction works;
- 3.16 list of returnable documents** means document that lists everything the employer requires a tenderer to include with the tender submission;
- 3.17 management contractor** means contract under which a contractor provides consultation during the design stage and is responsible for planning and managing all post contract activities for contractors and the performance of the whole contract;
- 3.18 notice and invitation to submit an expression of interest** means the document that alerts respondents to submit their credentials in order to be admitted to an electronic database or to be invited to submit tenders should they satisfy the stated criteria;
- 3.19 potentially emerging enterprise** means an enterprise which is least 50 percent owned, managed and controlled by black people;
- 3.20 preference** means points awarded for Broad-Based Black Economic Empowerment (B-BBEE) status level of contribution;
- 3.21 pricing assumptions** means the document that provides the criteria and assumptions which are assumed in the contract and which the tenderer has taken into account when developing his prices, or target in the case of target cost contracts;
- 3.22 quality** means totality of features and characteristics of a product or service that bears on the ability of the product or service to satisfy stated or implied needs;
- 3.23 scope of work** means the documentation that specifies and describes the engineering and construction works which are to be provided and any other requirements and constraints relating to the manner in which the contract work is to be performed;
- 3.24 services contract** means the contract for the provision of labour or work, including knowledge-based expertise, carried out by hand, or with the assistance of equipment and plant;
- 3.25 site information** means the document that describes the site as at the time of tender, to enable the tenderer to price tender and to decide upon the method of working and programming;
- 3.26 submission data** means document that establishes the respondent's obligations in responding to a call for an expression of interest and the employer's undertakings in administering the process of calling for and receiving expressions of interest;
- 3.27 term contract** means a contract that enables the employer to order work during a prescribed period at agreed rate;
- 3.28 tender data** means the document that establishes the tenderer's obligations in submitting a tender and the employer's undertakings in administering the tender process and evaluating tender offers;
- 3.29 tenderer** means a cidb registered sole proprietor, partnership or trust who establishes a company or close corporation in terms of the Companies Act, 1973 or the Close Corporations Act, 1984; submitting a tender offer;

**3.30 tender notice** means a formal communication to tenderers to submit competitive tenders;

**3.31 tender offer** means a written offer to carry out engineering and construction works under given conditions, usually at a stated price, and which is capable of acceptance and conversion into a binding contract;

**3.32 threshold** means a monetary value of a procurement contract established in any legislation governing procurement or by the executive of an institution, below which a procedure must be used.

## **4 Requirements**

### **4.1 General**

Procurement of construction works shall be undertaken in accordance with:

- a) the provisions of legislation regulating procurement;
- b) the cidb Code of Conduct for all parties engaged in Construction Procurement published in terms of section 5(4) of the Construction Industry Development Board Act.

### **4.2 Solicitation of tender offers**

#### **4.2.1 General**

4.2.1.1 Tender offers shall be solicited using one of the Standard Procurement Procedures and Tender Evaluation Methods described in Table 1.

4.2.1.2 As a general rule, engineering and construction works contract shall be solicited using Standard Methods of procuring different categories of engineering and construction works contracts in accordance with the provisions of Table 2.

4.2.1.3 The scope of work, terms and conditions and prices that are negotiated in the negotiation procedure, the proposal procedure using the two-stage system or the competitive negotiation procedure shall be in the best interests of the employer.

4.2.1.4 Minutes of such negotiations and the reasons for pursuing such procedures shall be kept for record and audit purposes.

4.2.1.5 Subject to section 23(2) of the Construction Industry Development Board Act, 38 of 2000, all tender offers above the prescribed tender value published by the Minister shall include a condition that such contracts comply with the cidb best practice standards, published in terms of project assessment scheme.

#### **4.2.2 Activities associated with the solicitation of tender offers**

##### **4.2.2.1 Preparation of procurement documents**

a) Procurement documents for engineering and construction works contract shall in general:

- i) require tenderers to submit particulars sufficient for the employer to evaluate their tenders and to assess their status, capabilities and capacities to perform the contract;
- ii) set out, in a clear and unambiguous manner, the criteria by which tenders are to be evaluated;
- iii) define the risks, liabilities and contractual obligations of the parties to the contract;
- iv) define the nature and quality of construction works to be provided in the performance of the contract.

**Table 1: Standard Procurement Procedures and Tender Evaluation Methods**

| Procedure |                                                       | Description                                                                                                                                                                                                                                                                                                    |
|-----------|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| PP1       | Negotiation procedure                                 | A tender offer is solicited from a single tenderer.                                                                                                                                                                                                                                                            |
| PP2       | Competitive selection procedure                       | Any procurement procedure in which the contract is normally awarded to the contractor who submits the lowest financial offer or obtains the highest number of tender evaluation points.                                                                                                                        |
|           | PP2A Nominated procedure                              | Tenderers that satisfy prescribed criteria are accepted to an electronic data base. Tenderers are invited to submit tender offers based on search criteria and their position on the data base. Tenderers are repositioned on the data base upon appointment or upon the submission of a tender offer.         |
|           | PP2B Open procedure                                   | Tenderers must submit tender offers in response to an advertisement by the employer to do so.                                                                                                                                                                                                                  |
|           | PP2C Qualified procedure                              | A call for expressions of interest is advertised and thereafter only those tenderers who have expressed interest, satisfy objective criteria and who are selected to submit tender offers, are invited to do so.                                                                                               |
|           | PP2D Quotation procedure                              | Tender offers are solicited from not less than three tenderers in any manner the employer chooses, subject to the procedures being fair, equitable, transparent, competitive and cost-effective.                                                                                                               |
|           | PP2E Proposal procedure using the two-envelope system | Tenderers submit technical and financial proposals in two envelopes. The financial proposal is only opened should the technical proposal be found to be acceptable.                                                                                                                                            |
|           | PP2F Proposal procedure using the two-stage system    | Non-financial proposal are called for. Tender offers are then invited from those tenderers that submit acceptable proposals based on revised procurement documents. Alternatively, a contract is negotiated with the tenderer scoring the highest number of evaluation points.                                 |
|           | PP2G Shopping procedure                               | Written or verbal offers are solicited in respect of readily available goods obtained from three sources. The goods are purchased from the source providing the lowest price once it is confirmed in writing.                                                                                                  |
| PP3       | Competitive negotiation procedure                     | A procurement procedure which reduces the number of tenderers competing for the contract through a series of negotiations until the remaining tenderers are invited to submit final offers.                                                                                                                    |
|           | PP3A Restricted competitive negotiations              | A call for expressions of interest is advertised and thereafter only those tenderers who have expressed interest, satisfy objective criteria and who are selected to submit tender offers, are invited to do so. The employer evaluates the offers and determines who may enter into competitive negotiations. |
|           | PP3B Open competitive negotiations                    | Tenderers must submit tender offers in response to an advertisement by the employer to do so. The employer evaluates the offers and determines who may enter into competitive negotiations.                                                                                                                    |

**Table 2: Standard methods for procuring different categories of engineering and construction works contracts**

| Category of contract               | Type of contracting strategies | Definitions                                                                                                          | Standard Procurement Procedure                                                                                                                                                    |
|------------------------------------|--------------------------------|----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Engineering and construction works | Design by employer             | Contract under which a contractor undertakes only construction based on full designs issued by the employer          | PP2B Open Procedure                                                                                                                                                               |
|                                    | Design and build               | Contract in which a contractor designs a project based on a brief provided by the employer and constructs it         | PP2E Proposal Procedure using two-stage system<br>PP2C Qualified Procedure and eligibility criteria framed around the attainment of a minimum functionality score or requirements |
|                                    | Develop and construct          | Contract based on a scheme design prepared by the employer under which a contractor produces drawings and constructs | PP3A Restricted Competitive Negotiation Procedure                                                                                                                                 |

| Category of contract | Type of contracting strategies                  | Definitions                                                                                                                                                                                                         | Standard Procurement Procedure              |
|----------------------|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
|                      | Management contractor / Construction Management | Contract under which a contractor provides consultation during the design stage and is responsible for planning and managing all post contract activities for contractors and the performance of the whole contract | PP3B Open Competitive Negotiation Procedure |

4.2.2.2 The employer shall apply the Register of Contractors as a requirement to any contracting strategy in Table 2 above for engineering and construction works contract.

### 4.2.3 Competitive negotiation procedures

4.2.3.1 The competitive negotiation procedures shall be used to negotiate with a number of responsive and qualified tenderers in order to arrive at the most acceptable offer in terms of one of the methods for the evaluation of tenders.

4.2.3.2 The employer shall negotiate with responsive and qualified tenderers when using the competitive negotiation procedures through one or more rounds of competitive negotiations, based on their rankings or the number of tender evaluation points, until the remaining tenderers are invited to submit final offers. During such negotiations, the employer:

- a) shall ensure equal treatment of all tenderers and not provide any requirements, criteria, guidelines, documents, clarification or other information relative to the negotiations in a discriminatory manner which may give some tenderers an advantage over others;
- b) may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated with, by applying the evaluation criteria disclosed in the procurement documents that are issued to tenderers;
- c) may not reveal to the other participants solutions proposed or other confidential information communicated by a tenderer participating in the process without that tenderer's agreement;
- d) may request that tender offers be clarified, specified and fine-tuned provided that such clarification, specification, fine-tuning or additional information does not:
  - i) involve changes to the basic features of the tender process or the tender data; or
  - ii) alter any fundamental aspects of the offers or impose substantial new requirements which restrict or distort competition or have a discriminatory effect on the tender process; and
- e) shall close the negotiation with tenderers when solutions which are capable of meeting its needs are identified, inform the tenderers accordingly and call for best and final offers.

