

REQUEST FOR PROPOSAL (“RFP”)

APPOINTMENT OF A LEGAL AND FORENSIC INVESTIGATORS PANEL FOR A PERIOD OF THREE (3) YEARS



Bid Number	EWSETA/RFP/20/2020
Bid Scope	APPOINTMENT OF A LEGAL AND FORENSIC INVESTIGATORS PANEL FOR A PERIOD OF THREE (3) YEARS
Issue Date	FRIDAY 09 OCTOBER 2020
Non-compulsory Briefing Session	N/A
Closing Date for submission of bids	MONDAY 02 NOVEMBER 2020 @ 11:00HRS
Inquiries (all inquiries should be in writing)	scmadmin@ewseta.org.za

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1. BACKGROUND INFORMATION

The Energy and Water Sector Education and Training Authority (“EWSETA”) is a statutory body established through the Skills Development Act No. 97 of 1998 to enable its stakeholders to advance the national and global position of the energy and water sector by facilitating the effective development of skills required to respond to related imperatives as envisaged in the National Development Plan (NDP).

As guided by its mandate, the SETA is an agent of transformation by promoting the achievement of desired outcomes as stipulated in the National Skills Development Plan (NSDP) whilst observing and complying with legislative and regulatory frameworks, such as the Public Finance Management Act No. 1 of 1999.

2. OBJECTIVE

The objective of this bid is to appoint a panel of three (3) service providers, per area of specialisation, for a Legal and Forensic Investigator Panel, for a period of three (3) years, to assist EWSETA with legal matters and forensic investigations.

Therefore, EWSETA invites proposals from suitably qualified service providers to form part of a Legal and Forensic Investigators Panel.

The EWSETA Legal and Forensic Investigators Panel is split into two (2) sections, namely

1. Section One: being the forensic investigators panel section (refer to area of specialisation 1 in the below table), and
2. Section Two: being the legal panel section (refer to area of specialisation 2-4 in the below table).

The objective is to obtain a panel of qualified service providers who can provide EWSETA with expert advice and skill. The Legal and Forensic Investigators Panel will be responsible to provide advice/services and/or represent EWSETA in legal matters (in particular areas of specialisation as depicted in the table below) **or** conduct independent and fair forensic investigations, as may be required, from time to time.

For the Legal Panel Section (area of specialisation 2 - 4): only legal practices established in accordance with the provisions of the Legal Practice Act 28 of 2014 (as amended), will be considered for the Legal Panel portion of this bid. Firms bidding for the legal panel portion of this bid, should be in possession of a valid Fidelity Fund certificate. Likewise, for the Forensic Panel Section (area of specialisation 1) only suitably qualified professionals will be considered. These do not necessarily have to be legal practices.

Specific requirements for the services to be rendered are identified in this document and serves only as a guideline in the request for proposals from suitably qualified service providers. The Legal and Forensic Investigators Panel reports, functionally, to the Office of the Chief Executive Officer of EWSETA.

3. SCOPE OF WORK

EWSETA invites proposals from suitably qualified service providers, to be placed on a Legal and Forensic Investigators Panel to assist with legal matters or forensic matters, as may arise, from time to time.

- The duration of the appointment is three (3) years. The EWSETA seeks to appoint three (3) services providers to service each area of specialisation (as depicted below) on the panel.
- Bidders are requested to clearly indicate the area of specialisation as per the below table that they are responding to.
- The legal and forensic needs, *inter alia*, include, but are not limited to the below areas of specialisation.
- Attending to any other matters, including, but not limited to, legal risk mitigation, related to the matter, relevant to the execution of the mandate of EWSETA, as may be related to any area of specialisation below.
- It is noted that all bidders should anticipate that the matters related to the respective areas of specialisation (as depicted below) may lead to litigation and that drafting of pleadings, notices and legal documents pertaining to the mandate of EWSETA, and related matters, will fall within the natural course of managing and handling legal proceedings within that area of specialisation, as the case may arise.
- It is further noted that advising and representing EWSETA in litigation matters which may include, but are not limited to, the appearance at the Magistrates' Court, the High Court, the Supreme Court of Appeal, the Constitutional Court, the Competition authorities and / or other dispute resolution authorities, in the execution of its mandate, protection of its goodwill and/or acting in the best interest of EWSETA, would be anticipated, as the case may arise.
- It is further expected that bidders fully understand the regulatory framework within which the SETA operates when providing advice and managing / handling matters related to any of the below areas of specialisation.

A bidder can bid for more than one area of specialisation as per the below table.

Areas of Specialisation
SECTION 1: FORENSIC INVESTIGATORS PANEL
<p>Area 1: Forensic Investigations</p> <ul style="list-style-type: none"> • Conduct preliminary investigation into identified transactions / cases and determine investigative strategies/methodologies or advice for reporting to the EWSETA. • Investigation assignments are to be performed using the appointed firm's investigative strategies/methodologies which should be in line with the Code of Conduct for Public Servants; the professional standards set by the Association of Certified Fraud Examiners (aCFE)/Institute of Commercial Forensic Practitioners (ICFP) and other related legislation, regulations and best practice applicable to forensic/fraud investigations. • The above includes investigation reports (cases as per the allegations registers and include amongst others irregular awarding of tenders, conflict of interest, misuse of

vehicles, fronting, cover quoting, financial misconduct, abuse and misuse of state assets and resources procurement fraud; fraud through misrepresentation, etc.)

- The investigation scope should, amongst others, cover the following:
 - Determine whether irregularities occurred with regard to the allegations reported,
 - Determine and identify officials of the EWSETA and/or other parties involved in irregularities that occurred,
 - Recommend appropriate action to be instituted by the EWSETA where irregularities have been confirmed.
- Utilise the latest available technology or specialised systems to image relevant computers, interrogate EWSETA systems, download, and analyse the relevant electronic data.
- Establish who is responsible for the alleged fraud or the unauthorised transfer of funds and identify all relevant activities, and/or individuals involved.
- Establish who received the funds that were transferred from the EWSETA. This part of the investigation may have to be conducted in conjunction with relevant law enforcement agency, should EWSETA decide to go this route.
- Quantify any possible/actual losses and recommend actions against parties responsible for the irregularities.
- Supply assistance as may be required and directed by the EWSETA, i.e. participation in disciplinary hearings and communication with law enforcement agencies.
- To assist with the investigation emanating from on-going transactional data analytics with suspicions of fraud.
- To investigate any other matters that may arise and deemed necessary for investigations by EWSETA.
- Write and present comprehensive reports to relevant EWSETA governance structures.

