



**CLUSTER**  
Trading Services

**UNIT**  
Water and Sanitation

**DEPARTMENT**  
Engineering and Data Services

**PROCUREMENT DOCUMENT**  
**WATER AND SANITATION**

Documents are to be obtained, free of charge, in electronic format, from the [National Treasury's eTenders website](#) or the [eThekweni Municipality's website](#).

<b>Contract No:</b>	<b>WS 7795</b>
<b>Contract Title:</b>	<b>REQUEST FOR PROPOSAL – FOR THE PROCUREMENT OF A PRIVATE PARTY TO UNDERTAKE THE DESIGN, FINANCE, CONSTRUCTION, OPERATION AND MAINTENANCE OF SEWAGE TREATMENT PLANTS AT UMDLOTI AND UMKOMAAS ON A PPP BASIS</b>

**CLARIFICATION MEETING AND QUERIES**

<b>Clarification Meeting:</b>	<b>Compulsory Clarification Meeting</b>
<b>Meeting Location, Date, Time:</b>	<b>See PartT1: 30 May 2024 @ 09:00, Ottawa Civic Centre, 14 Maharaj Road, Ottawa</b>
<b>Queries can be addressed to: The Employer's Agent's: Representative:</b>	<b>Sydney Masha email: <a href="mailto:sydney.masha@durban.gov.za">sydney.masha@durban.gov.za</a>. Email queries to be submitted by 01 August 2024. RFP Stage 2 will be uploaded on 12 September 2024.</b>

**TENDER SUBMISSION**

<b>Delivery Location:</b>	<b>The Tender Box in the foyer of the Municipal Building 166 KE Masinga Road, Durban</b>		
<b>Closing Date/ Time:</b>	<b>Friday, 08 November 2024</b>	<b>at</b>	<b>11h00</b>

**FACSIMILE, EMAIL, or POSTED TENDERS WILL NOT BE ACCEPTED**

<b>Issued by:</b>
<b>ETHEKWINI MUNICIPALITY</b>
<b>Head: <a href="#">Water and Sanitation</a></b>



# **REQUEST FOR PROPOSALS Phase 1**

## **Volume 1 of 2 Instructions to Bidders**

### **Chapter A - Preamble**

### **Chapter B – Instructions**

### **Chapter C – Proposal Requirements**

### **Chapter D – Evaluation**

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**EWS UMDLOTI & UMKOMAAS STP PPP PROJECT  
REQUEST FOR PROPOSALS Phase 1  
VOLUME 1: INSTRUCTIONS TO BIDDERS**

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## **PART T1: TENDERING PROCEDURES**

### **T1.1.1: TENDER NOTICE AND INVITATION TO TENDER**

Bidders are hereby invited to bid for the proposed [Public Private Partnership for the Finance, Design, Construction, Operation and Maintenance of Sewage Treatment Plants at uMdloti and Umkomaas on a PPP basis.](#)

<b>Subject</b>	<b>Description</b>	<b>Tender Data Ref.</b>
<b>Employer</b>	The Employer is the eThekwini Municipality as represented by: Deputy Head: <a href="#">Engineering and Data Services</a>	1.2.1
<b>Tender Documents</b>	Documents can only be obtained in electronic format, issued by the eThekwini Municipality. Documentation can be downloaded from the National Treasury's eTenders website or the eThekwini Municipality's Website. The entire document should be printed (on A4 paper) and suitably bound by the tenderer.	1.1.3
<b>Eligibility</b>	The CIDB provisions in relation to a Contractor's Potentially Emerging (PE) status do not apply.	7.1
<b>Clarification Meeting</b>	<p style="text-align: right;"><a href="#">Briefing No. 1</a></p> <p style="text-align: right;">Ottawa Civil Centre</p> <p style="text-align: right;"><a href="#">GPS Co-Ordinates:</a></p> <p style="text-align: right;">X: 31.0328972</p> <p style="text-align: right;">Y: -29.67055696</p> <p style="text-align: right;"><a href="#">30 May 2024</a></p> <p style="text-align: right;"><a href="#">09:00</a></p> <p style="text-align: right;">Verulam WWTW</p> <p style="text-align: right;"><a href="#">GPS Co-Ordinates:</a></p> <p style="text-align: right;">X: 31.0634090</p> <p style="text-align: right;">Y: -29.6458061</p> <p style="text-align: right;"><a href="#">30 May 2024</a></p> <p style="text-align: right;"><a href="#">10:30</a></p> <p style="text-align: right;">New Umdloti Regional WWTW</p> <p style="text-align: right;"><a href="#">GPS Co-Ordinates:</a></p> <p style="text-align: right;">X: 31.0711231</p> <p style="text-align: right;">Y: -29.6481045</p>	6.2

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30 May 2024

11:30

Existing Umdloti WWTW:

GPS Co-Ordinates:

X: 31.1097361

Y: -29.6506593

30 May 2024]

13:30

Genazzano WWTW

GPS Co-Ordinates:

X: 31.1565568

Y: -29.6069577

30 May 2024 15:30

Briefing No. 2

Existing Umkomaas WWTW

GPS Co-Ordinates:

: X: 30.7932408

Y: -30.2030321

31 May 2024 11:00

New Umkomaas Regional WWTW

GPS Co-Ordinates:

X: 30.7816376

Y: -30.1948883

31 May 2024

10:30

Craigieburn WWTW

GPS Co-Ordinates:

X: 30.7518651

Y: -30.2075824

31 May 2024 12:00

Magabeni WWTW

GPS Co-Ordinates:

X: 30.7820185

Y: -30.1662440

31 May 2024  
14:00

**NOTE:** It is mandatory that representatives of all Bidders are present at the respective venues no later than 30 minutes prior to the scheduled meeting time. Any representatives that arrive 30 minutes late will not be allowed to attend the briefing.

<b>Seek Clarification</b>	Queries relating to these documents are to be addressed to the Employer's Agent's Representative whose contact details are: <b>Sydney Masha</b> email: <b>Sydney.Masha@durban.gov.za</b>	5.1
<b>Submitting a Proposal</b>	Bidder Proposals shall be delivered to: <b>The Tender Box in the foyer of the Municipal Building</b> <b>166 KE Masinga Road, Durban</b>	7.4.2
<b>Submitting a Response</b>	Bidder Responses shall be delivered to: <b>Sydney Masha</b> email: <b>Sydney.Masha@durban.gov.za</b>	7.4.2
<b>Closing Time</b>	Tender offers shall be delivered on or before <i>Friday, 09 August 2024</i> at 11h00.	7.4.1
<b>Evaluation of Tender Offers</b>	The 90/10 Price Preference Point System, as specified in the PPPFA Regulations 2022 will be applied in the evaluation of tenders. Refer to Clause 9.2.2 of the Tender Data for the Specific Goal(S) for the awarding of Preference Points, and other related evaluation requirements.	Chapter D
<b>Opening of Proposals</b>	Tenders will be opened immediately after the closing time for tenders. The public reading of tenders will take place at in the SCM Boardroom and streamed on social media platforms. <b>The SCM Boardroom on the 6th Floor, Engineering Unit Building, 166 KE Masinga Road, Durban</b>	

Requirements for sealing, addressing, delivery, opening and assessment of tenders are further stated in the Tender Data

## **CHAPTER A – PREAMBLE**

### **(Development and Overview of RFP Phase 1 Volume 1)**

Terms and/or references used in this Chapter A – Preamble with an upper case first letter are defined in the Glossary of Terms below.

#### **A - Phase 1 – RFP Development Phase**

- (a) The purpose of the initial RFP Phase 1 development phase (Volume 1) is to give opportunity to Respondents to consider and make input on various points of principle on the commercial terms set out in Volume 2 (Concession Agreement). Respondents are not expected to be developing detailed designs or proposals at this stage. Respondents will, however, be provided with comprehensive information on the Project and required to respond, as a minimum, to the issues identified by the Municipality for clarification set out in section 2.2.1 below.
- (b) The Municipality will release draft RFP documentation for Respondents to review and provide mark-ups with reasons in Volume 2. The Municipality intends to take due consideration of comments made by the Respondents. However, Respondents are advised that the Municipality is under no obligation to accept any recommendation or proposal of any Respondent(s) to change Volume 2 of the RFP document, but where it accepts that it will improve Value for Money, risk transfer and/or affordability for the Municipality, it will consider accommodating such proposals in the RFP documentation.
- (c) Subsequent to the release of the draft RFP documents, the Project Officer will act as the point of contact for any inquiries by Respondents in relation to the Project. It is required that any contact made with the Transaction Advisory Team is co-ordinated through the Project Officer and all correspondence is copied to him.
- (d) Respondents are to advise the Municipality by sending an electronic mail to the Project Officer, within 7 (seven) days of receipt of this RFP Phase 1 of their nominated and authorised single point of contact.

#### **B – Overview of RFP Phase 1**

This Request for Proposals Phase 1 ("RFP Phase 1") is comprised of a suite of volumes, namely-

- (a) Volume 1 – Instructions to Bidders; and
- (b) Volume 2 – Concession Agreement.

Volume 1 of RFP Phase 1 contains specific instructions to Interested Parties, Respondents and Bidders. The following is the flow of this RFP Phase 1 Volume 1.

*Chapter A – Preamble (above)*

*Chapter B - Instructions*

- (a) section 1: provides the glossary of terms detailing the defined terms used within this RFP, as well as the important notice (which relates to the issuance and use of the RFP documents) and brief introduction of the Project;
- (b) section 2: provides the framework of this RFP, which includes the purpose of the RFP Phase 1 and the RFP as a suite of documents;

- (c) section 3: provides the Project description, which includes background information, objectives of the Project, Project Term, the nature of the contracting entity with which the Municipality intends to contract, the National Industrial Participation Programme, and funding structure;
- (d) section 4: provides the external framework, which includes the governing law, the environmental framework, ownership of assets;
- (e) section 5: provides for Project framework, which includes the liaison structure; financial framework; insurance framework; legal framework, technical framework; and the Economic Development framework;
- (f) section 6: provides for Project procurement process, programme and Bidder due diligence, which includes the Project procurement process and its phases, Bidder meetings, further meetings, an indicative project procurement programme, and Interested Party due diligence and organised site visits;
- (g) section 7: provides Instructions to Bidders on who may submit proposals, regulates the actions of the advisors and Debt Providers, the submission of Proposals, cost of submitting Proposals, collection/release of RFP documents, confidentiality, nature of information offered, Bidder's responsibilities, contact policy, corruption, supplementary notices, regulates the change in composition, control and membership of Bidders and post qualification participation in more than one Bidder, Bid Bond and background information;

#### *Chapter C – Proposal Requirements*

- (h) section 8: provides for the Proposal Requirements, which includes the format of Proposals, the validity period of Proposals, the provision of incorrect or misleading information, the Standard Proposal to be submitted;

#### *Chapter D – Evaluation*

- (i) section 9: provides for the Evaluation Structure and Criteria, Evaluation Process, and the Decision of the Accounting Officer

#### *Annex*

- (j) Annex A: provides a description and overview of the Project;

#### *Appendix*

- (k) Appendix 1 (Respondent Information Form) pertains to information to be furnished by Interested Parties seeking to participate in the RFP Volume 2 optimisation process; and

#### *Annexures*

- (l) Annexure 1: Mandatory Proposal Requirements, provides and identifies form of cover letters to accompany the Proposal, form of Bid Bond, PoPI Act consent and the Municipal Tender forms to be submitted by Bidders;
- (m) Annexure 2: provides for the Qualification Criteria requirements of each Bidder;
- (n) Annexure 3: provides for the requirements to be addressed by each Bidder in its technical Proposal;

- (o) Annexure 4: provides for the requirements to be addressed by each Bidder in its financial Proposal;
- (p) Annexure 5: provides for the requirements to be addressed by each Bidder in its legal Proposal; and
- (q) Annexure 6: provides for the requirements to be addressed by each Bidder in its Economic Development Proposal.

## CHAPTER B - INSTRUCTIONS

### 1. **SECTION 1 – PRELIMINARY**

#### 1.1. **Glossary of Terms**

The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –

affordable	means in relation to the Concession Agreement, the financial obligations to be incurred by the Municipality in terms of the Concession Agreement can be met by funds -  (a) designated within the Municipality's existing budget for the function to which this agreement relates; and/or  (b) destined for the Municipality for that activity in accordance with future budgetary projections of the Municipality; or  (c) any allocations to the Municipality; or  (d) a combination of such funds and allocations;
Amended B-BBEE Codes	means the amended B-BBEE Codes of Good Practice issued under Government Gazette No.36928 on 10 October 2013 in terms of section 9(1) of the B-BBEE Act;
B-BBEE Act	means the Broad-Based Black Economic Empowerment Act, 53 of 2003 and regulations promulgated thereunder, as amended by Broad-Based Black Economic Empowerment Amendment Act, No. 46 of 2014;
B-BBEE Codes	means Codes of Good Practice on Broad-Based Black Economic Empowerment which were gazetted on 9 February 2007 in Government Gazette Number 29617 (Main Codes), which are available on the <b>dtic</b> website: <a href="http://www.thedti.gov.za">www.thedti.gov.za</a> ;
B-BBEE	has the meaning ascribed to the definition of "broad-based black economic empowerment" in the B-BBEE Act;
B-BBEE Enterprises	shall have the same meaning ascribed to them in the Codes of Good Practice on B-BBEE issued under Government Gazette No. 42391 in terms of section 9(1) of the B-BBEE Act;
B-BBEE Contributor Status Level	means the contributor status levels which are based on the overall performance of a Measured Entity, in respect of B-BBEE measured in terms of any applicable Sector Code, and/or the Amended B-BBEE Codes and demonstrated by the submission of a valid B-BBEE Verification Certificate;
B-BBEE Verification Certificate	means a B-BBEE rating certificate or affidavit issued in terms of the Amended B-BBEE Codes, as applicable;
Bid Bond	means the bid bond submitted by a Bidder on the Proposal Submission Date, substantially with the form provided in Annexure 1B ( <i>Form of Bid Bond</i> ) and accepted by the Municipality as contemplated in section 7.15 below;
Bidder	means any person, entity, or Consortium who or which intends to submit and submits a Proposal with all required returnable documentation;

Bid Evaluation Committee	means the committee referred to in section 9.1 below;
Black Enterprise	means a legal entity with fifty one percent (51%) or more of its equity owned by Black People, participation in its board of directors controlled by Black People and in which Black People are entitled to at least fifty one percent (51%) Exercisable Voting Rights and Economic Interest;
Black People	is a generic term that means African, Coloured or Indians (i) who are citizens of the South Africa by birth or descent or (ii) who became citizens of South Africa by naturalisation before 27 April 1994 or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date, " <b>Black Person</b> " and " <b>Black Persons</b> " shall have a corresponding meaning;
Briefing Note	means a circular of the kind referred to in section 7.12.2 below;
Commercial Close	means the date of signature of the Concession Agreement by the parties thereto;
Concession Agreement	means a written contract(s) recording the terms of a PPP to be concluded between the Municipality and the Successful Bidder in respect of the provision of any one, more or all of the components of the Project, the form of which is set out in RFP Phase 1 Volume 2, including the schedules thereto;
Concessionaire	shall have the same meaning ascribed to it in the Concession Agreement;
Consortium	means any group of persons (or entities) comprising an Interested Party, Respondent or Bidder who wish to bid to undertake the Project by submitting a Proposal;
COD	means Chemical Oxygen Demand, a measure of the oxygen equivalent of the organic matter in a water sample that is susceptible to oxidation by a strong chemical oxidant;
CoGTA	means the national Department of Cooperative Governance and Traditional Affairs in the Government of South Africa;
Constitution	means the Constitution of the Republic of South Africa Act, 108 of 1996, as amended;
Data Room	means an online data room to be established by EWS for purposes of the Project to enable Interested Parties, Respondents and Bidders to access Project related information and documentation deposited therein by EWS from time to time;
Debt Provider	means any bank or lending financial institution in South Africa, registered in terms of the Banks Act, 94 of 1990 and/or regulated by the Financial Sector Conduct Authority, or any development finance institution in South Africa;
Designated Member	means any member of the Bidder which is neither a Sponsor nor a Key Contractor, identified by a Bidder as such in its response to the RFP in respect of which the Bidder submits credentials to be relied upon for selection as Preferred Bidder, or subsequently is subsequently post-qualified to do so;

Economic Development		means the development of specific categories of people, enterprises and communities by reference to Specific Goals;
Economic Development Requirements		means the criteria contained in Annexure 6 ( <i>Economic Development Proposal Requirements</i> ) of this RFP;
Economic Interest		a claim against an enterprise representing a return on ownership of the enterprise similar in nature to a dividend right, measured using the Flow Through Principle;
Entities Majority Owned by Priority Population Groups		means: <ul style="list-style-type: none"> <li>(a) a SMME which is at least 51% owned by Black People, least 51% owned by Black People who are Youths, women, Black People living with disabilities; and/or</li> <li>(b) co-operatives which are at least 51% owned by Black People;</li> </ul>
EME		means Exempted Micro-Enterprises, an enterprise with a turnover of less than R5 million per annum;
Equity		means any and all issued shares (or to be issued) in the authorised share capital of the concessionaire, the entire amount standing to the credit of the share premium account and the principal of any and all loans made by shareholders of the concessionaire, whether or not such loans are evidenced by written agreements, debentures or other documentation;
Evaluation Committee		means the committee referred to in section 9.1 below;
EWS		means the eThekweni Water and Sanitation Unit of the Municipality;
EWS Website		means the eThekweni Municipality's website at URLs: <a href="https://www.durban.gov.za/pages/business/procurement">https://www.durban.gov.za/pages/business/procurement</a>
Exercisable Voting Rights		means a voting right attaching to an equity instrument of a participant measured using the Flow Through Principle, that is not subject to any limit other than limitations that may be subject to financing arrangements imposed by Debt Providers providing financing for such equity instruments;
Existing STPs		means: <ul style="list-style-type: none"> <li>(a) in respect of the uMdloti Project Site, each STP at Genazzano, uMdloti, Verulam and King Shaka International Airport; and</li> <li>(b) in respect of the Umkomaas Project Site, each STP at Umkomaas and Craigeiburn (and Magabeni – not within scope).</li> </ul> each of which is to be decommissioned by the Successful Bidder in terms of the Concession Agreement;
Financial Close		means the date, following Commercial Close, on which the last of the conditions precedent in the Concession Agreement is fulfilled, or waived, as the case may be and financing documents become unconditional, enabling the commencement of the construction of the New Facilities;
Financial Excel Spreadsheet		means the excel spreadsheet shared in the Virtual Data Room used to calculate the Bid Price.

Financial Model	means the model provided as part of the financial Proposal in accordance with Annexure 4 ( <i>Financial Proposal Requirements</i> ) to this Volume 1;
Flow Through Principle	the measurement of ownership in terms of which only rights held by natural persons are considered for such measurement and, in respect of rights of ownership held in a Measured Entity through a juristic person, then the rights of ownership held by Black People in that juristic person are considered for measurement. The measurement of ownership shall have regard to every tier of ownership in a multi-tiered chain of ownership until that chain ends with a Black Person holding ownership rights;
Government	means the Government of South Africa constituted in terms of the Constitution; any one or more of all three branches or spheres of government: national, provincial or municipal;
Interested Party	each person or entity, or consortium that downloads, obtains or receives this RFP Phase 1 and/or RFP Phase 2;
Lender	has the meaning ascribed to it in the Concession Agreement;
Key Contractor	means any person (natural or juristic), other than a Sponsor, who in the Bidder's response to this RFP is identified as the person to undertake or provide any one or more of the following goods and/or services in regard to the Project, namely design, construction, or facilities management (incorporating operations and maintenance), or is subsequently post-qualified to do so;
Management Control	means, in relation to any enterprise, the ability to direct or cause the direction of the business and management policies or practices of that enterprise;
Mandatory Proposal Requirements	means each of the mandatory requirements set out in Annexures 1A to 1D ( <i>Mandatory Proposal Requirements</i> ) of RFP Phase 2;
Measured Entity	means an entity which is subject to measurement in respect of any one or more of the Economic Development elements in the Economic Development Scorecard;
Member	means, with respect to an Interested Party a Respondent, or a Bidder, which is a consortium, each member thereof; comprised of each Sponsor, Key Contractor and Designated Member, if any;
MFMA	means the Local Government: Municipal Finance Management Act, 53 of 2003;
Military Veterans	means any South African citizen who (a) rendered military service to any of the military organisations, statutory and non-statutory, which were involved on all sides of South Africa's Liberation War from 1960 to 1994; (b) served in the Union Defence Force before 1961; or (c) became a member of the new South African National Defence Force after 1994, and has completed his or her military training and no longer performs military service, and has not been dishonourably discharged from that military organisation or force: provided that this definition does not exclude any person referred to in paragraph (a), (b) or (c) who could not complete his or her military training due to an injury sustained during military training or a disease contracted or associated with military training;

MLD	means millions of litres per day;
Municipal PPP Regulation	means the Regulation No. 309 1 April 2005 promulgated in terms of the MFMA;
Municipality	means the eThekweni Municipality, established in terms of the Constitution, and the Municipal Structures Act, 117 of 1998, as amended;
National Treasury	means the national treasury, established in terms of Section 5 of the PFMA;
New Facilities	means collectively the new uMdloti STP, the new Umkomaas STP and the Transmission Pipelines, including the Potential Increased STP Capacity if instructed by the Municipality in accordance with the Concession Agreement;
Ownership	means the effective ownership of shares in a Measured Entity by Black People, which shall be determined with reference to Economic Interest and Exercisable Voting Rights;
PFMA	means the Public Finance Management Act, 1 of 1999;
PoPI Act	means the Protection of Personal Information Act, 4 of 2013;
Potential Increased STP Capacity	means the possibility of the Successful Bidder being requested by the Municipality, during the Project Term and in terms of the Concession Agreement to increase the capacity of the: <ul style="list-style-type: none"> <li>(a) uMdloti STP from 20 MLD per day to 35 MLD; and</li> <li>(b) Umkomaas STP from 11 MLD to 20 MLD;</li> </ul>
PPP	means a commercial transaction between the Municipality and a private party in terms of which the private party:- <ul style="list-style-type: none"> <li>(a) performs a municipal function for or on behalf of a municipality, or acquires the management or use of municipal property for its own commercial purposes, or both performs a municipal function for or on behalf of a municipality and acquires the management or use of municipal property for its own commercial purposes; and</li> <li>(b) assumes substantial financial, technical and operational risks in connection with- <ul style="list-style-type: none"> <li>(i) the performance of the municipal function;</li> <li>(ii) the management or use of the municipal property; or</li> <li>(iii) both; and</li> </ul> </li> <li>(c) receives a benefit from performing the municipal function or from utilising the municipal property or from both, by way of- <ul style="list-style-type: none"> <li>(i) consideration to be paid or given by the municipality or municipal entity under the sole or shared control of the municipality;</li> <li>(ii) charges or fees to be collected by the private party from users or customers of a service provided to them; or</li> <li>(iii) a combination of the benefits referred to in (i) and (ii);</li> </ul> </li> </ul>

PPP Unit	means the PPP Unit of GTAC (Government Technical Advisory Centre) an agency in the National Treasury;
PPPFA	means the Preferential Procurement Policy Framework Act, 1 of 2000;
Preferential Procurement Regulations	means the Preferential Procurement Regulations published under GN R2721 in Government Gazette 47452 of 04 November 2022, in terms of section 5(1) of the PPPFA;
Preferred Bidder	means a Bidder, following evaluation of its Proposal, is selected by the Municipality as the party with whom to pursue negotiations to conclude a Concession Agreement;
Preferential Procurement Policy Guideline	means the Municipality's 2022 Preferential Procurement Policy Guidelines;
Priority Population Group	means an individual/member of a targeted group who falls into a population group that had no franchise in national elections prior to the introduction of the 1984 constitution and the tricameral parliamentary system;
Project	entails, <ul style="list-style-type: none"> <li>(a) the design, construction, financing and commissioning of the New Facilities;</li> <li>(b) the maintenance and operation of the New Facilities for the Project Term and the Transmission Pipelines prior to the Transfer of the Transmission Pipelines to the Municipality; and</li> <li>(c) the decommissioning of the Existing STPs, after the New Facilities have commenced operating.</li> </ul>
Project Deliverables	means Works and Services;
Project Sites	means collectively the uMdloti Project Site and the Umkomaas Project Site, or any one of them as the context may require;
Project Term	means a period of no more than 32 (thirty-two) years inclusive of the design and construction stage for the provision of the Project Deliverables.
Promotion of SMMEs Owned by 51% black owned	means the extent to which a Measured Entity procures or subcontracts for goods and services from Entities Majority Owned by a minimum of 51% black ownership
Proposal	means the bid (responsive to all Annexures of RFP Phase 2 Volume 1) submitted by an Interested Party or a Respondent in response to RFP Phase 2 to undertake the Project;
Province	means the executive authority of KwaZulu-Natal contemplated in Section 125 of the Constitution;
Proposal Submission Address	means the place and address at which Proposals are to be submitted, being the tender box located on the ground floor foyer at Municipal Centre, 166 K.E. Masinga Road (formerly Old Fort Road), Durban. Respondents are advised that the tender box is open from Mondays to Fridays, excluding public holidays from 08:00 to 12:30 and 13:15 to 15:15;

Proposal Submission Date	means the date on which and time by which Bidders are to submit their Proposals, being 9 August 2024 no later than 11:00 (as per Telkom SA Clock: dial 1026 in RSA);
Province	means the executive authority of KwaZulu-Natal contemplated in Section 125 of the Constitution;
Provincial Treasury	means the treasury of the Province, established in terms of Section 17 of the PFMA;
QSE	means Qualifying Small Enterprises, an enterprise with a turnover between R5 million and R35 million per annum;
Qualification Criteria	means the criteria listed in the Annexure 2 ( <i>Qualification Criteria</i> ) of this RFP Volume 1;
Reserve Bidder	means the Bidder, if any, announced by the Municipality as the reserve bidder;
Respondent	means a person, an entity, joint venture or consortium that submits a mark-up of the RFP Phase 1 Volume 2 and submits a duly completed Respondent Information Form (Appendix 1);
Respondent Information Form	means the Respondent Information Form (Appendix 1), to be completed and submitted by Interested Parties (wishing to participate in the RFP Phase 1 optimisation process) on the Response Submission Date as part of RFP Phase;
Response	means a mark-up of RFP Phase 1 Volume 2 as well as a completed Respondent Information Form (Appendix 1), submitted by an Interested Party (wishing to participate in the RFP Phase 1 optimisation process) on the Response Submission Date;
Response Submission Address	means the email address at which Responses are to be submitted, being the email address <a href="mailto:Sydney.Masha@durban.gov.za">Sydney.Masha@durban.gov.za</a> ;
Response Submission Date	means the date on which a Response was to have been submitted by an Interested Party, as set out in the table at section 6.3;
RFP	means this Request for Proposals (comprised of Volumes 1 and 2) in relation to the Project, including RFP Phase 1, as well as RFP Phase 2;
RFP Phase 1	refers to the optimisation period where the Municipality invites and gives Interested Parties the opportunity to review and propose changes to the draft Concession Agreement (contained in Volume 2 of this RFP) and the technical and output specifications (contained in Schedule 3 ( <i>Technical Specifications</i> ) of the Concession Agreement);
RFP Phase 2	refers to the final version of the RFP issued by the Municipality following the optimisation period of RFP Phase 1, inviting Interested Parties and Respondents to submit their Proposals;
Sector Code	means a code designated as such, and issued in terms of section 9(1) of the B-BBEE Act, developed by major stakeholders in a particular industry;

Service Commencement	the date on which the uMdloti STP and the Umkomaas STP commence operating, or if on different dates, the last of such dates;
Services	means the operational services to be provided by or on behalf of the Successful Bidder in order to meet the Technical and Output Specifications set forth in Schedule 3 ( <i>Technical Specifications</i> ) of the Concession Agreement;
SITA	means the State Information Technology Agency SOC Ltd, established pursuant to the State Information Technology Act, 88 of 1998;
SMME	means Small Enterprise;
Social Upliftment	means the objective of encouraging the involvement of the Concessionaire in corporate and social investment initiatives through (i) clean up campaigns (ii) social upliftment programmes, (iii) bursaries and/or (iv) infrastructure repair and maintenance programmes;
South Africa or RSA	the Republic of South Africa as constituted in terms of the Constitution;
Specific Goals	means, collectively, Ownership, Social Upliftment and the Promotion of SMME's that are 51% black owned or more;
Sponsor	means any member of a Bidder identified as such in the Bidder's Proposal as having committed to acquiring Equity in the Successful Bidder, or subsequently post-qualified to do so;
Small Enterprise	has the meaning ascribed to it in the National Small Business Act, 102 of 1996;
Successful Bidder	means the Preferred Bidder who concludes a Concession Agreement;
Tariff	means the amount that the Municipality will pay the Successful Bidder for the provision of the Project Deliverables;
Technical Specifications	means the technical and output specifications provided to Interested Parties and Respondents defining the requirements that must be met by the Successful Bidder in establishing and operating the uMdloti STP and the uMkomaas STP, as stated in Schedule 3 ( <i>Technical Specifications</i> ) of the Concession Agreement;
the dtic	means the Department of Trade and Industry and Competition in the Government;
Transaction Advisory Team	means the advisors engaged to provide professional advisory services to the Municipality on the Project who comprise of IFC Advisory Services and its sub-consultants;
Transfer of Transmission Pipelines	means the transfer of the operation and maintenance of the Transmission Pipelines by the Successful Bidder to the Municipality on the fourth anniversary of the date reckoned from the end of the sixth month following Service Commencement, provided that the Municipality has fully paid the amount due therefor to the Successful Bidder in no less than 4 (four) equal annual instalments;

Transmission Pipelines	means the system of raw sewage conveyance pipelines to convey raw wastewater from the Existing STPs to each of the New Facilities;
uMdloti Project Site	means site identified in Site Plan contained in Schedule 3 ( <i>Technical Specifications</i> ) of the Concession Agreement;
Umkomaas Project Site	means site identified in Site Plan contained in Schedule 3 ( <i>Technical Specifications</i> ) of the Concession Agreement;
uMdloti STP	means the new regional sewage treatment plant to be established and operated by the Successful Bidder (in terms of the Concession Agreement) at the uMdloti Project Site;
Umkomaas STP	means the new regional sewage treatment plant to be established and operated by the Successful Bidder (in terms of the Concession Agreement) at the Umkomaas Project Site;
Validity Period	means a period of 12 (twelve) months following the Proposal Submission Date;
Value for Money	means that the provision of anyone, more or all of the components of the Project or the use of State property by a private party in terms of a Concession Agreement resulting in a net benefit to the Municipality defined in terms of cost, price, quality, quantity, risk transfer or a combination thereof;
Works	means the design, construction and commissioning of the works to be undertaken by the Successful Bidder in respect of the New Facilities, to enable each of them to meet the design and construction specifications and Performance Standards;
Youth	means Citizens between the ages of 18 (eighteen) and 35 (thirty-five) years, when entering the Project.