4.2.3.3 Tenderers shall be informed of the competitive negotiation process and notified of the evaluation criteria and associated weightings in the tender data. The evaluation criteria associated with each successive round of negotiations shall not be varied. Tenderers shall be notified in advance of the weighting attached to each category or subcategory of evaluation criteria whenever another round of offers is called for.

## 4.3 Evaluation of Tenders on Functionality

Generally, tender submissions are evaluated in terms of "Financial offer and preference". In the event of "functionality" being introduced as part of an evaluation criteria, such a requirement must be stated in the tender documents.

#### 4.3.1 Process for Evaluation of Tenders on Functionality

4.3.1.1 The evaluation criteria for measuring functionality must be objective.

4.3.1.2 The tender documents must specify-

- a) the evaluation criteria for measuring functionality;
- b) the points for each criteria and, if any, each sub-criterion; and
- c) the minimum qualifying score for functionality.

4.3.1.3 The minimum qualifying score for functionality for a tender to be considered further-

- a) must be determined separately for each tender; and
- b) may not be so-
  - i. low that it may jeopardize the quality of the required engineering and construction works; or
  - ii. high that it is unreasonably restrictive.

4.3.1.4 Points scored for functionality must be rounded off to the nearest two decimal places.

4.3.1.5 A tender that fails to obtain the minimum qualifying score for functionality, as indicated in the tender documents is not an acceptable tender.

4.3.1.6 Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in regulation 11 of the Preferential Procurement Regulations, 2017 (as amended).

#### 4.3.2 Functionality in different Contracting Strategies

To apply the different contracting strategies, works shall be classified as follows:

- **Simple/straightforward/routine work** - where the tasks or activities are of a straightforward nature in terms of which inputs are relatively well known and outputs can be readily defined.
- **Complex work** - characterised by requirements for higher levels of skills, greater resources or not well defined inputs and outputs.
- **Specialist work** - requiring considerable innovation, creativity, and expertise or skill (or both) or work that has a high downstream impact.

*Note: The value of the project or quantities shall not be used to determine whether the project is of a complex or specialist nature.*

##### 4.3.2.1 Design by an employer

- a) If the construction works contract is deemed to be simple or straightforward or routine. No functionality criteria shall be specified in the tender data.
- b) If the construction works contract is deemed to be of a complex or specialist works, the employer may, in the tender data, specify functionality criteria and such criteria shall include:
  - i. Relevant applicable trades or skills in accordance with the scope of works; or
  - ii. Suitably qualified professional person in the built environment; or
  - iii. Any other legislated requirements as per the scope of works.

*Note: The following contracting strategies are deemed to be deployed in circumstances where construction works contracts are of a complex or specialist works.*

#### 4.3.2.2 Develop and Construct

The employer must, in the tender data, specify functionality criteria and such criteria shall include:

- i. Professionals registered with relevant built environment professions councils.
- ii. Demonstrated experience of key personnel in relation to the scope of works.
- iii. Any other legislated requirements as per the scope of work.

#### 4.3.2.3 Design and Build/Construct

The employer must, in the tender data, specify functionality criteria and such criteria shall include:

- i. Professionals registered with relevant built environment professions councils.
- ii. Demonstrated experience of key personnel in relation to the scope of works.
- iii. Any other legislated requirements as per the scope of work.

#### 4.3.2.4 Management Contract

The employer must, in the tender data, specify functionality criteria and such criteria shall include:

- i. Professionals registered with relevant built environment professions councils.
- ii. Demonstrated experience of key personnel in relation to the scope of works.
- iii. Any other legislated requirements as per the scope of work.

**4.3.3** Where functionality is evaluated, at least three persons who are fully conversant with the technical aspects of the scope of works shall undertake such evaluation.

### 4.4 Procurement documents

#### 4.4.1 General

4.4.1.1 Construction procurement documents for engineering and construction works shall be formatted and compiled in accordance with the approach adopted under the headings contained in:

- a) Table 3: Calling for expressions of interest; or
- b) Table 4: Tenders are invited using a three-volume; or
- c) Table 5 Tenders are invited using a single volume;
- d) Table 6: Standard headings and sequencing of documents in the contract.

**Table 3: Documents that relate to a call for expressions of interest**

| Contents                       |                                                           | Function and broad outline of contents                                                                                                                                       |
|--------------------------------|-----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Number                         | Heading                                                   |                                                                                                                                                                              |
| Part E1: Submission procedures |                                                           |                                                                                                                                                                              |
| E1.1                           | Notice and invitation to submit an expression of interest | Alerts respondents to submit their credentials in order to be admitted to an electronic database or to be invited to submit tenders should they satisfy the stated criteria. |
| E1.2                           | Submission data                                           | Establishes the rules from the time a call for an expression of interest is advertised to the time a submission is evaluated.                                                |

| <b>Part E2: Returnable documents</b>                         |                              |                                                                                                                                                                                                                                      |
|--------------------------------------------------------------|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| E2.1                                                         | List of returnable documents | Ensures that everything the employer requires a respondent to include in his submission is included in, or returned with, such a submission.                                                                                         |
| E2.2                                                         | Submission schedules         | Contains documents that the respondent is required to complete for the purpose of evaluating submissions.                                                                                                                            |
| <b>Part E3: Indicative scope of work (where appropriate)</b> |                              |                                                                                                                                                                                                                                      |
| E3                                                           | Indicative scope of work     | Indicates to respondents what the contract is likely to entail so that they can make an informed decision as to whether or not they wish to respond and, if so, structure their submission around the likely demands of the project. |

**Table 4: Standard headings and sequencing of documents when soliciting tenders where a three-volume approach is adopted**

| Volume   | Contents                                                                             |                                                         | Broad outline of contents                                                                                                                                                                                                                      |
|----------|--------------------------------------------------------------------------------------|---------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|          | Number                                                                               | Heading                                                 |                                                                                                                                                                                                                                                |
| Volume 1 | <b>TENDERING PROCEDURES</b>                                                          |                                                         |                                                                                                                                                                                                                                                |
|          | T1.1                                                                                 | Tender Notice and Invitation to Tender                  | Ensures that everything the employer requires a tenderer to submit with the tender is included in or returned with the tender submission.                                                                                                      |
|          | T1.2                                                                                 | Tender Data                                             | Establishes the rules from the time a tender is invited to the time a tender is awarded.                                                                                                                                                       |
| Volume 2 | <b>RETURNABLE DOCUMENTS</b>                                                          |                                                         |                                                                                                                                                                                                                                                |
|          | T2.1                                                                                 | List of Returnable Documents                            | Ensures that everything the employer requires a tenderer to submit with the tender is included in or returned with the tender submission.                                                                                                      |
|          | C1.1                                                                                 | Form of Offer and Acceptance                            | Formalizes the legal process of offer and acceptance.                                                                                                                                                                                          |
|          | C1.2                                                                                 | Contract Data (Part 2: Data provided by the contractor) | Identifies the applicable conditions of contract and associated contract-specific data that collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the contract. |
|          | C2.2                                                                                 | Activity Schedule or Bills of Quantities                | Records the contractor's prices for providing engineering and construction works which are described in the scope of work section of the contract.                                                                                             |
| Volume 3 | T2.2                                                                                 | Returnable Schedules                                    | Contains documents that the tenderer is required to complete for the purpose of evaluating tenders and other schedules which, upon acceptance, become part of the subsequent contract.                                                         |
|          | <b>CONTRACT</b>                                                                      |                                                         |                                                                                                                                                                                                                                                |
|          | <b>Part C1: Agreement and Contract Data</b>                                          |                                                         |                                                                                                                                                                                                                                                |
|          | C1.2                                                                                 | Contract Data (Part 1: Data provided by the employer)   | Identifies the applicable conditions of contract and associated contract-specific data that collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the contract. |
|          | <b>Part C2: Pricing data</b>                                                         |                                                         |                                                                                                                                                                                                                                                |
|          | C2.1                                                                                 | Pricing Assumptions                                     | Provides the criteria and assumptions which it is assumed (in the contract) that the tenderer has taken into account when developing the prices, or target in the case of target and cost-reimbursable contracts.                              |
|          | <b>Part C3: Scope of Work</b>                                                        |                                                         |                                                                                                                                                                                                                                                |
|          | C3                                                                                   | Scope of Work                                           | Specifies and describes the engineering and construction works which shall be provided and any other requirements and constraints relating to the manner in which the contract work shall be performed.                                        |
|          | <b>Part C4: Site information (engineering and construction works contracts only)</b> |                                                         |                                                                                                                                                                                                                                                |
|          | C4                                                                                   | Site Information                                        | Describes the site at the time of tender to enable the tenderer to price his tender and to decide upon the method of working and programming, and risks.                                                                                       |

4.4.1.2 The contract arising from the solicitation of tender offers using a three-volume approach or the Negotiated Procedure shall be formatted and compiled under the headings contained in Table 6.