SECTION 2: LEGAL PANEL

Area 2: Contract Law/Commercial Law/ Corporate Law/Property Law/ Information Technology Law:

- Must have commercial department with expertise in all aspects of contract management, including, but not limited to, the review and advice on contractual transactions within the SETA legislative environment dealing with any area from commercial, contract, property, SETA services, and / or Intellectual Property
- Review policies / board charter / terms of reference of committees from time to time
- Provide opinions on governance from time to time
- Provide expertise in information communications and technology law and, as such, having experience in dealing with legal issues arising from the use of intellection property within information technology
- Advising on Information Technology contracts and issues impacting upon online transactions and copyright
- Draft website usage and privacy agreements

- Have proven expertise in the interpretation and application of Electronic Communications and Transactions Act (No. 25 of 2002), as well as regulation of Interception of Communications and Communication-related Information Act (No. 70 of 2002), the Electronic Communications Act (No. 36 of 2005), and Telecommunications Law and Protection of Personal Information Act
- Assist, advise, represent EWSETA in related litigation or dispute resolution proceedings
- Other legal matters as they may arise

Area 3: Labour Law / Employment Law:

- Must have a Labour Law Department with expertise including advising and representing EWSETA in all aspects of Employment/Labour Law, which includes the drafting of employment contracts; chairing of, or participation as committee member, disciplinary enquiries; labour litigation with the Commission for Conciliation, Mediation and Arbitration (CCMA) and the Labour Court.
- Manage/assist advise in dispute resolutions, disciplinary actions, unfair dismissal claims referred to the CCMA or other legal body, the Labour Relations Act 66 of 1995.
- Assist by advising, providing opinions, managing matters related to compliance regarding Human Resource, Labour and Employment Law matters
- Advise on employment relation matters and Human Resource matters
- Represent the EWSETA at labour courts, disciplinary hearings, facilitation, initiation and chairing at the CCMA (arbitration, mediation), and other related jurisdictions
- Assist and advice regarding lawful and unlawful strikes, lock out, and other labour processes including organisational rights agreement
- Any other labour law related matters

Area 4: Public Law / Administrative Law

- Must have an Administrative Law / Public Law department
- Providing opinions related to tender enquires and/or governance related matters
- Providing opinions or support to EWSETA regarding legislative compliance related to this area of specialisation.
- Providing legal support (by providing opinions and/or representing EWSETA) from point of request for information in line with Promotion of Access of Information Act (POPIA) up to, and including, post-litigation on tender matters or any other just administrative processes followed within EWSETA

Bidders are required to indicate which areas of specialisation they are bidding for.

4. RULES OF ENGAGEMENT

- A contract will be signed with each service provider appointed to the panel.
- The duration of the contract period will be from date of contracting up to three (3) years.
- The firms of attorneys and forensic investigators will be required to sign a confidentiality and indemnity agreement with EWSETA on being appointed to the Legal and Forensic Investigators panel.
- Panel members are not guaranteed any work under this tender proposal. The basis of engaging the firms will be on an assignment basis and RFQ, as and when required.
- Should the work arise, the EWSETA will engage in a request for quotation (RFQ) process to determine the most competitive bidder on the panel to award the work to.

- The EWSETA will source and award assignments on an RFQ basis, as the work arises to ensure fairness and equitability.
- A maximum of three (3) panel members to serve on the panel per area of specialisation will be appointed.
- EWSETA may in its sole discretion under specific circumstances award an assignment or any part thereof to more than one panel members.
- EWSETA reserves the right to interview panel members and review their suitability for assignments on an ongoing basis and for specific assignments.
- The panel members are required to keep the same profile team members as per bid documentation throughout the contract. Should there be changes within the firm's structure or team profile, an authorisation in writing should be sought from EWSETA.
- Progress reports from the service provider, on matters they are managing, will be required on a monthly basis, including an opinion on prospects of success, and a preliminary and final close out report and supporting documents of matters.
- Monthly progress reports and other reports on the management of the matters may not be billed for.
- Bidders may only apply for one of the sections, i.e. if the bidder applies for section 1, they may not apply for section 2 and vice versa.

5. Evaluation Criteria

5.1 Stage 1: Pre-Qualification Criteria

5.4.1 Submission of Compulsory Documents:

Prospective bidders must comply with the requirements and submit all required document(s) indicated hereunder with the bid documents at the closing date and time of bid. This phase is not scored and bidders who fail to comply with all the mandatory criteria will be disqualified.

5.1.1.1 Prospective bidders are required to provide proof of registration with the Central Supplier Database by submitting the CSD report. In case of a Joint Venture, each party must provide proof of registration with CSD.

5.1.1.2 Completed and signed Standard Bidding Documents attached to the bid.

5.1.1.3 In case of a Joint Venture, a written agreement between the parties which must clearly set out the roles and responsibilities of each member and include a resolution of each company of the Joint Venture together with a resolution by its members authorising a member of the Joint Venture to sign the documents on behalf of the Joint Venture.

5.1.1.4 Valid Fidelity Fund Certificate from the Legal Practice Council or proof of membership of the Association of Certified Fraud Examiners (aCFE), related to the respective area of specialisation the bidder is applying for.

5.4.1 Non-compulsory documents

Prospective bidders must comply with the requirements and submit all required document(s) indicated hereunder with the bid documents at the closing date and time of bid. This phase is not scored and bidders who fail to comply with all the mandatory criteria may be disqualified.

5.1.2.1 Submit a valid Tax Clearance Certificate/ Tax Pin

5.1.2.2 Certified copy of B-BBEE Certificate. A Joint Venture will qualify for the B-BBEE status level as a legal entity, provided that the legal entity submits their B-BBEE status level certificate. Failure on the part of the bidder to comply with the above will be deemed that preference points for B-BBEE status level of contribution are not claimed and will therefore be allocated a zero (0) points.

5.2 Stage 2: Technical/Functionality

Bidders must indicate the respective areas of specialisation they are applying for.

An assessment of Functionality for each discipline as per scope of work will be based on the evaluation criteria noted in the table below. Each of the evaluation criteria in the table will carry a weighting as indicated, and the bidder will be required to score a minimum of **75 points** (out of the 100 points), i.e. 75% for Functionality to proceed to Stage 3 of the evaluation process.

Upon registration of bids that meet the functionality minimum threshold, service providers on the panel will be invited to quote as when required, at which point the B-BBEE status and price points will be evaluated.

CRITERIA

Bidders are required to indicate the area of specialisation (as per the table under the scope of work) that they are bidding for. The criteria below will be applicable to each area of specialisation as depicted in the scope of work. Where a bidder is responding to multiple sections of the scope of work, it is the bidders' responsibility to ensure that the criteria is met per area of specialisation.

Criteria	Scoring	Weighted score
<p>Methodology for each area of specialisation</p> <p>The bidder must provide a clear statement (methodology) on how a typical instruction relating to the selected area(s) of specialisation will be carried out (e.g. how a litigation/investigation or legal opinion service will be provided, including resources to be allocated, applicable timelines, engagements with EWSETA, etc.).</p>	<p>The methodology is tailored to suit the requirements and needs of EWSETA, shows effective and efficient project management (including communication strategies, timeframes, budget and risk management), and case management = 20 – 30 points.</p> <p>The methodology is partially tailored to suit the requirements and needs of EWSETA, shows partially effective and efficient project management (including communication strategies, timeframes, budget and risk management), and case management = 10 – 19 points.</p> <p>Methodological approach is generic and does not suit the requirements and needs of EWSETA = 1 – 9 points.</p> <p>No submission = 0 points</p>	<p>30</p>
<p>Reference Letters</p> <p>Reference letters from different clients as evidence of <u>related</u> services previously conducted per area of specialisation applied for, as indicated in the scope of work.</p>	<p>3 Reference Letters attached = 15 points</p> <p>2 Reference Letters attached = 10 points</p>	<p>15</p>