## 1.2. Important Notice

All references in this Important Notice to 'the Municipality' include a reference to the eThekweni Municipality.

- 1.2.1. The employer: The Employer for this Contract is the eThekweni Municipality as represented by: Deputy Head: Engineering and Data Services, eThekweni Water and Sanitation.
- 1.2.2. The Request for Proposals (RFP) documentation (which expression shall include all other information, written or oral, made available during the procurement process) is being made available by the Municipality to Interested Parties, Respondents and Bidders on the condition that it is used solely for the purpose of considering whether or not to submit a Proposal, and if affirmative, to submit a Proposal in sufficient detail to conclude a Concession Agreement for the provision of the Project Deliverables, and for no other purpose.
- 1.2.3. The RFP documentation is provided solely for the purpose set out in this important notice section and is not intended to form any part or basis of any investment decision by Interested Parties, Respondents and Bidders. The recipient should not consider the document as an investment recommendation by the Municipality or any of its advisors, or their sub-consultants. Each person to whom this document (and other later documents) is made available must make his, her or its own independent assessment of the Project after making such investigation and taking such professional advice as he, she or it deems necessary. Neither receipt of this document or any related document by any person, nor any information contained

in the RFP documents or distributed with them or previously or subsequently communicated to any Interested Party, Respondent, Bidder or its advisors, is to be taken as constituting the giving of investment advice by the Municipality or its advisors or their sub-consultants.

Electronically downloaded documentation is obtainable from the National Treasury's eTenders Website or the eThekweni Municipality's Website at URLs:

- <https://www.etenders.gov.za/>
- <https://www.durban.gov.za/pages/business/procurement>

The entire downloaded document should be printed on white A4 paper (single-sided) and suitably bound by the tenderer.

- 1.2.4. Whilst reasonable care has been taken in preparing this and other documents, they do not purport to be comprehensive or to have been verified by the Municipality, its advisors or any other person. Neither the Municipality nor any of its advisors (sub-consultants) accept any liability or responsibility for the adequacy, accuracy or completeness of any of the information or opinions stated in any RFP document.
- 1.2.5. Save where expressly provided, no representation or warranty, express or implied, is or will be given by the Municipality, or any of its officers, employees, servants, agents or advisors with respect to the information or opinions contained in any RFP document or on which any RFP document is based. Any liability in respect of such representations or warranties, howsoever arising is hereby expressly disclaimed.
- 1.2.6. The Municipality has engaged consultants in respect of the Project, who are acting as advisors to the Municipality (and for no other person) to assist the Municipality in the procurement process of the Successful Bidder to conclude a Concession Agreement, and, accordingly will not be responsible or owe a duty of care to any person other than the Municipality in respect of the Project. The Transaction Advisory Team shall not nor shall any legal advisor, or advisor to the Municipality in relation to the Project, provide any opinion to or for the benefit of any Interested Party, Respondent, Bidder or Member thereof or any Lender.
- 1.2.7. The Municipality has developed a fair, equitable and transparent procurement process for the Project. In an effort to retain and enhance the integrity of the procurement process, Respondents or Bidders may be requested by the Municipality, at any time prior to submission of Proposals, to conclude an anti-bribery pact agreement with the Municipality.
- 1.2.8. The Municipality in issuing out this RFP documentation, has to ensure that it adheres to the provisions of the recently promulgated PoPI Act, which came into effect on 1 July 2021. As part of the requirements of the PoPI Act, all Interested Parties, Respondents and Bidders are requested to consent to the processing of their personal information, and as such are required to complete and sign the section 11 PoPI Act consent form, contained in Annexure 1C (*POPI Act Consent for Proposals*), Part 2 (*PoPI Act Consent for Proposals*) to this Volume 1 if they wish for their bid, submission or Proposal to be evaluated.
- 1.2.9. The Municipality reserves the right to amend, modify or withdraw this RFP, or to amend, modify or terminate any of the procedures or requirements of the RFP stage of the procurement process for the Project at any time and from time to time, without prior notice and except as may be provided otherwise in the RFP without liability to compensate or reimburse any party or person.

- 1.2.10. The Municipality is not obliged to accept any bid, submission or Proposal in response to this RFP document or to select a Preferred Bidder, or to conclude negotiations with such Preferred Bidder to be appointed to undertake the Project described in this RFP document.
- 1.2.11. The Municipality reserves the right to reject a Bidder's Proposal at any time.
- 1.2.12. Any requirement set out in this RFP regarding the content of a Proposal is stipulated for the sole benefit of the Municipality, and save as expressly stated to the contrary, may be waived at its discretion at any stage in the procurement process. The Municipality reserves the right to adopt any Proposal made by any Bidder at any time and to include such Proposal in any procurement documents, which may or may not be made available to other Bidders.
- 1.2.13. If any Interested Party, Respondent, Bidder or their constituent members, their employees, advisors or agents make or offers to make any gift to any public official or employee of the Municipality or consultant to the Municipality on the Project either directly or through an intermediary, then such Interested Party, Respondent, Bidder or their constituent member will, subject to section 7.11 below and the anti-bribery pact agreement if concluded, be disqualified forthwith from participating in the Project.
- 1.2.14. Any difference in information between documentation made available by the Municipality to Interested Parties, Respondents or Bidders during the procurement process shall, unless so expressed to the contrary, be deemed a variation or modification of the earlier document(s) or statement(s).
- 1.2.15. This RFP is issued, and all subsequent procurement documentation, if any, including amendments thereto and Briefing Notes will be issued subject to applicable legislation in South Africa. Interested Parties, Respondents, recipients, Bidders, Members, and all persons responding to this RFP and other subsequent procurement documentation are expected to comply with applicable legislation and laws, in participating in this procurement.

### 1.3. Brief Introduction of the Project

- 1.3.1. The institutional function of the Municipality for purposes of this Project is, *inter alia*, provide water and sanitation services, to control the quality of water and sanitation facilities, provide, and maintain equipment, vehicles and water and sanitation facilities within the boundaries of the Municipality.
- 1.3.2. This RFP Phase 1 document sets out key information for Interested Parties to prepare and submit their Responses and Interested Parties and Respondents in preparing their Proposals to the Municipality. The Municipality is keen to receive comprehensive, competitive and robust bids, each with attractive yet functional and cost-effective solutions for the provision of sewage facilities and wastewater treatment services at the uMdloti Project Site and Umkomaas Project Site and the required Transmission Pipelines from the Existing STPs to the New Facilities.
- 1.3.3. Interested Parties, Respondents and ultimately Bidders must take note that the award of the contract (Concession Agreement) will be governed or regulated by applicable procurement legislation as detailed later in this RFP Phase 1 Volume 1.
- 1.3.4. For the potential investor(s), the Project offers an opportunity to provide the Municipality with the design, construction, finance, operation and maintenance of the two New Facilities, the Transmission Pipelines and decommissioning of the

Existing STPs. The solicitation is for a PPP type relationship with the Successful Bidder accepting all the manageable risks in exchange for an affordable Tariff on a regular basis.

- 1.3.5. The Municipality has resolved to adopt a PPP model for procuring the Project Deliverables. The PPP model aims to achieve substantial (but manageable) risk transfer to the Successful Bidder, who offers an affordable proposition to the Municipality yielding significant value for money. As with other PPP initiatives within South Africa, this Project aims to create a long-term public-private-sector partnership compliant with the MFMA, its regulations and other applicable legislation.
- 1.3.6. The Project Term will comprise a period of no more than 32 (thirty-two) years inclusive of the design and construction stage for the provision of the Project Deliverables. The Successful Bidder will receive compensation in the form of affordable Project Deliverables and raw sewage actually treated.

The Successful Bidder will be required to assume the project life-cycle risks (including design, construction, financing, operation (facilities management), and maintenance risks). Once Services have commenced, the Successful Bidder will be entitled to receive a Tariff in accordance with the provisions of the Concession Agreement.

## 2. **SECTION 2 – PURPOSE OF THE RFP AND RFP FRAMEWORK**

### 2.1. **General Request for Proposals**

- 2.1.1. The RFP Phase 1 Volume 1 and Volume 2 was made available by the Municipality for all Interested Parties, Respondents and Bidders, following the publication of an advertisement inviting parties interested in participating in the Project procurement process.
- 2.1.2. The outline of the RFP release process is as follows –
- (a) the Municipality will issue, or make available to the public at large, this RFP Phase 1 Volume 1 (with its Annex A, Appendix and Annexures) and Volume 2 (with its Schedules);
  - (b) Interested Parties who wish to participate in the optimisation process for the development of Volume 2 of RFP Phase 2, after having received the RFP, are provided with an opportunity to submit their mark-up to the RFP Phase 1 Volume 2 for consideration by the Municipality. Respondents who submit their mark-up to the RFP Phase 1 Volume 2 are required to submit their Response, comprised of a mark-up of the draft Concession Agreement and a completed Respondent Information Form, in the form prescribed in this RFP, no later than the Response Submission Date;
  - (c) following conclusion of the RFP Phase 1 optimisation period, the Municipality will update Volume 1 (*Instructions to Bidders*) and revise Volume 2 (*Concession Agreement*) as appropriate, and issue to the world at large RFP Phase 2 (Volumes 1 and 2) inviting Interested Parties and Respondents to submit their Proposals.
- 2.1.3. Each Bidder will, at all times, be required to maintain the validity of its Bid Bond.
- 2.1.4. It is the intention of the Municipality, upon receipt of Proposals (in response to RFP Phase 2) to consider and evaluate the Proposals and select a Preferred Bidder and, if appropriate, a Reserve Bidder, having regard to the extent to which each Proposal is likely to achieve the Project objectives applying the evaluation criteria set out in section 9.2 below.

### 2.2. **Purpose of the Request for Proposals**

- 2.2.1. The purpose of this RFP Phase 1 is to afford an opportunity to Interested Parties to make input toward the development of RFP Phase 2 (Volume 2), by soliciting the views of Interested Parties on the following matters, namely –
- (a) mark-up and reason(s) thereof on the Concession Agreement with the object of facilitating where possible agreement on all key contractual issues affecting value for money, affordability and risk allocation;
  - (b) the Determination of Payments (Schedule 7 to the Concession Agreement);
  - (c) Project Insurances (clause 19 read with Schedule 5 (*Minimum Insurance Requirements*) of the Concession Agreement);
  - (d) Schedule 3 (*Technical Specifications*) of the Concession Agreement.
- 2.2.2. The purpose of RFP Phase 2 will be to:

- (a) set out the rules of participation in the response process referred to in RFP Phase 1 and later RFP Phase 2;
- (b) provide information in relation to the broader vision of the Municipality with regard to the framework of the Project;
- (c) provide details of the remainder of the procurement process, including time frames and milestone;
- (d) set out the framework and information requirements within which Proposals and responses to RFP Phase 2 should be made;
- (e) request from each Interested Party and Respondent a fully developed, comprehensive, firm and Debt Provider underwritten Proposal in the prescribed format and capable of acceptance by the Municipality;
- (f) seek agreement on all key contractual issues affecting price and risk allocation, including performance regimes;
- (g) set out the evaluation criteria that the Municipality will apply in considering and assessing Proposals; and
- (h) enable the Municipality to select a Preferred Bidder.

2.2.3. This document also contains important information concerning the RFP process and the conduct of Interested Parties, Respondents, Bidders, Members and their respective advisors. Particular attention is drawn to the provisions of this RFP relating to contact with the Municipality, confidentiality, canvassing, non-collusion and Respondent and Bidder changes. Failure to comply with any one or more of these provisions may lead to exclusion from any further participation in the Project procurement process. This decision will be at the sole discretion of the Municipality.

### 2.3. **The RFP as a Suite of Documents**

This RFP consists of the following documents:

- 2.3.1. Volume 1: Instructions to Bidders (this document) with its Annex A, Appendix and Annexures; and
- 2.3.2. Volume 2: Draft Concession Agreement with its Schedules and Schedules.

### 3. **SECTION 3 – PROJECT**

#### 3.1. **Background Information**

Interested Parties, Respondents and Bidders are referred to Annex A (*Project Description Overview*) for a technical overview of the scope of the Project.

#### 3.2. **Objectives of the Project**

3.2.1. The primary goal of the Project procurement process is to conclude a Concession Agreement with the Bidder which the Municipality has determined as best able to deliver the Project Deliverables and to achieve the strategic objectives of the Municipality through the Project.

3.2.2. In accordance with the strategic objectives of the Municipality in respect of water and sanitation, the Project is focused to meet the operational requirements of EWS, which underpin its operational philosophy, namely:

- (a) quality of service;
- (b) efficiency; and
- (c) full compliance with standards and regulations.

3.2.3. The Project is planned to actively promote the Specific Goals of the Municipality and to maximise and entrench the optimal involvement, of Entities Majority Owned by Black People in the entire life-cycle of the Project and promote sustainable local economic development. This will include:

- (a) Ownership, which promotes ownership by Black People in the Concessionaire;
- (b) Social Upliftment which encourages the involvement of the Concessionaire in corporate and social investment initiatives through (i) clean up campaigns (ii) social upliftment programmes, (iii) bursaries and/or (iv) infrastructure repairs and maintenance programmes; and
- (c) Promotion of SMMEs Owned by Black People, to address the Municipality's requirements for subcontracting to Entities Majority Black People.

3.2.4. In addition to the overall objectives of the Project, a number of specific project goals have been identified. Bidders are required in their Proposals to demonstrate how they intend to address each of the Project goals. The Project goals are as follows:

- (a) effective treatment of sewage, to the required output standards;
- (b) procurement of a cost effective, consolidated and legislation compliant working environment within an optimal project structure;
- (c) achievement of a successful long term strategic partnership between the Municipality and the Successful Bidder;
- (d) maximising and entrenching the optimal involvement of target groups in the entire life-cycle of the Project, meeting and exceeding the Department's empowerment targets and promoting sustainable local economic development;

- (e) successful management of key stakeholder relationships in the preparation and implementation of the Project;
- (f) successful achievement of the Technical Specifications developed for the Project; and
- (g) creation of sustainable jobs during the operational phase of the Project.

### 3.3. Project Term

The Project Term will be comprised of an operations period of no more than 32 (thirty-two) years for the provision of Project Deliverables, inclusive of the design, construction commissioning stage and if so instructed by the Municipality the Potential Increased STP Capacity in accordance with the Concession Agreement.

### 3.4. Contracting Entity

- 3.4.1. The contracting entity with which the Municipality intends to contract for the Project is expected to be a single legal entity, created specifically for the Project, competent to transact with the Municipality, with its registered address and principal place of business being within the Republic of South Africa, and which must for tax purposes be a resident in South Africa.
- 3.4.2. The Municipality intends selecting (subject to other criteria set out in this RFP Phase 1 and RFP Phase 2) as Preferred Bidder, the Bidder which, in its Proposal demonstrates the greatest willingness to accept a range of risks throughout the Project Term, given that affordability, value for money and substantial risk transfer are essential components of the Project.
- 3.4.3. The structure of the legal entity of the Bidder will have to comply with the commitments made by the Bidder in relation to Ownership.

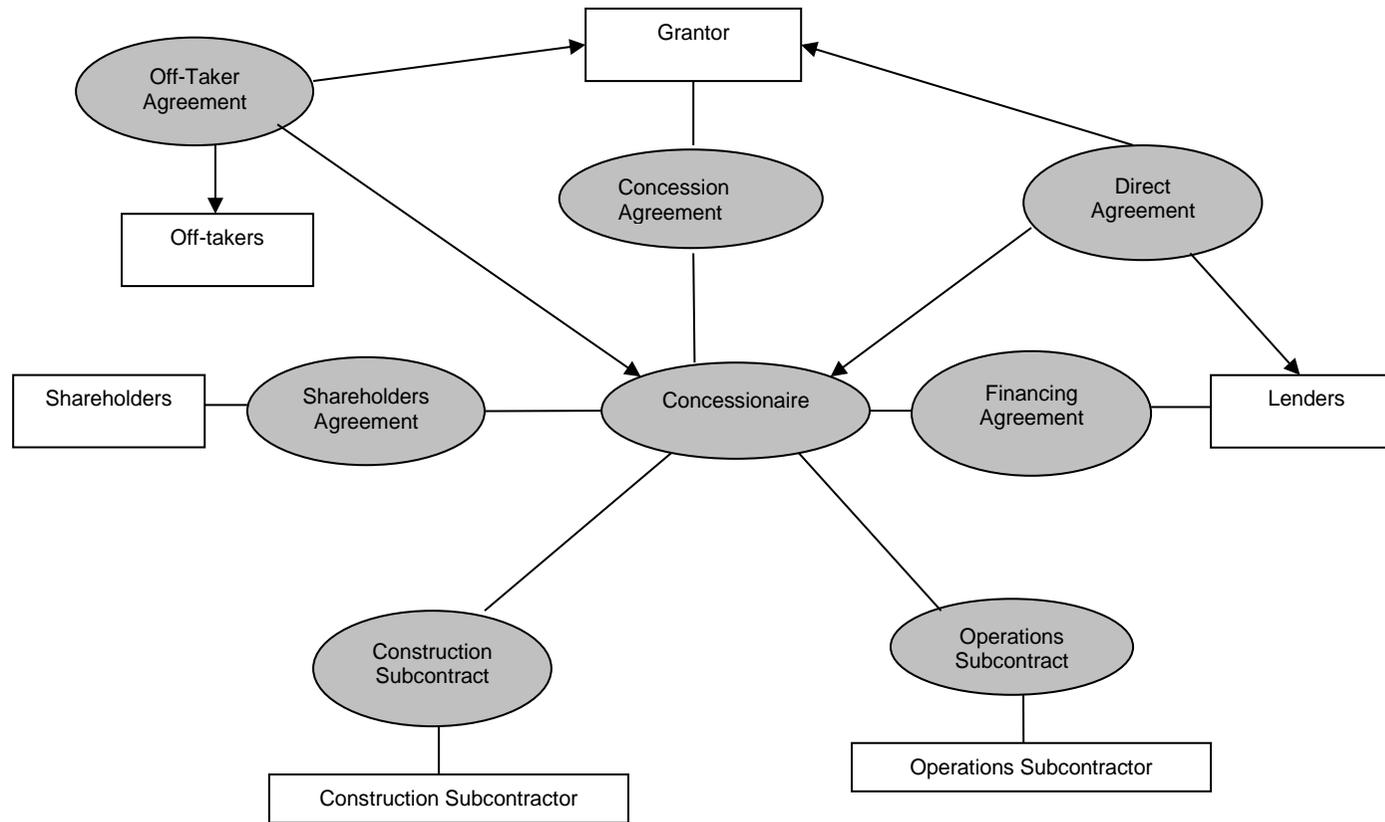
### 3.5. National Industrial Participation Programme

- 3.5.1. The National Industrial Participation ("NIP") Programme is a policy of Government which is applicable to all Government procurement contracts that have an imported content and became effective on the 1 September 1996.
- 3.5.2. NIP has been defined as the third and fourth tier of a four-tier public procurement levers system for local content, through which Government can leverage the development of industries within South Africa. The four tiers are (i) designation of sectors for local content in terms of the PPPFA Regulations, (ii) Competitive Supplier Development Programme, (iii) Direct NIP, and (iv) Indirect NIP.
- 3.5.3. In terms of the NIP Programme, the NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million will have a NIP obligation.
- 3.5.4. Interested Parties, Respondents and Bidders are advised that, in the view of the Municipality, the Project qualifies for the NIP Programme and the Successful Bidder will be required to comply with the requirements of the NIP Programme.
- 3.5.5. For purposes of this RFP, Bidders are required to complete and submit Annexure 1 (*Mandatory Proposal Requirements* (Annexure 1D15 - MBD5 - National Industrial Participation Programme) declaration together with their Proposal.

- 3.5.6. In terms of the NIP Programme, Preferred Bidders are required to, immediately after the award of a contract that is in excess of R10 million (ten million Rands), submit details of such a contract to **dtic** for reporting purposes.
- 3.5.7. Further information regarding the NIP Programme, is available from **dtic** and from the website [www.thedtic.gov.za](http://www.thedtic.gov.za).

### 3.6. Funding Structure and Contractual Matrix

- 3.6.1. It is anticipated that substantial funding for the Project will be provided by limited-recourse debt to be made available by Debt Providers (other than the shareholders or related parties of the Successful Bidder) who will look primarily to the cash flows generated from the Project (that is, the Tariff to be made by the Municipality for the delivery of the Project) to service that debt. Since the cash flows generated in the Project will depend on the sustained delivery by the Successful Bidder of the agreed services at the prescribed performance levels, poor performance by the Successful Bidder will put the servicing of such debt at risk. These Debt Providers will be able to mitigate such risk in part through step-in and substitution mechanisms provided for in terms of a direct agreement to be concluded between them, the Successful Bidder and the Municipality.
- 3.6.2. The financial commitments in the Concession Agreement shall be denominated in Rands. The concessionaire will be responsible for and take the risk of currency, interest rate, and other fluctuations and will to that extent make provision within its costs to the Municipality for any hedging arrangements which the Successful Bidder may require in relation to its obligations under the Concession Agreement.
- 3.6.3. No government guarantee will be furnished by the provincial government of Kwa-Zulu Natal, or the Government to the Successful Bidder, or any of its shareholders, or Debt Provider(s).
- 3.6.4. The basic contractual arrangements posed by the funding structure referred to above are reflected in the following organogram.



#### 4. **EXTERNAL FRAMEWORK**

##### 4.1. **Governing Law**

- 4.1.1. The primary enabling legislation for the Project is the MFMA together with the Municipal PPP Regulations, which regulate and create the competency of the Municipality to implement the Project.
- 4.1.2. The procurement of the Project, Proposals, subsequent documentation, the Concession Agreement and any other contracts arising therefrom, if any, are and will be governed by and construed according to the laws of the Republic of South Africa.
- 4.1.3. Procurement of the Project will be carried out following prescribed legislations, which includes the Constitution, the PPPFA, and the MFMA.

##### 4.2. **Environmental Framework**

Bidders shall, as part of their Proposals, provide an Environmental Management and Monitoring Plan describing their approach to ensuring the successful delivery of the completed uMdloti STP and Umkomaas STP. The plan should monitor the implementation of any required mitigation measures and the impacts of the Project during the construction and operational phases of the Concession Agreement. It should include but not be restricted to the approach towards addressing key issues relating to the design and construction of the uMdloti STP and the Umkomaas STP, environmental issues, the construction project management and how all the main professional services will be integrated into the Proposals.

##### 4.3. **Project Site Acquisition and Transmission Pipeline Route Land**

- 4.3.1. The Municipality will procure that the Project Sites that are registered in its name, and failing that in respect of any of the Project Sites, the Municipality will conclude an appropriate land lease to enable implementation of the Project. The Municipality will continue, subject to legislation, to own the Project Sites for the duration of the Concession Agreement, or have appropriate real rights thereto.
- 4.3.2. The Municipality will procure the requisite real rights over land on which any Transmission Pipeline(s) for the Project is to traverse, and ensure that those real rights (servitude or right of way) continue for the duration of the Concession Agreement.
- 4.3.3. All land required for the Project (Project Sites and Transmission Pipeline route land) will be made available by the Municipality to the Successful Bidder on a no charge or fee basis.
- 4.3.4. The land and all improvements thereon shall at all times for the duration of the Project Term, be owned by the Municipality.

##### 4.4. **Integration with other Role Players**

- 4.4.1. The Municipality is assisted by the Transaction Advisory team in the Project.
- 4.4.2. Several committees have been formulated to deal with the different aspects of this Project. These committees individually report to the Project Supervision Committee.

4.4.3. The role players for purposes of this Project are:

- (a) eThekweni Municipality;
- (b) KZN Department of Economic Development, Tourism and Environmental Affairs;
- (c) Dube Tradeport;
- (d) SAPPI SAICCOR;
- (e) CoGTA – views and recommendations;
- (f) KZN Department of Water and Sanitation – views and recommendations;
- (g) National Treasury – GTAC (advisory role) and Budget Office (Treasury Views and Recommendations);
- (h) Provincial Treasury – concurrence and support role;
- (i) SITA – review and certification of information technology specifications; and
- (j) Transaction Advisor – advisory role.

## 5. **PROJECT FRAMEWORK**

### 5.1. **Liaison Structure**

5.1.1. The Municipality has implemented a liaison structure whereby the Project has been allocated a Project Officer. Interested Parties, Respondents and Bidders are advised to address all correspondence relating to this Project to the Project Officer as indicated below

a) Mr Sydney Masha, Project Officer for the Municipality on this project

b) email: [Sydney.Masha@durban.gov.za](mailto:Sydney.Masha@durban.gov.za)

5.1.2. All queries must be addressed to the Project Officer in writing. Queries may only be submitted between the stipulated dates as indicated in the Procurement Milestone Schedule. Further, no queries will be accepted or replied to after the Last Date for Bidders to Submit Queries, which is also indicated in the Procurement Milestone Schedule.

5.1.3. In addressing queries (or questions) to the Project Officer, Interested Parties, Respondents and Bidders are required to indicate the volume of the RFP and/or Annexures of the RFP to which their query (or question) relates. Any queries (or questions) raised without the requisite cross referencing to a volume(s) of the RFP and/or the relevant Annexure(s) may be rejected by the Municipality. If a query (or question) does not relate to a specific volume(s) of the RFP and/or an Annexure, then the query (or question) must clearly state that.

5.1.4. Queries will be responded to in writing in the form of a Briefing Note or a Clarification Note. The Municipality will endeavour to reply within ten (10) working days of receipt of a query, irrespective of whether the urgency of queries has been categorised by Interested Parties, Respondents and Bidders as 'high', 'medium' or 'low'. The Municipality will treat each query with the same level of importance and/or urgency and queries will be responded to in the order that they are received by the Municipality.

5.1.5. No oral questions or submissions of any type or form will be permitted.

5.1.6. Interested Parties, Respondents and Bidders, Members, their agents and advisors and related parties must not contact the employees, advisors of the Municipality or any of the Municipality official(s) (except the person referred to in section 5.1.1 above for those purposes) who may be associated with the Project or its solicitation, without the prior written approval of the Department, save in the case of pre-existing commercial relationships, in which case contact may be maintained only with respect thereto and, in making such permitted contact, no party may make reference to the Project or its solicitation. This no contact policy does not apply to any information deemed to be in the public domain, or which is readily available from organs of State, which are the repository of such public information.

### 5.2. **Financial Framework**

5.2.1. This Project offers an opportunity to provide the Municipality with the financing, design, construction, operation and maintenance of the New Facilities. The Project Term is no more than 32 years for the design, construction and commissioning, operation and maintenance of the New Facilities as a PPP addressing the technical, legal, financial, and B-BBEE solutions for the Project. The Municipality

has resolved to adopt a PPP model for procuring the Project Deliverables. The PPP model aims to achieve substantial (but manageable) risk transfer to the Successful Bidder, who offers an affordable proposition to the Municipality yielding a significant value for money proposition to Municipality and must be affordable to the Municipality.

5.2.2. Affordability

- (a) A feasibility study to evaluate the viability of the Project has been undertaken and has indicated approximate affordability levels that have been reviewed by National Treasury and by Provincial Treasury and as such the council of the Municipality has issued an authorisation to proceed with the procurement phase of a PPP.
- (b) The Tariff will only become payable from Service Commencement, if the New Facilities commence operating on the same date. However, if Commencement Operation is on different dates than the applicable Tariff will become payable from the applicable date.

5.2.3. Financial Proposal Structure

The Proposal must be developed to reflect the risk transfer obligations reflected in the draft Concession Agreement (in RFP Phase 2 Volume 2) and the required Technical Specifications as detailed in Schedule 3 (*Technical Specification*) of the Concession Agreement. All information and numbers provided must reconcile fully and be co-ordinated to all aspects of the Project and be comprehensively reflected in the financial model called for in Annexure 4 (*Financial Proposal Requirements*) to this Volume 1.