4.4.1.3 The Tender Notice and Invitation to Tender shall, as a minimum, contain the wording provided in Annex A.

**Table 5: Standard headings and sequencing of documents when soliciting tenders where a single volume approach is adopted**

| Contents                                                                             |                                                              | Function and broad outline of contents                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------|--------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Number                                                                               | Heading                                                      |                                                                                                                                                                                                                                                |
| <b>TENDER</b>                                                                        |                                                              |                                                                                                                                                                                                                                                |
| <b>Part T1: Tendering procedures</b>                                                 |                                                              |                                                                                                                                                                                                                                                |
| T1.1                                                                                 | Tender Notice and Invitation to Tender                       | Alerts tenderers to the nature of the engineering and construction works required by the employer and must contain sufficient information to enable them to respond appropriately.                                                             |
| T1.2                                                                                 | Tender Data                                                  | Establishes the rules from the time a tender is invited to the time a tender is awarded.                                                                                                                                                       |
| <b>Part T2: Returnable documents</b>                                                 |                                                              |                                                                                                                                                                                                                                                |
| T2.1                                                                                 | List of Returnable Documents                                 | Ensures that everything the employer requires a tenderer to submit with the tender is included in or returned with the tender submission.                                                                                                      |
| T2.2                                                                                 | Returnable Schedules                                         | Contains documents that the tenderer is required to complete for the purposes of evaluating tenders and other schedules which, upon acceptance, become part of the subsequent contract.                                                        |
| <b>CONTRACT</b>                                                                      |                                                              |                                                                                                                                                                                                                                                |
| <b>Part C1: Agreement and Contract Data</b>                                          |                                                              |                                                                                                                                                                                                                                                |
| C1.1                                                                                 | Form of Offer and Acceptance                                 | Formalizes the legal process of offer and acceptance.                                                                                                                                                                                          |
| C1.2                                                                                 | Contract Data                                                | Identifies the applicable conditions of contract and associated contract-specific data that collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the contract. |
| <b>Part C2: Pricing data</b>                                                         |                                                              |                                                                                                                                                                                                                                                |
| C2.1                                                                                 | Pricing Assumptions                                          | Provides the criteria and assumptions which it is assumed (in the contract) that the tenderer has taken into account when developing the prices, or target in the case of target and cost-reimbursable contracts.                              |
| C2.2                                                                                 | Pricing schedules / Activity Schedule or Bills of Quantities | Records the contractor's prices for providing engineering and construction works which are described in the scope of work section of the contract.                                                                                             |
| <b>Part C3: Scope of Work</b>                                                        |                                                              |                                                                                                                                                                                                                                                |
| C3                                                                                   | Scope of Work                                                | Specifies and describes the engineering and construction works which shall be provided and any other requirements and constraints relating to the manner where the works shall be performed.                                                   |
| <b>Part C4: Site information (engineering and construction works contracts only)</b> |                                                              |                                                                                                                                                                                                                                                |
| C4                                                                                   | Site Information                                             | Describes the site at the time of tender to enable the tenderer to price his tender and to decide upon his method of working and programming, and risks.                                                                                       |

**Table 6: Standard headings and sequencing of documents in the contract**

| Contents                                                                             |                                          | Broad outline of contents                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Number                                                                               | Heading                                  |                                                                                                                                                                                                                                                |
| <b>Part C1: Agreements and contract data</b>                                         |                                          |                                                                                                                                                                                                                                                |
| C1.1                                                                                 | Form of Offer and Acceptance             | Formalizes the legal process of offer and acceptance.                                                                                                                                                                                          |
| C1.2                                                                                 | Contract Data                            | Identifies the applicable conditions of contract and associated contract-specific data that collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the contract. |
| <b>Part C2: Pricing data</b>                                                         |                                          |                                                                                                                                                                                                                                                |
| C2.1                                                                                 | Pricing Assumptions                      | Provides the criteria and assumptions which it is assumed (in the contract) that the tenderer has taken into account when developing the prices, or target in the case of target and cost-reimbursable contracts.                              |
| C2.2                                                                                 | Activity Schedule or Bills of Quantities | Records the contractor's prices for providing engineering and construction works which are described in the scope of work section of the contract.                                                                                             |
| <b>Part C3: Scope of Work</b>                                                        |                                          |                                                                                                                                                                                                                                                |
| C3                                                                                   | Scope of Work                            | Specifies and describes the engineering and construction works which shall be provided and any other requirements and constraints relating to the manner in which the contract work shall be performed.                                        |
| <b>Part C4: Site information (engineering and construction works contracts only)</b> |                                          |                                                                                                                                                                                                                                                |
| C4                                                                                   | Site Information                         | Describes the site at the time of tender to enable the tenderer to price the tender and to decide upon the method of working and programming, and risks.                                                                                       |

4.4.1.4 The Form of Offer and Acceptance with a schedule of deviations provided in Annex B shall be used with minimal contract specific amendments to form the basis of agreements arising from the solicitation of tender offers.

4.4.1.5 The Notice and Invitation to submit an Expression of Interest shall, as a minimum, contain the wording provided in Annex D.

4.4.1.6 The Record of Addenda to Tender Documents and the Compulsory Enterprise Questionnaire contained in Annexes F and G, respectively, shall form part of the Returnable Documents in all procurement documents issued by employer.

#### **4.4.2 Tender Data**

4.4.2.1 The Tender Data shall reference the Standard Conditions of Tender contained in Annex C.

4.4.2.2 The tender offer validity period provided for in the tender data shall not exceed twelve (12) weeks. Any extension beyond twelve (12) weeks must be approved by the Accounting Officer.

4.4.2.3 The Tender Data associated with a Standard Tender Evaluation Method shall reference the method to be used by the employer.

#### **4.4.3 Contract data**

4.4.3.1 The contract data in respect of prime or main contracts must reference one of the following standard industry forms of contract unless the publishers of such forms of contract indicate that such a form of contract is not suited for the intended application:

- a) Engineering and Construction Works Contract -
  - i) General Conditions of Contract for Construction Works (GCC);
  - ii) Conditions of Contract for Construction, Conditions of Contract for Plant and Design-Build, Conditions of Contract for FIDIC EPC/Turnkey Projects, Conditions of Contract for Design, Build and Operate Projects or Short Form of Contract;
  - iii) JBCC series 2000 Principal Building Agreement or Minor Works Agreement; or
  - iv) NEC3 Engineering and Construction Short Contract or NEC3 Engineering and Construction Contract.

4.4.3.2 The standard industry forms of contract shall be used with minimal project specific variations and additions which do not change their intended usage.

4.4.3.3 Guarantees required in engineering and construction contracts shall not substantially differ from the samples provided by the drafters of the forms of contract listed in paragraph (4.4.3.1a) or the form as provided in the contract. Such guarantees shall in the case of a fixed guarantee not exceed 10% of the contract price or, in the case of a variable guarantee not exceed 12, 5%, and shall be stated in the contract data.

4.4.3.3.1 Forms of Guarantees shall, where the parties otherwise agree; include one or more of the following:

- a) Guarantee issued by an insurance company duly registered in terms of the Insurance Act (Long Term Insurance Act No 52 of 1998 or Short Term Insurance Act No 53 of 1998) or a bank duly registered in terms of the Banks Act No 94 of 1990; or
- b) A cash deposit paid in the name of employer; or
- c) A payment reduction against payment certificates; or
- d) Combination of (a) to (c) above.

4.4.3.4 The deduction of retention monies, as stated in the contract data, shall not exceed 10% of any amount due to a contractor. Where guarantees are provided in terms of 4.4.3.3, the total amount of retention monies held shall not exceed 5% of the contract price.

#### 4.4.4 Submission Data

4.4.4.1 The Submission Data shall reference the Standard Conditions for the Calling for Expressions of Interest contained in Annex D.

#### 4.4.5 Subcontracting as a condition of tender

If feasible to subcontract for an engineering and construction works contract, an employer must apply subcontracting to advance designated groups in accordance with the provisions of sections 9 and 12 of the Preferential Procurement Regulations, 2017 (as amended).

#### 4.4.6 Scope of work

4.4.6.1 The scope of work shall, wherever possible be:

- a) described in terms of performance rather than the design or descriptive characteristics, and
- b) based on national or international standards, where such exist.

4.4.6.2 Requirements in the form of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling or conformity certification shall not create trade barriers. Reference to any particular trademark, name, patent, design, type, specific origin or producer shall not be made unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work. Such reference shall be accompanied by the words "or equivalent".

#### 4.5 Applying the cidb register of contractors to public contracts

4.5.1 Subject to regulation 6 read with regulation 25 of the Construction Industry Development Regulations, 2004 (as amended), contractor grading designations shall, where appropriate, be described in all procurement documents by a three-digit alpha-numeric where the first character is a number representing the tender value designation and the next two characters are capital letters representing the designation for the class of engineering and construction works.