<p><i>The Reference Letter(s) must not be older than 5 years, must be on the letterhead of the previously serviced client, should at least reflect the name of the client, title of the related work conducted, year conducted and completed, contactable reference, and signed by the appropriate delegate. The Reference Letter must indicate the quality of the service rendered.</i></p>	<p>1 Reference Letter attached = 5 points</p> <p>No Reference Letters attached/unsatisfactory services rendered = 0 points</p>	
<p>Experience and Qualifications of the Lead Partner / Director</p> <p>Qualifications: Must be accredited with an appropriate professional body and proof of accreditation must be provided.</p> <p>NB. Bidders must attach certified copies of the qualification. The certifications must not be older than 3 months. <u>Uncertified qualification certificates, and/or qualification certificates certified more than 3 months prior to the closing date of this request will not be accepted and will therefore not score any points.</u> Foreign qualifications are required to be accompanied by a SAQA evaluation certificate</p>	<p>Qualifications: Proof of registration with relevant professional body = 5 points</p> <p>No/uncertified proof submitted = 0 points</p>	10
<p>Experience: Must have at least 8 years of experience in related work.</p>	<p>Experience: 8 years or more = 10 points</p> <p>Less than 8 years' experience = 0 points</p>	10

<p>Curriculum Vitae(s) and qualifications of each of the core team members</p> <p>Bidder must attach brief CVs indicating minimum three years relevant experience and proof of registration with relevant professional body of at least one team member</p> <p>NB. Bidders must attach certified copies of the qualification and professional body membership. The certifications must not be older than 3 months. <u>Uncertified qualification certificates, and/or qualification certificates certified more than 3 months prior to the closing date of this request will not be accepted and will therefore not score any points.</u> Foreign qualifications are required to be accompanied by a SAQA evaluation certificate.</p>	<p>Experience: 3 years post articles/qualification experience or more = 10 points</p> <p>Less than 3 years' post articles/qualification experience = 0 points</p> <p>Qualifications Minimum relevant degree in related studies:</p> <ul style="list-style-type: none"> • Forensic investigators – (LLB, Forensics or Accounting) • Legal panel – (LLB or similar) <p>Non submission of relevant degree = 0 points</p> <p>Proof of membership with relevant professional body = 5 points</p>	<p>10</p> <p>10</p> <p>5</p>
<p>Company profile</p> <p>The company profile should indicate the following:</p> <ul style="list-style-type: none"> • Services rendered • Bidder's years of experience • Geographical location • Proposed team structure 	<ul style="list-style-type: none"> • Services rendered by the bidder = 1 point • Bidder's years of experience (at least 5 years) = 2 points • Geographical location = 2 points (awarded only to those companies located and/or have operations within Gauteng Province) • Organisation structure clearly indicates responsibilities of each team member = 5 points 	<p>10</p>
<p>TOTAL</p>		<p>100</p>

5.3 PRESENTATION / DEMONSTRATION

The EWSETA reserves the right to request presentations/demonstrations from the short-listed bidders as part of the bid evaluation process.

5.4 Stage 3: Pricing and preference points Stage

5.4.1 Preference Points

For purpose of evaluating preference points, the following preference point systems will be applicable to all bids whereby preference points shall be awarded for Price; and B-BBEE Status Level of Contribution.

- The points scored in respect of B-BBEE contribution will be added to the points scored for price.
- The following formula will be used to calculate the points for Price:

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

Where

P_s = Points scored for comparative price of proposal or quotation

P_t = Comparative price of proposal or offer

P_{\min} = Comparative price of lowest acceptable proposal or offer

The following table must be used to calculate the score out of 20 for BBBEE

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

Bidders are required to submit original and valid B-BBEE Status Level Verification Certificates or certified copies thereof together with their bids, to substantiate their B-BBEE rating claims.

A Bidder failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified but may only score points out of 80 for price; and scores 0 points out of 20 for B-BBEE.

A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid.

A bidder will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

5.4.2 Financial Proposal

Financial proposals will be compared on the basis of their total amount inclusive of VAT and all other related costs. Bidders are required to submit financial proposals as per the table below on a company letterhead.

Pricing schedule is compulsory and failure to complete same in prescribed manner as per the table below without alterations may result in disqualification of the bid during the financial evaluation process.

Table 1 is to be completed by bidders bidding for Section 1: **Area of Specialisation 1 (bidding forensic firms)**. Table 2 is to be completed by bidders bidding for Section 2: **Areas of Specialisation 2 – 4 (bidding attorney firms)**. Bidders are reminded that they may only apply for either Section 1 or Section 2.

Table 1: Section 1

Item	Hourly rate per resource (incl VAT)
Senior Partner / Project Leader	R
Forensic Manager or equivalent	R
Forensic Investigator	R

Table 2: Section 2

Item	Hourly rate per resource (incl VAT)
Senior Director / Lead Attorney / Project leader	R
Associate Director	R
Senior Associate	R
Junior Associate	R
Candidate Attorney	R

In the event that personnel hold a position different to the stipulated ones under the Pricing Schedule, the Bidder is required to allocate those personnel to an existing position and indicate the actual position in brackets.

Bidders are reminded that any fees charged over and above the above tables are catered for on a case by case and needs basis, by written agreement between the two parties only.

Bidders are required to indicate rates per each level inclusive of all applicable taxes for the legal services.

Bidders are required to indicate if prices are fixed or not. If not firm for the full period, bidders are to provide details of the basis on which adjustments will be applied for, for example consumer price index.

EWSETA reserves the right to consider the guidelines on consultancy rates as set out in the National Treasury Instruction 03 of 2017/2018: Cost Containment Measures, where relevant.

The bidder must indicate if their proposed rates are in line with the provisions of the referenced National Treasury Instruction: Cost Containment Measures.

The rates MUST be all inclusive. This means, all direct and indirect related cost must be included. Note that failure to propose the rates will render the entire bid as non-responsive and will result in the bidder scoring zero out of 80 points achievable on the price criteria.

6. NOTES TO BIDDERS

Outlined below are basic requirements that each bid must note and comply with throughout the bid process and project lifespan:

- A prospective service provider must ensure that their tax matters are in order in line with the Treasury Regulations and reflect accordingly on CSD. It is therefore a condition of this bid that the tax matters of the bidder be in order at the time of award. Failure of the bidder for not complying with their tax matters at the time of award will result in the bidder being disqualified.
- The EWSETA will not be liable to reimburse any costs incurred by applicants in preparing their proposals.
- Bids received late shall not be considered under any circumstances. A bid will be considered late if it arrives after 11:00 o'clock on/after the closing date.
- EWSETA does not bind itself into making an appointment from proposals and offers received.
- EWSETA reserves the right, at its sole discretion, to cancel this request for proposals, presentations and price or not to make any appointment at all.
- EWSETA will not make upfront payments.
- Successful bidder must undertake to abide by the confidentiality undertakings contained in the agreement to be concluded.
- The successful bidder will be informed of the outcome. A contract will only be deemed to be concluded when reduced to writing and signed by the designated responsible person of both parties (duly authorised). The designated responsible person of the EWSETA is the Chief Executive Officer or his written authorised delegate.
- A probation period of 90 days will apply to the agreement and a penalty regime system in the agreement addressing recourse by the supplier or EWSETA will be implemented.
- The EWSETA undertakes to pay valid invoices in full within 30 (thirty) days if all supporting documents are submitted.
- Please note that any plagiarism of any sort contained within any bid or any other documents submitted to the EWSETA by any bidder will result in the disqualification of the respective bidder.
- EWSETA may request clarification or further information regarding any aspect of the bidder. The bidder must provide the requested information within forty-eight (48) hours after the request has been made; otherwise the bidder may be disqualified.
- If any clarity needs to be obtained for evaluation purposes, EWSETA may require the potential service provider to substantiate certain information, or to allow officials to undertake a financial/ physical inspection to assure the capacity and ability is proven.
- Please note that the team members indicated in the proposal must be the same team members who will be undertaking the litigation / legal matter unless otherwise agreed by EWSETA in writing

7. DISCLAIMER

The SETA reserves the right not to appoint a service provider and is also not obliged to provide reasons for the rejection of any proposal. EWSETA reserves the right to:

- Award contract or any part thereof to one or more Service Providers;
- Reject all bids;
- Decline to consider any bids that do not conform to any aspect of the bidding requirements;
- Request further information from any Service Provider after the closing date;
- Cancel this tender or any part thereof at any time.