5.2.4. Liquidated Damages Regime

Bidders must adhere to the liquidated damages based on availability and performance as contained in Schedule 14 to the Concession Agreement – RFP Phase 2 Volume 2.

5.2.5. Foreign Currency

- (a) There is no restriction on the choice of currency in which finance might be raised by a Bidder and any associated investment. In the event that any currency other than the South African Rand is utilised, clear statements must be made about the exchange rates used and the basis of those exchange rates and any hedging structures that will be introduced.
- (b) All payments by the Municipality will be denominated in the South African Rand. The Municipality will not accept currency risk. Bidders are required to indicate their acceptance of this statement.

5.2.6. Debt Funding Reduction

Bidders are to note the implication of debt reduction on account of the proposed Transfer of the Transmission Pipelines.

**5.3. Insurance Framework**

- 5.3.1. Clause 24 (*Insurance*) and Schedule 5 (*Minimum Insurance Requirements*) of the Concession Agreement contain the minimum insurance requirements of the Municipality to be procured by the Successful Bidder. Bidders should not view the stated minimum insurance as final, the stated minimum insurances may be added to and or reduced, however this should be well motivated and such analysis must be included in the Proposal. To the extent that additional insurances are required and same have a cost implication, the additional costs thereof may be determined by the Municipality not to form part of the Tariff. Where Bidders are of the opinion that a specific risk may be self-insured, Bidders should incorporate this view with a full motivation as to the applicability of such self-insurance.
- 5.3.2. The placing of insurance is subject to the Short-Term Insurance Act, 1998, which requires that all short-term insurance be placed with insurers registered in terms of that Act (being only South African companies) or Lloyd's. That Act appears to limit access to the worldwide insurance market if such insurance is available in South Africa.

#### 5.4. **Legal Framework**

- 5.4.1. The Municipality's competency to implement this Project as a PPP has been established with reference to, *inter alia*, the Constitution, MFMA, and Municipal Structures Act, 32 of 2000.
- 5.4.2. The Municipality may enter into a Concession Agreement, but only if the Municipality can demonstrate that the agreement will: -
- (a) provide value for money to the Municipality;
  - (b) be affordable for the Municipality; and
  - (c) transfer appropriate technical, operational and financial risk to the Successful Bidder;
- 5.4.3. The Concession Agreement must take into account any prescribed regulatory framework for PPPs in the national and provincial sphere of government.
- 5.4.4. Procurement of the Project is being and will continue to be undertaken in accordance with applicable legislation, which includes the Constitution and the PPPFA.
- 5.4.5. The Concession Agreement, once fully concluded shall constitute the entire agreement between the parties, and serve as the sole basis of determining the relationship between the parties in the implementation of the Project. No right of recourse shall exist other than as contained in the Concession Agreement.
- 5.4.6. National Treasury has established a dedicated PPP Unit within GTAC to support the implementation of the Municipal PPP Regulations with regards to PPP arrangements. In terms of the MFMA and Municipal PPP Regulation on the procurement and implementation of a public private partnership the Municipality has solicited the Treasury Views and Recommendations: I in relation to the feasibility study, Treasury Views and Recommendations: IIA, in relation to the preparation and submission of the Bid Documents including the draft Concession agreement. Treasury Views and Recommendations: IIB as well as Treasury Views and Recommendations: III will be obtained by the Municipality.

5.4.7. The procurement process for the Project has been designed and implemented to comply with applicable legislation and procurement policy of the Municipality, which include, *inter alia*, the Constitution, MFMA, Municipal PPP Regulation, PPPFA, B-BBEE Act and National Treasury Municipal Service Delivery and PPP Guidelines.

## 5.5. Technical Framework

Interested Parties are referred to Annex A (*Project Description Overview*), for a technical overview of the Project.

## 5.6. Economic Development

Economic Development for purposes of the Project is a term used to refer to the Specific Goals.

### 5.6.1. Regulatory Framework for Economic Development

(a) In designing requirements pertaining to Economic Development, the Municipality had regard to the existing policy framework and legislation regarding Economic Development and this was used to design an appropriate approach to Economic Development for this Project.

(b) The existing policy framework and legislation includes, the:

- (i) Constitution;
- (ii) PPPFA and the PPPFA Regulations;
- (iii) B-BBEE Act and B-BBEE Codes;
- (iv) Amended B-BBEE Codes;
- (v) the Municipality Supply Chain Management Policy;
- (vi) Preferential Procurement Policy Guideline
- (vii) Construction Sector Codes;
- (viii) BEE Code for PPPs;
- (ix) National Development Plan Vision 2030;
- (x) New Growth Plan; and
- (xi) Local Procurement Accord.

### 5.6.2. Economic Development Objectives

The Economic Development Objectives for the Project are in line with applicable legislation and the Preferential Procurement Policy Guideline pertaining to the Specific Goals and are outlined below as follows:

(a) Ownership, to address the PPPFA Regulations and Preferential Procurement Policy Guideline requirements in respect of the specific goal for ownership by Black People in the Concessionaire;

- (b) Social Upliftment, to address the PPPFA and PPPFA Regulations' and Preferential Procurement Policy Guideline which encourages the involvement of the Concessionaire in corporate and social investment initiatives through (i) clean up campaigns (ii) social upliftment programmes (iii) bursaries and/or (iv) infrastructure repairs and maintenance programmes; and
- (c) Promotion of SMMEs Owned by Black People, to address the PPPFA, PPPFA Regulations and the Preferential Procurement Policy Guideline requirements for subcontracting to Entities Majority Owned by Black People.

5.6.3. Introduction to the Economic Development Requirements

- (a) The following two-stage evaluation of the Economic Development requirements will be undertaken by the Municipality:
  - (i) Stage 1 – where compliance with the Economic Development Requirements will be evaluated; and
  - (ii) Stage 2 – where Proposals will be scored for the Specific Goals, out of 10 (ten) points in accordance with the Preferential Procurement Regulations, and as set out below:

<b>Ownership Goal</b>		
Goal Weighting: 33.334%		
The tendering entity's Percentage Ownership, in terms of the Ownership Category(s) listed below, is to be used in the determination of the tenderer's claim for Preference Points.		
<b>Ownership Categories</b>	<b>Criteria</b>	<b>90/10</b>
Race: Black (w1)	Equals 0%	0
	Between 0% and 51%	3.5
	Greater or equal to 51% and less than 100%	7.5
	Equals 100%	10
	<b>Maximum Goal Points:</b>	10

<p><b>Proof of claim as declared on MBD 6.1</b> (1 or more of the following will be used in verifying the tenderer's status)</p> <ul style="list-style-type: none"> <li>• Companies and Intellectual Property Commission registration document (CIPC)</li> <li>• CSD report.</li> <li>• B-BBEE Certificate of the tendering entity.</li> <li>• Consolidated BBBEE Certificate if the tendering entity is a Consortium, Joint Venture, or Trust (Issued by verification agency accredited by the South African Accreditation System).</li> <li>• Agreement for a Consortium, Joint Venture, or Trust.</li> </ul>

<p><b>RDP Goal: Social Upliftment of communities</b></p> <p>Goal Weighting: 33.333%</p> <p>The tendering entity's Involvement in Corporate Social Investment initiatives, in terms of the categories below, is to be used in the determination of the tenderer's claim for Preference Points for this Specific Goal.</p>	
<b>Corporate Social Investment</b>	<b>90/10</b>
Clean-up campaigns	2.5
Social upliftment programmes	5
Bursaries	7.5
Infrastructure repairs and maintenance	10
<b>Maximum Goal Points:</b>	10
<p><b>Proof of claim as declared on MBD 6.1</b> (1 or more of the following will be used in verifying the tenderer's status)</p>	

- List and value of projects identified through the local councillor/chief in a letter form.

(as a percentage of the tendered value)

**RDP Goal: The promotion SMMEs that are 51% black owned – Contracts > R5m**

Goal Weighting: 33.333%

The tendering entity's **Commitment to Sub-Contracting** (to Sub-Contractors conforming to the specified ownership demographics) the **percentage works**, as specified below, is to be used in the determination of the tenderer's claim for **Preference Points** for this Specific Goal.

<b>Contract Participation Goal</b>	<b>90/10</b>
Sub-contracting 0%	0
Sub-contracting <25%	2.5
Sub-contracting 25%	5
Sub-contracting $\geq$ 25% and <50%	10
<b>Maximum Goal Points:</b>	10

**Proof of claim**

- Contract Participation Goal Plan (% work to be allocated)
- Database of local contractors
- Service level agreement between contract and sub-contractor
- Work and payment schedule
- Legal documentation of sub-contractor
- Number of jobs created through sub-contractor.

- (b) In respect of the Economic Development Requirements in relation to Stage 1 of the evaluation process, each Bidder's Proposal will be assessed in order to determine whether the supporting documentation and information required to establish eligibility to be scored has been provided. The supporting documentation and information required is detailed in Annexure 6 (*Economic Development Proposal Requirements*) of this RFP.
- (c) Bidders will only be scored for those Economic Development elements for which they have submitted the requisite supporting information and documentation. The Municipality will only consider a Bidder's Proposal in terms of Stage 2 insofar as that Bidder has submitted the supporting information and documentation specified in Annexure 6 (*Economic Development Proposal Requirements*), to the Municipality's satisfaction.

5.6.4. Overview of Stage 1 Economic Development Functionality Requirements

- (a) Three (3) key elements will be assessed in the Economic Development evaluation. In relation to the Specific Goals, Bidders will have to submit all of the supporting information and documentation specified in Annexure 6 (*Economic Development Proposal Requirements*) in order to be scored for those Specific Goals in Stage 2.
- (b) The Economic Development elements referred to in 5.6.4(a) above and summarised in 5.6.4(c), (d) and (e) below are detailed in Annexure 6 (*Economic Development Proposal Requirements*) of this RFP.
- (c) Ownership
  - (i) The Municipality, through the Project, wishes to encourage and facilitate ownership by Black People in the Concessionaire.
  - (ii) There is no minimum ownership target which Bidders are required to achieve. Bidders will be scored on the commitments to Ownership.
  - (iii) Bidders must provide a detailed breakdown of the total shareholding in the Concessionaire held by Black People. Bidders should note that Ownership is to be measured using the Flow-Through Principle.
  - (iv) In order to be eligible to be scored for commitments made in relation to Ownership, Bidders are required to submit all of the supporting information and documentation specified in Annexure 6 (*Economic Development Proposal Requirements*) in support of their commitments on Ownership.
- (d) Social Upliftment
  - (i) Social Upliftment seeks to address the socio-economic needs of communities. The Municipality sees an opportunity for the Project to have a positive socio-economic impact in various communities.

- (ii) Social Upliftment is intended to contribute towards broad social and economic advancement of communities by encouraging the involvement of the Concessionaire in corporate and social investment initiatives.
  - (iii) In order to be eligible to be scored for commitments made in relation to the Social Upliftment, Bidders are required to submit the information specified in Annexure 6 (*Economic Development Proposal Requirements*) in support of their commitments on the Social Upliftment.
- (e) Promotion of SMMEs Owned by Black People.
- (i) The Municipality, through the Project, intends to facilitate the development of enterprises owned by 51% black owned which are SMME's.
  - (ii) In order to be eligible to be scored for commitments made in relation to the promotion of SMME's Owned by Black People, Bidders are required to submit all of the supporting information and documentation specified in Annexure 6 (*Economic Development Proposal Requirements*) in support of their commitments in for Promotion of SMME's Owned by Black People. .

5.6.5. Overview of Stage 2 – Economic Development Scoring

- (a) As indicated above, Bidders will only be scored for the Specific Goals out of 10 (ten) points in accordance with the Preferential Procurement Regulations.
- (b) Bidders are also required to complete the Preference Points Claim Form (MBD 6.1).
- (c) For purposes of evidencing the Bidder's claims in respect the Specific Goal, the Bidder must include, in its Proposal, all of the supporting information and documentation specified in Annexure 6 (*Economic Development Proposal Requirements*).

## 6. **PROJECT PROCUREMENT PROCESS, TIMETABLE AND DUE DILIGENCE**

### 6.1. **Project Procurement Process**

6.1.1. The Project procurement process philosophy is based, amongst other things, on the following considerations:

- (a) an accelerated procurement strategy;
- (b) interaction with Respondents at an early stage; and
- (c) a curtailed negotiation phase with prompt Financial Close.

6.1.2. The Project procurement process consists of one phase, Request for Proposal, which entails:

- (a) issuance of this RFP Phase 1;
- (b) issuance of the final RFP Phase 2 RFP;
- (c) submission of Proposals;
- (d) evaluation of Proposals;
- (e) selection and announcement of Preferred Bidder, and possibly a Reserve Bidder; and
- (f) Commercial Close followed by Financial Close.

### 6.2. **Meetings**

#### 6.2.1. Interested Party and/or Respondent interactions

In order to ensure that the Proposal Submission Date is met and to enable well thought through Proposals, the procurement process envisages ongoing interactions with Interested Parties and/or Respondents, including but not limited to an Interested Party conference(s), question and answer sessions, Project Site visit(s), RFP Phase 1 optimisation, and question and answer sessions in RFP Phase 2, that are structured in such a way so as to not prejudice the process or compromise the competitive position of any Interested Party or Respondent, but that will enable transparency and a competitive outcome that will benefit the Municipality.

#### 6.2.2. Proposal Presentations

After the Proposal Submission Date, Bidders may be requested to prepare a presentation of their Proposals to be made to in the Municipality at a date and time to be advised after Proposal Submission Date.

#### 6.2.3. Further meetings

The Municipality reserves the right to arrange further Bidder interviews to further clarify matters relating to submitted Proposals.

### 6.3. Indicative Project Procurement Programme

The milestones and indicative dates below are a guideline to the Project procurement program.

Item	Milestones	Date
1.	Placement of the Advertisement for the RFP and Issuance of RFP Phase 1	Month 0
2.	Compulsory Briefing for Respondents	Month 1
3.	Last Date for Respondents to Submit Queries	2 weeks later
4.	Response Submission Date	Month 2
5.	Submission of Respondent comments and mark-up to RFP Phase 1 Volume 2 and Respondent Information Form	Month 3
6.	Q&A and mark-up of CA	Month 4
7.	Issue RFP Phase 2	Month 5
8.	Last Date for Respondents / Bidders to Submit Queries	2 weeks later
9.	Submission Date for Proposals	Month 6
10.	Anticipated announcement of Preferred Bidder	Month 9
11.	Conclusion of Negotiations (Contract signing /Commercial Close)	Month 10
12.	Financial Close	Month 22
13.	Start of Construction	Month 24
14.	Service Commencement	

### 6.4. Bidder Due Diligence

#### 6.4.1. Additional Briefing Session

As the Municipality has initiated upfront discussions with Respondents for purposes of optimising the RFP prior to issuance of RFP Phase 2, the Municipality sees no need for an additional Briefing Session, although the Municipality reserves the right, in its sole discretion, to require Respondents to attend any additional Briefing Session.

#### 6.4.2. Organised Site Visits

The Municipality will inform all Interested Parties of the dates for an organised site visit(s).

6.4.3. Access to Virtual Data Room

- (a) Key information in respect of the Project will be hosted at the following web address <https://www.onedrive.com>. Bidders will be required to fill a form requesting the Municipality access to the Virtual Data Room. Aforesaid form is annexed to this RFP as Annexure 1E VDR Undertaking.
- (b) Access to the Data Room will be at the discretion of the Municipality and subject to Bidders entering into such confidentiality undertaking(s) as the Municipality may require and compliance with the conditions of this RFP.

## 7. **INSTRUCTIONS TO BIDDERS**

### 7.1. **Who May Submit Proposals?**

Any Interested Party or Respondent, alternatively is a Member of an Interested Party or Respondent, who attended the compulsory briefing session.

7.2. A Tenderer will not be eligible to submit a tender if:

7.2.1 the Tenderer does not comply with the legal requirements as stated in the Employer's current SCM Policy.

7.2.2 the Tenderer cannot provide proof that he is in good standing with respect to duties, taxes, levies and contributions required in terms of legislation applicable to the work in the contract.

7.2.3 In the event of a Compulsory Clarification Meeting:

- i) the Tenderer fails to attend the Compulsory Clarification Meeting.
- ii) the Tenderer fails to have form "Certificate of Attendance at Clarification Meeting / Site Inspection" (ANNEXURE 1D1) signed by the Employer's Agent or his representative.

7.2.4 (in the case of JV submissions, two or more JV entities have common directors / shareholders or common entities tendering for the same works.

7.2.5 at the time of closing of tenders, the Tenderer is not registered on the National Treasury Central Supplier Database (CSD) as a service provider. In the case of a Joint Venture, this requirement will apply individually to each party in the Joint Venture.

7.2.6 The tenderer has not submitted, with this tender, a valid Letter of Good Standing from the Compensation Commissioner as proof of being registered and in good standing with the compensation fund. Reference is to be made to Returnable Document (ANNEXURE 1D5).

7.2.7 The tender fails to complete and sign the Declaration of Municipal Fees in ANNEXURE 1D1 "Returnable Documents" and submits the required documentation.

7.2.8 SCM Policy (Cl.14(4)) requires suppliers/ service providers/ contractors to be registered on the eThekwini Municipality Supplier Portal or be in a position to be so before the award.

In the event of the Tenderer not being registered on the eThekwini Municipality's Supplier Self Service Portal, the tenderer must register on the internet at <https://ethekwiniupplierportal.durban.gov.za/>

The following are to be noted:

- (a) The information for registration as in the possession of the eThekwini Municipality will apply.
- (b) It is the Tenderer's responsibility to ensure that the details as submitted to the Municipality are correct.
- (c) Tenderers are to register prior to the submission of tenders.

### 7.3. **Advisors and Debt Providers**

No Key Contractor or Sponsor or advisor may be a Member of, or in any way participate or be involved, whether directly or indirectly, with more than one Interested Party, Respondent or Bidder during any stage of the procurement process.

#### 7.4. **Submission of Proposals**

##### 7.4.1. Submission date

Proposals must be submitted no later than the Proposal Submission Date.

##### 7.4.2. Submitting a tender offer

Submissions must be submitted on official submission documentation issued (either in hard copy or in electronic format) by the eThekweni Municipality.

Identification details to be shown on each tender offer package are:

**Contract No. : WS-7795**

**Contract Title : Contract Title: multiple lines allowable**

The Employer's address for delivery of tender offers is:

**The Tender Box in the foyer of the Municipal Building**

**166 KE Masinga Road, Durban**

Parts of each tender offer communicated on paper shall be submitted as an original, plus 6 copies.

Tenderers are to include, with their paper ("hard copy") submission, a memory-stick containing an electronically scanned (300 dpi resolution) Public Document Format (PDF) copy of their complete bid submission. This PDF file should be named using the contract number and the Tenderer's name, e.g. "WS-7795 – Tenderers Name.PDF". The memory-stick must be labelled with the Tenderer's name and securely fixed to the paper submission. Furthermore, tenderers are to upload their complete tender submission on Supplier Self Service (SSS) portal.

Telephonic, telegraphic, telex, facsimile or e-mailed tender offers will not be accepted.

##### 7.4.3. Postponement of submission date

The Municipality reserves the right to postpone the Proposal Submission Date, however, Respondents and Bidders should not pre-empt or rely on any postponements of the Proposal Submission Date as the Municipality does not foresee any reasons for postponement at this stage.

##### 7.4.4. Late submissions

No late Proposal(s) or submissions will be accepted by the Municipality.

##### 7.4.5. Incomplete submissions

Incomplete submissions, namely submissions that do not contain a response to each of the six proposal requirements ((i) Mandatory Proposal Requirements, (ii) Qualification Criteria (iii) Technical Proposal Requirements, (iv) Financial Proposal Requirements, and (v) Legal Proposal Requirements will be marked as incomplete, and may, at the sole discretion of the Municipality, be rejected.

#### **7.5. Cost of Submitting Proposals**

- 7.5.1. Each Interested Party, Respondent and Bidder shall bear all costs associated with the preparation and submission of its Proposal(s), including all its own costs attendant on any following stages of the procurement process.
- 7.5.2. Should the process be terminated at any stage as a result of it being tainted by the corrupt activities of one or more of the Interested Parties, Respondents or Bidders whether in breach of the provisions of section 7.11 below or other applicable legal requirements, then the Municipality shall have the right to recover from the said Interested Party, Respondent or Bidder whose conduct has tainted the process any other damages or costs to the Municipality flowing from such termination.

#### **7.6. Issuance of RFP Documents**

All RFP documentation will be made available by the Municipality. Electronically downloaded documentation is obtainable from the National Treasury's eTenders Website or the eThekweni Municipality's Website at URLs:

- <https://www.etenders.gov.za/>
- <https://www.durban.gov.za/pages/business/procurement>

The entire downloaded document should be printed on white A4 paper (single-sided) and suitably bound by the tenderer.

#### **7.7. Confidentiality**

All Confidential Information Provided (including all copies thereof) remains the property of the Municipality and must be delivered to the Municipality on demand. Further, by receiving this RFP each Interested Party, Respondent or Bidder and each of its members agrees to maintain its submission in response to this RFP confidential from third parties other than the Municipality, and their officials, officers and advisors who are required to review the same for the purpose of procurement of the Project.

#### **7.8. Nature of Information Offered**

- 7.8.1. All materials and data which are submitted by Respondents and Bidders shall become the sole property of the Municipality, with the exception of copyrighted material, trade secrets or other proprietary information clearly identified as such by Respondents or Bidders. Respondents and Bidders shall be deemed by their submission of a Response and Proposal to agree to indemnify the Municipality and hold it harmless from any claim or liability and defend any action brought or legal step against the Municipality for its refusal to disclose materials marked

confidential, trade secret or other proprietary information to any person seeking access thereto.

- 7.8.2. The Municipality undertakes to keep confidential all information received from any Respondent and Bidder which is clearly identified as confidential in such Respondent's or Bidder's submission and or Response(s) or Proposal(s) and which is not already in the public domain or in the hands of the Municipality or required to be disclosed by legal or regulatory requirements on the condition that the Respondent or Bidder provides the Municipality with a written undertaking in its Response and Proposal to indemnify the Municipality in respect of any claim or liability, and any action brought against the Municipality or its refusal to disclose the relevant materials/data to any person seeking access thereto. Failure to include such an undertaking shall be deemed to be a waiver of the Respondent's or Bidder's right to exemption from disclosure and to authorise the Municipality to provide a copy of the relevant materials/data or any part thereof to third parties on due request.

#### **7.9. Bidder's Responsibilities**

If an Interested Party, Respondent or Bidder identifies any ambiguities, errors or inconsistency between the various documents that form part of this RFP, the Interested Party, Respondent or Bidder should notify the Municipality and the Municipality will provide clarification as to the intended position. To the extent that any inconsistency exists between the terms of the Concession Agreement and any other provision in the RFP, but such inconsistency is not identified by any Interested Party, Respondent or Bidder and/or clarified by the Municipality prior to submission of Proposals, the terms of the Concession Agreement shall prevail.

#### **7.10. Contact Policy**

Interested Parties, Respondents, Bidders and their constituent Members, as well as their respective agents and advisors and related parties may not contact the employees, advisors of the Municipality, or any other Municipality official(s) who may be associated with this solicitation (other than the Project Officer), without the prior written approval of the Project Officer save in the case of pre-existing commercial relationships, in which case contact may be maintained only with respect thereto and, in making such permitted contact, no party may make reference to this solicitation or procurement. This policy does not apply to any information deemed to be in the public domain, or which is readily available from public bodies in South Africa where such information is not Project specific and is not under the control of the Municipality.

#### **7.11. Corruption**

- 7.11.1. The Municipality is committed to ethical and clean business practice and will not tolerate any impropriety in any respect and in particular with regard to the Project.
- 7.11.2. If any Interested Party, Respondent, Bidder, or any of their employees, shareholders, representatives, advisors or agents make or offers to make any gift or other gratuity to any public official or employee of the Municipality, relevant authority, or consultant to the Municipality on the Project either directly or through an intermediary, the Municipality reserves the right to terminate its relationship, without prejudice to any of the Municipality's rights, with that Respondent, Bidder or responsible party/entity.

7.11.3. The Municipality and each the Respondents and Bidders must give an undertaking that everything possible would be done to avoid irregularities, bribery and corruption. The Municipality reserves the right to appoint an independent Probity Auditor to monitor in this regard the procurement process and the activities during the Project Term

7.11.4. The Municipality reserves the right to request Interested Party, Respondents and Bidders to conclude an anti-bribery pact agreement with the Municipality, at any time during the Project procurement process, to contractually bind all participants to the undertakings referred to in this section 7.10.

## 7.12. Supplementary Notices

### 7.12.1. Further information

The Municipality reserves the right to seek such further information from any Respondent or Bidder and/or their constituent members as it determines is required in its absolute and sole discretion.

### 7.12.2. Acknowledge addenda

(a) The Municipality will issue addenda for any and all communications to Interested Parties, Respondent and Bidders (including questions asked by Interested Parties, Respondents and Bidders and responses thereto by the Municipality) and for any amendment(s) which may be effected to the RFP. Briefing Notes will be sequentially numbered. It will be the responsibility of each Respondent and Bidder to ensure that it refers to and takes account of such Briefing Note(s) in its Response or Proposal. Addenda will be published, in electronic format, on the same platform(s) as the Tender Notification (ANNEXURE 1D9).

(b) Acknowledgement of receipt of the addenda will be by the return of the relevant completed, dated, and signed portion of the addenda, to the physical or email address as specified on the addenda. Failure of the tenderer to comply with the requirements of the addenda may result in the tender submission being made non-responsive.

### 7.12.3. No partnership, No offer

This RFP is not an offer to enter into contractual relations but merely a solicitation of Proposals to select a Preferred Bidder and to conclude negotiations with such Preferred Bidder. Proposals shall constitute an offer to enter into a contractual relationship with the Municipality on the basis of the Concession Agreement. No Proposal shall constitute an offer to enter into a partnership or any other contractual relationship with the Municipality.

### 7.12.4. Independent submission

(a) By responding to this RFP each Bidder and their constituent Members certifies that:

(i) Its Proposal has been submitted independently, without consultation, communication, or agreement for restricting competition, with any other Bidder or to any other competitor/potential competitor;

- (ii) Unless otherwise required by law, the relevant Proposal has not been knowingly disclosed by it and will not knowingly be disclosed by it prior to opening, directly or indirectly to any other Bidder, member of another Bidder or to any competitor/ potential competitor; and
  - (iii) No attempt has been made or will be made by it to induce any other person or firm to submit a Proposal for the purpose of restricting competition.
- (b) The attention of each Interested Party Respondent and Bidder and their constituent Members is also drawn to Section 4(1)(b)(iii) of the Competition Act, 1998 (Act No. 89 of 1998), which prohibits 'collusive tendering'.

7.12.5. Failure to comply with Mandatory Proposal Requirements and Qualification Criteria

Any material failure on the part of a Bidder to comply with the Mandatory Proposal Requirements (in Annexure 1 to Volume 1), as well as the Qualification Criteria (in Annexure 2), to the extent that same are not waived by the Municipality, may result in a Proposal being treated as non-compliant. Non-compliant responses may be rejected without being further evaluated.

7.12.6. Grounds for Disqualification

- (a) The following events, in addition to any other events contained in this RFP, constitute (without being exhaustive) those grounds upon which an Respondent or Bidder (or if appropriate in the Municipality's determination, any Member thereof) may be disqualified at any stage of the Project procurement process –
- (i) An infringement of the Confidentiality Undertaking by any Interested Party, Respondent, Bidder, Member or any director, officer, agent, trustee or advisor of the Interested Party, Respondent, Bidder and/or Member;
  - (ii) Past, present, or future participation by any Interested Party, Respondent, Bidder, Member or any director, officer, agent, trustee or advisor of the Interested Party, Respondent, Bidder and/or Member in any activity which may constitute corruption, bribery or impropriety, during the Project procurement process, or any other government procurement process;
  - (iii) An infringement by any Interested Party, Respondent, Bidder, Member or any director, officer, agent, trustee or advisor of the Interested Party, Respondent, Bidder and/or Member of any one or more of the provisions of section 7.10 (Contact Policy), or section 7.11 (Corruption), or section 7.12.4 (Independent Submission), or any portion of such section(s).
- (b) Any Interested Party, Respondent, Bidder and/or their constituent Member(s) that engages or communicates with any of the officials, agents or advisors to the Project on any matter concerning the Project at any time during the Project procurement process, without due authority of the Project Officer, may (at the sole discretion of the Municipality) be disqualified from further participation in the procurement process.

- (c) Each Member that is resident in South Africa for tax purposes is required to provide, as at submission date, a valid tax clearance certificate from the South African Revenue Service. Failure to provide such valid tax clearance certificate constitutes a ground of disqualification, and such Member may be disqualified, at the sole discretion of the Municipality.
- (d) Interested Party, Respondent and Bidders are required to submit correct and true information. Failure to provide correct and true information constitutes a ground of disqualification.
- (e) Any change in composition, control or structure of a Bidder or any one or more of its Members from that set out in their Proposal, without the prior written consent of the Municipality constitutes a ground of disqualification.