4.5.2 The following wording must be included in the Notice and Invitation to Tender in all engineering and construction works contracts:

*It is estimated that tenderers must have a cidb contractor grading designation of .... or ..... or higher...*

*Note: Delete "or ...." where only one class of construction works is applicable.*

4.5.3 The following wording must be included in the Tender Data, where the class of work is designated in terms clause 4.5.1:

| Clause number<br>(refer to Annex C) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| C.2.1                               | <p>Only those tenderers who are registered with the cidb, or are capable of being so prior to the evaluation of submissions, in a contractor grading designation equal to or higher than a contractor grading designation determined in accordance with the sum tendered, or a value determined in accordance with Regulation 25 (1B) or 25(7A) of the Construction Industry Development Regulations, for a ..... Or .....*. class of construction work, are eligible to have their tenders evaluated.</p> <p>Joint ventures are eligible to submit tenders provided that:</p> <ol style="list-style-type: none"><li>1. every member of the joint venture is registered with the cidb;</li><li>2. the lead partner has a contractor grading designation in the ..... or .....* class of construction work; or not lower than one level below the required grading designation in the class of works construction works under considerations and possess the required recognition status.</li><li>3. the combined contractor grading designation calculated in accordance with the Construction Industry Development Regulations is equal to or higher than a contractor grading designation determined in accordance with the sum tendered for a or .....* class of construction work or a value determined in accordance with Regulation 25 (1B) or 25(7A) of the Construction Industry Development Regulations.</li></ol> |

*\* insert class of construction work. Delete "or ...." where only one class of construction works is applicable.*

4.5.4 The following wording must be included in the Notice and Invitation to submit an Expression of Interest in respect of engineering and construction works, where the contractor grading designation is based on the estimated value of a tender that may arise:

*Respondents must have a contractor grading designation of ... or .....or higher.*

*Note: Delete "or ...." where only one class of construction works is applicable.*

4.5.5 The following wording must be included in the Submission Data:

| Clause number (refer to Annex E) |                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| E.2.1                            | Only those respondents who are registered with the Construction Industry Development Board, or are capable of being so registered within twenty-one (21) working days from the closing date for submission of tenders, in a contractor grading designation of . . . or . . . * or higher, are eligible to have their submissions evaluated. |

*\*insert contractor grading designation for one or two classes of construction works. Delete "or ...." where only one class of construction works is applicable.*

4.5.6 The following wording must be included in the Submission Data:

| Clause number (refer to Annex E) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| E.2.1                            | Joint ventures are eligible to have their submissions evaluated provided that: <ol style="list-style-type: none"> <li>1. every member of the joint venture is registered with the cidb not later than twenty-one (21) working days from the closing date for tenders;</li> <li>2. the lead partner has a contractor grading designation in the ..... or .....* class of construction work; or not lower than one level below the required grading designation in the class of works construction works under considerations and possess the required recognition status.</li> <li>3. the combined contractor grading designation calculated in accordance with the Construction Industry Development Regulations is equal to or higher than the required contractor grading designation.</li> </ol> |

*\* insert class of construction work. Delete "or ...." where only one class of construction works is applicable.*

4.5.7 Where an employer promotes potentially emerging enterprises within a framework of a targeted development programme as contemplated in terms of the Construction Industry Development Regulations:

- a) the wording provided in the Notice and Invitation to Tender in terms of 4.5.2 shall be amended as follows:

*It is estimated that tenderers must have a cidb contractor grading designation of ..... or .....\* or higher. .... or .....\*\* potentially emerging enterprises who satisfy criteria stated in the Tender Data may submit tender offers.*

*\* insert estimated contractor grading designation in one or two construction classes, as relevant.*

*\*\* insert one contractor grading designation below estimated contractor grading designation*

*Note: Delete "or ...." where only one class of construction works is applicable.*

- b) the wording in the Tender Data provided in terms of 4.5.3 shall be amended as follows:

| Clause number (refer to Annex C) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| C.2.1                            | The following tenderers who are registered with the cidb, or are capable of being so registered prior to the evaluation of submissions, are eligible to have their tenders evaluated: <ol style="list-style-type: none"> <li>a) contractors who have a contractor grading designation equal to or higher than a contractor grading designation determined in accordance with the sum tendered, or a value determined in accordance with Regulation 25 (1B) or 25(7A) of the Construction Industry Development Regulations, for a ..... or .....*. class of construction work; and</li> <li>b) contractors registered as potentially emerging enterprises with the cidb who are registered in one contractor grading designation lower than that required in terms of a) above and who satisfy the following criteria:.....**</li> </ol> |

*\* insert class of construction work. Delete "or ...." where only one class of construction works is applicable.*

*\*\*state criteria relevant to employer's targeted development programme*

- c) the wording provided in terms of 4.5.4 shall be amended as follows:

*Respondents must have a contractor grading designation of ... or ..... or higher. .... or ..... potentially emerging enterprises who satisfy criteria stated in the Submission Data may submit expressions of interest.*

Note: Delete "or ...." where only one class of construction works is applicable.

- d) the wording in the Submission Data provided in terms of 4.5.5 shall be amended as follows:

| Clause number (refer to Annex D.) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| D.2.1                             | <p>The following respondents who are registered with the cidb or are capable of being so registered within twenty-one (21) working days from the closing date for the submission of tenders are eligible to have their submissions evaluated:</p> <ul style="list-style-type: none"> <li>a) those respondents who are registered with the Construction Industry Development Board or are capable of being so registered within twenty-one (21) working days from the closing date for submission of tenders, in a contractor grading designation of ..... or .....*or higher; and</li> <li>b) contractors registered as potentially emerging enterprises with the cidb who are registered in one contractor grading designation lower than that required in terms of a) above and who satisfy the following criteria:</li> </ul> <p>.....**</p> |

\* insert contractor grading designation for one or two classes of construction works. Delete "or ...." where only one class of construction works is applicable.

\*\*state criteria relevant to employer's targeted development programme.

- e) details appropriate to any support provided must be stated in the Contract Data, the Pricing Data and the Scope of Work, as relevant.

4.5.8 Employers, wherever appropriate, in support of industry development, shall in the application of the register of contractors, promote the participation and development of registered contractors by means of one or more of the following:

- a) unbundling projects into smaller contracts;
- b) implementing targeted development programmes to support potentially emerging contractors in accordance with the provisions regulations 25(8) of the Construction Industry Development Regulations;
- c) requiring a prime contractor to subcontract defined portions of the works to such contractors in accordance with the provisions of 4.4.5.

## Annex A

### Standard Tender Notice and Invitation to Tender

|                                                                                                                                                                                                                     | <b>Guidance Notes</b>                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ..... invites tenders for .....                                                                                                                                                                                     | <i>Enter the name of the employer and describe briefly what is to be procured, and if appropriate, over what time period.</i>                                                                                                                                                                                                                         |
| It is estimated that tenderers must have a cidb contractor grading of ... or ... or higher.                                                                                                                         | <i>Omit where:</i><br><i>i) the contract involves goods or services; or</i><br><i>ii) the employer promotes potentially emerging enterprises in engineering and construction works.</i><br><i>Insert best estimate of required contractor grading designation.</i>                                                                                    |
| It is estimated that tenderers must have a cidb contractor grading of ... or ... or higher. .... or ..... potentially emerging enterprises who satisfy criteria stated in the Tender Data may submit tender offers. | <i>Omit where:</i><br><i>i) the contract involves goods or services; or</i><br><i>ii) the employer does not promote potentially emerging enterprises in engineering and construction works.</i><br><i>Insert best estimate of required contractor grading designation and one contractor grading designation lower before "potentially emerging".</i> |
| Preferences are offered to tenderers who .....                                                                                                                                                                      | <i>Briefly indicate the nature of the preferences that are applicable, if so desired.</i>                                                                                                                                                                                                                                                             |
| Only tenderers who ..... are eligible to submit tenders.                                                                                                                                                            | <i>Where applicable, state essence of eligibility criteria.</i>                                                                                                                                                                                                                                                                                       |
| The physical address for collection of tender documents is:<br>.....<br>Documents may be collected during working hours after 09:00 on .....                                                                        | <i>Enter data</i>                                                                                                                                                                                                                                                                                                                                     |
| A non-refundable tender deposit of R.....payable in cash or by bank guaranteed cheque made out in favour of the Employer is required on collection of the tender documents.                                         | <i>Omit if not a requirement. Amend wording if cheques or cash are not acceptable.</i>                                                                                                                                                                                                                                                                |
| Queries relating to the issue of these documents may be addressed to Mr/Ms ....., Tel No. ...., Fax No. .... E- Mail .....                                                                                          | <i>Enter data</i>                                                                                                                                                                                                                                                                                                                                     |
| A compulsory clarification meeting with representatives of the Employer will take place at ..... on ..... starting at .... hrs.                                                                                     | <i>Omit if not a requirement</i>                                                                                                                                                                                                                                                                                                                      |
| The closing time for receipt of tenders is ..... hrs on .....<br>Telegraphic, telephonic, telex, facsimile, e-mail and late tenders will not be accepted.                                                           | <i>Enter data and delete that which does not apply</i>                                                                                                                                                                                                                                                                                                |
| Tenders must only be submitted on the tender documentation that is issued.                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                       |
| Requirements for sealing, addressing, delivery, opening and assessment of tenders are stated in the Tender Data.                                                                                                    |                                                                                                                                                                                                                                                                                                                                                       |

## Annex B

### Form of Offer and Acceptance

- Note:** 1 This form of offer and acceptance is identical to that contained in Annex F of SANS 10845 - 1: Construction Procurement Processes, Procedures and Methods.  
2 SAICE's Practice Manual #1, The use of South African National Standards in Construction Procurement, provides guidance on the formulation of the wording for the actual offer where it is not based on the offered total of prices.