8. SUB-CONTRACTING

A Bidder will not be awarded points for B-BBEE status level if it is indicated in the tender documents that such a Bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a Bidder qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the sub-contract.

9. NEGOTIATION

EWSETA has the right to enter into negotiation with a prospective contractor regarding any terms and conditions, including price(s), of a proposed contract.

EWSETA shall not be obliged to accept the lowest of any quotation, offer or proposal.

The successful bidder will be informed. A contract will only be deemed to be concluded when reduced to writing in a contract form signed by the designated responsible person of both parties. The designated responsible person of EWSETA is the Chief Executive Officer or his/her written authorised delegate.

10. CLOSING DATE OF PROPOSAL

A comprehensive proposal with pricing schedule must reach EWSETA by no later than **Monday 02 November 2020 not later than 11H00 o'clock**. Please note that no late proposals will be considered.

11. TENDER VALIDITY

This RFP shall be valid for 90 days calculated from bid closing date.

12. SUBMISSION OF BIDS

Bidders are required to submit **ONE original plus two copies** of the bid document which should be hand delivered to the following address:

EWSETA
 Building B, Ground Floor – reception
 32 Princess of Wales Terrace
 Sunnyside Office Park
 Parktown
 2193

The following information must be indicated on each envelope:

- Bid number
- Title of the bid
- Name of bidder
- Applicable area of specialisation (bidders must tick yes to the relevant areas they are responding to):

Selection	Indicate (Yes) / (No)
Area 1 – Forensic Investigations	
Area 2 – Contract Law/Commercial Law/ Corporate Law/Property Law/Information Technology Law	
Area 3 – Labour Law / Employment Law	
Area 4 – Public Law / Administrative Law	

Bidders are required to submit their proposals in two (2) sealed envelopes in the following format:

ENVELOPE 1: Technical Proposal

- Section A** – Pre-qualification information
- Section B** – Technical Functionality information

ENVELOPE 2: PRICING PROPOSAL

13. FRAUD HOT-LINE

EWSETA subscribes to fair and just administrative processes. EWSETA therefore urges its clients, suppliers and the general public to report any fraud or corruption to:

EWSETA TIP-OFFS ANONYMOUS
 Free Call: 0800 611 205
 Email: ewseta@tip-offs.com
 Or visit their website www.tip-offs.com

14. ANNEXURE 1 - SBD1

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE ENERGY & WATER SECTOR EDUCATION AND TRAINING AUTHORITY					
BID NUMBER:	EWSETA/RFP/20/2020	CLOSING DATE:	02 NOVEMBER 2020	CLOSING TIME:	11:00HOURS
DESCRIPTION	APPOINTMENT OF A LEGAL AND FORENSIC INVESTIGATORS PANEL FOR A PERIOD OF THREE (3) YEARS				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).					

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

SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER		CODE		NUMBER	
CELLPHONE NUMBER					
FACSIMILE NUMBER		CODE		NUMBER	
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
		TCS PIN:		OR	CSD No:
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]		<input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT <input type="checkbox"/> Yes <input type="checkbox"/> No	
IF YES, WHO WAS THE CERTIFICATE ISSUED BY?					
AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) AND NAME THE APPLICABLE IN THE TICK BOX		<input type="checkbox"/>	AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)		
		<input type="checkbox"/>	A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS)		
		<input type="checkbox"/>	A REGISTERED AUDITOR		

		NAME:	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORN AFFIDAVIT(FOR EMEs& QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]			
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ANSWER PART B:3 BELOW]
SIGNATURE OF BIDDER	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)			
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE (ALL INCLUSIVE)	
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT/ PUBLIC ENTITY	SUPPLY CHAIN MANAGEMENT	CONTACT PERSON	
CONTACT PERSON	Ms. Moseke Matlala	TELEPHONE NUMBER	011 274 4700
TELEPHONE NUMBER	011 274 4700	FACSIMILE NUMBER	
FACSIMILE NUMBER		E-MAIL ADDRESS	
E-MAIL ADDRESS	mosekem@ewseta.org.za		

PART B

TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR ONLINE</p> <p>1.3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.</p> <p>1.4. WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.</p> <p>1.5. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.</p>
2. TAX COMPLIANCE REQUIREMENTS
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER’S PROFILE AND TAX STATUS.</p> <p>2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER.</p> <p>2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p>
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS
<p>3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.</p>

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

15. ANNEXURE 2 - EWSETA GENERAL CONDITIONS OF CONTRACT

General

EWSETA and the Supplier enter into an order/contract on these conditions to supply the items (goods/services/works) as described in the order/contract.

Conditions

These conditions form the basis of the contract between EWSETA and the Supplier. Notwithstanding anything to the contrary in any document issued or sent by the Supplier, these conditions apply except as expressly agreed in writing by EWSETA. No servant or agent of EWSETA has authority to vary these conditions orally. These general conditions of purchase are subject to such further special conditions as may be prescribed in writing by EWSETA in the order/contract.

Price and payment

The price or rates for the items stated in the order/contract may include an amount for price adjustment, which is calculated in accordance with the formula stated in the order/contract. The Supplier may be paid in one currency other than South African Rand. Only one exchange rate is used to convert from this currency to South African Rand. Payment to the Supplier in this currency other than South African Rand, does not exceed the amounts stated in the order/contract. EWSETA pays for the item within 30 days of receipt of the Suppliers correct tax invoice.

Delivery and documents

The Supplier's obligation is to deliver the items on or before the date stated in the order/contract. Late deliveries or late completion of the items may be subject to a penalty if this is imposed in the order/contract. No payment is made if the Supplier does not provide the item as stated in order/contract.

Where items are to be delivered the Supplier:

Clearly marks the outside of each consignment or package with the Supplier's name and full details of the destination in accordance with the order and includes a packing note stating the contents thereof; On dispatch of each consignment, sends to EWSETA at the address for delivery of the items, an advice note specifying the means of transport, weight, number of volume as appropriate and the point and date of dispatch; Sends to EWSETA a detailed priced invoice as soon as is reasonably practical after dispatch of the items, and states on all communications in respect of the order the order number and code number (if any).

Containers / packing material

Unless otherwise stated in the order/contract, no payment is made for containers or packing materials or return to the Supplier.

Title and risk

Without prejudice to rights of rejection under these conditions, title to and risk in the items passes to EWSETA when accepted by EWSETA.

Rejection

If the Supplier fails to comply with his obligations under the order/contract, EWSETA may reject any part of the items by giving written notice to the Supplier specifying the reason for rejection and whether and within what period replacement of items or re-work are required.