7.12.7. Undertaking by Bidders

By signing and submitting with its Proposal and cover letter in the form contained in Annexure 1A (*Cover Letter to Accompany Proposal Submission*) of this RFP Volume 1, each Bidder signatory warrants that, save as disclosed in writing to the Municipality, the Proposal and the information supplied by it is true and warrants further that, save for any disclosures in writing to the Municipality, each Member has:

- (a) Not passed a resolution nor is the subject of an order by the court for the company's winding-up;
- (b) Not been convicted of a criminal offence relating to the conduct of its business or profession;
- (c) Not committed an act of grave misconduct in the course of its business or profession;
- (d) Has fulfilled obligations relating to the payment of taxes under the laws of the Republic of South Africa; and
- (e) Not made any misrepresentation in providing any of the information required in relation to the above.

**7.13. Change in composition, control and membership structure of Bidders or Preferred Bidders and post-qualification**

7.13.1. No change in composition, control or structure of a Bidder, Preferred Bidder, Reserve Bidder and/or its Member(s) from that set out in their Proposal will be permissible without the prior written consent of the Municipality.

7.13.2. If there is a proposed change in composition, control or structure of a Bidder, Preferred Bidder, Reserve Bidder and/or its Member(s), then the Bidder, Preferred Bidder or Reserve Bidder must forthwith apply to the Municipality for consent, prior to any change in their composition, control or structure or in the change in composition, control or structure of its Member(s), from that set out in their Proposal.

7.13.3. If a change in the composition, control or structure of a Bidder, Preferred Bidder or Reserve Bidder and/or its Member(s) of the kind referred to in section 7.13.1 above occurs without the prior approval of the Municipality, then such Bidder, Preferred

Bidder, Reserve Bidder and/or Member(s) may, at the sole discretion of the Municipality, be disqualified from further stages of the procurement process, or allowed to continue, subject to such conditions as the Municipality may consider appropriate in light of the possible implications of the relevant change in composition, control or structure, on the matters on which evaluation under section 9 below is based.

- 7.13.4. If a change in the composition, control or structure of a Bidder, Preferred Bidder, Reserve Bidder and/or its Member(s) of the kind referred to in section 7.13.1 above occurs, the Municipality may require the relevant Bidder, Preferred Bidder, Reserve Bidder and/or its Member(s) to supply further information in relation to the relevant change.
- 7.13.5. If as part of a change in the composition of a Bidder, Preferred Bidder, Reserve Bidder and/or its Member(s), new entities are proposed to participate in relation to the execution of the Successful Bidder obligations under the Concession Agreement, then such new entities shall be post-qualified in the following manner:-
- (a) A party seeking to post-qualify must, at the instance of a, Bidder, Preferred Bidder, or Reserve Bidder submit all information as may be required by the Municipality to consider the application to post-qualify as a Member, taking into account if seeking to join as Sponsor, Key Contractor or Designated Member, including any changed Proposal documentation and a completed Respondent Information Form;
  - (b) The format of the submission of the party seeking to post-qualify must comply with this section 7 (Instructions to Bidders);
  - (c) The post-qualification must be accompanied by a letter addressed by the party seeking to post-qualify to the Project Officer ("the post-qualification Response letter") stating:
    - (i) That it wishes to be post-qualified and the name of the, Bidder, Preferred Bidder or Reserve Bidder through which it wishes to be post-qualified;
    - (ii) The capacity in which it wishes to be post-qualified, namely Sponsor, Key Contractor and / or Designated Member;
    - (iii) That it has read and understood this RFP and upon being post-qualified undertakes to be bound by the procurement rules set out herein and this post-qualification procedure; and
    - (iv) Declaring that the information furnished by it in its response is correct;
  - (d) The Bidder, Preferred Bidder or Reserve Bidder through which the party seeking to post-qualify is applying for post-qualification must:
    - (i) Indicate, any change in information in its Proposal on account of the application for post-qualification;
    - (ii) To the extent that any Bidder, Preferred Bidder, Reserve Bidder or Member is withdrawing, furnish a letter addressed by such withdrawing

Member to the Project Officer confirming the cessation of its membership in the Bidder and the effective date thereof;

- (iii) Address a covering letter to the Project Officer indicating its request to post-qualify a new party, the reasons therefor and the impact on the Bidder, Preferred Bidder or Reserve Bidder of the proposed change; and
- (iv) Enclose with the covering letter its Qualification Criteria (Annexure 2 of RFP Volume 1), if applicable, the post-qualification response letter, the new party's Respondent Information Form (in Appendix 1 of RFP Volume 1), its completed and signed popi Act consent form (Annexure 1C of RFP Volume 1), and the withdrawing party's cessation letter, if any, and deliver same to the Project Officer;
- (e) The Municipality will not consider any request for any extension of any procurement stage or phase on account of a post-qualified party(ies);
- (f) If the Municipality, in its sole discretion, considers that the credentials of the post-qualified party are sufficient, it may choose to allow such post-qualification;
- (g) The evaluation process and criteria which previously applied to Bidders, Preferred Bidder or Reserve Bidder will apply similarly to parties seeking to post-qualify. The Municipality reserves the right to clarify and/or request further information of the Bidder, Preferred Bidder or Reserve Bidder and the party seeking post-qualification in considering and evaluating a request for post-qualification;
- (h) The Municipality will notify the Bidder, Preferred Bidder or Reserve Bidder concerned, whether or not it has been successful in its application as soon as reasonably possible after receipt of the request for post-qualification. The Municipality decision on this matter will be final and not subject to appeal; and
- (i) The decision to allow a party to post-qualify will be announced to the Bidder, or Preferred Bidder and Reserve Bidder, if any, by the Municipality.

7.13.6. In the event of a Sponsor, or Key Contractor or Designated Member, if any ("the exiting entity") of the Bidder, Preferred Bidder or Reserve Bidder ceasing to be a Member of the Bidder, Preferred Bidder or Reserve Bidder then the Municipality requires the following:

- (a) A letter addressed by the exiting entity to the Bidder, Preferred Bidder or Reserve Bidder, copied to the Municipality, stating that it no longer wishes to participate as a Member of the Bidder, Preferred Bidder or Reserve Bidder or, alternatively, a resolution passed by the Members at a duly convened and quorate meeting of the Bidder, Preferred Bidder or Reserve Bidder, wherein it was resolved that the participation of the exiting entity be terminated, in a manner contemplated in the agreement regulating the relationship between the members of the Bidder, Preferred Bidder or Reserve Bidder;

- (b) A letter from the Bidder, Preferred Bidder or Reserve Bidder indicating how the equity interest is to be held in the Bidder, Preferred Bidder or Reserve Bidder occasioned by the departure of the exiting entity;
- (c) A statement from the Bidder, Preferred Bidder or Reserve Bidder stating which of the remaining Members is going to fulfil the role(s), responsibility(ies) or obligation(s) which were previously allocated to the exiting entity; and
- (d) The submission by the Bidder, Preferred Bidder or Reserve Bidder, of an amended consortium agreement if one was previously concluded and provided to the Municipality and if not so concluded and provided, then the submission of a consortium agreement from the Bidder, Preferred Bidder or Reserve Bidder.

#### **7.14. Participation in more than one Bidder**

No Bidder, Member or any other party (or entity) including an advisor or consultant may be a Member of, or in any way participate or be involved, whether directly or indirectly, in more than one Bidder during any stage of the procurement process. A failure to comply with this requirement may result in the disqualification of the Bidder, Member, or any other organisation, advisor or consultant involved.

#### **7.15. Bid Bond**

To mitigate the risk of Bidders dropping out of the process, the Municipality requires that proposal security be submitted by each Bidder with its Proposal, in the form of a bid bond to be secured through a South African financial institution in the amount of R30 million. The form of the bid bond to be provided by Bidders is contained in Annexure 1B (*Form of Bid Bond*) of RFP Volume 1. The Municipality may, at its election, require a further bid bond(s) (replacing the earlier bond(s)) to be submitted by the Preferred Bidder or Reserve Bidder for an amount (no greater than R30 million) to be determined by the Municipality at any time prior to Financial Close.

## CHAPTER C – PROPOSAL REQUIREMENTS

### 8. PROPOSAL REQUIREMENTS

#### 8.1. **Format of Proposals**

##### 8.1.1. Signing requirements of a single entity

- a. Where the Bidder is a single legal entity, the principal or persons duly authorised to legally bind the legal entity concerned shall sign the original Proposal. Each such person or persons shall be properly authorised to sign such documentation by way of a formal resolution by the board of directors, or its equivalent, of the organisation concerned. Copies of such an authorisation, authorising the signatory to the Proposal, resolution, properly dated, must accompany each Proposal in the format provided in Annexure 1A, Part 1 (*Form of Cover Letter to Accompany Proposal Submission*) of this Volume 1.
- b. In addition, every signatory shall make a written declaration to the effect that all documentation signed by him or her is factually correct and true.

##### 8.1.2. Signing requirements of a consortium or joint venture

- (a) Proposals submitted by a consortium or joint venture shall be signed by the lead Member so as to legally bind all the constituent members of the consortium. To this end, Bidders are referred to Annexure 1A, Part 1 (*Form of Cover Letter to Accompany Proposal Submission*) of this Volume 1.
- (b) Proof of the authorisation of the lead Member to act on behalf of the consortium or a joint venture shall be included in the proposal submitted in the format provided in Annexure 1A, Part 1 (*Form of Cover Letter to Accompany Proposal Submission*) of this Volume 1.
- (c) The lead Member shall be the only authorised party to make legally binding statements and receive instruction for and on behalf of the Bidder and all its Members.
- (d) A copy of the agreement entered into by the consortium partners or the joint venture partners for the formation of the consortium or joint venture shall be submitted with the Proposal.

##### 8.1.3. Correspondence

All correspondence from the Bidder should be addressed to the Project Officer and must be signed by an authorised person or persons, legally binding the Bidder. All such signatures must indicate the name(s) of the person(s) signing them, their position(s) and the name of their organisation.

##### 8.1.4. Format of submissions

- (a) Bidders are requested to submit their Proposals in a clearly structured way. All parts of the Proposal are to be clearly headed, pages must be numbered and a detailed content listing is to be provided. The Proposals should follow a consistent numbering system (volumes, sections, headings, paragraphs,

sub-paragraphs, etc) that allows for easy cross-referencing, both within the Proposal and to the RFP.

- (b) All Proposals must be submitted in the format as prescribed (in MS Word or Microsoft compatible products) and according to the following instructions:
  - (i) 1 (one) original printed and bound in a volume(s) and 3 (three) hard copies thereof (clearly marked as 'original', and each copy marked as 'copy 1', 'copy 2' and so on until 'copy 3'). Bidders are cautioned that any colour documents will have to be reproduced in colour in all the 3 (three) copies;
  - (ii) 2 (two) electronic copies of the original hard copy (clearly marked as 'electronic copy 1' and 'electronic copy 2') in a memory stick, which electronic copies should contain an electronically scanned (300 dpi resolution) Public Document Format (PDF) copy of the Bidders entire hard copy. The PDF file should be named using the contract number and the Bidder's name, e.g. "XX-xxxx – Bidders Name.PDF". The memory-stick must be labelled with the Tenderer's name and securely fixed to the paper submission; and
  - (iii) the Proposals must also be as complete and comprehensive as possible and be in English.
- (c) The onus is on Bidders to submit all relevant information.
- (d) Bidders are nonetheless requested to avoid unnecessary duplication or repetition of information, and not to submit irrelevant information.
- (e) A cover letter with contact details for the authorised person representing the lead Member should be submitted, in the format provided in Annexure 1A, Part 1 (*Form of Cover Letter to Accompany Proposal Submission*) to this Volume 1.
- (f) Each Proposal is to have an executive summary, not exceeding 20 pages inclusive of any annexure(s) (using formatting similar to Volume 2) which summarises the salient aspects of the Proposal.

#### 8.1.5. Identification of Proposal document

Bidders should prepare and submit Proposals that are clearly and visibly identifiable as a Proposal for tender WS-7795 for the "Request For Proposal – for the procurement of a private party to undertake the design, finance, construction, operation and maintenance of sewage treatment plants at uMdloti and uMkomaas on a PPP basis" including the following information on the outside of the Proposal:

- (a) Name of the Bidder;
- (b) Tender number and name;
- (c) "Original" or "Copy" clearly indicated;
- (d) "Hard Copy" or "Electronic Copy" clearly indicated; and
- (e) Date of submission.

8.1.6. Correction of Errors

The complete Proposals shall be submitted without alterations, erasures or omissions, except those to accord with instructions issued by the Project Officer through Briefing Notes, in which case, such corrections shall be initialled in black ink by the person or persons signing the Proposal.

**8.2. Proposal Validity**

8.2.1. Validity Period

Proposals shall remain valid and open for acceptance for a period of 12 (twelve) months from the Proposal Submission Date, plus any agreed extension of the Validity Period.

8.2.2. Extensions to the Validity Period

The Municipality may, in exceptional circumstances, request Bidders, the Preferred Bidder and/or Reserve Bidder, for an extension of the Validity Period, prior to the expiry of the original Proposal Validity Period. The request and the response thereto shall be made in writing. A Bidder agreeing to the request will not be permitted to modify its Proposal.

**8.3. Incorrect or Misleading Information**

The Municipality may disqualify any Bidder and/or revoke any decision in respect of the selection of a Preferred Bidder or Reserve Bidder or the announcement of the successful conclusion of negotiations with the Preferred Bidder if such decision was based on incorrect information which the Bidder or its constituent Members, advisors and/or agents provided in response to this RFP.

**8.4. Standard Proposal to be Submitted**

Bidders should prepare and submit a Standard Proposal that includes:

8.4.1. Mandatory Proposal Requirements

The Mandatory Proposal Requirements are described in Annexure 1 (*Mandatory Proposal Requirements*) of this RFP Volume 1.

8.4.2. Qualification Criteria

The Qualification Criteria are described in Annexure 2 (*Qualification Criteria Proposal Requirements*) of this RFP Volume 1.

8.4.3. Technical Proposal Requirements

The Technical Proposal Requirements are described in Annexure 3 (*Technical Proposal Requirements*) of this RFP Volume 1.

8.4.4. Financial Proposal Requirements

The Financial Proposal Requirements, which also includes the Insurance Proposal Requirements are described in Annexure 4 (*Financial Proposal Requirements*) of this RFP Volume 1.

8.4.5. Legal Proposal Requirements

The Legal Proposal Requirements are described in Annexure 5 (*Legal Proposal Requirements*) of this RFP Volume 1.

8.4.6. Economic Development Requirements

The Economic Development Proposal Requirements are described in Annexure 6 (*Economic Development Proposal Requirements*) of this RFP Volume 1.

## CHAPTER D – EVALUATION

### 9. EVALUATION STRUCTURE AND CRITERIA

#### 9.1. Evaluation Structure

- 9.1.1. The Municipality has formed a series of bodies to undertake the evaluation process against the stated evaluation criteria. There will be a three-tier approach, being –
- (a) the Bid Evaluation Committee, will consist of representatives of the Municipality who will be supported by GTAC and any other members as selected by the City Manager to assess Bidder responses to the Mandatory Proposal Requirements and to the Qualification Criteria, and evaluate Bidder submissions on Technical, Financial, Legal and Economic Development aspects of the Proposals. The transaction adviser to the Project will provide professional advice and input regarding the Technical, Financial, Social Economic and Legal aspects of the Bids received;
  - (b) the Bid Adjudication Committee will consist of representatives of the Municipality and such other members as may be appointed by the Municipality to review the work of the Bid Evaluation Committee, adjudicate on the Responses, taking into account the recommendation of the Bid Evaluation Committee, and make recommendations to the Accounting Officer in respect of the appointment of the Reserve Bidder and the Preferred Bidder, if any; and
  - (c) the Accounting Officer will consider the report and recommendations of the Bid Adjudication Committee and determine which Bidders, if any, will be selected as the Preferred Bidder and the Reserve Bidder respectively, if any, as well as the successful Preferred Bidder, if, taking into account the recommendations of the Bid Adjudication Committee. The determination of the Accounting Officer will be final and binding.
- 9.1.2. The Accounting Officer reserves the right to modify and amend the above procedures, subject to applicable law at his/her/its discretion in appropriate circumstances. Bidders will be notified of any material changes.

#### 9.2. Evaluation Process

- 9.2.1. The main objective of evaluation for the Municipality is to select a Preferred Bidder as the party with whom to pursue negotiations to conclude a Concession Agreement. Bidders are advised that value for money is a key consideration for evaluation purposes, and that Proposals are to contain sufficient detailed information to enable the Evaluation Committee to assess and evaluate the value for money statement.
- 9.2.2. The evaluation process will be subject to the provisions of the Preferential Procurement Policy Framework Act, 5 of 2000 ("PPPFA"). To this end the Municipality will apply the 90/10 preference point system where 90 points will be awarded for price. A maximum amount of 10 points, out of the 100 points available, will be allocated to the B-BBEE requirements in terms of the regulations to the PPPFA.
- 9.2.3. The RFP Phase 2 evaluation process will, subject to any variations provided for in the RFP, be undertaken in the following 4 (four) primary stages:

- (a) Stage 1 – Completeness and Compliance;
- (b) Stage 2 - Qualification Criteria (for those Proposals that have met the Stage 1 Completeness and Compliance requirements);
- (c) Stage 3 –Functionality (for those Proposals that have met the Stage 2 Qualification Criteria);
- (d) Stage 4 –Price Evaluation. If a Proposal fulfils all the requirements in Stage 3 to the satisfaction of the Municipality, the Proposal will be evaluated further in accordance with the 90/10 preference points system prescribed in the PPPFA Regulations; and
- (e) Stage 5 – Comparison of Proposals. If more than one Proposal meets the requirements of Stage 4 to the satisfaction of the Municipality, the Municipality will then compare those Proposals with one another, taking into account objective criteria (in Annexure 2A (*Evaluation of Qualification Criteria*)) in order to select a Preferred Bidder.

### 9.3. Stage 1: Evaluation of Completeness and Compliance

This stage involves assessing whether the Bidder has complied with the minimum submission requirements criteria, which includes the following:

- 9.3.1. Proof of attendance at the Compulsory Briefing/ Bid Clarification Meeting or Certificate of Attendance at Compulsory Briefing/ Bid Clarification Meeting, as applicable
- 9.3.2. Compulsory Tender Options Compliance Bid Declaration Affidavit which is duly signed by the authorised representative of the Bidder
- 9.3.3. Declaration of Correctness of Bid and Understanding of the Bid Specification which is duly signed by the authorised representative of the Bidder
- 9.3.4. Submission of the Contract Participation Goal (CPG) Declaration Affidavit
- 9.3.5. Submission of CIPC Company Registration Certificate
- 9.3.6. Submission of the Letter of Good Standing issued by the Department of Labour, in accordance with the Compensation for Occupational Injuries and Diseases Act (COIDA).
- 9.3.7. Record of Addenda to Bid Document, which is duly signed by the authorised representative of the Bidder
- 9.3.8. Submission of the following compulsory returnable schedules, i.e.
- 9.3.9. Certificate of Authority
- 9.3.10. Declaration of Municipal Fees for the Bidder, including all Joint Venture and / or Consortium Members and Sub-contractors, etc.
- 9.3.11. Compulsory Enterprise Questionnaire for the Bidder, including all Joint Venture and / or Consortium Members and Sub-contractors, etc.

- 9.3.12. Proof of valid registration with National Treasury – Republic of South Africa Central Supplier Database (CSD) for Government for the Bidder, including all Joint Venture and / or Consortium Members and Sub-contractors, etc.
- 9.3.13. Certificate of Compliance / Good Standing from the Department of Employment and Labour for UIF (Unemployment Insurance Fund)
- 9.3.14. MBD 2: Tax Clearance Certificate Requirements for the Bidder, including all Joint Venture and / or Consortium Members and Sub-contractors, etc. Original Tax Compliance Pin Certificate issued by the South African Revenue Services (SARS) in respect of the Bidder's tax compliance status with SARS for the Bidder, including all Joint Venture and / or Consortium Members and Sub-contractors, etc.
- 9.3.15. MBD 4: Declaration of Interest for the Bidder, including all Joint Venture and / or Consortium Members and Sub-contractors, etc.
- 9.3.16. MBD 5: Declaration for Procurement Above R10 Million for the Bidder, including all Joint Venture and / or Consortium Members and Sub-contractors, etc.
- 9.3.17. MBD 6.1: Preference Points Claim Form ITO the Preferential Regulations
- 9.3.18. MBD 8: Declaration of Bidder's Past SCM Practices for the Bidder, including all Joint Venture and / or Consortium Members and Sub-contractors, etc.
- 9.3.19. MBD 9: Certificate of Independent Bid Determination for the Bidder, including all Joint Venture and / or Consortium Members and Sub-contractors, etc.

Note: Any Bid that fails to comply with any one of the above pre-qualification criteria shall be considered as non-responsive, be recommended to Bid Adjudication Committee for disqualification, and therefore shall not be considered further in the evaluation process.

#### 9.4. **Stage 2: Evaluation of Qualification Criteria**

- 9.4.1. If a Proposal fulfils all the requirements in Stage 1 to the satisfaction of the Municipality, the Proposal will be evaluated further in accordance with the requirements of Stage 2: Qualification Criteria.
- 9.4.2. Failure on the part of a Bidder to comply with the Mandatory Proposal Requirements (in Annexure 1 to Volume 1), as well as the Qualification Criteria (in Annexure 2), to the extent that same are not waived by the Municipality, may result in a Proposal being treated as non-compliant. Non-compliant responses may be rejected without being further evaluated.
- 9.4.3. Only those bidders that can demonstrate experience, by the submission of the specified returnable document, Qualification Criteria (in Annexure 2) and supporting documents, will be eligible to have their tenders evaluated.

#### 9.5. **Stage 3: Functionality Evaluation**

- 9.5.1. If a Proposal fulfils all the requirements in Stage 2 to the satisfaction of the Municipality, the Proposal will be evaluated further in accordance with the requirements of Stage 3: Functionality Evaluation.
- 9.5.2. The functionality evaluation will be undertaken for each criterion set out in Annexure 3 (*Technical Proposal Requirements*). The assessment for functionality

will be undertaken for each criterion in the manner indicated in Annexure 3A (*Technical Proposal Evaluation Criteria*).

9.5.3. A minimum functionality evaluation score equal to (or greater than) 70 points is required for any Proposal to be considered as responsive. Accordingly, for the sake of clarity, Bidders are advised that any Proposal that fails to achieve the minimum 70 shall be considered as non- responsive.

9.5.4. **Stage 4: Price and BBEEE (Preference Point 90/10 System Formula)**

If a Proposal fulfils all the requirements in Stage 3 to the satisfaction of the Municipality, the Proposal will be evaluated further in accordance with the requirements of Stage 4: Price Evaluation, namely the 90/10 preference points system prescribed in the PPPFA Regulations.

9.5.5. The following formula will be used to calculate the points out of 90 for price:

$$P_s = 90 \left( 1 - \frac{P_t - P_{min}}{P_{min}} \right), \text{ where:}$$

$P_s$  = points scored for price, where price means the Tariff submitted by the Bidder in its Financial Proposal;

$P_t$  = price of the Proposal under consideration; and

$P_{min}$  price of the lowest acceptable Proposal.

9.5.6. the following table will be used to calculate the points out of 10 for Economic Development:

SPECIFIC GOAL	NUMBER OF POINTS (90/10 SYSTEM)
Ownership	3.334
Social Upliftment	3.333
Promotion of SMMEs that are 51% Black Owned	3.333

**Note:**

- Bidders must submit proof of its (the bidder) B-BBEE status level of contributor by providing a certificate issued by a Verification Agency accredited by the South African National Accreditation System (SANAS).
- A Bidder which is a trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate issued by a Verification Agency accredited by the South African National Accreditation System (SANAS).
- A Bidder failing to submit proof of its (the bidder) B-BBEE status level of contribution or is a non-compliant contributor to B-BBEE may not be disqualified, but,

- may only score points' out of 90 for price; and
- scores 0 points out of 10 for B-BBEE.
- A Bidder may not be awarded points for its (the bidder) B-BBEE status level of contributor if the bid submission documents indicate that the Bidder intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the Bidder qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

**Total Points Scored**

- The Total Points scored for each Bidder shall be determined by adding the points scored for price to the points scored for B-BBEE.
  - The Municipality is not bound to accept any offer, in which case the bid may be regarded as a non-award.
  - The Maximum points that can be scored by any Bidder is 100.
  - The evaluation of all bids is subject to compliance with the Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2022, as published in the Government Gazette No. 47452, 04 November 2022.
- 9.5.7. The Bidder which will have achieved the highest aggregate financial and Economic Development score, will be selected as Preferred Bidder.
- 9.5.8. Only 1 (one) Bidder will qualify for appointment as the Preferred Bidder.

**9.6. Stage 5 - Comparison of Proposals**

Any Proposals meeting the requirements in Stage 4 to the satisfaction of the Municipality, will be compared with another to enable the selection of a Preferred Bidder, taking into account the objective criteria identified in Annexure 2A (*Evaluation of Qualification Criteria*).

**9.7. Decision of the Bid Award Committee**

The decision(s) as to which Bidder(s) the Accounting Officer selects as Preferred Bidder and/or Reserve Bidder, as well as to conclude negotiations with the successful Bidder for this Project, rest solely with the Bid Award Committee. The decision of the Accounting Officer will be final.

**9.8 Appeals**

In terms of Regulation 49 of the Municipal Supply Chain Management Regulations persons aggrieved by decisions or actions taken by the Municipality, may lodge an appeal within 14 days of the decision or action, in writing to the Municipality. All appeals (clearly setting out the reasons for the appeal) and queries with regard to the decision of award are to be directed to:

The City Manager  
**Attention Ms S. Pillay**                      **eMail: Simone.Pillay@durban.gov.za**  
 P O Box 1394  
 DURBAN, 4000

**9.9 Prohibition on awards to persons in the service of the state**

Clause 44 of the Supply Chain Management Regulations states that the Municipality or Municipal Entity may not make any award to a person:

- (a) Who is in the service of the State;
- (b) If that person is not a natural person, of which a director, manager, principal shareholder or stakeholder is a person in the service of the state; or
- (c) Who is an advisor or consultant contracted with the municipality or a municipal entity.

Should a contract be awarded, and it is subsequently established that Clause 44 has been breached, the Employer shall have the right to terminate the contract with immediate effect.

#### **9.10 Code of Conduct and Local Labour**

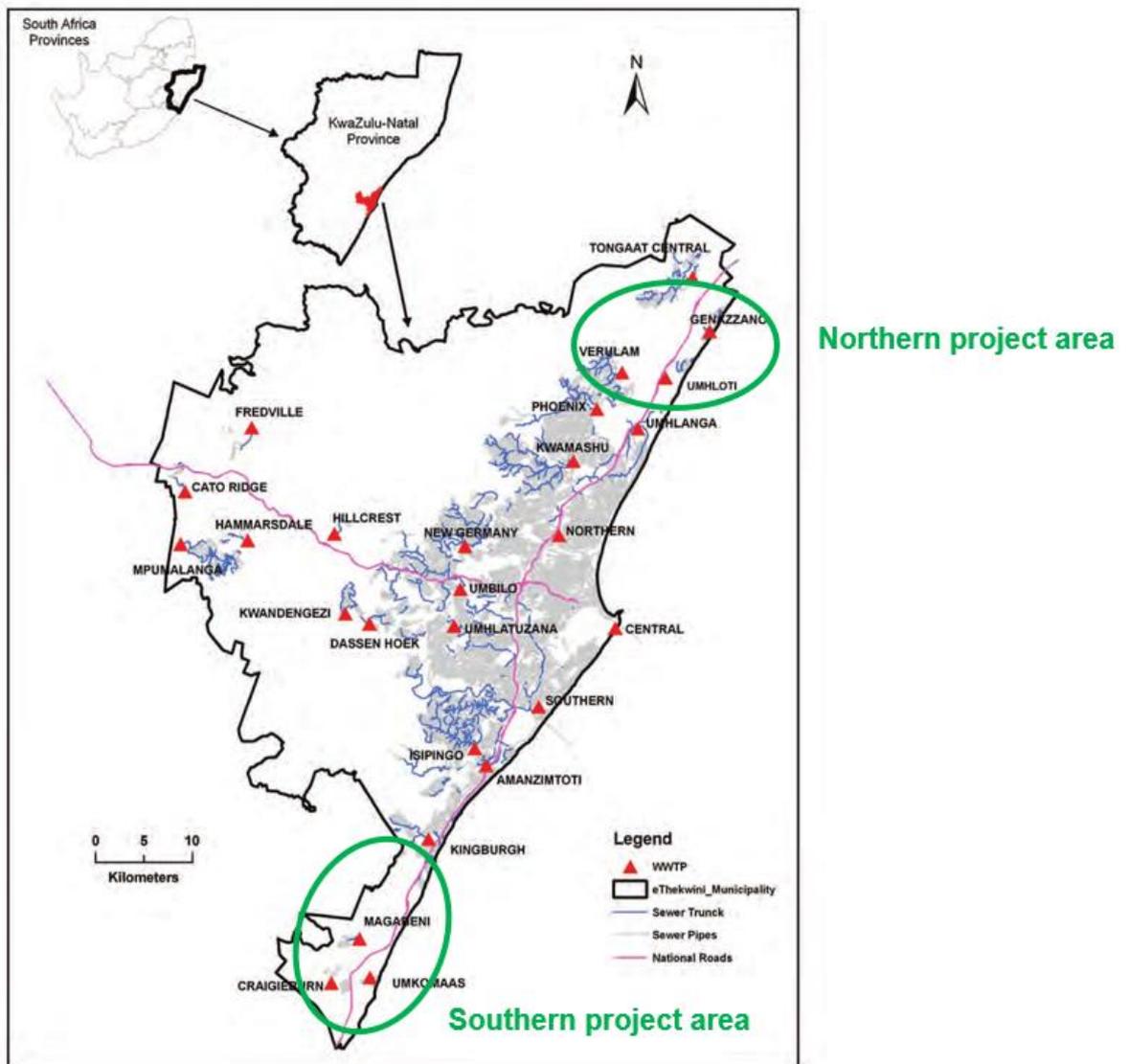
The Tenderers shall make themselves familiar with the requirements of the following policies that are available on web address:  
<ftp://ftp.durban.gov.za/cesu/StdContractDocs/>:

- Code of Conduct;
- The Use of CLOs and Local Labour.