#### Offer

The employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of: .....

The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the contractor under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the contract data.

**THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX IS .....Rand (in words);**

R..... (in figures) (or other suitable wording)

This offer may be accepted by the employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the contractor in the conditions of contract identified in the contract data.

|                               |                                |      |  |
|-------------------------------|--------------------------------|------|--|
| Signature(s)                  |                                |      |  |
| Name(s)                       |                                |      |  |
| Capacity                      |                                |      |  |
| for the tenderer              |                                |      |  |
|                               | (Name and address of tenderer) |      |  |
| Name and signature of witness |                                | Date |  |

#### Acceptance

By signing this part of this form of offer and acceptance, the employer identified below accepts the tenderer's offer. In consideration thereof, the employer shall pay the contractor the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer's offer shall form an agreement between the employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1 Agreements and contract data, (which includes this agreement)

Part C2 Pricing data

Part C3 Scope of work

Part C4 Site information and drawings and documents or parts thereof, which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the returnable schedules as well as any changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this form of offer and acceptance. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the employer's agent (whose details are given in the contract data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now contractor) within five (5) working days of the date of such receipt notifies the employer in writing of any reason why he/she cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.<sup>1</sup>

|                               |                                |  |      |
|-------------------------------|--------------------------------|--|------|
| Signature(s)                  |                                |  |      |
| Name(s)                       |                                |  |      |
| Capacity                      |                                |  |      |
| for the Employer              |                                |  |      |
|                               | (Name and address of employer) |  |      |
| Name and signature of witness |                                |  | Date |

<sup>1</sup> As an alternative, the following wording may be used:

Notwithstanding anything contained herein, this agreement comes into effect two working days after the submission by the employer of one fully completed original copy of this document including the schedule of deviations (if any), to a courier-to-counter delivery / counter-to-counter delivery / door-to-counter delivery / door-to-door delivery / courier service (delete that which is not applicable), provided that the employer notifies the tenderer of the tracking number within 24 hours of such submission. Unless the tenderer (now contractor) within seven working days of the date of such submission notifies the employer in writing of any reason why he/she cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.

## Schedule of Deviations

### Notes:

1. *The extent of deviations from the tender documents issued by the employer before the tender closing date is limited to those permitted in terms of the conditions of tender.*
2. *A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.*
3. *Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.*
4. *Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.*

1 Subject \_\_\_\_\_

Details \_\_\_\_\_

2 Subject \_\_\_\_\_

Details \_\_\_\_\_

3 Subject \_\_\_\_\_

Details \_\_\_\_\_

4 Subject \_\_\_\_\_

Details \_\_\_\_\_

By the duly authorised representatives signing this agreement, the employer and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the returnable schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.

## Annex C

### Standard Conditions of Tender

#### C.1 General

##### C.1.1 Actions

C.1.1.1 The employer and each tenderer submitting a tender offer shall comply with these conditions of tender. In their dealings with each other, they shall discharge their duties and obligations as set out in C.2 and C.3, timeously and with integrity, and behave equitably, honestly and transparently, comply with all legal obligations and not engage in anticompetitive practices.

C.1.1.2 The employer and the tenderer and all their agents and employees involved in the tender process shall avoid conflicts of interest and where a conflict of interest is perceived or known, declare any such conflict of interest, indicating the nature of such conflict. Tenderers shall declare any potential conflict of interest in their tender submissions. Employees, agents and advisors of the employer shall declare any conflict of interest to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to the procurement process or as soon as they become aware of such conflict and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

*Note: 1) A conflict of interest may arise due to a conflict of roles which might provide an incentive for improper acts in some circumstances. A conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of that person to act properly in his or her position even if no improper acts result.*

*2) Conflicts of interest in respect of those engaged in the procurement process include direct, indirect or family interests in the tender or outcome of the procurement process and any personal bias, inclination, obligation, allegiance or loyalty which would in any way affect any decisions taken.*

C.1.1.3 The employer shall not seek and a tenderer shall not submit a tender without having a firm intention and the capacity to proceed with the contract.

##### C.1.2 Tender Documents

The documents issued by the employer for the purpose of a tender offer are listed in the tender data.

##### C.1.3 Interpretation

C.1.3.1 The tender data and additional requirements contained in the tender schedules that are included in the returnable documents are deemed to be part of these conditions of tender.

C.1.3.2 These conditions of tender, the tender data and tender schedules which are required for tender evaluation purposes, shall form part of any contract arising from the invitation to tender.

C.1.3.3 For the purposes of these conditions of tender, the following definitions apply:

a) **conflict of interest** means any situation in which:

- i) someone in a position of trust has competing professional or personal interests which make it difficult to fulfill his or her duties impartially;
- ii) an individual or tenderer is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit; or
- iii) incompatibility or contradictory interests exist between an employee and the tenderer who employs that employee.

b) **comparative offer** means the price after the factors of a non-firm price and all unconditional discounts it can be utilised to have been taken into consideration;

- c) **corrupt practice** means the offering, giving, receiving or soliciting of anything of value to influence the action of the employer or his staff or agents in the tender process;
- d) **fraudulent practice** means the misrepresentation of the facts in order to influence the tender process or the award of a contract arising from a tender offer to the detriment of the employer, including collusive practices intended to establish prices at artificial levels;

#### **C.1.4 Communication and employer's agent**

Each communication between the employer and a tenderer shall be to or from the employer's agent only, and in a form that can be readily read, copied and recorded. Communications shall be in the English language. The employer shall not take any responsibility for non-receipt of communications from or by a tenderer. The name and contact details of the employer's agent are stated in the tender data.

#### **C.1.5 Cancellation and Re-Invitation of Tenders**

C.1.5.1 An employer may, prior to the award of the tender, cancel a tender if-

- a) due to changed circumstances, there is no longer a need for the engineering and construction works specified in the invitation;
- b) funds are no longer available to cover the total envisaged expenditure; or
- c) no acceptable tenders are received.
- d) there is a material irregularity in the tender process.

C.1.5.2 The decision to cancel a tender invitation must be published in the same manner in which the original tender invitation was advertised

C.1.5.3 An employer may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

#### **C.1.6 Procurement procedures**

##### **C.1.6.1 General**

Unless otherwise stated in the tender data, a contract will, subject to C.3.13, be concluded with the tenderer who in terms of C.3.11 is the highest ranked or the tenderer scoring the highest number of tender evaluation points, as relevant, based on the tender submissions that are received at the closing time for tenders.

##### **C.1.6.2 Competitive negotiation procedure**

C.1.6.2.1 Where the tender data require that the competitive negotiation procedure is to be followed, tenderers shall submit tender offers in response to the proposed contract in the first round of submissions. Notwithstanding the requirements of C.3.4, the employer shall announce only the names of the tenderers who make a submission. The requirements of C.8 relating to the material deviations or qualifications which affect the competitive position of tenderers shall not apply.

C.1.6.2.2 All responsive tenderers or at least a minimum of not less than three responsive tenderers that are highest ranked in terms of the evaluation criteria stated in the tender data shall be invited to enter into competitive negotiations based on the principle of equal treatment, keeping confidential the proposed solutions and associated information.

Notwithstanding the provisions of C.2.17, the employer may request that tenders be clarified, specified and fine-tuned in order to improve a tenderer's competitive position provided that such clarification, specification, fine-tuning or additional information does not alter any fundamental aspects of the offers or impose substantial new requirements which restrict or distort competition or have a discriminatory effect.

C.1.6.2.3 At the conclusion of each round of negotiations, tenderers shall be invited by the employer to revise their tender offer based on the same evaluation criteria, with or without adjusted weightings. Tenderers shall be advised when they are to submit their best and final offer.

C.1.6.2.4 The contract shall be awarded in accordance with the provisions of C.3.11 and C.3.13 after tenderers have been requested to submit their best and final offer.

### **C.1.6.3 Proposal procedure using the two stage-system**

#### **C.1.6.3.1 Option 1**

Tenderers shall in the first stage submit technical proposals and, if required, cost parameters around which a contract may be negotiated. The employer shall evaluate each responsive submission in terms of the method of evaluation stated in the tender data, and in the second stage negotiate a contract with the tenderer scoring the highest number of evaluation points and award the contract in terms of these conditions of tender.

#### **C.1.6.3.2 Option 2**

C.1.6.3.2.1 Tenderers shall submit in the first stage only technical proposals. The employer shall invite all responsive tenderers to submit tender offers in the second stage, following the issuing of procurement documents.

C.1.6.3.2.2 The employer shall evaluate tenders received during the second stage in terms of the method of evaluation stated in the tender data, and award the contract in terms of these conditions of tender.