In the case of items delivered, EWSETA may return the rejected items to the Supplier at the Supplier's risk and expense. Any money paid to the Supplier in respect of the items not replaced within the time required, together with the costs of returning rejected items to the Supplier and obtaining replacement items from a third party, are paid by the Supplier to EWSETA.

In the case of service, the Supplier corrects non-conformances as indicated by EWSETA.

Warranty

Without prejudice to any other rights of EWSETA under these conditions, the Supplier warrants that the items are in accordance with EWSETA's requirements, and fit for the purpose for which they are intended, and will remain free from defects for a period of one year (unless another period is stated in the Order) from acceptance of the items by EWSETA.

Indemnity

The Supplier indemnifies EWSETA against all actions, suits, claims, demands, costs, charges and expenses arising in connection therewith arising from the negligence, infringement of intellectual or legal rights or breach of statutory duty of the Supplier, his subcontractors, agents or servants, or from the Supplier's defective design, materials or workmanship.

The Supplier indemnifies EWSETA against claims, proceedings, compensation and costs payable arising out of infringement by the Supplier of the rights of others, except an infringement which arose out of the use by the Supplier of things provided by EWSETA.

Assignment and sub-contracting

The Supplier may not assign or subcontract any part of this order/contract without the written consent of EWSETA.

Termination

EWSETA may terminate the order/contract at any time (without prejudice to any right of action or remedy which has accrued or thereafter accrues to EWSETA):

If the Supplier defaults in due performance of the order/contract, or if the Supplier becomes bankrupt or otherwise is, in the opinion of EWSETA, in such financial circumstances as to prejudice the proper performance of the order/contract, or for any other reason in which case the Supplier will be compensated for all costs incurred.

Governing law

The order/contract is governed by the law of the Republic of South Africa and the parties hereby submit to the non-exclusive jurisdiction of the South African courts.

This annexure will be read in conjunction with the service level agreement attached herein as an annexure.

16. ANNEXURE 3 - SBD4

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

2.1 Full Name of bidder or his or her representative:

2.2 Identity Number:

2.3 Position occupied in the Company (director, trustee, shareholder²):

2.4 Company Registration Number:

2.5 Tax Reference Number:

2.6 VAT Registration Number:

2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

¹“State” means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

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

2.7 Are you or any person connected with the bidder **YES / NO**
presently employed by the state?

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:

Name of state institution at which you or the person
connected to the bidder is employed :

Position occupied in the state institution:

Any other particulars:

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

2.7.2 If you are presently employed by the state, did you obtain **YES / NO**
the appropriate authority to undertake remunerative
work outside employment in the public sector?

2.7.2.1 If yes, did you attached proof of such authority to the bid **YES / NO**
document?

(Note: Failure to submit proof of such authority, where
applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:
.....
.....
.....

2.8 Did you or your spouse, or any of the company’s directors / **YES / NO**
trustees / shareholders / members or their spouses conduct

business with the state in the previous twelve months?

2.8.1 If so, furnish particulars:

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

2.9.1 If so, furnish particulars.

2.10 Are you, or any person connected with the bidder, **YES/NO** aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?

2.10.1 If so, furnish particulars.

2.11 Do you or any of the directors / trustees / shareholders / members **YES/NO** of the company have any interest in any other related companies whether or not they are bidding for this contract?

2.11.1 If so, furnish particulars:

3 FULL DETAILS OF DIRECTORS / TRUSTEES / MEMBERS / SHAREHOLDERS.

Full Name	Identity Number	Personal Tax Reference Number	State Number / Employee Pearsal Number

4 DECLARATION

I, THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

17. ANNEXURE 4 - SBD 6.1

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

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

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

2.3 GENERAL CONDITIONS

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

1.2 Points for this bid shall be awarded for:

2.

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

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

2.3 The maximum points for this bid are allocated as follows:

1.2.1 **Price - 80**

2.2.2 **B-BBEE Status Level of Contributor- 20**

2.2.3 **Total points for Price and B-BBEE - 100**

2.3 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.4 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- a) "B-BBEE" means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- b) "B-BBEE status level of contributor" means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

- c) “bid” means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- d) “Broad-Based Black Economic Empowerment Act” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- e) “EME” means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- f) “functionality” means the ability of a bidder to provide goods or services in accordance with specifications as set out in the tender/ RFQ documents.
- g) “prices” includes all applicable taxes less all unconditional discounts;
- h) “proof of B-BBEE status level of contributor” means:
 - 1) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- i) “QSE” means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- j) “rand value” means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

4.1 THE 80/20 PREFERENCE POINT SYSTEMS

A maximum of 80 points is allocated for price on the following basis:
80/20

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

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

P_{\min} = Price of lowest acceptable bid

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

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

B-BBEE Status Level of Contributor Number of points (80/20 system)

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

6. BID DECLARATION

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

7. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS

7.1 B-BBEE Status Level of Contributor:=(maximum of 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by relevant proof of B-BBEE status level of contributor

8. SUB-CONTRACTING

8.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

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

8.1.1 If yes, indicate:

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

(Tick applicable box)

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

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

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

9. DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of company/firm:

9.2 VAT registration number:

9.3 Company registration number:

9.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

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

- i. The information furnished is true and correct;
- ii. The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii. In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv. If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - a. disqualify the person from the bidding process;
 - b. recover costs, losses or damages it has incurred or suffered as a result of that person’s conduct;
 - c. cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation
 - d. recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
 - e. forward the matter for criminal prosecution.

<p>WITNESSES</p> <p>1.</p> <p>2.</p>
--

<p>.....</p> <p>SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE:</p> <p>ADDRESS</p> <p>.....</p>

18. ANNEXURE 5 - SBD 8

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

The order/contract is governed by the law of the Republic of South Africa and the parties hereby submit to the non-exclusive jurisdiction of the South African courts.

1. This Standard Bidding Document must form part of all bids invited.
2. It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
3. The bid of any bidder may be disregarded if that bidder, or any of its directors have-
 - a. abused the institution's supply chain management system;
 - b. committed fraud or any other improper conduct in relation to such system; or
 - c. failed to perform on any previous contract.
4. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid

Item	Question	Yes	No
4.1	<p>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?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p><i>The Database of Restricted Suppliers now resides on the National Treasury's website (www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.</i></p>	Yes	No
4.1.1	If so, furnish particulars:		

4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? <i>The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.</i>	Yes	No
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes	No
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes	No
4.4.1	If so, furnish particulars:		

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME).....

CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS TRUE AND CORRECT.

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

19. ANNEXURE 6 - SBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

1. This Standard Bidding Document (SBD) must form part of all bids¹ invited.
2. Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a pe se prohibition meaning that it cannot be justified under any grounds.
3. Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
4. This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
5. In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of: that: (Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - 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. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - a. prices;

- 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; or
 - f. bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- ³ JOINT VENTURE OR CONSORTIUM MEANS AN ASSOCIATION OF PERSONS FOR THE PURPOSE OF COMBINING THEIR EXPERTISE, PROPERTY, CAPITAL, EFFORTS, SKILL AND KNOWLEDGE IN AN ACTIVITY FOR THE EXECUTION OF A CONTRACT.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder



20. ANNEXURE 7 – GENERIC SERVICE LEVEL AGREEMENT

SERVICE LEVEL AGREEMENT

entered into between

**ENERGY AND WATER SECTOR EDUCATION AND TRAINING AUTHORITY
(hereinafter referred to as “EWSETA”)**

Represented by **(representative)**, in her capacity as Chief Executive Officer and she being duly authorised to enter into this Contract,

and

NAME OF SERVICE PROVIDER

(CO. REGISTRATION NUMBER)

(hereinafter referred to as “SERVICE PROVIDER”)

Represented herein by **(name of representative)** in her capacity as **(position)** and being duly authorised to enter into this Service Level Agreement.