## ANNEX A: PROJECT DESCRIPTION OVERVIEW

### 1. INTRODUCTION

- 1.1. The Municipality intends to implement two new regional STPs. The areas that will be served by the new regional STPs at uMdloti and Umkomaas are presently served by a number of existing sewage treatment plants. These existing STPs do not have adequate capacity to treat the projected future flows and their current capacity to achieve the required discharge standards to comply with local legislation is limited.
- 1.2. The service to be delivered is the treatment of municipal wastewater up to a quality standard suitable for safe reuse or disposal. The Services are to be delivered in the two locations, namely uMdloti (northern project area) and Umkomaas (southern project area), and will require the design, construction and operation of raw sewage transmission and wastewater treatment infrastructure at each of the locations.

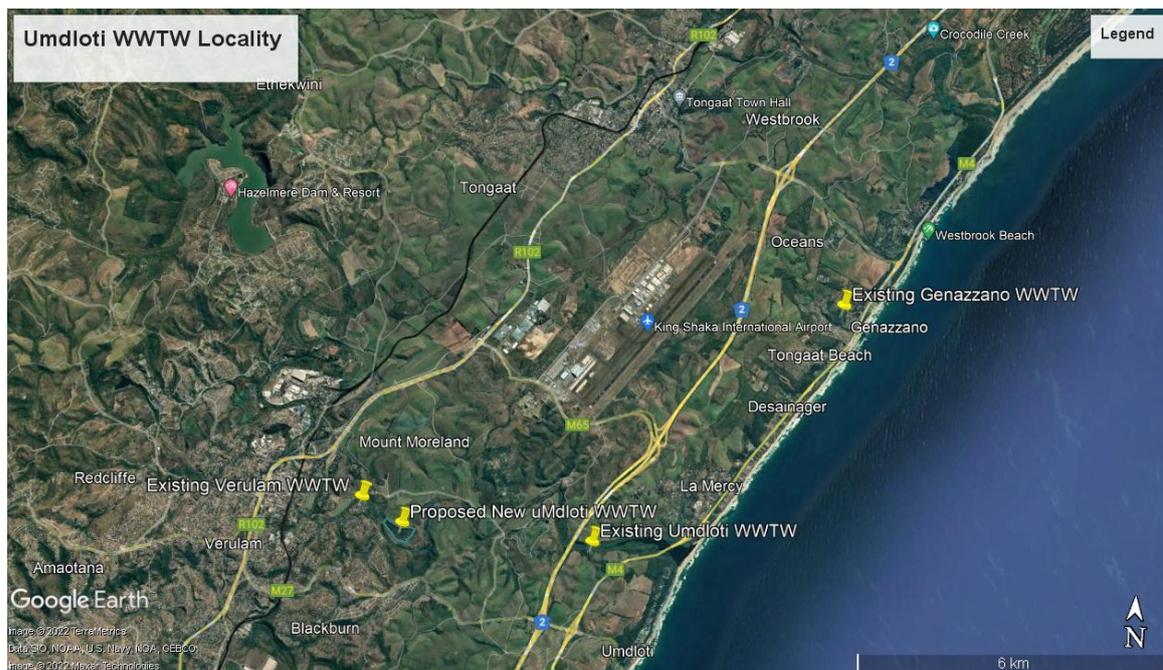


### 2. UMDLOTI STP (NORTHERN PROJECT AREA)

Treatment of municipal wastewater generated and collected in the northern region of eThekweni Municipality, roughly covering the areas of Verulam, Umdloti and Genazzano, including Dube

Trade port. The effluent will be disposed in the uMdloti River. In order to provide the service, the following outputs are required:

- 2.1. Design and construction of wastewater transmission systems from the existing STPs of Genazzano, Umdlotti, Verulam and King Shaka International Airport (KSIA) Southern to the site of the proposed new regional umdloti STP;
- 2.2. Obtaining all regulatory approvals, including licensing of the infrastructure and discharges (e.g. Environmental authorisations and water use licenses);
- 2.3. Design and construction of the new regional umdloti STP having a capacity to treat an average wastewater flow of 35 MLD to the “special limit” as defined in the National Water Act;
- 2.4. Design and construction of sludge handling and treatment infrastructure, including sludge drying and disposal;
- 2.5. Operation and maintenance of the new infrastructure; and
- 2.6. Decommissioning of the four existing STPs at Genazzano, Umdlotti, Verulam and KSIA STPs.



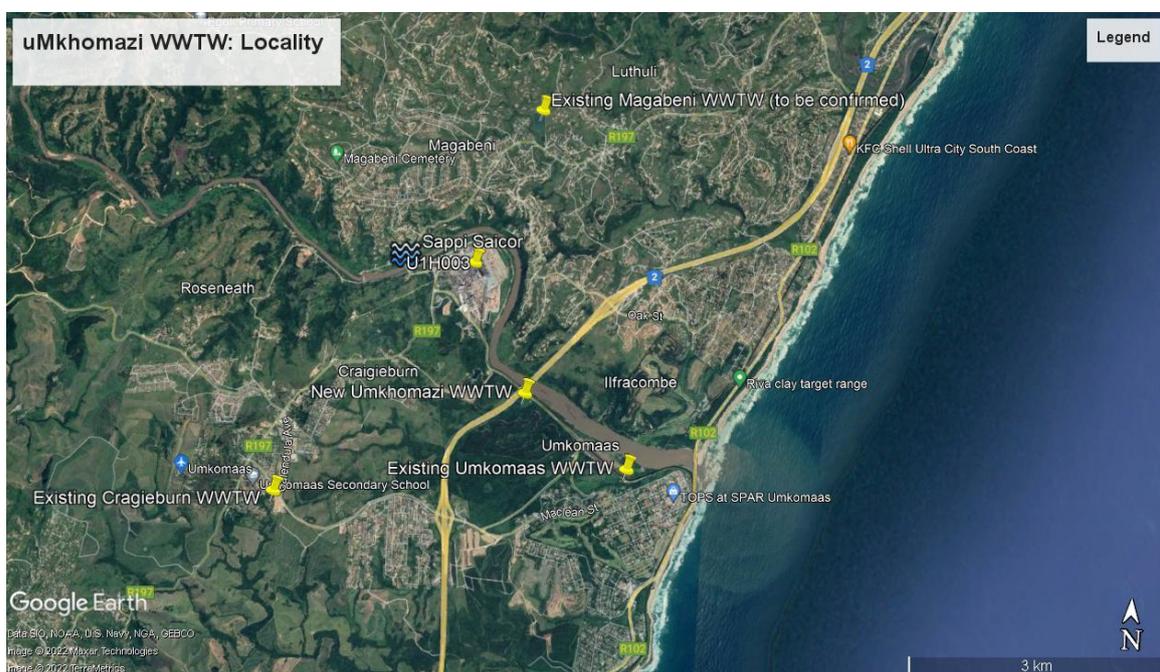
*uMdloti Project area (showing the existing STPs to be replaced)*

### 3. **UMKOMAAS STP (SOUTHERN PROJECT AREA)**

Treatment of municipal wastewater generated and collected in the southern region of the Municipality, roughly covering the areas of uMkomaas, Craigieburn, Magabeni and Danganya/Umgababa. The effluent will be used by a neighbouring paper pulp factory, with occasional discharges to the Umkomaas River. In order to provide the service, the following outputs are required:

- 3.1. Design and construction of wastewater transmission systems from the existing STPs of Umkomaas and Craigieburn to the site of the proposed regional Umkomaas STP;

- 3.2. Obtaining all regulatory approvals, including licensing of the infrastructure and discharges (e.g. Environmental authorisations and water use licenses);
- 3.3. Design and construction of the regional Umkomaas STP having a capacity to treat an average wastewater flow of 11 MLD to the “special limit” as defined in the National Water Act;
- 3.4. Design and construction of sludge handling and treatment infrastructure, including sludge drying and disposal;
- 3.5. Transmission of treated effluent to the location of reuse and disposal;
- 3.6. Operation of this new infrastructure; and
- 3.7. Decommissioning of the two existing STPs at Umkomaas and Craigieburn.



*Umkomaas Project area (showing the existing STPs to be replaced)*

#### 4. **RAW SEWAGE SYSTEMS**

4.1. The raw sewage transmission infrastructure from each of the sub-catchments to the new STPs is tabulated below. This was done as part of the feasibility assessment in order to identify possible alignments for the pipe mains. Given the topography of the area, the transmission systems are likely to include gravity mains as well as pressure mains with associated pumping stations.

##### 4.2. **uMdloti STP conveyance pipelines**

- |  |                 |                |
|--|-----------------|----------------|
| • Seatides PS to La Mercy PS:              | DN500 x 5 489m  | (Rising main)  |
| • La Mercy PS to Discharge manhole TM2:    | DN500 x 2 943m  | (Rising main)  |
| • New Umdloti PS to Discharge manhole TM2: | DN315 x 687m    | (Rising main)  |
| • Discharge manhole TM2 to New STP:        | DN650 x 10 248m | (Gravity main) |

- KSIA STP to New STP: DN700 x 8 034m (Gravity main)
- Verulam STP to New STP: DN750 x 1 036m (Gravity main)

#### 4.3. Umkomaas STP conveyance pipelines

- Craigieburn STP to Umkomaas STP DN350 x 4 160m (Gravity main)
- Umkomaas (old) STP to Umkomaas STP DN350 x 1 520m (Rising main)

Bidders will be invited to verify and, ideally, propose improvements to the proposed pipeline routes, design flows, pipe sizing, pumping arrangements and material selection.

### 5. **SEWAGE TREATMENT PLANTS**

5.1. As is the case with the raw sewage transmission systems, high level concepts have been prepared for the sewage treatment processes at each of the two new STPs.

5.2. uMdloti STP Transmission Pipelines:

- 5.2.1. Conventional activated sludge STP with 35 MLD capacity;
- 5.2.2. Infrastructure must be planned and constructed to allow for future expansion (outside of this PPP) to 112 MLD within the identified site boundary;
- 5.2.3. Additional treatment in order to produce treated effluent complying with special limit (sand filtration, GAC filtration, advanced oxidation); and
- 5.2.4. Discharge to Umdloti River.

5.3. Umkomaas STP:

- 5.3.1. Conventional activated sludge STP with 11 MLD capacity (to comply to Sappi quality requirements);
- 5.3.2. Infrastructure must be planned and constructed to allow for future expansion (outside of this PPP) to 20 MLD within the identified site boundary;
- 5.3.3. Additional treatment in order to produce treated effluent complying with special limit required for discharge to the environment (GAC filtration, advanced oxidation); and
- 5.3.4. Treated effluent reuse pipeline and pump station to Sappi-Saicor Mill under normal operating conditions and discharge to the Umkomaas River during annual mill shutdowns (approximately 2 weeks per year).

5.4. Note that information provided here is indicative only and that all process design and selection must be determined by bidders based on the outputs and standards defined in the bidding documents.

### 6. **SLUDGE TREATMENT**

6.1. The sludge that is produced by the wastewater treatment process at each of the sites must be treated and disposed of. The engineering concepts that have been prepared for

the STPs include thermal hydrolysis and energy generation from biogas. These processes are not prescribed. However, bids that include beneficial reuse of sludge will be encouraged, particularly where this involved the production of agricultural compost. Likewise, heat and energy recovery (“combined heat and power”) will be encouraged.

- 6.2. Priority must be given to on-site power generation where the opportunity exists in order to offset the electricity demand from the sites.
- 6.3. Priority must be given to the beneficial reuse of sludge, e.g. for industry or agriculture, where the opportunity exists.
- 6.4. Sludge produced by the plants, whether intended for reuse or disposal, must comply with the relevant standards for reuse or disposal.

## **7. DECOMMISSIONING OF EXISTING STPS**

- 7.1. Except for Magabeni (pond system) and the Southern STP (package plant), the existing wastewater treatment plants are all conventional activated sludge plants. A pond system is employed at Magabeni.
- 7.2. The Existing STPs will be required to remain in operation until such time as the new infrastructure is in operation and performance has been verified. It is furthermore likely that some functions will continue at the sites of the Existing STPs as the origin point for the Transmission Pipelines.
- 7.3. The decommissioning of the Existing STPs will include the removal of all superfluous mechanical and electrical equipment, making safe and adapting of structures that can/should be reused, making safe of redundant structures and demolition of redundant structures that cannot be made safe.

## **8. OPERATION OF INFRASTRUCTURE**

Design and construction of the infrastructure will be followed by a thirty-year Operations period. EWS requires that the wastewater treatment, sludge handling and treated effluent infrastructure be operated and maintained by the Concessionaire. The raw sewage transmission infrastructure will, however, be handed over to EWS for operation within a defined period after being put into operation.

## APPENDIX 1: RESPONDENT INFORMATION FORM

### 1. PURPOSE OF THIS APPENDIX 1 (RESPONDENT INFORMATION FORM)

- 1.1. The Municipality intends to collate the details of the Respondents into a database that may or may not be shared with interested parties seeking to identify companies to partner with in undertaking the Project.
- 1.2. The purpose of this Appendix 1 (Respondent Information Form) will enable the Municipality to:
  - 1.2.1. have record of all Respondents participating in the RFP Phase 1 process; and
  - 1.2.2. notify those Respondents who participated in RFP Phase 1 of the availability of the RFP Phase 2 Volumes 1 and 2.

### 2. RESPONDENT INFORMATION

- 2.1. Respondents are requested to provide the following information:

RESPONDENT DETAILS	
Name of Respondent	
Physical Address	
Postal Address	
Email Address	
Telephone Number	

- 2.2. Respondents are required the following information in respect of the contact person of the Respondent:

CONTACT PERSON OF RESPONDENT	
Name	
Physical Address	
Postal Address	
Email Address	
Telephone Number	

- 2.3. Respondents are required the following information in respect of the Lead Member of the Respondent:

LEAD MEMBER OF RESPONDENT	
Name of Entity	
Physical Address	
Postal Address	
Email Address	
Telephone Number	

- 2.4. Respondents are required the following information in respect of the authorised representative of the Lead Member of the Respondent:

<b>AUTHORISED REPRESENTATIVE OF LEAD MEMBER</b>	
Name	
Name of Employer	
Designation	
Physical Address	
Postal Address	
Email Address	
Telephone Number	

## **ANNEXURE 1: MANDATORY PROPOSAL REQUIREMENTS**

Comprised of –

**Annexure 1A – Cover Letter to Accompany Proposal Submission**

**Annexure 1B – Form of Bid Bond**

**Annexure 1C – POPI Act Consent for Proposals**

**Annexure 1D – Municipality Tender Forms**

**Annexure 1E – VDR Undertaking**

## ANNEXURE 1A – Part 1

### FORM OF COVER LETTER TO ACCOMPANY PROPOSAL SUBMISSION

The Project Officer  
eThekweni Water and Sanitation for the uMdloti and Umkomaas Sewage Treatment PPP Project  
3 Prior Road, Durban Central, 4001 KwaZulu-Natal, Republic of South Africa  
Email address: Sydney.Masha@durban.gov.za

Sir/Madam,

Tender Reference: **eThekweni Municipality uMdloti and Umkomaas Sewage Treatment Plants PPP Project**

1. We, the [*insert name of Bidder*], led by [*insert name of lead Member*] are pleased to submit the Proposal enclosed with this letter, as our Proposal in response to the Request for Proposals ("RFP") issued by the Municipality on 26 April in relation to the Project.
2. As appears more fully in the enclosed Proposal, the [*insert name of Bidder*] is comprised of the following entities –
  - 2.1 [*insert names of Members and their respective equity/shareholding percentages*]
3. The following documents are submitted separately: -
  - 3.1 Bid Bond (resubmitted, as may be necessary); and
  - 3.2 Standard Proposal.
4. Having examined the content of this Proposal, I/We, the undersigned confirm and warrant that all statements made and information supplied in this Proposal are both true and correct. Terms defined in the RFP are accorded the same meanings in this letter.
5. I/We acknowledge that this letter and all parts of our Proposal and other documents that constitute my/our Proposal, bind all our Members in respect of all of the representations and/or undertakings made as part of this Proposal, and I/we hereby confirm that we have authority to bind our Members.
6. I/We acknowledge and accept your authority to carry out, directly or through your advisors, any investigation you may deem necessary to verify the truthfulness of the statements and documents submitted and to obtain clarification of my/our legal and/or technical and/or financial and/or Economic Development ability to provide the services contemplated in the scope of the RFP, and our ability to duly comply with the requirements of the RFP documentation, which we are responding to. To this end, I/we authorise you (Municipality), by my/our signature hereto, to obtain information from any person, or institution pertaining to our company or consortium and/or our Proposal, including that which relates to the Members of the [*insert name of Bidder*], to the extent relevant and require for the conduct of due diligence and/or evaluation of our Proposal, from whomsoever may be in possession thereof.
7. I/We agree that the terms contained in the RFP will be binding upon us and the Members of our consortium.
8. We further agree and/or undertake and/or represent that by signing of this letter that -

- 8.1 each Member is fully acquainted with all the legal provisions prevailing in South Africa in respect of the realisation of the Project and that it will comply therewith;
- 8.2 our Proposal has been submitted independently, without consultation, communication, or agreement for restricting competition, with any other Bidder or to any other competitor/potential competitor;
- 8.3 unless otherwise required by law, in which case we would notify the Municipality in writing, our Proposal has not been knowingly disclosed and will not, knowingly be disclosed prior to opening, directly or indirectly to any other Bidder, Member of another Bidder or to any competitor/ potential competitor;
- 8.4 no attempt has been made or will be made by it to induce any other person or firm to submit (or refrain from submitting) a Proposal for the purpose of restricting competition;
- 8.5 we have undertaken a due diligence as contemplated in section 6.4 of the RFP;
- 8.6 save as discussed in writing to the Municipality, the response to the RFP is true;
- 8.7 save for any disclosures in writing to the Municipality, each Member has –
  - 8.7.1 not passed a resolution nor is the subject of an order by the court for its winding-up;
  - 8.7.2 not been convicted of a criminal offence relating to the conduct of its business or profession;
  - 8.7.3 not committed an act of grave misconduct in the course of its business or profession;
  - 8.7.4 fulfilled obligations relating to the payment of taxes under the laws of the Republic of South Africa; and
  - 8.7.5 not made any misrepresentation in providing any of the information required in relation to this Project.
- 9. I/We understand and accept that this Proposal shall constitute a binding and irrevocable offer by our consortium to the Municipality to provide the Project Deliverables of the Project until acceptance or rejection thereof by the Municipality within [insert months] of the date of submission hereof.
- 10. I/We understand that the Municipality is not bound to accept any Proposal, which it may receive and that Municipality will not defray any expenses incurred by me/us in the preparation of this Proposal.
- 11. I/We acknowledge that this letter and all parts of the Standard Proposal and other documentation, which constitutes our Proposal, duly bind all our Members as well.
- 12. I/We choose *domicilium citandi* and *executandi* at

.....  
 .....

in the Republic of South Africa.

Yours faithfully

.....

(Signature)

(a) Dated this ..... day of ..... 2024

On Behalf Of..... [Block Capitals]

Address .....

.....

.....

Witness:..... (Signature)

Name: ..... [Block Capitals]

Address .....

.....

.....

Occupation .....

**ANNEXURE 1A – Part 2**

**Signatory's Authority**

**COMPANY LETTER**

By the resolution of the Board of Directors at a meeting held at ..... on ..... 2024... whose signature appears below, has been duly authorised to sign and thereby bind [*insert name of the Bidder*] and its members in relation to all documents in connection with the Project. A copy of the resolution authorising the signatory to sign the relevant documents is attached herewith.

On behalf of

..... [BLOCK LETTERS]

SIGNED FOR AND ON BEHALF OF COMPANY .....

IN HIS CAPACITY AS .....

DATE .....

SPECIMEN SIGNATURE OF SIGNATORY.....

WITNESS: 1 .....

2.....

**ANNEXURE 1B  
FORM OF BID BOND**



**ETHEKWINI MUNICIPALITY UMDLOTI AND UMKOMAAS SEWAGE  
TREATMENT PLANTS PPP PROJECT**

**REQUEST FOR PROPOSALS Phase 1 (RFP Phase 1)  
comprised of Volume 1 (Instructions to Bidders) and Volume 2 (Concession Agreement)**

**RFP NUMBER: WS-7795**

**FOR THE PROCUREMENT OF A PRIVATE PARTY TO UNDERTAKE THE DESIGN, FINANCE,  
CONSTRUCTION, OPERATION AND MAINTENANCE OF SEWAGE TREATMENT PROJECTS  
AT UMDLOTI AND UMKOMAAS ON A PPP BASIS**

**ANNEXURE 1B**

**FORM OF BID BOND<sup>1</sup>**

---

<sup>1</sup> This Bid Bond is to be provided by a financial institution in South Africa, which may be a registered bank in terms of the Banks Act (Act 94 of 1990), a lending institution registered in terms of the National Credit Act (Act 34 of 2005) or an insurance company registered in terms of Short-term Insurance Act (Act 53 of 1998) or registered in terms of Long-term Insurance Act (Act 52 of 1998).

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**BID BOND IN RESPECT OF [INSERT NAME OF BIDDER]**

**THIS BOND IS MADE ON [DAY, MONTH AND YEAR]**

**BETWEEN:**

**ETHEKWINI MUNICIPALITY**

**AND [INSERT ADDRESS AND EMAIL ADDRESS] ("the Beneficiary")**

**AND**

**[INSERT NAME OF BANK OR INSURANCE COMPANY] [WHOSE REGISTERED OFFICE IS AT] [INSERT ADDRESS AND EMAIL ADDRESS] ("Bond Provider")**

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1. Terms defined in the RFP are accorded the same meaning in this Bond, save in respect of those terms defined in the Concession Agreement which are accorded the same meanings as in the Concession Agreement, which are italicised for ease of identification; and
- 1.2. Principal means for purposes of this Bid Bond, the Bidder.

**2. PAYMENTS UNDERTAKING**

Subject to provisions of this Bond, the Bond Provider hereby irrevocably undertakes to the Beneficiary that, upon the Beneficiary making demand upon the Bond Provider in accordance with clause 3, the Bond Provider will, within 10 (ten) days of receipt of such demand, pay to the Beneficiary the whole amount the Beneficiary certifies in the Certificate (as defined in clause 3) (the "Bond Amount").

**3. MAKING DEMAND**

- 3.1. In order to make a demand on the Bond Provider pursuant to clause 2, the Beneficiary shall deliver to the Bond Provider a certificate substantially in the form set out in Appendix 2A (the "Certificate") signed by the permitted assignee of the Beneficiary and attaching to such certificate a copy of any document referred to in the certificate as being so attached.
- 3.2. Any demand under this Bond shall be delivered to the Bond Provider by hand or by registered post to the address given above (or to such other address in South Africa as the Bond Provider shall have given to the Beneficiary not less than 14 (fourteen) business days' prior notice in writing).
- 3.3. Any claim by the Beneficiary under this Bond must be made within 60 (sixty) days of the expiry of the proposal validity period or any extended proposal validity period.
- 3.4. Within the business day following the date on which the Beneficiary delivers the Certificate pursuant to clause 3.1, the Beneficiary shall also deliver to the Principal a certificate substantially in the form set out in Appendix 2A. Any failure by the Beneficiary to so deliver such a Certificate in a timely fashion shall not in any respect vitiate or derogate from the effect of the Certificate delivered pursuant to clause 3.1.

**4. NO DEDUCTIONS**

All payments by the Bond Provider under this Bond shall be made free, clear of and without any deduction or withholding for or on account of any set-off, counterclaim or tax, save to the extent that the Bond Provider is required by law to make payment subject to a deduction or a withholding. In such event the Bond Provider shall make such further payments as are necessary to ensure that, after the making of such deduction or withholding, the Beneficiary receives (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum the Beneficiary would have received had no such deduction or withholding been made or required to be made.

**5. LIABILITY OF THE BOND PROVIDER**

- 5.1. The maximum aggregate liability of the Bond Provider under this Bond shall be R30 million. The limit in this clause 5 shall not apply to any default interest payable by the Bond Provider pursuant to clause 6.

5.2. The Bond Provider liability under this Bond shall come into existence on whichever of the following events is first to occur: -

5.2.1 if during the procurement phase, but prior to Commercial Close –

5.2.1.1. the Principal, and/or any Member thereof, or any relevant entity thereof has failed to satisfy its obligations in full in accordance with the RFP;

5.2.1.2. the Principal has withdrawn its Proposal, or the Principal and/or any relevant entity has withdrawn or terminated its participation as the case maybe at any time after submission of its Proposal up to and including the validity period or any extended proposal validity period, provided, in the latter instance, that the Principal agreed to the extended proposal validity period;

5.2.1.3. the Response and/or Proposal contains a false statement or a material misrepresentation; or

5.2.1.4. an event(s) that constitute(s) a ground for disqualification in the RFP has occurred; or

5.2.2 if post Commercial Close –

5.2.2.1. the Concessionaire does not pay IFC Advisory the Reimbursable Grant per clause 3.2 of the Concession Agreement; or

5.2.2.2. failure by the Concessionaire to meet any one or more of the Conditions Precedent due to be fulfilled by the Concessionaire per clause 3.5 of the Concession Agreement.

5.3. The validity period of this Bond shall from the date on which it is issued until the announcement of a Preferred Bidder, unless this Bond is earlier called as contemplated in clause 5.2 above, or the Department terminates the procurement process for the Project, whereupon this Bond shall expire

## 6. **DEFAULT INTEREST**

The Bond Provider shall be liable to pay to the Beneficiary default interest on the amount unpaid at a rate equal to 2 (two) percent, above the publicly quoted prime lending rate per annum published by the *[insert name of ABSA, FNB, Nedbank or Standard Bank]* from time to time on any sum due hereunder which remains unpaid from the date on which payment is due to the date on which payment is made.

## 7. **ABSOLUTE NATURE OF BOND**

This Bond constitutes an absolute, unconditional and irrevocable commitment by the Bond Provider to make payment to the Beneficiary in accordance with, and subject only to, the terms set out in this Bond.

## 8. **VALIDITY OF BOND**

8.1. This Bond shall remain valid from the date of its issue until the expiry of the Bid Validity Period (as it may be extended in terms the RFP)].

8.2. This Bond shall terminate and be returned to the Bond Provider within 15 (fifteen) Business Days of payment of an amount or amounts which in aggregate equal the Bond Amount or, on expiry of the Bond as set out above.

## 9. **NOTICES AND OTHER COMMUNICATIONS**

9.1. Save as specifically otherwise provided in this Bond, any notice or other communication to be served under this Bond shall be in writing and may be served upon a party to this Bond only by delivering this by hand, registered post or facsimile to the party to be served at the address or facsimile number (as applicable) shown above or at such other address

or facsimile number as it may from time to time notify in writing to the other party. Any notice or other communication served by facsimile shall also be sent by registered post to the address shown above.

9.2. A notice or other communication served by facsimile shall be deemed duly served at the time of transmission and a notice or other communication served by hand or by registered post shall be deemed to have been served at the time of delivery unless in respect of any notice or communication served on a day which is a Saturday, Sunday or public holiday in South Africa.

**10. ENTIRE AGREEMENT**

The terms of this Bond constitute the entire agreement and understanding between the parties to this Bond in connection with the subject matter to this Bond. Neither party to this Bond has relied upon any representation by the other party except as expressly set out in this Bond.

**11. APPLICABLE LAW**

This Bond (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Bond or its formation) shall be governed by and construed in accordance with the laws of the Republic of South Africa and the parties to this Bond agree to submit to the jurisdiction of the courts of the Republic of South Africa.

Signed by the parties and witnessed on the following dates and at the following places respectively:

<u>DATE</u>	<u>PLACE</u>	<u>SIGNATURE</u>
_____	_____	[insert name] For: Bond Provider <sup>1</sup> [signature] _____ (who warrants that he is duly authorised hereto)
_____	_____	[insert name] For: eThekweni Municipality [signature] _____ (who warrants that s/he is duly authorised hereto)
_____	_____	[insert name] [signature] _____
_____	_____	[insert name] [signature] _____
_____	_____	

**WITNESSES**

<sup>1</sup> Proof of authority may be required.

**ANNEX 1 – ANNEXURE TO THE BID BOND**

**Form of Certificate**

To: *[insert name and address of Bond Provider]*

Attention:

From: **eTHEKWINI MUNICIPALITY**

Dated:

Dear Sirs

**Re: Bond No. [ ] issued by you and Dated (the "Bond")**

Terms defined in the Bond and in the Request for Proposals ("RFP") shall have the same meaning when used in this certificate, and similarly, those terms defined in the Concession Agreement have the same meanings as in the Concession Agreement, which are italicised for ease of identification.