## **C.2 Tenderer's obligations**

### **C.2.1 Eligibility**

C.2.1.1 Submit a tender offer only if the tenderer satisfies the criteria stated in the tender data and the tenderer, or any of his principals, is not under any restriction to do business with employer.

C.2.1.2 Notify the employer of any proposed material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used by the employer as the basis in a prior process to invite the tenderer to submit a tender offer and obtain the employer's written approval to do so prior to the closing time for tenders.

### **C.2.2 Cost of tendering**

C.2.2.1 Accept that, unless otherwise stated in the tender data, the employer will not compensate the tenderer for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer complies with requirements.

C.2.2.2 The cost of the tender documents charged by the employer shall be limited to the actual cost incurred by the employer for printing the documents. Employers must attempt to make available the tender documents on its website so as not to incur any costs pertaining to the printing of the tender documents.

### **C.2.3 Check documents**

Check the tender documents on receipt for completeness and notify the employer of any discrepancy or omission.

#### **C.2.4 Confidentiality and copyright of documents**

Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by the employer only for the purpose of preparing and submitting a tender offer in response to the invitation.

#### **C.2.5 Reference documents**

Obtain, as necessary for submitting a tender offer, copies of the latest versions of standards, specifications, conditions of contract and other publications, which are not attached but which are incorporated into the tender documents by reference.

#### **C.2.6 Acknowledge addenda**

Acknowledge receipt of addenda to the tender documents, which the employer may issue, and if necessary apply for an extension to the closing time stated in the tender data, in order to take the addenda into account.

#### **C.2.7 Clarification meeting**

Attend, where required, a clarification meeting at which tenderers may familiarize themselves with aspects of the proposed work, services or supply and raise questions. Details of the meeting(s) are stated in the tender data.

#### **C.2.8 Seek clarification**

Request clarification of the tender documents, if necessary, by notifying the employer at least five (5) working days before the closing time stated in the tender data.

#### **C.2.9 Insurance**

Be aware that the extent of insurance to be provided by the employer (if any) might not be for the full cover required in terms of the conditions of contract identified in the contract data. The tenderer is advised to seek qualified advice regarding insurance.

#### **C.2.10 Pricing the tender offer**

C.2.10.1 Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes except Value Added Tax (VAT), and other levies payable by the successful tenderer, such duties, taxes and levies being those applicable fourteen (14) days before the closing time stated in the tender data.

C.2.10.2 Show VAT payable by the employer separately as an addition to the tendered total of the prices.

C.2.10.3 Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the conditions of contract identified in the contract data.

C.2.10.4 State the rates and prices in Rand unless instructed otherwise in the tender data. The conditions of contract identified in the contract data may provide for part payment in other currencies.

#### **C.2.11 Alterations to documents**

Do not make any alterations or additions to the tender documents, except to comply with instructions issued by the employer, or necessary to correct errors made by the tenderer. All signatories to the tender offer shall initial all such alterations.

### **C.2.12 Alternative tender offers**

C.2.12.1 Unless otherwise stated in the tender data, submit alternative tender offers only if a main tender offer, strictly in accordance with all the requirements of the tender documents, is also submitted as well as a schedule that compares the requirements of the tender documents with the alternative requirements that are proposed.

C.2.12.2 Accept that an alternative tender offer must be based only on the criteria stated in the tender data or criteria otherwise acceptable to the employer.

C.2.12.3 An alternative tender offer must only be considered if the main tender offer is the winning tender.

### **C.2.13 Submitting a tender offer**

C.2.13.1 Submit one tender offer only, either as a single tendering entity or as a member in a joint venture to provide the whole of the works identified in the contract data and described in the scope of works, unless stated otherwise in the tender data.

C.2.13.2 Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing legibly in non-erasable ink.

C.2.13.3 Submit the parts of the tender offer communicated on paper as an original plus the number of copies stated in the tender data, with an English translation of any documentation in a language other than English, and the parts communicated electronically in the same format as they were issued by the employer.

C.2.13.4 Sign the original and all copies of the tender offer where required in terms of the tender data. The employer will hold all authorized signatories liable on behalf of the tenderer. Signatories for tenderers proposing to contract as joint ventures shall state which of the signatories is the lead partner whom the employer shall hold liable for the purpose of the tender offer.

C.2.13.5 Seal the original and each copy of the tender offer as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

C.2.13.6 Where a two-envelope system is required in terms of the tender data, place and seal the returnable documents listed in the tender data in an envelope marked "financial proposal" and place the remaining returnable documents in an envelope marked "technical proposal". Each envelope shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

C.2.13.7 Seal the original tender offer and copy packages together in an outer package that states on the outside only the employer's address and identification details as stated in the tender data.

C.2.13.8 Accept that the employer will not assume any responsibility for the misplacement or premature opening of the tender offer if the outer package is not sealed and marked as stated.

C.2.13.9 Accept that tender offers submitted by facsimile or e-mail will be rejected by the employer, unless stated otherwise in the tender data.

### **C.2.14 Information and data to be completed in all respects**

Accept that tender offers, which do not provide all the data or information requested completely and in the form required, may be regarded by the employer as non-responsive.

### **C.2.15 Closing time**

C.2.15.1 Ensure that the employer receives the tender offer at the address specified in the tender data not later than the closing time stated in the tender data. Accept that proof of posting shall not be accepted as proof of delivery.

C.2.15.2 Accept that, if the employer extends the closing time stated in the tender data for any reason, the requirements of these conditions of tender apply equally to the extended deadline.

### **C.2.16 Tender offer validity**

C.2.16.1 Hold the tender offer(s) valid for acceptance by the employer at any time during the validity period stated in the tender data after the closing time stated in the tender data.

C.2.16.2 If requested by the employer, consider extending the validity period stated in the tender data for an agreed additional period with or without any conditions attached to such extension.

C.2.16.3 Accept that a tender submission that has been submitted to the employer may only be withdrawn or substituted by giving the employer's agent written notice before the closing time for tenders that a tender is to be withdrawn or substituted. If the validity period stated in C.2.16 lapses before the employer evaluating tender, the contractor reserves the right to review the price based on Consumer Price Index (CPI).

C.2.16.4 Where a tender submission is to be substituted, a tenderer must submit a substitute tender in accordance with the requirements of C.2.13 with the packages clearly marked as "SUBSTITUTE".

### **C.2.17 Clarification of tender offer after submission**

Provide clarification of a tender offer in response to a request to do so from the employer during the evaluation of tender offers. This may include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the competitive position of tenderers or substance of the tender offer is sought, offered, or permitted.

**Note:** Sub-clause C.2.17 does not preclude the negotiation of the final terms of the contract with a preferred tenderer following a competitive selection process, should the Employer elect to do so.

### **C.2.18 Provide other material**

C.2.18.1 Provide, on request by the employer, any other material that has a bearing on the tender offer, the tenderer's commercial position (including notarized joint venture agreements), preferencing arrangements, or samples of materials, considered necessary by the employer for the purpose of a full and fair risk assessment.

Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the employer's request, the employer may regard the tender offer as non-responsive.

C.2.18.2 Dispose of samples of materials provided for evaluation by the employer, where required.

### **C.2.19 Inspections, tests and analysis**

Provide access during working hours to premises for inspections, tests and analysis as provided for in the tender data.

### **C.2.20 Submit securities, bonds and policies**

If requested, submit for the employer's acceptance before formation of the contract, all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the contract data.

### **C.2.21 Check final draft**

Check the final draft of the contract provided by the employer within the time available for the employer to issue the contract.

### **C.2.22 Return of other tender documents**

If so instructed by the employer, return all retained tender documents within twenty-eight (28) days after the expiry of the validity period stated in the tender data.

### **C.2.23 Certificates**

Include in the tender submission or provide the employer with any certificates as stated in the tender data.

## **C.3 The employer's undertakings**

### **C.3.1 Respond to requests from the tenderer**

C.3.1.1 Unless otherwise stated in the tender Data, respond to a request for clarification received up to five (5) working days before the tender closing time stated in the Tender Data and notify all tenderers who collected tender documents.

C.3.1.2 Consider any request to make a material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used to prequalify a tenderer to submit a tender offer in terms of a previous procurement process and deny any such request if as a consequence:

- a) an individual firm, or a joint venture as a whole, or any individual member of the joint venture fails to meet any of the collective or individual qualifying requirements;
- b) the new partners to a joint venture were not prequalified in the first instance, either as individual firms or as another joint venture; or
- c) in the opinion of the Employer, acceptance of the material change would compromise the outcome of the prequalification process.

### **C.3.2 Issue Addenda**

If necessary, issue addenda that may amend or amplify the tender documents to each tenderer during the period from the date that tender documents are available until three (3) working days before the tender closing time stated in the Tender Data. If, as a result a tenderer applies for an extension to the closing time stated in the Tender Data, the Employer may grant such extension and, shall then notify all tenderers who collected tender documents.

### **C.3.3 Return late tender offers**

Return tender offers received after the closing time stated in the Tender Data, unopened, (unless it is necessary to open a tender submission to obtain a forwarding address), to the tenderer concerned.

### **C.3.4 Opening of tender submissions**

C.3.4.1 Unless the two-envelope system is to be followed, open valid tender submissions in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data. Tender submissions for which acceptable reasons for withdrawal have been submitted will not be opened.