WHEREBY IT IS AGREED AS FOLLOWS:

DEFINITIONS AND INTERPRETATIONS

1.1. Words importing –

- 1.1.1. any one gender include the other two genders;
- 1.1.2. the singular include the plural and *vice versa*; and
- 1.1.3. natural persons include created entities (corporate or unincorporated) and the state and *vice versa*;

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

- 1.2.1. **“Agreement”** means this agreement and its annexures, read in consultation with the preceding bid documents with reference number **EWSETA/RFP/20/2020**;
- 1.2.2. **“Annexure of Costs”** means annexure of this Agreement, wherein the all Costs relating to the Services provided in terms of this Agreement are set out;
- 1.2.3. **“Annexure of Services”** means annexure one (1) of this Agreement, wherein the details pertaining to the Services to be provided in terms of this Agreement are set out;
- 1.2.4. **“Business Day”** means any day other than a Saturday, Sunday or statutory public holiday in South Africa, on which commercial banks are generally open for business in South Africa;
- 1.2.5. **“Confidential Information”** shall have the meaning ascribed thereto in clause 15.1 of this Agreement;
- 1.2.6. **“Costs”** means the fees payable by EWSETA to the Service Provider in consideration for the Services provided, as set out in the Annexure of Costs, read with clause 7 of this Agreement;
- 1.2.7. **“Effective Date”** means this agreement shall commence on the earlier of a date as reflected in appointment letter or the date on the last signature.
- 1.2.8. **“EWSETA”** means the Energy and Water Sector Education and Training Authority, as established in terms of the Skills and Development Act (97 of 1998);
- 1.2.9. **“Financial Distress Event”** means, in relation to a Party, that such Party:
 - 1.2.9.1. becomes unable to pay its debts generally as they become due;
 - 1.2.9.2. proposes or makes any arrangement or composition with its creditors;
 - 1.2.9.3. has a business rescue practitioner, receiver, administrator, trustee or liquidator appointed over all or any part of its property or assets;
 - 1.2.9.4. proposes a resolution to go into business rescue proceedings, an administration order or goes into bankruptcy, liquidation or receivership;
 - 1.2.9.5. takes, suffers or is the subject of (or proposes to take or is threatened with) any similar or analogous action, event or proceedings in any jurisdiction in consequence of debt; or
 - 1.2.9.6. ceases, or threatens to cease, to carry on business
- 1.2.10. **“Parties”** means EWSETA and the Service Provider;
- 1.2.11. **“PFMA”** means the Public Finance Management Act (1 of 1999), as amended or replaced from time to time;
- 1.2.12. **“Services”** means the deliverables and services to be provided by the Service Provider in terms of this Agreement, as set out in the Annexure of Services, read with clause 0 of this Agreement;
- 1.2.13. **“Service Provider”** means the Party entering into this Agreement with EWSETA, and who/which is obligated to comply with the terms and conditions hereof, and in particular (without limitation) the Party which will provide the Services contemplated in this Agreement;
- 1.2.14. **“Supply Chain Policy”** means the supply chain policy of EWSETA, as amended from time to time; and
- 1.2.15. **“Signature Date”** means the date on which this Agreement has been signed by the Parties;
- 1.3. Any reference in this Agreement to **“Signature Date”** shall be read as meaning a reference to the date of the last signature of this Agreement;
- 1.4. Any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the Signature Date, and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this Agreement are changed, the relevant provision of this Agreement shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 1.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.6. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.7. If figures are referred to in numerals and in words and if there is any conflict between the two, the words shall prevail;

- 1.8. If any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that term has not been defined in this interpretation clause;
- 1.9. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.10. The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.11. Any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 1.12. The words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s;
- 1.13. Any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented; and
- 1.14. The words "other" and "otherwise" shall not be construed *eiusdem generis* with any preceding words if a wider construction is possible.

APPOINTMENT OF THE SERVICE PROVIDER

- 2.1. EWSETA hereby appoints the service provider for the provision of **(title of RFP)** to EWSETA for the duration of, and on the terms and conditions agreed to, in this Agreement. This agreement was preceded with the procurement process with reference number **EWSETA/RFP/20/2020**, which forms part of this agreement.
- 2.2. The service provider accepts the appointment, and undertakes to, amongst others, provide the Services with the professionalism, due care and skill required to fulfil the terms and conditions of this Agreement.
- 2.3. For the avoidance of doubt, the Service Provider shall at no point have any authority to represent EWSETA in any manner, unless EWSETA has provided the Service Provider with prior written consent to do so.

DURATION

- 3.1. This Agreement will commence on **DD/MM/YY** and will end on **DD/MM/YY** with an option to extend at the sole discretion of EWSETA or the exhaustion of the budget whichever is first.

NO LEGITIMATE EXPECTATION

- 4.1. The Service Provider agrees that it has no expectation of this Agreement being renewed or of a similar agreement being concluded, notwithstanding that this Agreement may have been renewed on a number of previous occasions or that similar

agreements to this one may have been concluded between the Parties on a number of previous occasions.

- 4.2. Furthermore, the Service Provider agrees that it has no expectation of being appointed as a service provider for similar, related, or the same, service in the future.

THE SERVICES

- 5.1. The Service Provider hereby agrees that it will provide the Services as set out in the Annexure of Services (attached) for the duration of this Agreement.

CONTRACT AMENDMENTS

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

CHARGES AND PAYMENT

- 7.1. The Service Provider shall be entitled to commence invoicing EWSETA for the costs in relation to the services from the commencement date of such services, as determined in accordance with the Annexure of Services. The Service Provider shall at all times quote the Purchase Order number when submitting a claim.
- 7.2. The Parties agree that the Services will be chargeable in accordance with the provisions contained in the Annexure of Costs.
- 7.3. Subject to clauses 7.4 and 7.5, EWSETA undertakes to pay within thirty (30) days of presentation of a duly completed tax invoice and supporting documents if required by EWSETA. Payment is to be made by way of an electronic funds transfer into a bank account nominated in writing by the Service Provider for such a purpose.

Account Holder: XXXXXXXX
 Bank: XXXXXXXXX
 Account Number: XXXXXXXXX
 Branch Code: XXXXXXXXX

- 7.4. Payment may be withheld if EWSETA is, for any reason, not satisfied with the standard of work done in rendering the services, and is only obligated to make payment upon presentation of a substantiated claim, and if all supporting documents are submitted with or prior to the receipt of the invoice.
- 7.5. EWSETA shall not pay for any unproductive or duplicated time spent by the Service Provider on any assignment as a result of, amongst others, staff changes or redrafting of reports due to inadequate quality thereof.
- 7.6. Timesheet sign-off shall be made promptly by EWSETA, but in no case later than fifteen (15) days after submission of completed timesheets and supporting documents by the Service Provider.
- 7.7. Prices charged by the Service Provider for the services rendered under the contract shall not vary from the prices quoted by the Service Provider in his bid, with the exception of any price adjustments authorised in the Service Level Agreement or in the EWSETA's request for bid validity extension, as the case may be.