We confirm that the Principal has failed to satisfy its obligations in full in accordance with the terms of the RFP, in that: -

- the Principal, and/or any Member thereof, or any relevant entity thereof has withdrawn its Proposal and/or any Member has withdrawn or terminated its participation as the case maybe at any time after submission of its Proposal up to and including the validity period or any extended proposal validity period; or
- the Respondent Information Form and/or Proposal contain a false statement or a material misrepresentation; or
- an event that constitutes a ground for disqualification in the RFP has occurred; or
- the Concessionaire has not paid *IFC Advisory the Reimbursable Grant* per clause 3.2 of the Concession Agreement; or
- the Concessionaire failed to meet any one or more of the *Conditions Precedent* due to be fulfilled by the Concessionaire per clause 3.5 of the Concession Agreement.

We hereby demand in accordance with clauses 2 and 3 of the Bond that you pay the sum of R[●] (insert) in immediately available funds to the following bank account: -

Account Name:

Account Bank:

Account Number:

Yours faithfully

---

**[insert signatory title]**

for and on behalf of  
**eThekwini Municipality**

## ANNEXURE 1C

### POPI ACT CONSENT FOR PROPOSALS

#### ETHEKWINI MUNICIPALITY UMDLOTI AND UMKOMAAS SEWAGE TREATMENT PLANTS PPP PROJECT

#### CONSENT TO PROCESS PERSONAL INFORMATION IN TERMS OF THE PROTECTION OF INFORMATION ACT, 4 OF 2013 ("PoPI Act")

##### 1. GENERAL

In order to evaluate Proposals submitted by Bidders with respect to the RFP, the Municipality is required to process the personal information of Bidders and their constituent Members, therefore the Municipality must comply with the provisions of PoPI Act and give effect to the purposes of the PoPI Act, which *inter alia*, includes giving effect to the constitutional right to privacy, by safeguarding personal information of Bidders and their constituent Members when processing same.

##### 2. INFORMATION BEING COLLECTED AND PROCESSED BY THE MUNICIPALITY

2.1. The Municipality will be collecting and processing the personal information of the Bidder and its Members which the Municipality has requested in the different volumes of the RFP document.

2.2. The personal information collected and processed by the Municipality will be collected directly from the Bidder and its Members, and from the Bidder's Proposal.

2.3. The Municipality reserves the right to seek such further information from any Bidder and/or their constituent members as it determines is required in its absolute and sole discretion, which further information will also be collected and processed for the purpose mentioned in section 3 (*The Purpose for Collecting and Processing Information*) below.

2.4. The Municipality reserves the right to collect and process the Bidder and its Member's personal information indirectly, from public records, including but not limited to the website of the Bidder and the website of each of its Members. In this regard, the Municipality undertakes to collect and process of such information in a manner that does not prejudice the legitimate interests of the Bidder and its Members.

##### 3. THE PURPOSE FOR COLLECTING AND PROCESSING INFORMATION

3.1. The personal information collected and processed by the Municipality will be for the purpose of requesting from each Bidder a fully developed, comprehensive, firm and underwritten Proposal in the prescribed format and capable of acceptance by the Municipality, and for the purpose related to the function and activity of the Municipality as a public body. The full purpose of the RFP is as recorded in section 2.2 of RFP Volume 1 (*Instructions to Bidders*) and personal information of each

Bidder and Member may also be processed by the Municipality for various components of such RFP purpose.

- 3.2. The Municipality will keep the records of the Bidder and its Member's personal information for the period necessary for achieving the purposes of the RFP, and for any period prescribed by law that may require the Municipality to retain the Bidder and its Member's personal information.

4. **SUPPLY OF THE INFORMATION BY EACH BIDDER AND ITS MEMBERS**

Each Bidder and its Members acknowledge and understand that the personal information collected and processed by the Municipality is mandatory for purposes of evaluating the Bidder's Proposal, and is provided to the Municipality by the Bidder and its Members voluntarily.

5. **CONSEQUENCES OF FAILURE TO PROVIDE THE INFORMATION**

Each Bidder and its Members acknowledge and understand that any failure by a Bidder and/or its Members to satisfy the requirements of Annexure 1 (*Mandatory Proposal Requirements*) of Volume 1 to the RFP, may in the sole and absolute discretion of the Municipality result in the disqualification by the Municipality of the Bidder and/or any one or more of its Member.

6. **PROCESSING OF INFORMATION BY THIRD PARTIES**

The Municipality is assisted by the Transaction Advisory Team in the Project, who may as part of its mandate and to the extent required by the Municipality provide support to the Municipality's evaluation officials, and consequently in providing such support, process the Bidder and its Member's personal information, on behalf of the Municipality, and under the authority of the Municipality. To this end, Transaction Advisory Team has executed a Code of Conduct and a Declaration of Interest, to ensure the lawful processing and protection of the Bidder and its Members personal information.

7. **RIGHTS OF EACH BIDDER AND ITS MEMBERS**

- 7.1. The Municipality hereby notifies the Bidders and their Members of their rights, with respect to the processing of their personal information, in terms of section 11 of the PoPI Act. Each Bidder and its Members are entitled to exercise the rights in paragraph 7.2, below in deference to applicable procurement jurisprudence, such as the provisions of section 217 of the Constitution, section 51(1)(a) of the PFMA, the PPPFA, the PPPFA Regulations and case law.

- 7.2. In terms of the PoPI Act, each Bidder and its Members, have the right to, *inter alia*:

- 7.2.1. request access to their personal information;

- 7.2.2. request, where necessary, the correction, destruction or deletion, of their personal information;

- 7.2.3. object, on reasonable grounds and with respect to its particular circumstance, to the processing of its personal information, which may in the sole and absolute discretion of the Municipality result in the disqualification by the Municipality of the Bidder concerned;

- 7.2.4. access its personal information;
- 7.2.5. submit a complaint to the Regulator, as contemplated by the provisions of the PoPI Act, with respect to an alleged interference regarding the protection of its personal information; and
- 7.2.6. institute civil proceedings regarding an alleged interference with the protection of its personal information.

8. **CONSENT**

By signature hereunder, each Bidder and each of its Members acknowledge that they know and understand the terms and conditions for the processing of their personal information and consent to the collection and processing of their personal Information by the Municipality as set out in this consent form.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Authorised Member

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Capacity or position of signatory in  
Authorised Member

\_\_\_\_\_  
Name of signatory

**ANNEXURE 1D  
MUNICIPALITY TENDER FORMS**

Annexure 1D1	Proof of Attendance at the Compulsory Briefing / Bid Clarification Meeting or Certificate
Annexure 1D2	Compulsory Tender Options Compliance Bid Declaration Affidavit
Annexure 1D3	Declaration of Correctness Of Bid and Understanding Of The Bid Specification
Annexure 1D4	CIPC Company Registration Certificate
Annexure 1D5	Letter of Good Standing in terms of Coid Act (Compensation for Occupational Injuries and Diseases Act)
Annexure 1D6	Bidders Financial Standing
Annexure 1D7	Record of Addenda / Briefing Notes
Annexure 1D8	Certificate of Authority
Annexure 1D9	Declaration of Municipal Fees
Annexure 1D10	Compulsory Enterprise Questionnaire
Annexure 1D11	CSD Registration Report
Annexure 1D12	Certificate of Compliance / Letter of Good Standing from the Department of Employment and Labour for UIF (Unemployment Insurance Fund)
Annexure 1D13	MBD2: Tax Clearance Certificate Requirements
Annexure 1D14	MBD 4: Declaration of Interest
Annexure 1D15	MBD 5: Declaration for Procurement Above R10 Million (All Applicable Taxes Included)
Annexure 1D16	MBD 6.1: Preference Points Claim in terms of the Preferential Procurement Regulations
Annexure 1D17	MBD8: Declaration of Bidder's Past Supply Chain Management Practices
Annexure 1D18	MBD9: Certificate of Independent Bid Determination B-BBEE Certificate / B-BBEE Sworn Affidavit

**ANNEXURE 1D1 - PROOF OF ATTENDANCE AT THE COMPULSORY BRIEFING / BID  
CLARIFICATION MEETING OR CERTIFICATE**

This is to certify that:

(Bidder's name) .....

of (address) .....

.....

was represented by the person(s) named below at the Clarification Meeting held for all tenderers, the details of which are stated in the Response Forms.

I/We acknowledge that the purpose of the meeting was to acquaint myself / ourselves with the works and / or matters incidental to doing the work specified in the bid documents in order for me / us to take account of everything necessary when compiling our rates and prices included in the offer.

Particulars of person(s) attending the meeting:

Name: .....	Name: .....
Signature: .....	Signature: .....
Capacity: .....	Capacity: .....

Attendance of the above person(s) at the meeting is confirmed by the Municipality Representative, namely:

Name: .....

Signature: .....

Date: .....

**ANNEXURE 1D2 - COMPULSORY TENDER OPTIONS COMPLIANCE BID DECLARATION  
AFFIDAVIT**

The undersigned declares the following:

- a) We, including our representatives and agents have read and understood the Request for Proposal Documents and fully understand the content of the documents.
- b) We have submitted bona fide offer for the Bid.
- c) We acknowledge and accept the Condition of Bid, that it is mandatory/compulsory for a Bidder to submit bona fide offers all bid options in order for a bid to be considered as a responsive bid.
- d) We acknowledge and accept that by submitting a bid, that the municipality at its sole and absolute discretion has the right to disqualify any bidder, should a Bidder fail to submit bona fide bid offers for all Bid Options.

Signed by the undersigned,

- Who warrants that he is duly authorized to do so on behalf of the Bidder, and
- Who confirms that the contents of the declarations made herein are within his/her personal knowledge and are to the best of his/her belief both true and correct, and
- Who understands the conditions under which such declarations are made and confirms that the Bidder satisfies the Conditions of Bid in respect of bid options.

Signature of Bidder's Representative:	
Name of Bidder's Representative:	
Name of Bidder:	
Telephone No. of Bidder:	
Email Address of Bidder:	
Date:	

**ANNEXURE 1D3 - DECLARATION OF CORRECTNESS OF BID AND UNDERSTANDING OF THE BID SPECIFICATION**

I, \_\_\_\_\_ (Full Name) the Authorised

Signatory of \_\_\_\_\_ (Bidder) hereby declare that the information furnished in this bid is entirely true and correct; and the bid is submitted on condition that the Bidder; its facilities, etc., shall at any stage be subject to inspection.

In addition, I confirm that our bid management team (all individuals that participate in any manner whatsoever in the preparation of the bid) has read and understood the contents of the Request for Proposal document including all Annexures and Schedules and are fully aware of all the terms and conditions, punitive measures, conditions of contract, pricing instructions, disqualifying criteria, bid evaluation criteria, output specification, etc.

Further, I acknowledge that our bid management team confirms that they are aware that the set of procurement documents, which may be amended from time to time during the tender period via tender addenda, briefing notes, etc. comprises the following:

- Volume 1 of 2: Instructions to Bidders; and
- Volume 2 of 2: Draft Concession Agreement with its schedules and annexes

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
(of person authorised to sign on behalf of the Bidder)

## **ANNEXURE 1D4 - CIPC COMPANY REGISTRATION CERTIFICATE**

Important note to the Bidder: The relevant supporting documents to the organisation submitting a bid i.e. Registration Certificates for Sole Proprietors, Companies, Close Corporations, Joint Ventures, Consortia and Partnerships, all as referred to in the Response Forms, must be inserted here.

***[CIPC Registration documents to be inserted here]***

**ANNEXURE 1D5 - LETTER OF GOOD STANDING IN TERMS OF COID ACT (COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT)**

[Letter/s of Good Standing to be inserted here]

In Bids where Bidders, Consortium (if relevant) and Key Contractors are involved; each party must submit a separate valid Letter of Good Standing Certificate, or any an equivalent of valid proof of good standing in respect of an international member, for their respective organisation.

NOTE: Upon submission of its Proposal, should the Bidder/s Letter of Good Standing Status printed from the online portal, not be in order, this will lead to the invalidation of the Bid.

## **ANNEXURE 1D6 - BIDDERS FINANCIAL STANDING**

The Bidder shall provide information about its commercial position, which includes information necessary for the Employer to evaluate the Bidders financial standing.

To that end the Bidder must ensure that the bank report below is completed by the Bidder's bank and/or banker, confirming the minimum bank rating of Code: C (Good for normal business engagements) for South African members or an equivalent bank rating code for an international member, to the effect that the Bidder will be able to successfully complete the contract at the offered amount within the specified time for completion.

The Municipality undertakes to treat the information thus obtained as confidential, strictly for the use of evaluation of the bid submitted by the Bidder.

***[Bank Rating Letter to be inserted here]***



**ANNEXURE 1D8 - CERTIFICATE OF AUTHORITY**

Indicate the status of the Bidder by ticking the appropriate box hereunder.

<b>COMPANY</b>	<input type="checkbox"/>	<b>CLOSE CORPORATION</b>	<input type="checkbox"/>	<b>PARTNERSHIP</b>	<input type="checkbox"/>	<b>JOINT VENTURE</b>	<input type="checkbox"/>	<b>SOLE PROPRIETOR</b>	<input type="checkbox"/>
Refer to Notes at the bottom of the page									

I/We, the undersigned, being the Chairperson (Company), Member(s) (Close Corporation), Partners (Partnership), Sole Owner (Sole Proprietor), Lead Partner (JV), in the company / business trading as:

.....  
..

hereby authorise Mr/Mrs/Ms .....

acting in the capacity of .....

to sign all documents in connection with this bid for RFP No. WS-7795 and any contract resulting from it on our behalf.

NAME	ADDRESS	SIGNATURE	DATE
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**Notes**

The following documents must be attached to the back inside cover to this procurement document:

- If a Company: a "Resolution of the Board" in this regard.
- If a Joint Venture: a "Power of Attorney" signed by the legally authorised signatories of all the partners to the Joint venture.

**ANNEXURE 1D9 - DECLARATION OF MUNICIPAL FEES**

I, the undersigned, do hereby declare that the Municipal fees of

.....

(full name of Company / Close Corporation / partnership / sole proprietor/Joint Venture) (hereinafter referred to as the TENDERER) are, as at the date hereunder, fully paid or an Acknowledgement of Debt has been concluded with the Municipality to pay the said charges in instalments.

The following account details relate to property of the said TENDERER:

<u>Account</u>	<u>Account Number:</u> to be completed by tenderer.
Consolidated Account No.	<input type="text"/>
Electricity	<input type="text"/>
Water	<input type="text"/>
Rates	<input type="text"/>
JSB Levies	<input type="text"/>
<u>Other</u>	<input type="text"/>
<u>Other</u>	<input type="text"/>

I acknowledge that should the aforesaid Municipal charges fall into arrears, the Municipality may take such remedial action as is required, including termination of any contract, and any payments due to the Contractor by the Municipality shall be first set off against such arrears. ATTACHED, to the back inside cover of this document, please find copies of the above account's and or agreements signed with the municipality.

- Where the TENDERER'S place of business or business interests are outside the jurisdiction of eThekweni municipality, a copy of the accounts/agreements from the relevant municipality must be attached (to the back inside cover of this document).
- Where the tenderer's Municipal Accounts are part of their lease agreement, then a copy of the agreement, or official letter to that effect is to be attached (to the back inside cover of this document).

NAME : ..... (Block Capitals)

SIGNATURE : ..... DATE: .....  
*(of person authorised to sign on behalf of the Tenderer)*

**ANNEXURE 1D10 - COMPULSORY ENTERPRISE QUESTIONNAIRE**

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

- 1) **Name of enterprise:** .....
- 2) **VAT registration number, if any:** .....
- 3) **CIDB registration number, if any:** .....
- 4) **Particulars of sole proprietors and partners in partnerships**

Full Name	Identity number*	Personal income tax number *

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

**5) Particulars of companies and close corporations**

Company registration number, if applicable:

.....

Close corporation number, if applicable:

.....

Tax Reference number, if any:

.....

**6) Record in the service of the state**

Indicate by marking the relevant boxes with a cross, if any sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months in the service of any of the following:

- a member of any municipal council
- a member of any provincial legislature
- a member of the National Assembly or the National Council of Province
- a member of the board of directors of any municipal entity
- an official of any municipality or municipal entity
- an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999)
- a member of an accounting authority of any national or provincial public entity
- an employee of Parliament or a provincial legislature

Name of sole proprietor, partner, director, manager, principal shareholder or stakeholder	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

Insert separate page if necessary.

### 7) Record of spouses, children and parents in the service of the state

Indicate by marking the relevant boxes with a cross, if any spouse, child or parent of a sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months in the service of any of the following:

- |  |   |
|--|---|
| <input type="checkbox"/> a member of any municipal council                                     | <input type="checkbox"/> an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999) |
| <input type="checkbox"/> a member of any provincial legislature                                |   |
| <input type="checkbox"/> a member of the National Assembly or the National Council of Province | <input type="checkbox"/> a member of an accounting authority of any national or provincial public entity  |
| <input type="checkbox"/> a member of the board of directors of any municipal entity            |   |
| <input type="checkbox"/> an official of any municipality or municipal entity                   | <input type="checkbox"/> an employee of Parliament or a provincial legislature  |

Name of spouse, child or parent	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

Insert separate page if necessary

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

- i) authorizes the Employer to obtain a tax clearance certificate from the South African Revenue Services that my/our tax matters are in order;
- ii) confirms that neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercise, 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 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 bidders or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest; and
- v) 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 .....

**ANNEXURE 1D11 - CSD REGISTRATION REPORT**

Bidders are required to be registered at the time of tender closing on the National Treasury Central Supplier Database (CSD) as a service provider.

Bidders are to attach to this page a printout of their CSD Registration Report, as obtained from the National Treasury’s CSD website <https://secure.csd.gov.za/Account/Login>. The date of obtaining the printout is to be indicated on the printout.

The following is an example of the beginning of the printout obtained from the above website.

**CENTRAL SUPPLIER DATABASE FOR GOVERNMENT**

Report Date: \_\_\_\_\_

Report Ran By: \_\_\_\_\_

**CSD REGISTRATION REPORT**

**SUPPLIER IDENTIFICATION**

Supplier number	_____	Have Bank Account	_____
Is supplier active?	_____	Total annual turnover	_____
Supplier type	_____	Financial year start date	_____
Supplier sub-type	_____	Registration date	_____
Legal name	_____	Created by	_____
Trading name	_____	Created date	_____
Identification type	_____	Edit by	_____
Government breakdown	_____	Edit date	_____
Business status	_____	Restricted Supplier	_____
Country of origin	_____	Restriction Last Verification Date	_____
South African company/CC registration number	_____		

NAME : ..... (Block Capitals)  
 SIGNATURE : ..... DATE: .....  
 (of person authorised to sign on behalf of the Bidder)

**ANNEXURE 1D12 – CERTIFICATE OF COMPLIANCE / LETTER OF GOOD STANDING FROM THE DEPARTMENT OF EMPLOYMENT AND LABOUR FOR UIF (UNEMPLOYMENT INSURANCE FUND)**

Bidders are required to be registered at the time of tender closing, with the Unemployment Insurance Fund. In this regard, Bidders must produce a Valid Certificate of Compliance / Letter of Good Standing as proof of registration with the Unemployment Insurance Fund, as well as compliance with the Unemployment Insurance Fund requirements.



NAME : ..... (Block Capitals)

SIGNATURE : ..... DATE: .....  
(of person authorised to sign on behalf of the Bidder)

**ANNEXURE 1D13 - MBD 2: TAX CLEARANCE CERTIFICATE REQUIREMENTS**

Reference is to be made to Clauses F.2.23 and F.3.13(a) of the Tender Data.

SARS has introduced a new Tax Compliance Status System. Tenderers can submit a Tax Compliance Status PIN (TCS PIN) instead of an original Tax Clearance Certificate. This TCS PIN can be used by third parties to certify the taxpayer’s real-time compliance status.

Separate Tax Clearance Certificates / TCS PINs are required for each entity in a Joint Venture.

The TCS PIN(s) are to be entered under item 3.4 on form **T2.1.2.1: Compulsory Enterprise Questionnaire**.

**Tenderers are to include, at the back of their tender submission document, a printout of their Tax Compliance Status PIN (TCS PIN) OR an original Tax Clearance Certificate.**

**Failure to include the required document will make the tender submission non-responsive.**

*I, the undersigned, who warrants that they are authorised to sign on behalf of the Tenderer, confirms that the information contained in this form is within my personal knowledge and is to the best of my belief both true and correct, **and that the requested documentation has been included in the tender submission.***

**NAME (Block Capitals):**

**Date**

**SIGNATURE:**

**ANNEXURE 1D14 - MBD 4: DECLARATION OF INTEREST**

**No bid will be accepted from persons “in the service of the state”<sup>1</sup>.**

Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

1.0 Are you presently in the service of the state?  If yes, furnish particulars: .....	YES	NO
2.0 Have you been in the service of the state for the past twelve months?  If yes, furnish particulars: .....	YES	NO
3.0 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid?  If yes, furnish particulars: .....	YES	NO
4.0 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid?  If yes, furnish particulars: .....	YES	NO
5.0 Are any of the company’s directors, trustees, managers, principle shareholders or stakeholders in service of the state?  If yes, furnish particulars: .....	YES	NO
6.0 Are any spouse, child or parent of the company’s directors, trustees, managers, principle shareholders or stakeholders in service of the state?  If yes, furnish particulars: .....	YES	NO
7.0 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract?  If yes, furnish particulars: .....	YES	NO
8.0 The names of all directors / trustees / shareholders / members / sole proprietors / partners in partnerships, their individual identity numbers and state employee numbers are indicated in <b>SECTION A of these Consolidated Municipal Bidding documents.</b>		

Full Name	Identity No.	State Employee No.	Personal income tax No. *
Use additional pages if necessary			

**ANNEXURE 1D15 - MBD 5: DECLARATION FOR PROCUREMENT ABOVE R10 MILLION (ALL APPLICABLE TAXES INCLUDED)**

For all procurement expected to exceed R10 million (all applicable taxes included), bidders must complete the following questionnaire.

<p>1.0 Are you by law required to prepare annual financial statements for auditing? If YES, you will be required to submit audited annual financial statements (on request during the tender evaluation period) for the past three years or since the date of establishment if established during the past three years.</p>	<p>YES</p>	<p>NO</p>
<p>2.0 Do you have any outstanding undisputed commitments for municipal services towards any municipality for more than three months or any other service provider in respect of which payment is overdue for more than 30 days?</p> <p>If NO, this serves to certify that the bidder has no undisputed commitments for municipal services towards any municipality for more than three months or other service provider in respect of which payment is overdue for more than 30 days.</p> <p>If YES, provide particulars on a letterhead. (Attach this letter to the back inside cover of this procurement document).</p>	<p>YES</p>	<p>NO</p>
<p>3.0 Has any contract been awarded to you by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract?</p> <p>If YES, provide particulars on a letterhead. (Attach this letter to the back inside cover of this procurement document).</p>	<p>YES</p>	<p>NO</p>
<p>4.0 Will any portion of goods or services be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality / municipal entity is expected to be transferred out of the Republic?</p> <p>If YES, provide particulars on a letterhead. (Attach this letter to the back inside cover of this procurement document).</p>	<p>YES</p>	<p>NO</p>

## **ANNEXURE 1D16 - MBD 6.1: PREFERENCE POINTS CLAIM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS (2022)**

Reference is to be made to Clause F.3.11 of the Tender Data.

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

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

### **1.0 GENERAL CONDITIONS**

- 1.1 The following preference point systems are applicable to invitations to tender:
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- 1.2 The applicable preference point system for this tender is the 90/10 preference point system.
- 1.3 Preference Points for this tender shall be awarded for:
- Price and Specific Goals: 90 (price) and 10 (specific goals), in terms of 1.2 above.
- The total Preference Points, for Price and Specific Goals, is 100.
- 1.4 Failure on the part of the tenderer to submit the required proof or documentation, in terms of the requirements in the Conditions of Tender for claiming specific goal preference points, will be interpreted that preference points for specific goals are not claimed.
- 1.5 The Municipality reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard of preferences, in any manner required by the Municipality.

### **2.0 DEFINITIONS**

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

### 3.0 FORMULA FOR CALCULATION OF PREFERENCE PRICE POINTS

#### 3.1 PROCUREMENT OF GOODS AND SERVICES

POINTS AWARDED FOR PRICE: A maximum of 90 points is allocated for price on the following basis:

90 / 10 Points System

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

Where:

- Ps = Points scored for price of tender under consideration  
Pt = Price of tender under consideration  
Pmin = Price of lowest acceptable tender

#### 4.0 POINTS AWARDED FOR SPECIFIC GOALS

- 4.1 In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goal(s) stated in Table 1 below, as supported by proof/ documentation stated in the Conditions of Tender:
- 4.2 In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of:
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system, or
  - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

**TABLE 1:** Specific Goals for the tender and maximum points for each goal are indicated per the table below.

**Tenderers are to indicate their points claim for each of the Specific Goals in the shaded blocks.**

The Specific Goals to be allocated points in terms of this tender	Maximum Number of points ALLOCATED (90/10 system)	Number of points CLAIMED (90/10 system)
<b>Ownership Goal:</b> Race (black)	3.334	
<b>RDP Goal:</b> Social upliftment of communities	3.333	
<b>RDP Goal:</b> The promotion of SMMEs owned by Black People (contracts >R5m)	3.333	
<b>Total CLAIMED Points 10 Maximum</b>	10	

I, the undersigned, who warrants that they are authorised to sign on behalf of the Tenderer, certify that the points claimed, based on the specific goals as specified in the tender, qualifies the tendering entity for the preference(s) shown.

I acknowledge that:

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

**NAME (Block Capitals):** .....

**Date**

**SIGNATURE:** .....

**ANNEXURE 1D17 - MBD8: DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES**

*This Municipal Bidding Document must form part of all bids invited. It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.*

*The bid of any bidder may be rejected if that bidder, or any of its directors have:*

- a) *abused the municipal entity's supply chain management system or committed any improper conduct in relation to such system;*
- b) *been convicted for fraud or corruption during the past five years;*
- c) *wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or*
- d) *been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).*

*In order to give effect to the above, the following questions must be answered.*

<p>1.0 Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer / Authority of the institution that imposed the restriction after the audi alteram partem rule was applied. The Database of Restricted Suppliers now resides on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page. If <input type="checkbox"/> yes, <input type="checkbox"/> no, furnish particulars: .....</p>	YES	NO
<p>2.0 Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page. If <input type="checkbox"/> yes, <input type="checkbox"/> no, furnish particulars: .....</p>	YES	NO
<p>3.0 Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years? If <input type="checkbox"/> yes, <input type="checkbox"/> no, furnish particulars: .....</p>	YES	NO
<p>4.0 Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months? If <input type="checkbox"/> yes, <input type="checkbox"/> no, furnish particulars: .....</p>	YES	NO
<p>5.0 Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract? If <input type="checkbox"/> yes, <input type="checkbox"/> no, furnish particulars: .....</p>	YES	NO

## ANNEXURE 1D18 - MBD9: CERTIFICATE OF INDEPENDENT BID DETERMINATION

Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a pe se prohibition meaning that it cannot be justified under any grounds.

Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:

- (a) take all reasonable steps to prevent such abuse;
- (b) reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
- (c) cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.

The following MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging. In order to give effect to the above, the following Certificate of Bid Determination must be completed and submitted with the bid.

The undersigned, in submitting the accompanying bid:

---

(Bid Number and Description)

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

- 1.0 I have read and I understand the contents of this Certificate;
- 2.0 I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
- 3.0 I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
- 4.0 Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
- 5.0 For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - a) has been requested to submit a bid in response to this bid invitation;
  - b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder.
- 6.0 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding. (Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.
- 7.0 In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - a) prices;
  - b) geographical area where product or service will be rendered (market allocation);
  - c) methods, factors or formulas used to calculate prices;
  - d) the intention or decision to submit or not to submit, a bid;
  - e) the submission of a bid which does not meet the specifications and conditions of the bid;
  - f) bidding with the intention not to win the bid.

- 8.0 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 9.0 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No. 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 or any other applicable legislation.

.....	.....
Signature	Date
.....	.....
Position	Name of Bidder

**ANNEXURE 1D19 - B-BBEE CERTIFICATE / B-BBEE SWORN AFFIDAVIT**

Bidders are required to insert the BBBEE Certificate / B-BBEE Sworn Affidavit to substantiate its BBBEE Status Level claimed under Annexure 1T - MBD:6.1 Preference Points Claimed.

## ANNEXURE 1E – VDR UNDERTAKING

### 1. GENERAL

- 1.1 This Virtual Data Room undertaking document (the "**VDR Undertaking**"), is issue as contemplated in section 6.4.3 (a) of the request for proposals dated 26 April, 2024 issued by the eThekweni Municipality (the "Municipality"), ("the **RFP**") in connection with the project to procure a private party to undertake the design, finance, construction, operation and maintenance of sewage treatment plants at Umdloti and Umkomaas on a PPP basis (the "**Project**").
- 1.2 Capitalised terms used but not otherwise defined in this VDR Undertaking shall have the meaning given to them in the RFP.
- 1.3 The VDR Undertaking sets out the undertakings, rules and procedures governing the use of a website data room (the "**Virtual Data Room**") made available to Bidders and, where the Bidder is a Consortium, to its Members and to its and their respective directors, officers, employees, agents, financial and/or any other professional adviser(s) involved in the Project procurement process (each a "**Permitted Person**").
- 1.4 The signing of this VDR Undertaking by an authorized representative of the Bidder shall be deemed to be on behalf of all parties comprising or representing the Bidder who are subsequently given access to the Virtual Data Room. Any direct obligation imposed on the Bidder under this VDR Undertaking shall, in addition to the direct obligation itself, be construed as an obligation to ensure that each Permitted Person complies with such obligation as if such Permitted Person were itself a party to this VDR Undertaking (*mutatis mutandis*). The Bidder shall be liable for the non-performance by each Permitted Person of such indirect / constructive obligation.