C.3.4.2 Announce at the meeting held immediately after the opening of tender submissions, at a venue indicated in the tender data, the name of each tenderer whose tender offer is opened and, where

applicable, the total of his prices, number of points claimed for its BBBEE status level and time for completion for the main tender offer only.

C.3.4.3 Make available the record outlined in C.3.4.2 to all interested persons upon request.

### **C.3.5 Two-envelope system**

C.3.5.1 Where stated in the tender data that a two-envelope system is to be followed, open only the technical proposal of valid tenders in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data and announce the name of each tenderer whose technical proposal is opened.

C.3.5.2 Evaluate functionality of the technical proposals offered by tenderers, then advise tenderers who remain in contention for the award of the contract of the time and place when the financial proposals will be opened. Open only the financial proposals of tenderers, who score in the functionality evaluation more than the minimum number of points for functionality stated in the tender data, and announce the score obtained for the technical proposals and the total price and any points claimed on BBBEE status level. Return unopened financial proposals to tenderers whose technical proposals failed to achieve the minimum number of points for functionality.

### **C.3.6 Non-disclosure**

Not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tender offers, the final evaluation price and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.

### **C.3.7 Grounds for rejection and disqualification**

Determine whether there has been any effort by a tenderer to influence the processing of tender offers and instantly disqualify a tenderer (and his tender offer) if it is established that he engaged in corrupt or fraudulent practices.

### **C.3.8 Test for responsiveness**

C.3.8.1 Determine, after opening and before detailed evaluation, whether each tender offer properly received:

- a) complies with the requirements of these Conditions of Tender,
- b) has been properly and fully completed and signed, and
- c) is responsive to the other requirements of the tender documents.

C.3.8.2 A responsive tender is one that conforms to all the terms, conditions, and specifications of the tender documents without material deviation or qualification. A material deviation or qualification is one which, in the Employer's opinion, would:

- a) detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Scope of Work,
- b) significantly change the Employer's or the tenderer's risks and responsibilities under the contract, or
- c) affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

Reject a non-responsive tender offer, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

### C.3.9 Arithmetical errors, omissions and discrepancies

C.3.9.1 Check responsive tenders for discrepancies between amounts in words and amounts in figures. Where there is a discrepancy between the amounts in figures and the amount in words, the amount in words shall govern.

C.3.9.2 Check the highest ranked tender or tenderer with the highest number of tender evaluation points after the evaluation of tender offers in accordance with C.3.11 for:

- a) the gross misplacement of the decimal point in any unit rate;
- b) omissions made in completing the pricing schedule or bills of quantities; or
- c) arithmetic errors in:
  - (i) line item totals resulting from the product of a unit rate and a quantity in bills of quantities or schedules of prices; or
  - (ii) the summation of the prices.

C.3.9.3 Notify the tenderer of all errors or omissions that are identified in the tender offer and either confirm the tender offer as tendered or accept the corrected total of prices.

C.3.9.4 Where the tenderer elects to confirm the tender offer as tendered, correct the errors as follows:

- a) If bills of quantities or pricing schedules apply and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate shall be corrected.
- b) Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the prices shall govern and the tenderer will be asked to revise selected item prices (and their rates if bills of quantities apply) to achieve the tendered total of the prices.

### C.3.10 Clarification of a tender offer

Obtain clarification from a tenderer on any matter that could give rise to ambiguity in a contract arising from the tender offer.

### C.3.11 Evaluation of tender offers

The Standard Conditions of Tender standardize the procurement processes, methods and procedures from the time that tenders are invited to the time that a contract is awarded. They are generic in nature and are made project specific through choices that are made in developing the Tender Data associated with a specific project.

Conditions of tender are by definition the document that establishes a tenderer's obligations in submitting a tender and the employer's undertakings in soliciting and evaluating tender offers. Such conditions establish the rules from the time a tender is advertised to the time that a contract is awarded and require employers to conduct the process of offer and acceptance in terms of a set of standard procedures.

| The CIDB Standard Conditions of Tender are based on a procurement system that satisfies the following system requirements: |                                                                                                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Requirement                                                                                                                | Qualitative interpretation of goal                                                                                                                                                                                             |
| Fair                                                                                                                       | The process of offer and acceptance is conducted impartially without bias, providing simultaneous and timely access to participating parties to the same information.                                                          |
| Equitable                                                                                                                  | Terms and conditions for performing the work do not unfairly prejudice the interests of the parties.                                                                                                                           |
| Transparent                                                                                                                | The only grounds for not awarding a contract to a tenderer who satisfies all requirements are restrictions from doing business with the employer, lack of capability or capacity, legal impediments and conflicts of interest. |
| Competitive                                                                                                                | The system provides for appropriate levels of competition to ensure cost effective and best value outcomes.                                                                                                                    |

|                |                                                                                                                                                                                                                                        |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cost effective | The processes, procedures and methods are standardized with sufficient flexibility to attain best value outcomes in respect of quality, timing and price, and least resources to effectively manage and control procurement processes. |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**The activities associated with evaluating tender offers are as follows:**

- a) Open and record tender offers received
- b) Determine whether or not tender offers are complete
- c) Determine whether or not tender offers are responsive
- d) Evaluate tender offers
- e) Determine if there are any grounds for disqualification
- f) Determine acceptability of preferred tenderer
- g) Prepare a tender evaluation report
- h) Confirm the recommendation contained in the tender evaluation report

#### **C.3.11.1 General**

The employer must appoint an evaluation panel of not less than three persons conversant with the proposed scope of works to evaluate each responsive tender offer using the tender evaluation methods and associated evaluation criteria and weightings that are specified in the tender data.

#### **C.3.12 Insurance provided by the employer**

If requested by the proposed successful tenderer, submit for the tenderer's information the policies and / or certificates of insurance which the conditions of contract identified in the contract data, require the employer to provide.

#### **C.3.13 Acceptance of tender offer**

Accept the tender offer; if in the opinion of the employer, it does not present any risk and only if the tenderer:

- a) is not under restrictions, or has principals who are under restrictions, preventing participating in the employer's procurement;
- b) can, as necessary and in relation to the proposed contract, demonstrate that he or she possesses the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel, to perform the contract;
- c) has the legal capacity to enter into the contract;
- d) is not; insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act No. 2008, bankrupt or being wound up, has his/her affairs administered by a court or a judicial officer, has suspended his/her business activities or is subject to legal proceedings in respect of any of the foregoing;
- e) complies with the legal requirements, if any, stated in the tender data; and
- f) is able, in the opinion of the employer, to perform the contract free of conflicts of interest.

#### **C.3.14 Prepare contract documents**

**C.3.14.1** If necessary, revise documents that shall form part of the contract and that were issued by the employer as part of the tender documents to take account of:

- a) addenda issued during the tender period,
- b) inclusion of some of the returnable documents and
- c) other revisions agreed between the employer and the successful tenderer.

C.3.14.2 Complete the schedule of deviations attached to the form of offer and acceptance, if any.

### **C.3.15 Complete adjudicator's contract**

Unless alternative arrangements have been agreed or otherwise provided for in the contract, arrange for both parties to complete formalities for appointing the selected adjudicator at the same time as the main contract is signed.

### **C.3.16 Registration of the award**

An employer must, within twenty-one (21) working days from the date on which a contractor's offer to perform a construction works contract is accepted in writing by the employer, register and publish the award on the cidb Register of Projects.

### **C.3.17 Provide copies of the contracts**

Provide to the successful tenderer the number of copies stated in the Tender Data of the signed copy of the contract as soon as possible after completion and signing of the form of offer and acceptance.

### **C.3.18 Provide written reasons for actions taken**

Provide upon request written reasons to tenderers for any action that is taken in applying these conditions of tender but withhold information which is not in the public interest to be divulged, which is considered to prejudice the legitimate commercial interests of tenderers or might prejudice fair competition between tenderers.

## Annex D

### Standard Conditions for the calling for Expressions of Interest

#### D.1 General

##### D.1.1 Actions

D.1.1.1 The employer and each respondent submitting an expression of interest shall comply with these conditions for calling for expressions of interest. In their dealings with each other, they shall discharge their duties and obligations as set out in D.2 and D.3, timeously and with integrity, and behave equitably, honestly and transparently, comply with all legal obligations and not engage in anti-competitive practices.

D.1.1.2 The employer and the respondent and all their agents and employees involved in the submission process shall avoid conflicts of interest and where a conflict of interest is perceived or known, declare any such conflict of interest, indicating the nature of such conflict. Respondents shall declare any potential conflict of interest in their submissions. Employees, agents and advisors of the employer shall declare any conflict of interest to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to the procurement process or as soon as they become aware of such conflict and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

*Note:*

- 1) A conflict of interest may arise due to a conflict of roles which might provide an incentive for improper acts in some circumstances. A conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of that person to act properly in his or her position even if no improper acts result.
- 2) Conflicts of interest in respect of those engaged in the procurement process include direct, indirect or family interests in the tender or outcome of the procurement process and any personal bias, inclination, obligation, allegiance or loyalty which would in any way affect any decisions taken.

D.1.1.3 The respondent shall not make a submission without having a firm intention and the capacity to proceed with the next stage of the procurement process.