8. ACCESS TO INFORMATION

The Service Provider hereby agrees that it shall provide EWSETA with all information reasonably requested by EWSETA in order for EWSETA to assess the financial status and credit worthiness of the Service Provider.

9. TAX CLEARANCE CERTIFICATE

9.1. The Service Provider agrees to produce a valid and original tax clearance certificate or ancillary documentation on an annual basis in order for EWSETA to comply with the Supply Chain Policy, amongst other things.

9.2. For the avoidance of doubt, where the Service Provider fails to supply EWSETA with such a certificate, EWSETA shall be able to terminate this Agreement forthwith, without affecting any of EWSETA's rights it may have in law.

10. WARRANTIES AND REPRESENTATIONS

10.1. The Parties acknowledge that they have entered into this Agreement after making independent investigations, and that neither Party has made any representations or given any warranties other than as may be set out in this Agreement.

10.2. The Service Provider warrants and represents that:

10.2.1. it has full capacity and authority to enter into, and perform in terms of, this Agreement and to provide the Services to EWSETA;

10.2.2. it is the owner of, or has the right to use, under licence or otherwise, any intellectual property employed by it during or as part of the Services;

10.2.3. it holds all the necessary permits, licences, authorisations and qualifications necessary to provide the Services;

10.2.4. it is not aware, as at the Signature Date, of any matter within its reasonable control or knowledge which might or will adversely affect its ability to perform its contractual obligations as contained in this Agreement;

10.2.5. it has been provided with a copy of EWSETA's Supply Chain Policy, and is familiar with the contents thereof;

10.2.6. the Services shall be performed in accordance with South African law;

10.2.7. the Services shall be provided in accordance with the provisions of this Agreement;

10.2.8. the Services shall be performed in a professional manner, and the Service Provider (including without limitation its employees and/or agents) shall provide the Services with reasonable skill, care and diligence; and

10.2.9. it shall only use personnel that are appropriately experienced, suitably qualified and have sufficient knowledge, expertise and competence to perform the Services, in accordance with the highest standards of the industry; and

10.2.10. it undertakes that –

10.2.10.1. should any of the Service Provider's personnel for any reason whatsoever be found to be incompetent or in any manner untrustworthy or dishonest with respect to any matter relative to this Agreement or its implementation, whether in

EWSETA's reasonable bona fide opinion, or otherwise howsoever, such of the Service Provider's personnel shall, if so required by EWSETA, be replaced forthwith, and replaced after consultation with and approval by EWSETA; and

10.2.10.2. should EWSETA at any time request that any of the Service Provider's personnel relative to this Agreement or its implementation be replaced, which it undertakes not to do unreasonably or without bona fide reason, such personnel shall be replaced forthwith after consultation and approval with EWSETA.

11. LIMITATION OF LIABILITY

11.1. EWSETA shall not be held liable for, and the Service Provider indemnifies and holds the EWSETA harmless against, any and all claims of any person in any manner arising or resulting from, caused by, connected with or related to the provision of the Services, a breach of this Agreement, or EWSETA relying, to its detriment, on incorrect or false information supplied by the Service Provider.

11.2. The Service Provider is required to effect and maintain at all times, and verify if requested by EWSETA, a public liability insurance policy and a short-term insurance policy with a reputable insurer in respect of the provision of the Services. The Service Provider is to provide certified proof of same when requested to do so by EWSETA.

12. SUB-CONTRACTING

12.1. The Services shall be rendered by the Service Provider itself and the Service Provider shall not be entitled to sub-contract the Services or any portion thereof to anyone without the prior written consent of EWSETA, which consent EWSETA may withhold in its absolute and entire discretion without furnishing any reason for such withholding, and in giving any such consent may impose such conditions that it may deem appropriate.

13. IDENTITY OF THE SERVICE PROVIDER

13.1. If, without the prior written consent of EWSETA, which consent EWSETA may withhold in its absolute and entire discretion without having to furnish any reason for any such withholding –

13.1.1. Any change whatsoever takes place in the membership of the Service Provider; or

13.1.2. The Service Provider sells, cede, assigns or otherwise disposes of its business or any part thereof;

13.2. EWSETA shall be entitled at any time thereafter to terminate this Agreement forthwith on written notice to the Service Provider in addition to and without prejudice to any other legal remedy which EWSETA may have.

14. RELATIONSHIP

14.1. For the avoidance of any doubt, it is recorded and agreed that the relationship between the Service Provider and EWSETA is that of an independent contractor (constituted by the Service Provider) appointed by EWSETA to provide the Services and consequently the relationship between EWSETA and the Service Provider in terms of this Agreement is a contract of services only and does not constitute nor may it be construed as constituting a contract of

agency, representation, employment or partnership with EWSETA. The Service Provider shall not incur any liability whatsoever on behalf of EWSETA and it has no authority to bind EWSETA through any representations, statements or agreements in any manner whatsoever, and the Service Provider undertakes not to hold itself out as such.

15.1.4.2. disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement; or

15.1.4.3. copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary in terms of this Agreement.

15. CONFIDENTIALITY UNDERTAKING

15.1. For the purposes of this Agreement, “**Confidential Information**” shall mean all confidential information (however recorded, preserved or disclosed) disclosed by a Party or its employees, officers, representatives or advisers (together, its “**Representatives**”) to the other Party and that Party’s Representatives (whether before, on or after the date of this Agreement) in connection with:

15.1.1. the terms of, or for the purposes of fulfilling its obligations in terms of, this Agreement;

15.1.2. any information that would be regarded as confidential by a reasonable business person relating to the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Party disclosing the information, including the operations, processes, product information, know-how, designs, trade secrets or software of such Party; and

15.1.3. any information compiled by the Parties in the course of carrying out or fulfilling their obligations in terms of this Agreement, but not including any information that:

15.1.3.1. is or becomes generally available to the public, other than as a result of its disclosure by the recipient or its Representatives in breach of this Agreement or of any other undertaking of confidentiality addressed to the party to whom the information relates (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or

15.1.3.2. was available to the recipient on a non-confidential basis prior to disclosure by the disclosing Party; or

15.1.3.3. was, is or becomes available to the recipient on a non-confidential basis from a person who, to the recipient’s knowledge, is not bound by a confidentiality undertaking with the disclosing Party or otherwise prohibited from disclosing the information to the Recipient; or

15.1.3.4. was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party; or

15.1.3.5. the Parties agree in writing that it is not confidential and may be disclosed; or

15.1.3.6. is developed by or for the recipient independently of the information disclosed by the disclosing Party; or

15.1.3.7. is trivial, obvious or useless.

15.1.4. The recipient shall use its reasonable endeavours to keep the disclosing Party’s Confidential Information confidential and, except with the prior written consent of the disclosing Party, shall not, and shall procure that its Representatives shall not:

15.1.4.1. use or exploit the Confidential Information in any way except to ensure compliance with this Agreement; or

16. DELAYS IN SUPPLIER’S PERFORMANCE

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

16.2. If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier’s notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier’s time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

16.3. A delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

17. BREACH

17.1. If any Party hereto:

17.1.1. breaches any term of this Agreement and fails to remedy such breach within 10 Business Days of receipt of written notice requiring it to do so;

17.1.2. then the aggrieved Party shall be entitled, without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party’s right to claim damages.