### 2. CONFIDENTIALITY

The Bidder acknowledges and agrees that information contained in the Virtual Data Room (the "**Information**") that may be made available by the Municipality or their advisors or representatives in connection with the Project constitutes Confidential Information as contemplated in section 7.6 of RFP Volume 1.

### 3. VIRTUAL DATA ROOM

- 3.1 No representation or warranty (whether express or implied) is given and no responsibility or liability is accepted by the Municipality or its advisers or representatives as to the accuracy or completeness of the Information or otherwise.
- 3.2 The Information, or any part thereof, does not constitute an offer or proposal by or on behalf of the Municipality.

3.3 Additional documents may be added to and documents may be removed from, the Virtual Data Room from time to time by or on behalf of the Municipality. Any change in the Virtual Data Room shall be promptly notified to Bidders. Upon receipt of such notification, Bidders should check the Virtual Data Room regularly as the inclusion of new documents will be apparent from doing so. However, no obligation is undertaken or accepted by the Municipality or its advisers or representatives to provide any additional or updated Information or to correct any inaccuracies or discrepancies in the Information.

#### 4. ACCESS TO THE VIRTUAL DATA ROOM

4.1 Only those Permitted Persons identified to and approved by the Municipality from time to time will be allowed access to the Virtual Data Room. The initial list of such Permitted Persons is set out in 0 (*Schedule 1 Permitted Persons Requiring Access to the Virtual Data Room*) to this VDR Undertaking. If a Bidder wishes to add new Permitted Persons to such list at any time, it should prepare an updated list in the form of 0 (*Schedule 1 Permitted Persons Requiring Access to the Virtual Data Room*) to this VDR Undertaking and submit such updated list to the Project with a copy to the Transaction Advisor Coordinator (to the email address: **eThekwiniWastewaterPPP@ifc.org**). Following the receipt of the updated list, the Project Officer shall notify that Bidder as to whether it accepts the updated list. If the Project Officer accepts, in its absolute discretion, the updated list, the updated list shall replace any previous list provided by that Bidder.

4.2 The Bidder shall ensure at all times that:

- (a) only Permitted Persons shall seek access to the Virtual Data Room; and
- (b) the number of Permitted Persons who shall seek access is limited only to those for whom it is strictly necessary.

4.3 Access to the Virtual Data Room by any Permitted Persons is subject to:

- (a) the consent of the Project Officer; and
- (b) the authorized representative of the Bidder having submitted (i) a signed copy of the VDR Undertaking, together with (ii) a complete list of those Persons requiring access to the Virtual Data Room in the form of 0 (*Schedule 1 Permitted Persons Requiring Access to the Virtual Data Room*) to this VDR Undertaking to the email address: **Sydney.Masha@durban.gov.za** with a copy to the Transaction Advisor Coordinator (being IFC Advisory Services).

4.4 Each Permitted Person granted access to the Virtual Data Room will be allocated and sent a unique user name and temporary password to enable such person to access the Virtual Data Room. Permitted Persons will be prompted to use their name and password each time that they seek access to the Virtual Data Room.

4.5 Having entered a correct user name and password, Permitted Persons will be requested to confirm that they:

- (a) understand and agree to comply with the terms of this VDR Undertaking and any Confidentiality undertakings in the RFP;

- (b) are the authorized user of the Virtual Data Room to whom the password was issued and have not received the password by unauthorized means; and
- (c) acknowledge and accept that neither the Project Officer, the Municipality, its representative or advisers nor any of their respective officers, employees or agents accepts responsibility for or makes any representations, express or implied, or gives any warranty with respect to the accuracy or completeness of the Information.

4.6 Permitted Persons will not be able to access the Virtual Data Room unless and until they have confirmed the above.

4.7 The Municipality reserves the right to refuse, terminate or withdraw access to the Virtual Data Room (either in general or by any Permitted Person) at any time without giving any reason. In particular, if the Bidder withdraws or is disqualified from the Bid Process, access to the Virtual Data Room will be withdrawn.

4.8 The Virtual Data Room will be open twenty-four hours per day, seven days a week until the Proposal Submission Date or such other date as notified by the Municipality to the Bidder, provided that neither the Municipality, the Project Officer, their representative or advisers nor any of their respective officers, employees or agents accepts responsibility for down time, either scheduled or unscheduled of the Virtual Data Room.

## 5. **USE OF THE INFORMATION**

5.1 The Information may not be forwarded or shared other than in accordance with this VDR Undertaking.

5.2 If any Information is printed or downloaded, it shall be deemed to have been printed and/or downloaded on and shall remain subject to, the terms of this VDR Undertaking (including, for the avoidance of doubt, the obligation to return or destroy the Information).

5.3 No attempt may be made to circumvent any of the security features of the Virtual Data Room.

## 6. **SECURITY**

6.1 Permitted Persons must not reveal their user name and password to anyone for any reason whatsoever. New individuals can be added to the list of Permitted Persons and granted their own user names and passwords under the procedure described in Section 4 (*ACCESS TO THE VIRTUAL DATA ROOM*) above.

6.2 When accessing the Virtual Data Room, Permitted Persons must:

- (a) take all necessary steps to ensure that none of the Information contained therein is visible to, or capable of being viewed by, other persons;
- (b) not leave their computer (or other communications device through which they have logged on to the Virtual Data Room) unattended whilst they are logged on to the Virtual Data Room; and
- (c) ensure that they log-out of the Virtual Data Room when they have finished using it, by closing down their Internet browser program.

6.3 It should be noted that the system keeps a record of which usernames have been used and at what time, to access particular documents.

**7. TECHNICAL SUPPORT**

Permitted Persons who experience technical difficulties in accessing or using the Virtual Data Room should be addressed directly to following email address: Sydney.Masha@durban.gov.za.

**8. DISCLAIMER**

No liability is accepted by the Municipality, the Project Officer or their employees, officers, advisers or representatives for any damage of any sort which may be caused to any computer, computer system or other communications device through which the Virtual Data Room has been accessed, or any information stored on any such computer, computer system or other communications device, in any way resulting from the use of or the downloading of any Information from the Virtual Data Room. Use of the Virtual Data Room is entirely at the user's own risk.

**9. GOVERNING LAW**

This VDR Undertaking shall be governed by and construed in accordance with the laws of South Africa.

**10. ACCEPTANCE**

In consideration of the Municipality agreeing to grant us access to the Virtual Data Room, we hereby agree to comply with this VDR Undertaking.

**ACKNOWLEDGED, CONFIRMED AND AGREED BY BIDDER.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: *Authorized Representative*

Date: \_\_\_\_\_

*Schedule 1 Permitted Persons Requiring Access to the Virtual Data Room*

<b>First Name</b>	<b>Surname</b>	<b>Company</b>	<b>Company Address</b>	<b>Email</b>	<b>Phone</b>

## ANNEXURE 2: QUALIFICATION CRITERIA

Each Bidder is required to fill in the Qualification Criteria table below with details of the projects (name, location, etc.), accompanied by supporting evidence. Only those bidders that can demonstrate experience, by the submission of the specified returnable document (Annexure 2) will be eligible to have their tenders evaluated in terms of Clause 9.4.1, 9.4.2 and Annexure 3.

Technical	
<b>1.</b>	<b>Planning and design experience</b>
1.1.	Raw sewage transmission/pumping systems completed and commissioned within the last 10 years where: a) the pipe diameters were at least 600mm; b) pipeline lengths totaled not less than 15 000m; and c) design flow rates were at least 400 l/s.
1.2.	Planning and design of domestic wastewater treatment plants, completed and commissioned within the last 10 years, where the treatment capacity (average dry weather flow) was at least 25 ML/day.
1.3.	Planning and design of advanced drinking water or wastewater treatment projects (which may include wastewater treatment projects already accounted for under 1.2), completed and commissioned within the last 10 years, where: a) the treatment capacity (average dry water flow) was at least 15 ML/day; and b) the treatment process has included at least 2 of the following: i. rapid gravity sand filtration (RGSF) ii. granular activated carbon filtration (GAC) iii. biologically activated carbon filtration (BAC) iv. advanced oxidation processes (AOC) v. ultra-filtration (UF) vi. reverse osmosis (RO)
1.4.	Planning and design of sludge handling plants, completed and commissioned within the last 10 years, where the sludge treatment process has included at least 3 of the following: a) thermal hydrolysis; b) sludge digestion; c) sludge drying;

	d) gas-to-energy; e) sludge reuse (e.g. as compost).	
<b>2.</b>	<b>Construction experience</b>	
2.1.	Construction of sewage transmission or raw water pipelines, completed and decommissioned within the last 10 years, with: a) pipe diameters of at least 600mm; and b) total pipeline lengths totaled not less than 15,000m	
2.2.	Construction of sewage pumping stations, completed and commissioned within the last 10 years, where: a) design flow rates were at least 400 l/s; or b) with a total installed pumping power of 400 kW	
2.3.	Construction of sewage treatment plants, completed and commissioned within the last 10 years, where the treatment capacity (average dry weather flow) was at least 25 ML/day.	
2.4.	Construction of advanced water or sewage treatment plants, completed and commissioned within the last 10 years, where: a) the treatment capacity (average dry weather flow) was at least 15 ML/day; and b) the treatment process included at least 2 of the following: i. RGSF ii. GAC iii. BAC iv. AOC v. UF vi. RO.	
<b>3.</b>	<b>Operation experience</b>	
3.1.	Operation and maintenance maintenance of wastewater treatment plants, for a continuous period of at least five (5) years during the last 15 years, where the treatment capacity (average weather flow) of the wastewater treatment projects was at least 10 ML/d.	
3.2.	Operation and maintenance of sludge treatment facilities, for a continuous period of at least five (5) years during the last 15 years, where the sludge treatment included digestion and mechanical sludge drying.	

	(may include experience accounted for under 3.1 and 3.3).	
3.3.	<p>Operation and maintenance of at least two (2)* advanced water or sewage treatment plants, for a continuous period of at least five (5) years during the last 15 years, where:</p> <p>a) the treatment capacity (average dry weather flow) was at least 10 ML/day; and</p> <p>b) the treatment process included at least two (2) of the following:</p> <ul style="list-style-type: none"> <li>i. RGSF;</li> <li>ii. GAC</li> <li>iii. BAC</li> <li>iv. AOC</li> <li>v. UF</li> <li>vi. RO</li> </ul> <p>*(may include experience accounted for under 3.1 and 3.2).</p>	

	<b>Financial</b>	
1.	Funding plan and support letters	
2.	Proposed Tariff / payment (price)	

	<b>Legal</b>	
1.	Consortium Structure	
2.	Subcontracting	

## ANNEXURE 2A: EVALUATION OF QUALIFICATION CRITERIA

Technical		
4.	Planning and design experience	Acceptable or Not Acceptable to the Municipality
4.1.	Raw sewage transmission/pumping systems completed and commissioned within the last 10 years where: a) the pipe diameters were at least 600mm; b) pipeline lengths totaled not less than 15 000m; and c) design flow rates were at least 400 l/s.	<ul style="list-style-type: none"> <li>• Acceptable or Not Acceptable with regard to the purpose thereof</li> </ul>
4.2.	Planning and design of domestic wastewater treatment plants, completed and commissioned within the last 10 years, where the treatment capacity (average dry weather flow) was at least 25 ML/day.	<ul style="list-style-type: none"> <li>• Acceptable or Not Acceptable with regard to the purpose thereof</li> </ul>
4.3.	Planning and design of advanced drinking water or wastewater treatment projects (which may include wastewater treatment projects already accounted for under 1.2), completed and commissioned within the last 10 years, where: a) the treatment capacity (average dry water flow) was at least 15 ML/day; and b) the treatment process has included at least 2 of the following: i. rapid gravity sand filtration (RGSF) ii. granular activated carbon filtration (GAC) iii. biologically activated carbon filtration (BAC) iv. advanced oxidation processes (AOC) v. ultra-filtration (UF) vi. reverse osmosis (RO)	<ul style="list-style-type: none"> <li>• Acceptable or Not Acceptable with regard to the purpose thereof</li> </ul>
4.4.	Planning and design of sludge handling plants, completed and commissioned within the last 10 years, where the sludge treatment process has included at least 3 of the following: a) thermal hydrolysis; b) sludge digestion; c) sludge drying; d) gas-to-energy; e) sludge reuse (e.g. as compost).	<ul style="list-style-type: none"> <li>• Acceptable or Not Acceptable with regard to the purpose thereof</li> </ul>

5.	Construction experience	Acceptable or Not Acceptable to the Municipality
5.1.	Construction of sewage transmission or raw water pipelines, completed and decommissioned within the last 10 years, with: a) pipe diameters of at least 600mm; and b) total pipeline lengths totaled not less than 15,000m	<ul style="list-style-type: none"> <li>• Acceptable or Not Acceptable with regard to the purpose thereof</li> </ul>
5.2.	Construction of sewage pumping stations, completed and commissioned within the last 10 years, where: a) design flow rates were at least 400 l/s; or b) with a total installed pumping power of 400 kW	<ul style="list-style-type: none"> <li>• Acceptable or Not Acceptable with regard to the purpose thereof</li> </ul>
5.3.	Construction of sewage treatment plants, completed and commissioned within the last 10 years, where the treatment capacity (average dry weather flow) was at least 25 ML/day.	<ul style="list-style-type: none"> <li>• Acceptable or Not Acceptable with regard to the purpose thereof</li> </ul>
5.4.	Construction of advanced water or sewage treatment plants, completed and commissioned within the last 10 years, where: a) the treatment capacity (average dry weather flow) was at least 15 ML/day; and b) the treatment process included at least 2 of the following: i. RGSF ii. GAC iii. BAC iv. AOC v. UF vi. RO.	<ul style="list-style-type: none"> <li>• Acceptable or Not Acceptable with regard to the purpose thereof</li> </ul>
6.	Operation experience	Acceptable or Not Acceptable to the Municipality
6.1.	Operation and maintenance maintenance of wastewater treatment plants, for a continuous period of at least five (5) years during the last 15 years, where the treatment capacity (average weather flow) of the wastewater treatment projects was at least 10 ML/d.	Acceptable or Not Acceptable with regard to the purpose thereof
6.2.	Operation and maintenance of sludge treatment facilities, for a continuous period of at least five (5) years during the last 15 years, where the sludge treatment included digestion and mechanical sludge drying. (may include experience accounted for under 3.1 and 3.3).	Acceptable or Not Acceptable with regard to the purpose thereof

6.3.	<p>Operation and maintenance of at least two (2)* advanced water or sewage treatment plants, for a continuous period of at least five (5) years during the last 15 years, where:</p> <p>a) the treatment capacity (average dry weather flow) was at least 10 ML/day; and</p> <p>b) the treatment process included at least two (2) of the following:</p> <ul style="list-style-type: none"> <li>i. RGSF;</li> <li>ii. GAC</li> <li>iii. BAC</li> <li>iv. AOC</li> <li>v. UF</li> <li>vi. RO</li> </ul> <p>*(may include experience accounted for under 3.1 and 3.2).</p>	Acceptable or Not Acceptable with regard to the purpose thereof
7.		•

<b>Financial</b>		<b>Acceptable or Not Acceptable to the Municipality</b>
1.	Funding plan and support letters	Acceptable or Not Acceptable with regard to the purpose thereof
2.	Proposed Tariff / payment (price	Stage 3 evaluation

<b>Legal</b>		<b>Acceptable or Not Acceptable to the Municipality</b>
1.	Consortium Structure	Acceptable or Not Acceptable, with regard to the purpose thereof
2.	Subcontracting	Acceptable or Not Acceptable, with regard to the purpose thereof

### ANNEXURE 3: TECHNICAL PROPOSAL REQUIREMENTS

For each of the STPs, the technical Proposal shall consist of the documents listed below.

- The proposed treatment configuration, showing the sequence of proposed treatment technologies adequate to meet the applicable water quality standards;
- A process-flow diagram (PFD) for the STP, from the intake to the outlets. The PFD shall clearly demonstrate the sequence of the treatment technologies, intermediate pumping facilities, waste streams and possible by-pass arrangements. The PFD shall show the number and capacity of parallel treatment facilities in each individual treatment technology, demonstrating the requirements of redundancy and robustness.
- A preliminary hydraulic profile for the entire treatment process, from the intake to the outlet.
- A Schematic General Site Plan consisting of three sheets, which shall include the following:
  - Overall Plan in appropriate scale, showing the relative locations of all components of the STP;
  - Site Plan of the STP in scale 1:1000 or larger, showing site boundaries and indicating locations of proposed treatment process units, pumping stations, piping works, ancillary buildings (such as administration building, laboratory, storehouses and workshops) and access and internal roads. The Plan shall be adequately labelled.
  - Plan of the Raw Sewage Conveyance System in scale 1:2000 or larger, showing relevant existing arrangements and proposed works to the STP.
- The Proposed Construction Timetable: a complete monthly construction timetable for the Project using project management programs in accordance with the timelines and phasing of the Concession Agreement (e.g., Primavera P6, Microsoft Project version 2017 or better) or equivalent indicating at a minimum the following:
  - Scheduled Construction Completion Date;
  - Main works items such as works at the STP and works on the Conveyance System;
  - Commencement and end of the test period, Performance Acceptance Date and the Operations Period.

### ANNEXURE 3A: TECHNICAL PROPOSAL EVALUATION CRITERIA

No	Evaluated Documents	Score
1.	The proposed treatment configuration and technologies for the STP, with supporting conceptual drawings, technical documents and diagrams.	<ul style="list-style-type: none"> <li>• Detailed, complete and fully consistent proposed treatment configuration and technology = 28 points;</li> <li>• Not detailed, partially incomplete or inconsistent proposal = 14 points;</li> <li>• No relevant proposal = 0 points.</li> </ul>
2.	Process-flow diagram (PFD) for the STP, with its requirements.	<ul style="list-style-type: none"> <li>• Detailed, complete diagram, fully consistent with the proposed configuration and technology = 8 points;</li> <li>• Not detailed diagram, partially incomplete or inconsistent with the proposed configuration and technology = 4 points;</li> <li>• No relevant diagram = 0 points.</li> </ul>
3.	Preliminary hydraulic profile.	<ul style="list-style-type: none"> <li>• Detailed, complete hydraulic profile, fully consistent with the proposed configuration and technology = 6 points;</li> <li>• Not detailed hydraulic profile, partially incomplete or inconsistent with the proposed configuration and technology = 3 points;</li> <li>• No relevant hydraulic profile = 0 points.</li> </ul>
4.	Schematic General Site Plan (in three sheets) showing all principal elements of the STP.	<ul style="list-style-type: none"> <li>• Detailed, complete site plan, fully consistent proposal = 4 points</li> <li>• Not detailed, partially incomplete or inconsistent site plan = 2 point</li> <li>• No relevant site plan= 0 points</li> </ul>
5.	Construction Timetable	<ul style="list-style-type: none"> <li>• Detailed, complete site plan, fully consistent timetable = 4 points</li> <li>• Not detailed, partially incomplete or inconsistent timetable = 2 point</li> <li>• No relevant site plan= 0 points</li> </ul>

6.	The proposed treatment configuration and technologies for the STP, and Reuse Plant with supporting conceptual drawings. technical documents and diagrams.	<ul style="list-style-type: none"> <li>• Detailed, complete and fully consistent proposed treatment configuration and technology = 28 points;</li> <li>• Not detailed, partially incomplete or inconsistent proposal = 14 points;</li> <li>• No relevant proposal = 0 points.</li> </ul>
7.	Process-flow diagram (PFD) for the STP and Reuse Plant.	<ul style="list-style-type: none"> <li>• Detailed, complete diagram, fully consistent with the proposed configuration and technology = 8 points;</li> <li>• Not detailed diagram, partially incomplete or inconsistent with the proposed configuration and technology = 4 points;</li> <li>• No relevant diagram = 0 points.</li> </ul>
8.	Preliminary hydraulic profile.	<ul style="list-style-type: none"> <li>• Detailed, complete hydraulic profile, fully consistent with the proposed configuration and technology = 6 points;</li> <li>• Not detailed hydraulic profile, partially incomplete or inconsistent with the proposed configuration and technology = 3 points;</li> <li>• No relevant hydraulic profile = 0 points.</li> </ul>
9.	Schematic General Site Plan (in three sheets) showing all principal elements of the STP.	<ul style="list-style-type: none"> <li>• Detailed, complete site plan, fully consistent proposal = 4 points</li> <li>• Not detailed, partially incomplete or inconsistent site plan = 2 point</li> <li>• No relevant site plan= 0 points</li> </ul>
10.	Construction Timetable	<ul style="list-style-type: none"> <li>• Detailed, complete site plan, fully consistent timetable = 4 points</li> <li>• Not detailed, partially incomplete or inconsistent timetable = 2 point</li> <li>• No relevant site plan= 0 points</li> </ul>

## ANNEXURE 4: FINANCIAL PROPOSAL REQUIREMENTS

Each Bidder will submit its Financial Bid by completing the Financial Bid Forms and providing its completed Financial Excel Spreadsheet on the USB drive that includes the soft copy of the Financial Bid.

The Financial Bid Forms shall be consistent with the Financial Model and the Indicative Financing Plan.

A Bid submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected.

A Bid submitted which is not supported by and consistent with the results in the Financial Model may at the discretion of the Municipality, be rejected.

The Financial Bid shall consist of following documents specified below:

- (i) **Financial Bid Forms**, using the forms in **Annexure 4 Part 1** (*Financial Bid Form 1*) and **Annexure 4 Part 2** (*Financial Bid Form 2 - Bid Price*).
- (ii) **The audit report for the Financial Model and the Financial Model**, developed in accordance with the guidelines set forth in **Annexure 4 Part 3** (Instructions to Financial Model), to be submitted only in electronic form on a USB drive, in Microsoft Excel format, showing all relevant formulas, with amounts stated in thousands of South African Rant and expressed in nominal terms. The USB drive should contain two (2) versions of the Financial Model (one which is not editable and another which is editable) that should be signed with an electronic signature. No part of the editable version of the Financial Model should be locked or protected with a password.
- (iii) **Indicative Financing Plan**, using the form set forth in **Annexure 4 Part 4** (the "**Indicative Financing Plan**") of **Annex 8** (*Financial Bid Forms & Content*) (the "**Indicative Financing Plan**"), together with its required supporting documents including:
  - (a) Letter of certification from the chief executive officer or treasurer / controller of each Company described as a shareholder of the Concessionaire detailing the proposed equity contributions in the Concessionaire;
  - (b) Non-binding support letter by each prospective debt provider;
  - (c) Non-binding support letter concerning any debt underwriting; and
  - (d) Details concerning any long-term financing.

The Indicative Financing Plan must show that the Concessionaire can adequately fund the works required for the Project and still service its debt obligations, fulfil its covenants with its lenders, and realize a reasonable return on equity, with amounts stated in thousands of South Africa Rands and United States Dollars.

**ANNEXURE 4 PART 1**

**Financial Bid Form 1**

[To be inserted as part of the Bid]

Date: \_\_\_\_\_

**Re:** uMdloti and Umkomaas Sewage treatment plants Project

**To:** eThekweni Water and Sanitation

Dear [Madam/Sir],

Having carefully examined the Request for Proposals, including the annexes thereof, the receipt of which is hereby acknowledged, and having satisfied ourselves with the nature and location of the works and services referenced above and the general and local conditions to be encountered in the performance thereof, we, the undersigned, hereby present our Financial Bid as follows<sup>2</sup>:

Raw Sewage Conveyance Systems Transfer Fee <sup>3</sup>	Unit	Amount Value	Amount in words
uMdloti	ZAR million		
Umkomaas	ZAR million		

uMdloti Sewage Treatment Tariff Charges	Unit	Amount Value	Amount in words
STP Capacity Charge: STP <sup>1</sup> CC	ZAR '000s/day		
STP Fixed Operating Charge: STP <sup>1</sup> FC	ZAR '000s/day		
STP Availability Payment: STP <sup>1</sup> AP	ZAR '000s/day		< Sum of the above >

<sup>2</sup> Values in these tables are to be expressed as of December 31, 2022. These values will be used for evaluation purposes and to calculate the Project Charges and Electricity Charge as per Schedule 7 of the Concession Agreement.

<sup>3</sup> Includes the Transmission / Conveyance Networks, the decommissioning of the old STPs, etc.

<b>uMdloti Sewage Treatment Tariff Charges</b>	<b>Unit</b>	<b>Amount Value</b>	<b>Amount in words</b>
STP Variable Operating Charge: $STP^1_{VC}$	ZAR '000s / t COD		
STP Electricity Factor: $STP^1_{EF}$	kWh '000s / t COD		
STP DG Electricity Factor: $STP^1_{DG-EF}$	Liters / t COD		

c

<b>UMkomaas Sewage Treatment Tariff Charges</b>	<b>Unit</b>	<b>Amount Value</b>	<b>Amount in words</b>
STP Capacity Charge: $STP^2_{CC}$	ZAR '000s/day		
STP Fixed Operating Charge: $STP^2_{FC}$	ZAR '000s/day		
STP Availability Payment: $STP^2_{AP}$	ZAR '000s/day		< Sum of the above >
STP Variable Operating Charge: $STP^2_{VC}$	ZAR '000s / t COD		
STP Electricity Factor: $STP^2_{EF}$	kWh '000s / t COD		
STP DG Electricity Factor: $STP^2_{DG-EF}$	Liters / t COD		

<b>Water Reuse Tariff Charges (Umkomaas)</b>	<b>Unit</b>	<b>Amount Value</b>	<b>Amount in words</b>
RP Capacity Charge: $RP_{CC}$	ZAR '000s/day		
RP Fixed Operating Charge: $RP_{FC}$	ZAR '000s/day		
RP Availability Payment: $RP_{AP}$	ZAR '000s/day		< Sum of the above >
RP Variable Operating Charge: $RP_{VC}$	ZAR / m <sup>3</sup>		
RP Electricity Factor: $RP_{EF}$	kWh / m <sup>3</sup>		
RP DG Electricity Factor: $RP_{DG-EF}$	Liters / m <sup>3</sup>		

The **Sewage Treatment Plant Capacity Charge (STP-CC)** includes:

- (i) The total investment made in designing, constructing and operating the sewage treatment plant and any capital expenditure required during its operation period;
- (ii) Debt service;
- (iii) Return on equity for the concessionaire; and
- (iv) Insurance premium for insurance policies stipulated in the concession agreement.

The **Sewage Treatment Plant Fixed Operating Charge (STP<sub>FC</sub>)** covers all fixed operating costs for the sewage treatment plant with the exception of electricity consumption costs.

The **Sewage Treatment Plant Variable Operating Charge (STP<sub>VC</sub>)** covers all variable operating costs for the sewage treatment plant with the exception of electricity consumption costs.

- (i) **STP<sub>VC</sub>** will be multiplied by the average incoming pollution load of sewage delivered by EWS at the intake of the STPs, expressed in tons of COD per day, and measured daily using a flow weighted compound sample.

The **Reuse Plant Capacity Charge (RP<sub>CC</sub>)** includes, for Umkomaas:

- (i) The investment made in designing, constructing and operating the Reuse Plant and the Pipeline and any capital expenditure required during the Operation Period;
- (ii) Debt service for the Reuse Plant;
- (iii) Return on equity for the Concessionaire; and
- (iv) Insurance premium for insurance policies stipulated in the Concession Agreement.

The **Reuse Plant Fixed Operating Charge (RP<sub>FC</sub>)** covers all fixed operating costs for the Reuse Plant and the Pipeline, with the exception of electricity consumption costs.

The **Reuse Plant Variable Operating Charge (RP<sub>VC</sub>)** covers variable operating costs for the Reuse Plant and the Pipeline in ZAR per cubic meter of Reuse Water, with the exception of electricity consumption costs.

The **STP Electricity Factor (STP<sub>EF</sub>)** represents the electricity (expressed in kWh 000's) required to operate the STP to treat one (1) ton of COD as expressed by the Bidder in its Financial Bid.

The **STP DG Electricity Factor (STP<sub>DG-EF</sub>)** represents the electricity (expressed in kWh 000's) produced by the diesel generators to operate the STP to treat one (1) ton of COD as expressed by the Bidder in its Financial Bid.

The Concessionaire will be paid the "**STP Electricity Charge**" in accordance with the following formula:

- **WWTP<sub>EC</sub>** = [total incoming pollution load, expressed in tons of COD during the month] x [average electricity tariff paid by the Concessionaire during month (m) x STP<sub>EF</sub>] x [% duration of the month using grid power] + [total incoming pollution load, expressed in tons of COD during the month] x [average price of diesel during month (m) x STP<sub>DG-EF</sub>] x [% duration of the month using diesel generators]

The **Electricity Factor for the Reuse Plant and Pipeline (RP<sub>EF</sub>)** represents the electricity (expressed in kWh) required to operate the Reuse Plant and the Pipeline to produce and deliver one (1) m<sup>3</sup> of Reuse Water at the [delivery point] as expressed by the Bidder in its Financial Bid.