##### D.1.2 Supporting documents

The documents issued by the employer for the purpose of obtaining expressions of interest are listed in the submission data.

##### D.1.3 Interpretation

D.1.3.1 The submission data and additional requirements contained in the submission schedules that are included in the returnable documents are deemed to be part of these conditions for the calling for expressions of interest.

D.1.3.2 For the purposes of these conditions for the calling for expressions of interest, the following definitions apply:

- a) **conflict of interest** means any situation in which:
  - i. someone in a position of trust has competing professional or personal interests which make it difficult to fulfill his or her duties impartially.
  - ii. an individual or tenderer is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit.
  - iii. incompatibility or contradictory interests exist between an employee and the tenderer who employs that employee.
- b) **corrupt practice** means the offering, giving, receiving or soliciting of anything of value to influence the action of the employer or his staff or agents in the tender process; and

- c) **fraudulent practice** means the misrepresentation of the facts in order to influence the tender process or the award of a contract arising from a tender offer to the detriment of the employer, including collusive practices intended to establish prices at artificial levels

#### **D.1.4 Communication and employer's agent**

Each communication between the employer and a respondent shall be to or from the employer's agent only, and in a form that can be readily read, copied and recorded. Communications shall be in the English language. The employer shall not take any responsibility for non-receipt of communications from or by a respondent. The name and contact details of the employer's agent are stated in the submission data.

### **D.2 Respondent's obligations**

#### **D.2.1 Eligibility**

Submit an expression of interest only if the respondent complies with the criteria stated in the submission data and the respondent, or any of his/her principals, is not under any restriction to do business with the employer.

#### **D.2.2 Cost of submissions**

Accept that the employer will not compensate the respondent for any costs incurred in the preparation and delivery of a submission.

#### **D.2.3 Check documents**

Check the submission documents on receipt, including pages within them, and notify the employer of any discrepancy or omission.

#### **D.2.4 Acknowledge addenda**

Acknowledge receipt of addenda to the submission documents, which the employer may issue, and if necessary apply for an extension to the closing time stated in the submission data, in order to take the addenda into account.

#### **D.2.5 Clarification meeting**

Attend the clarification meeting(s) at which respondents may familiarize themselves with the proposed work, services or supply (and location, etc.) and raise questions. Details of the meeting(s) are stated in the submission data.

#### **D.2.6 Seek clarification**

Request clarification of the submission documents, if necessary, by notifying the employer at least five (5) working days before the closing time stated in the submission data.

#### **D.2.7 Making a submission**

D.2.7.1 Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing legibly in non-erasable ink.

D.2.7.2 Seal the original and each copy of the submission as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the employer's address and identification details stated in the submission data, as well as the respondent's name and contact address.

D.2.7.3 Accept that the employer shall not assume any responsibility for the misplacement or premature opening of the submission if the outer package is not sealed and marked as stated.

#### **D.2.8 Information and data to be completed in all respects**

Accept that submissions, which do not provide all the data or information requested completely and in the form required, may be regarded by the employer as non-responsive.

#### **D.2.9 Closing time**

Ensure that the employer receives the submissions at the address specified in the submission data not later than the closing time stated in the submission data. Proof of posting shall not be accepted as proof of delivery. The employer shall not accept submissions submitted by telegraph, telex, facsimile or e-mail, unless stated otherwise in the submission data.

Accept that, if the employer extends the closing time stated in the submission data for any reason, the requirements of these conditions for expressions of interest apply equally to the extended deadline.

#### **D.2.10 Clarification of submission**

Provide clarification of a submission in response to a request to do so from the employer during the evaluation of submissions.

### **D.3 Employer's undertakings**

#### **D.3.1 Respond to clarification**

Respond to a request for clarification received up to five (5) working days before the submission closing time stated in the submission data and notify all respondents who attended the clarification meetings, if any, of those responses.

#### **D.3.2 Issue Addenda**

If necessary, issue addenda that may amend or amplify the submission documents to each respondent during the period from the date of the calling for expressions of interest until seven (7) working days before the closing time for submissions stated in the submission data. If, as a result, a respondent applies for an extension to the closing time stated in the submission data, the employer may grant such extension and, shall then notify it to all respondents.

#### **D.3.3 Late submissions**

Unless otherwise stated in the submission data, return submissions received after the closing time stated in the submission data, unopened, (unless it is necessary to open a submission to obtain a forwarding address), to the respondent concerned.

#### **D.3.4 Opening of submissions**

D.3.4.1 Record the name of each respondent whose submission is opened and acknowledge receipt of each submission.

D.3.4.2 Make available the names of the respondents that made submissions prior to the closing time for submissions to all interested persons upon request.

#### **D.3.5 Non-disclosure**

Not disclose to respondents, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of submissions until after the evaluation process is complete.

### **D.3.6 Grounds for rejection and disqualification**

Determine whether there has been any effort by a respondent to influence the processing of submissions and instantly disqualify a respondent if it is established that he/she engaged in corrupt or fraudulent practices.

### **D.3.7 Test for responsiveness**

Determine, on opening and before detailed evaluation, whether each submission received:

- a) meets the requirements of these conditions for the calling for expressions of interest;
- b) has all the substantive provisions properly and fully completed and signed, and
- c) is responsive to the other requirements of the call for expressions of interest.

### **D.3.8 Non-responsive submissions**

Reject all non-responsive submissions.

### **D.3.9 Evaluation of responsive submissions**

D.3.9.1 Appoint an evaluation panel of not less than three persons. Evaluate submissions using the evaluation criteria established in the submission data.

D.3.9.2 Notify the respondents of the outcome of the evaluation process within two (2) weeks of the evaluation report being accepted by the employer.

### **D.3.10 Provide written reasons for actions taken**

Provide upon request written reasons to respondents for any action that is taken in applying these conditions, but withhold information which is not in the public interest to be divulged, which is considered to prejudice the legitimate commercial interests of respondents or might prejudice fair competition between respondents.

## Annex E

### Standard Notice and Invitation to submit an Expression of Interest

|                                                                                                                                           | <b>Guidance</b>                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Expressions of interest are invited for the provision of .....                                                                            | <i>Describe briefly what is to be procured, and if appropriate, over what time period.</i> |
| The Employer is .....                                                                                                                     |                                                                                            |
| .....                                                                                                                                     | <i>Describe objective selection criteria and provide any other pertinent information.</i>  |
| The physical address for collection of documentation is:<br>.....<br>Documents may be collected during working hours after ..... on ..... |                                                                                            |
| Queries relating to the issues of these documents may be addressed to Mr/Ms ...<br>..., Tel No. ...., Fax No. .... E-mail .....           |                                                                                            |

## Annex F

### Record of Addenda to Tender Documents

The undersigned confirm that the following communications received from the employer before the submission of this tender offer, amending the tender documents, have been taken into account in this tender offer:

|     | Date | Title or Details |
|-----|------|------------------|
| 1.  |      |                  |
| 2.  |      |                  |
| 3.  |      |                  |
| 4.  |      |                  |
| 5.  |      |                  |
| 6.  |      |                  |
| 7.  |      |                  |
| 8.  |      |                  |
| 9.  |      |                  |
| 10. |      |                  |

Attach additional pages if more space is required.

|          |  |          |  |
|----------|--|----------|--|
| Signed   |  | Date     |  |
| Name     |  | Position |  |
| Tenderer |  |          |  |

## Annex G

### Compulsory Enterprise questionnaire

The following particulars must be furnished. In the case of a joint venture, separate enterprise questionnaires in respect of each partner must be completed and submitted.

**Section 1: Name of enterprise:**

**Section 2: VAT registration number, if any:**

**Section 3: cidb registration number, if any:**

**Section 4: CSD number:**

**Section 5: Particulars of sole proprietors and partners in partnerships:**

| Name* | Identity number* | Personal income tax number* |
|-------|------------------|-----------------------------|
|       |                  |                             |
|       |                  |                             |
|       |                  |                             |

*\* Complete only if sole proprietor or partnership and attach separate page if more than 3 partners*

**Section 6: Particulars of companies and close corporations**

Company registration number:

Close corporation number:

Tax reference number:

**Section 7: SBD4 issued by National Treasury must be completed for each tender and be attached as a tender requirement.**

**Section 8: SBD 6 issued by National Treasury must be completed for each tender and be attached as a tender requirement.**

**Section 9: SBD8 issued by National Treasury must be completed for each tender and be attached as a tender requirement.**

**Section 10: SBD9 issued by National Treasury must be completed for each tender and be attached as a tender requirement.**

The undersigned, who warrants that he / she is duly authorised to do so on behalf of the enterprise:

- i) authorizes the employer to verify the tenderers tax clearance status from the South African Revenue Services that it is in order;
- ii) confirms that the neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercises or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004;
- iii) confirms that no partner, member, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears, has within the last five years been convicted of fraud or corruption;
- iv) confirms that I / we are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest; and
- iv) confirms that the contents of this questionnaire are within my personal knowledge and are to the best of my belief both true and correct.

|                 |  |          |  |
|-----------------|--|----------|--|
| Signed          |  | Date     |  |
| Name            |  | Position |  |
| Enterprise name |  |          |  |