The **RP DG Electricity Factor (RP<sub>DG-EF</sub>)** represents the electricity (expressed in kWh) produced by the diesel generators to operate the Reuse Plant and the Pipeline to produce and deliver one (1) m<sup>3</sup> of Reuse Water at the [delivery point] as expressed by the Bidder in its Financial Bid.

The Concessionaire will be paid the "**RP Electricity Charge**" in accordance with the following formula:

- **RP-EC** = [Volume of Reuse Water, expressed in m<sup>3</sup> during the month] x [average electricity tariff paid by the Concessionaire during month (m) x RP<sub>EF</sub>] x [% duration of the month using grid power] + [Volume of Reuse Water, expressed in m<sup>3</sup> during the month] x [average price of diesel during month (m) x RP<sub>DG-EF</sub>] x [% duration of the month using diesel generators]

Yours Sincerely,

*[signature]*

In the capacity of \_\_\_\_\_ *[position]*

Authorised Representative for \_\_\_\_\_ *[name of Bidder]*.

**ANNEXURE 4 PART 2:  
FINANCIAL BID FORM 2 - BID PRICE**

The total Bid Price is equal to the estimated NPV of future payments by the Grantor to the Concessionaire under the Concession Agreement as calculated in accordance with the Financial Excel Spreadsheet.

Amount in numbers	
Amount in words	

**Note:** The total Bid Price inserted in the above box shall be written in words and numbers and, in case of discrepancy between both values - the one written in words and the one written in digits - the written value in words shall prevail.

We understand that Project charges will be subject to indexation and performance adjustments in accordance with the terms and conditions of the Concession Agreement.

We have used (i) the Project charges set out in Financial Bid Form 1 and (ii) the completed Financial Excel Spreadsheet which is inserted in the soft copy of our Financial Bid to calculate the Bid Price set out in the table below.

We understand the Bid Committee will verify the Bid Price written above.

*[signature]*

*In the capacity of* \_\_\_\_\_ *[position]*

*Authorized Representative for* \_\_\_\_\_ *[name of Bidder]*

**ANNEXURE 4 PART 3  
INSTRUCTIONS TO FINANCIAL MODEL**

**11. GENERAL REQUIREMENTS**

The Financial Model, which generates the financial projections contained in the Financial Bid, shall be an electronic file constructed in an MS Excel 2010 (or higher version) (English United States) compatible format and shall not require the use of external modules. Bidders are encouraged to make the Financial Model as user-friendly as possible. The Financial Model shall satisfy each of the following requirements:

- (a) No part of the Financial Model (cell, column, row, sheet, macro or otherwise) shall be separately hidden. The Financial Model shall be formatted to facilitate printing (e.g., row and column headers should be on every page of the printout);
- (b) Macros should be kept to a minimum and only used where absolutely necessary. When used, these shall be fully detailed and explained in the assumptions and instructions book set out below. The Financial Model should not include circular references in calculations;
- (c) Other than an optional title/disclaimer and/or instructions worksheet, the Financial Model shall use only the following three (3) types of worksheets:
  - (i) Input worksheets – which shall include data and assumptions to be hardcoded. Input worksheets may also include simple calculations to support the hardcoded assumptions presentation;
  - (ii) Calculation worksheets- which shall consist of the individual calculations that support each line of all outputs. Input cells shall not be hard-coded in calculation sheets; and
  - (iii) Output worksheets - shall be used to display and generate model outputs. No input cells shall be hard coded in output sheets and no calculations, except for simple formulae such as sums and check totals should be performed here;
- (d) Worksheet names shall be descriptive;
- (e) A separate colour coding scheme shall be consistently used for input cells. Other colour coding can also be used, but should be fully explained in the model's instruction worksheet (if used) and/or the model instruction book;
- (f) For calculation or output worksheets using time periods, the following requirements apply:
  - (i) A given column shall be used for the same period in each of its occurrence (e.g., January 1 through January 31, 20[\*] for column g);
  - (ii) A row shall generally contain only one formula, copied across all columns. Cells which use a different formula (e.g., the first column) should be clearly indicated (e.g., by colour or label);
  - (iii) Values that are obtained from input worksheets should be clearly indicated (e.g., by colour or label); and

- (g) The information in the financial model must be displayed on the basis of the fiscal year indicated in the concession agreement, with amounts stated in thousands of South African Rand and United States Dollars (except where explicitly stipulated) and expressed in nominal terms.
- (h) The financial statements shall be prepared in accordance with the International Accounting Standards (IAS) and the International Financial Reporting Standards (IFRS).

## 12. INPUT DATA REQUIREMENTS

The Financial Model shall clearly indicate in one or more input worksheets all assumptions supporting the calculation of projections, including (to the extent applicable):

- (a) Macro-economic assumptions (including foreign exchange, base rates, electricity tariff, inflations – note that the Financial Model must incorporate the Bidder's assumptions of inflation);
- (b) Tax assumptions pertaining to South Africa (including taxation depreciation policy and tax allowances);
- (c) Accounting pertaining to South Africa;
- (d) Revenue assumptions;
- (e) Mandatory Works expenditures and other capital expenditures including maintenance costs;
- (f) Operation and maintenance costs including major maintenance, life cycle and handover costs;
- (g) Electricity consumption/production rates and costs;
- (h) Detailed financing assumptions (including shareholder target IRR, dividend payments, dividend policy, cost of debt, drawdown schedule, principal repayment profile);
- (i) Working capital;
- (j) Reserve accounts (for instance for debt service, lifecycle cost, handover cost).

The assumptions and the output of the Financial Model shall be consistent with the information provided in:

- (a) Breakdown of Estimated Project Cost;
- (b) Indicative Financing Plan; and
- (c) Any information provided by the Bidder in its Bid.

## 13. CALCULATION AND OUTPUT SHEET REQUIREMENTS

The Financial Model shall include a sources and uses table and the Bidder's projected monthly cash flow for the Project. Further, the Financial Model shall include, at a minimum, each of the following output displaying information on an annual basis for each fiscal year (Concession Year) indicated in the Concession Agreement under one or more worksheets:

- (a) Concessionaire's annual balance sheet;
- (b) Concessionaire's annual profit & loss statement;
- (c) Concessionaire's annual cash flow statement;
- (d) Concessionaire's annual distribution of dividends and any other distributions to shareholders; and
- (e) Sources of funds during the construction phase.

**14. FINANCIAL RATIOS**

The Financial Model shall include the calculation of the (at least) the key following financial ratios:

- (a) Project Internal Rate of Return (PIRR);
- (b) Equity Internal Rate of Return (EIRR);
- (c) Debt Service Cover Ratio (DSCR) for each semester;
- (d) Annual Debt Service Cover Ratio (ADSCR) for each year;
- (e) Fixed Payments to Fixed Costs Ratio (FPFCR) for each semester;
- (f) Debt to Equity Ratio for each semester.

**15. ASSUMPTIONS AND INSTRUCTIONS BOOK**

Bidders shall submit an assumptions and instructions book providing:

- (a) The logical layout and structure of the Financial Model, including the names of all worksheets and a description of the colour coding and/or labelling scheme(s);
- (b) Sources which constitute the basis of the assumptions and/or arguments about the adopted options and the execution of any related sensitivity analysis;
- (c) Sufficient information and instruction regarding the operation of the Financial Model; and
- (d) A detailed description of any circularities in the model.

**16. AUDIT REPORT AND ERRORS**

The Financial Model shall be audited by a model audit firm (at the Bidder's sole expense).

The model audit firm chosen by the Bidder must be unaffiliated with such Bidder and otherwise be free of any conflict of interest. The audit report for the Financial Model shall be submitted with the Financial Bid and shall state that the Financial Model is:

- (a) Free of mechanical error;
- (b) Suitable for use in connection with the concession fee calculations set forth in the concession agreement; and

- (c) Consistent with the requirements in the request for proposals and the concession agreement.

17. **FINANCIAL MODEL AND TECHNICAL BID**

*The Financial Model shall reflect the same assumptions presented in the Technical Bid.*

Each Bidder shall bear the entire risk of any errors in or omissions from the Financial Model and inconsistencies with the Technical Bid. Each bidder shall not be entitled to any compensation from or other redress against the eThekweni Municipality, the EWS, the IFC or their employees, officers, advisers or representatives in relation to any loss or damage that it suffers in consequence of such error, omission or material inconsistency with the Technical Bid.

**ANNEXURE 4 PART 4  
INDICATIVE FINANCING PLAN**

The Indicative Financing Plan provided by the Bidder will describe the sources of funds and the terms of financing for both debt and equity as applicable for implementing the Project. For the avoidance of doubt, shareholder loans will be treated as equity provided that they are subordinated to all other debt. The Indicative Financing Plan must be consistent with the Financial Model, and in an amount sufficient to cover all estimated Project costs. A Financial Bid with an Indicative Financing Plan that is inconsistent with the Financial Model shall be rejected.

**I. DESCRIPTION OF THE INDICATIVE FINANCING PLAN**

Bidders are required to submit a summary note describing their Indicative Financing Plan and covering in particular:

- (a) The sources and uses of funds throughout the Construction Phase, with a short description of the institutions involved;
- (b) The consistency between the Indicative Financing Plan and estimated Project costs;
- (c) The consistency between the Indicative Financing Plan and the Financial Model;
- (d) The status of letters of intent or letters of support received from planned lenders;
- (e) The envisaged roadmap to Financial Close, detailing all activities required to reach Financial Close.

If a financial advisor has been employed in the context of the preparation of the Financial Proposal, Bidders are required to provide a letter signed by this financial advisor and supporting the Indicative Financing Plan detailed in this summary note.

**II. SUMMARY TERMS AND CONDITIONS**

Bidders are required to submit a detailed description of each source of funds attached to the Indicative Financing Plan, covering, at least, for each funding source the items below:

**A. Equity and Subordinated Debt**

- (a) Target return on equity (Equity Internal Rate of Return - EIRR);
- (b) Amount and sources of funds to be committed, including standby and contingency funds, and the timing of subscription;
- (c) Equity / quasi-equity structure of the Bidder, including different classes of shares or subordinated debt;
- (d) Connections to other interested parties in the Bidder;
- (e) Terms and conditions of each class of shares and/or subordinated debt, including standby and contingency funds;

- (f) Mechanism for providing the equity in the event of default by any shareholder in providing its pro-rated share;
- (g) Holder(s), including amount held, of each class of shares and any plans for transfer to other holders and/or third parties;
- (h) Equity and subordinated debt investment schedule;
- (i) Expected distribution schedule; and
- (j) Currency of each investment.

**B. Debt Facilities**

- (a) Type of facility and amount of facility to be available, including any standby element;
- (b) Composition of senior debt (long term or short term, as applicable);
- (c) Availability period and expected drawdown schedule;
- (d) Currency;
- (e) Grace period and availability period;
- (f) Reference interest rates (whether fixed or floating), method of fixing the reference rate, margin, exchange rates, cost of funds and arrangements and other fees;
- (g) Any proposed hedging arrangements in respect of interest rates and currencies;
- (h) Repayment schedule and final maturities;
- (i) Security requirements;
- (j) Required reserve accounts (including debt service, major maintenance);
- (k) Identity of finance providers; and
- (l) Purpose and/or usage of facility.

**C. Grants (if any)**

The Bidder shall also indicate if the Indicative Financing Plan includes grants or alternative forms of concessional finance and provide the following details on these additional grants:

- (a) Type of grant and amount of grant to be available, including any standby element;
- (b) Condition attached to disbursement
- (c) Identity of grant providers; and
- (d) Purpose and/or usage of grant.

**III. SUMMARY USES OF FUNDS**

Bidders are required to show the sources and uses of funds up to the Commercial Operation Date of the Reuse Plant as per the table below:

**INDICATIVE FINANCING PLAN UP TO COMMERCIAL OPERATION DATE**

(Currency: ZAR)

	Year1 – Sem 1	Year1 – Sem 2	Year 2 – Sem 1	Year 2 – Sem 2	Year 3 – Sem 1	Year 3 – Sem 2	Total
Equity contribution							
International lenders							
Local Lenders							
Grant Contribution							
Others							
<b>TOTAL</b>							

Control:

Total Estimated Project Cost							
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**IV. SUPPORTING DOCUMENTS**

Bidders are required to provide support letters from each of the fund providers in their Indicative Financing Plan.

## **ANNEXURE 5: LEGAL PROPOSAL REQUIREMENTS**

### **9. INFORMATION ON BIDDER AND THE CONSORTIUM STRUCTURE**

Save for paragraph 1.15 below, the following information is to be provided in respect of each Member of the Bidder in its Proposal: -

- 9.1. Full name of the Bidder and of each of the Members, its physical and postal address and details of its authorised representative or lead Member in the case of a consortium or joint venture (i.e. A person/s duly authorised to legally bind the Bidder and the constituent members of the Bidder). The information required should include name, telephone number, mobile phone number and email address;
- 9.2. If incorporated, incorporation details (namely registered name and registration number) indicating whether or not same is incorporated, and if so the country in which it is incorporated, the date and nature of its legal formation/registration. Please also provide, if available, the physical address, postal address, email address, telephone number and registered office, all constitutive company documentation including, without limitation, the Bidder's memorandum of incorporation or if not a company similar constitutive documentation;
- 9.3. Where a Bidder is a consortium or joint venture, not incorporated into legal entity as yet, copies of resolutions by members of the joint venture/consortium authorising their individual representatives to represent and bind them in the consortium, and a resolution passed by the duly authorised representatives of the members of the joint venture/consortium appointing the lead Member/s of the consortium;
- 9.4. Name of the lead member (organisation) of the Bidder, and please provide the physical address, postal address, email address, telephone and mobile numbers of such lead member;
- 9.5. Name of the lead person (individual) responsible for the submission of the Proposal, the name of his/her employer and designation within such employer. Please also provide such person's physical address, postal address, email address, landline and mobile numbers;
- 9.6. Must submit an organogram detailing their organisational structure if they are a consortium (including all Members). If the Bidder is an incorporated entity, please submit an organogram detailing the shareholders and Members of the Bidder;
- 9.7. Details of the Bidder's proposed share structure, namely authorised share capital, issued capital, both expressed as Rand value and number of shares, distinguishing between different classes, of shares, if any;
- 9.8. Details of all shareholders or Sponsors of the Bidder (namely name, address and number of shares held by a shareholder or proposed to be held by each Sponsor) and a certified copy of the shareholders' agreement(s) or similar agreement (consortium agreement) regulating the relationship of the Sponsors between each other and the relationship between the Sponsors on the one hand and the Bidder on the other;

- 9.9. Details of any holding (or parent) company of the Bidder, and of each of the Members, if any, and details of any subsidiary(ies) and of each of the Members (details being name, registration number, main business (objective) and authorised share capital);
- 9.10. Details of any other shareholding or equity interests that the Bidder and its Members have in any other company, business, firm, joint venture or partnership arrangement (namely, name of entity, registration number (if any) main business, percentage equity holding and Rand value thereof);
- 9.11. Details of all directors (name, address and occupation) of the Bidder and of each of the Members, or proposed directors where they have not been appointed as yet, indicating in respect of each director whether he/she is an executive or non-executive director including brief curricula vitae;
- 9.12. Details of any perceived potential or actual conflict of interest by the Members, in participating in the procurement process, and in undertaking the Project;
- 9.13. Details of any conviction or likely convictions in the Republic of South Africa, or in any other country for criminal offences relating to the conduct of its business or profession by each Member and its directors, the holding (or parent) company (if any) and its directors, and the subsidiary(ies) (if any) and the directors thereof. This should include details in respect of the holding company of the members of the Bidder, and companies which are subsidiaries of the holding companies of the Members;
- 9.14. Details of the Bidder's, professional advisers, and insurance advisers (namely name, address, and discipline of each advisor, and name of the person responsible) name and legal status of the organisation, its registration number, date and country of registration/legal formation of each organisation; registered address and website address (if any) of each organisation; street address, postal address, telephone number and email address of each organisation; person dealing with the Proposal on each organisation's behalf, and their contact details; details of previous experience, focusing on the last ten years, in hospital related projects and/or PPP projects. Projects should be listed in order of decreasing capital value. Projects which are particularly relevant to the scope of this Project should be clearly indicated.
- 9.15. Notwithstanding the preceding paragraphs, the following information and/or documentation is to be provided in respect of the Bidder (for paragraph 1.15.1, if applicable) and each Member of the Bidder (for paragraph 1.15.2): -
  - 9.15.1. Resolution authorising the authorised representative to sign the RFP Proposal and other response documents, in the case where the Bidder is already a company duly incorporated;
  - 9.15.2. Declaration by the Members of the Bidder that:
    - 9.15.2.1. They are participating in the Bidder and are submitting the Proposal;
    - 9.15.2.2. They accept and are bound by the terms and conditions upon which the Proposal is being submitted;

- 9.15.2.3. They are fully acquainted with all the legal provisions (including without limitation all laws, provincial enactments and municipal by-laws) prevailing in South Africa in respect of the realisation of the Project and will comply therewith; and
- 9.15.2.4. They will take up the shares that are stated in the Proposal to be subscribing for.

## 10. **SUBCONTRACTS**

- 10.1. Bidders are required to provide a detailed and comprehensive term sheet in respect of, or a substantially developed agreement, initialled by both the Bidder and each and every one of the potential subcontractors with whom it proposes to enter into further negotiations in respect of their appointment as the subcontractors for the Project if the Bidder is appointed as a Preferred Bidder
- 10.2. To comply with section 10.1 above, Bidders are required to either:
  - 10.2.1. Provide subcontractor term sheets in respect of first tier subcontractors, using the same format and numbering as the Concession Agreement; or
  - 10.2.2. Provide subcontractor term sheets or agreements that deals with the following issues at a minimum: -
    - 10.2.2.1. The term of the subcontract;
    - 10.2.2.2. Details of the price in respect of the price to be paid for the services to be rendered by the subcontractor;
    - 10.2.2.3. Undertakings and/or warranties to ensure compliance with any and all laws by the subcontractor;
    - 10.2.2.4. That the subcontractor are in possession of and or will obtain any and all Consents that may be necessary in terms of the relevant contract for the purposes of the Bidder's Project;
    - 10.2.2.5. Complete and accurate details of the scope of work to be undertaken by each subcontractor that has been, or will be appointed by the Bidder for the purposes of the Project;
    - 10.2.2.6. Details of all of the inspection requirements and obligations, as well as the testing and commissioning to be undertaken by the subcontractor and or the Concessionaire;
    - 10.2.2.7. Details of any and all conditions on which the parties have entered into the agreement, including all suspensive conditions;
    - 10.2.2.8. Details of the termination provisions, including, but not limited to, force majeure, system event, compensation event, unforeseeable conduct and site risk, to the extent applicable;

- 10.2.2.9. Details of any security, performance guarantees and or penalties or damages to be provided and or paid by the subcontractor to the Bidder; and
- 10.2.2.10. Details of the relevant Contractors' compliance with the applicable Economic Development obligations and reporting requirements

## ANNEXURE 6: ECONOMIC DEVELOPMENT PROPOSAL REQUIREMENTS

### 1. PURPOSE OF THIS ANNEXURE

- 1.1. The purpose of this Annexure 6 (*Economic Development Proposal Requirement*) is to provide for the information and supporting documentation required to be submitted to substantiate the Economic Development commitments made by Bidders in response to each of the Specific Goals and for purposes of the Economic Development evaluation and scoring of the Specific Goals that the Bidder has elected to submit a proposal for.
- 1.2. Failure to provide the information and/or documentation required in terms of this Annexure 6 (*Economic Development Proposal Requirement*) may result in the Municipality disregarding commitments made in the Economic Development proposal in relation to the relevant Specific Goal(s).

### 2. PROOF OF COMPLIANCE OF ECONOMIC DEVELOPMENT COMMITMENTS

#### 2.1. Ownership

- 2.1.1. Where a Bidder wishes to be scored for Ownership, Bidders are required to indicate their commitments by completing and providing MBD 6.1 (*Preference Points Claim in terms of the Preferential Procurement Regulations*).
- 2.1.2. In order to be eligible to be scored for commitments made in relation to Ownership, Bidders are required to submit, in addition to MBD 6.1 (*Preference Points Claim in terms of the Preferential Procurement Regulations*),:
  - 2.1.2.1. Companies and Intellectual Property Commission registration document;
  - 2.1.2.2. Central Supplier Database report;
  - 2.1.2.3. B-BBEE Certificate of the tendering entity;
  - 2.1.2.4. Consolidated B-BBEE Certificate if the tendering entity is a Consortium, Joint Venture, or Trust (issued by verification agency accredited by the South African Accreditation System); and
  - 2.1.2.5. Consortium / joint venture or trust agreement.

#### 2.2. Social Upliftment

- 2.2.1. Social Upliftment has 4 (four) sub-elements. These are:
  - 2.2.1.1. Clean-up campaigns;
  - 2.2.1.2. Social upliftment programmes;
  - 2.2.1.3. Bursaries; and
  - 2.2.1.4. Infrastructure repair and maintenance.

#### 2.2.2. Clean-up Campaigns

2.2.2.1. Where Bidders wish to be scored for Clean-up Campaigns sub element, Bidders are required to indicate their commitments by completing and providing MBD 6.1 (*Preference Points Claim in terms of the Preferential Procurement Regulations*).

2.2.2.2. In order to be eligible to be scored for commitments made in relation to the clean up campaign sub-element, Bidders are required to submit, in addition to MBD 6.1 (*Preference Points Claim in terms of the Preferential Procurement Regulations*), a letter, signed by a local councillor or chief from the jurisdiction where the Clean up Campaigns are to be undertaken, setting out, at a minimum, the following:

2.2.2.2.1. Identify the local councillor / chief;

2.2.2.2.2. Identify the area(s) in which the campaigns are to be undertaken; and

2.2.2.2.3. List and value of the clean up campaigns to be undertaken (as a percentage of the tender value.

### 2.2.3. Social Upliftment Programmes

2.2.3.1. Where Bidders wish to be scored for the Social Upliftment Programmes sub element, Bidders are required to indicate their commitments by completing MBD 6.1 (*Preference Points Claim in terms of the Preferential Procurement Regulations*).

2.2.3.2. In order to be eligible to be scored for commitments made in relation to the Social Upliftment Programmes sub-element, Bidders are required to submit, in addition to MBD 6.1 (*Preference Points Claim in terms of the Preferential Procurement Regulations*), a letter, signed by a local councillor or chief from the jurisdiction where the Social Upliftment Programmes are to be undertaken, setting out, at a minimum, the following:

2.2.3.2.1. Identify the local councillor / chief;

2.2.3.2.2. Identify the area(s) in which the social upliftment programmes are to be undertaken; and

2.2.3.2.3. List and value of the social upliftment programmes to be undertaken (as a percentage of the tender value.

2.2.4. Bursaries

2.2.4.1. Where Bidders wish to be scored for the Bursaries sub element, Bidders are required to indicate their commitments by completing and providing MBD 6.1 (*Preference Points Claim in terms of the Preferential Procurement Regulations*).

2.2.4.2. In order to be eligible to be scored for commitments made in relation to the Bursaries sub-element, Bidders are required to submit, in addition to MBD 6.1 (*Preference Points Claim in terms of the Preferential Procurement Regulations*), a letter, signed by a local councillor or chief from the jurisdiction where the Social Upliftment Programmes are to be undertaken, setting out, at a minimum, the following:

2.2.4.2.1. Identify the local councillor / chief;

2.2.4.2.2. Identify the area(s) in which the bursaries are to be provided; and

2.2.4.2.3. List and value of the bursaries to be provided (as a percentage of the tender value).

2.2.5. Infrastructure Repairs and Maintenance

2.2.5.1. Where Bidders wish to be scored for the Infrastructure Repairs and Maintenance sub element, Bidders are required to indicate their commitments by completing and providing MBD 6.1 (*Preference Points Claim in terms of the Preferential Procurement Regulations*).

2.2.5.2. In order to be eligible to be scored for commitments made in relation to the Infrastructure Repairs and Maintenance sub element, Bidders are required to submit, in addition to MBD 6.1 (*Preference Points Claim in terms of the Preferential Procurement Regulations*), a letter, signed by a local councillor or chief from the jurisdiction where the Infrastructure Repair and Maintenance Programmes are to be undertaken, setting out, at a minimum, the following:

2.2.5.2.1. Identify the local councillor / chief;

2.2.5.2.2. Identify the area(s) in which the infrastructure repair and maintenance programmes are to be undertaken; and

2.2.5.2.3. List and value of the infrastructure repair and maintenance programmes to be undertaken (as a percentage of the tender value).

2.3. **Promotion of SMMEs Majority Owned by Black People**

2.3.1. Where Bidders wish to be scored for the Promotion of SME's Majority owned by Black People, Bidders are required to indicate their commitments by completing and providing MBD 6.1 (*Preference Points Claim in terms of the Preferential Procurement Regulations*).

2.3.2. In order to be eligible to be scored for commitments made in relation to the Infrastructure Repairs and Maintenance sub element, Bidders are required to submit, in addition to MBD 6.1 (*Preference Points Claim in terms of the Preferential Procurement Regulations*), a Contract Participation Goal Plan setting out, at a minimum, the following:

2.3.2.1. Percentage of the work to be allocated to the subcontractor;

2.3.2.2. Database of local contractors;

2.3.2.3. Service level agreement between contract and sub-contractor;

2.3.2.4. Work and payment schedule(s);

2.3.2.5. Legal documentation of the sub-contractor; and

2.3.2.6. Number of jobs created through sub-contractor.

3. **MONITORING AND REPORTING**

3.1. Bidders should note that as a part of Schedule 10 (*Economic Development Obligations*) of the Concession Agreement, the Concessionaire will be required to submit reports on a quarterly and/or biannual period, detailing their compliance with their Economic Development commitments.

3.2. Bidders must note that although the reporting obligations for the Economic Development Matrix are on a quarterly and or biannual basis, they will be required to keep monthly records in respect of the implementation of Economic Development.

3.3. Bidders will also be required to provide appropriate proof to substantiate claims in relation to their Economic Development.

4. **INFORMATION REQUIRED FROM BIDDERS FOR PURPOSES OF THE CONCESSION AGREEMENT**

4.1. Bidders must note that the Economic Development Scorecard and Matrix will become annexures to the Concession Agreement and as such, Bidders are required to provide MS-Excel versions of the Economic Development Scorecard and the Economic Development Matrix.

4.2. Bidders are also required to provide their quarterly obligations in relation to Economic Development (see Appendix 1A (*Quarterly Obligations – Construction Period*) and Appendix 1B (*Quarterly Obligations – Operations Period*)). These quarterly obligations

should be indicated for the full term of the Project. These obligations will constitute the Quarterly Obligations for purposes of the Concession Agreement. These Quarterly Obligations will become the basis upon which monitoring and compliance is undertaken in terms of the Concession Agreement.

- 4.3. Bidders are required to provide 2 spread sheets in the form of Appendix 1A (*Quarterly Obligations – Construction Period*) and Appendix 1B (*Quarterly Obligations – Operations Period*) in respect of the:

4.3.1. Construction Period; and

4.3.2. Operations Period.

- 4.4. Bidders must note that there needs to be alignment between the values in the Quarterly Obligations and *Operations Period* MBD 6.1 (*Preference Points Claim in terms of the Preferential Procurement Regulations*)

## 5. **POINT ALLOCATION SHEET**

For purposes of scoring, Bidders should consider Appendix 2 (*Point Allocation Sheet*) which sets out the methodology to be used for allocating points for commitments made for each of the Specific Goals.

**APPENDIX 1A QUARTERLY OBLIGATIONS – CONSTRUCTION PERIOD**

SPECIFIC GOAL	SUB ELEMENT	CONTRACT QUARTER 1			CONTRACT QUARTER 2		
		Unit	Bidder Achievement	Quarterly/ Biannual Obligation	Unit	Bidder Achievement	Quarterly/Biannual Obligation
Ownership	Black People						
Social Upliftment	Clean-up campaigns						
	Social upliftment programmes						
	Bursaries						
	Infrastructure repairs and maintenance						
Promotion of SMMEs that 51% Black Owned	N/A						

## APPENDIX 1B QUARTERLY OBLIGATIONS – OPERATIONS PERIOD

SPECIFIC GOAL	SUB ELEMENT	CONTRACT QUARTER 1			CONTRACT QUARTER 2		
		Unit	Bidder Achievement	Quarterly/Biannual Obligation	Unit	Bidder Achievement	Quarterly/Biannual Obligation
Ownership	Black People						
Social Upliftment	Clean-up campaigns						
	Social upliftment programmes						
	Bursaries						
	Infrastructure repairs and maintenance						
Promotion of SMMEs that 51% black owned	N/A						

## APPENDIX 2 POINT ALLOCATION SHEET

SPECIFIC GOAL	SUB-ELEMENT	COMMITMENT	POINTS
Ownership	Black People	Equals 0%	
		Between 0% and 51%	
		Greater or equal to 51% and less than 100%	
		Equals 100%	
Social Upliftment	Clean-up Campaigns		
	Social Upliftment Programmes		
	Bursaries		
	Infrastructure Repairs and Maintenance		
Promotion of SMMEs that 51% black owned	N/A	Sub-contracting 0%	
		Sub-contracting <25%	
		Sub-contracting 25%	
		Sub-contracting >25% and <50%	