17.2. The Parties agree that the Apportionment of Damages Act, 1956, shall apply to this Agreement.

18. FORCE MAJEURE

18.1. Either party shall be excused from the non-performance of any of its obligations under this agreement, if such non-performance is caused by any factor outside the control of that Party, such factors including (without limitation) fire, storm damage, inclement weather, power failures, riots, unavailability of materials (beyond the sole responsibility of the service provider), strikes, lock-outs, sanctions, embargoes and actions of the legislative, or the executive, or the military authorities (herein after called a force majeure).

18.2. The Either party shall be excused from the non-performance of any of its obligations under this agreement, if such non-performance is caused by any factor outside the control of that Party, such factors including (without limitation) fire, storm damage, inclement weather, power failures, riots, unavailability of materials (beyond the sole responsibility of the service provider),

strikes, lock-outs, sanctions, embargoes and actions of the legislative, or the executive, or the military authorities (herein after called a force majeure).

- 18.3. If Either party shall be excused from the non-performance of any of its obligations under this agreement, if such non-performance is caused by any factor outside the control of that Party, such factors including (without limitation) fire, storm damage, inclement weather, power failures, riots, unavailability of materials (beyond the sole responsibility of the service provider), strikes, lock-outs, sanctions, embargoes and actions of the legislative, or the executive, or the military authorities (herein after called a force majeure).

19. TERMINATION

- 19.1. Notwithstanding any other provision in this Agreement, either Party shall be able to terminate this Agreement by providing the other Party with 30 calendar days' written notice of termination.

20. SUMMARY TERMINATION

20.1. If any Party hereto:

- 20.1.1. commits or is subject to a Financial Distress Event or fraud; or
- 20.1.2. allows any judgment against it, in excess of R500 000.00 (five hundred thousand Rand), to remain unsatisfied for more than 10 (ten) Business Days without taking the appropriate steps to have it rescinded; or
- 20.1.3. being a natural person, takes any steps to surrender his estate or is provisionally or finally sequestered; or
- 20.1.4. is guilty of grave misconduct or wilful neglect in the discharge of its duties; or
- 20.1.5. commits a criminal offence of a dishonest and/or serious nature; or
- 20.1.6. being a created entity, undergoes a change of control,

then the aggrieved Party shall be entitled, without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to summarily terminate this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages.

- 20.1.7. The Parties agree that the Apportionment of Damages Act, 1956, shall apply to this Agreement.

21. ASSIGNMENT

- 21.1. The Service Provider shall not be entitled to cede, delegate, assign, or otherwise transfer any part, share or interest herein, to any person other than EWSETA, without the prior written consent of EWSETA.

22. DISPUTE RESOLUTION, NEGOTIATION, MEDIATION THEN ARBITRATION

- 22.1. Should any dispute, disagreement or claim arise between the Parties (the "Dispute") in connection with the Agreement, the Parties shall endeavour to resolve the dispute by negotiation. This entails the authorised representatives of one of the Parties inviting the authorised representatives of the other in writing to meet and

to attempt to resolve the dispute within 10 (ten) Business Days from date of written invitation to do so.

- 22.2. If the dispute has not been resolved by such negotiation within 10 (ten) Business Days of the date of the delivery of the written invitation referred to in clause 22.1, then the Parties shall:

- 22.2.1. submit the dispute to mediation to be administered by the Arbitration Foundation of Southern Africa ("AFSA"), upon such terms as agreed between the Parties and the secretariat of AFSA; and
- 22.2.2. failing agreement as aforesaid within 10 (ten) Business Days of the dispute being submitted to mediation, the Parties shall refer the dispute to arbitration as provided in clause 22.3.

- 22.3. In the event that the Parties are unable to settle the dispute by mediation in accordance with clause 22.2 within 10 (ten) Business Days of submission of the dispute to mediation, the dispute shall be submitted to arbitration for final resolution in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by that foundation.

- 22.4. Each Party shall be entitled to appeal against the award to an panel (the "Arbitration Appeal Panel") consisting of three retired judges of the Constitutional Court, the Supreme Court of Appeal, the High Court, or practising senior counsel appointed in writing by the Parties and, in the absence of an agreement between the Parties in regard to the appointment of any one or more of the three Appeal Arbitrators, by the Chairman for the time being of the Johannesburg Bar Council.

- 22.5. The Arbitration Appeal Panel will on appeal have the same powers *mutatis mutandis* as the Supreme Court of Appeal;

- 22.6. Such appeal shall be lodged in accordance with the Uniform Rules of Court and the time limits and procedures laid down in the Rules in regard to appeals from the judgment of a single judge of the Court to a full bench of the Court shall apply in every respect, unless mutually otherwise agreed in writing by the Parties;

- 22.7. The appeal shall be heard and determined in accordance with the ordinary principles regulating appeal hearings at the AFSA Arbitration Centre, Sandton, on a date to be agreed between the Parties and the Arbitration Appeal Panel and, in the absence of agreement within a reasonable time, on a date to be determined by the Arbitration Appeal Panel.

- 22.8. Unless otherwise agreed in writing by both Parties, any such negotiation, mediation or arbitration shall be held in Johannesburg in the English language.

- 22.9. Nothing in this clause 0 shall preclude the Parties from seeking interim and/or urgent relief from the court for the protection of any rights pending the final determination of the dispute.

23. WHOLE AGREEMENT, NO AMENDMENT

- 23.1. This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof, and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof. This agreement will be read in consultation with the bid documents should there be a conflict between the bid documents and this agreement, this agreement will prevail should there be a conflict between this agreement and its annexures

23.2.No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

23.3.No oral *pactum de non petendo* shall be of any force or effect.

23.4.No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party (save as to any extension, waiver or relaxation actually given) thereafter from exercising its rights strictly in accordance with this Agreement.

23.5.To the extent permissible by law no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

24. SURVIVAL OF OBLIGATIONS

Any provision of this Agreement, which contemplates performance or observance subsequent to any termination, or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

25. CO-OPERATION

The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to implementing, the putting into effect of, and the maintenance of the terms, conditions and impact of, this Agreement.

26. LEGAL COSTS

26.1.Should it at any stage become necessary for EWSETA to institute action against the Service Provider by reason of this Agreement and/or a breach thereof, then the Service Provider shall be liable to pay all the costs so incurred by EWSETA on the scale as between attorney and client;

26.2.The Service Provider shall, in addition to the costs referred to above, be liable for all legal costs and related expenses pertaining to and associated with the preparation and registration of any of the securities provided for in this Agreement.

27. SEVERABILITY

27.1.Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non*

scripto and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

28. DOMICILIUM CITANDI ET EXECUTANDI

28.1.The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

28.2.EWSETA:

Attention: XXXXXXXX
Physical: Sunnyside Office Park
Building B, Ground Floor
32 Princes of Wales Terrace
Parktown
Johannesburg
Tel: 011 274 4700
Email: XXXXXXXX

28.3. SERVICE PROVIDER DETAILS

Attention: xxxxxxxx
Physical: xxxxxxxx
xxxxx
xxxxx
xxxxx
Tel: xxxxxxxx
Email: xxXXXXXX

28.4.Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by post or e-mail.

28.5.Either Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in South Africa, provided that the change shall become effective on the 4th (fourth) Business Day from the deemed receipt of the notice by the other Party.

28.6. Any notice to a Party –

28.6.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 4th (fourth) Business Day after posting (unless the contrary is proved);

28.6.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

28.6.3. sent by e-mail to its chosen e-mail address stipulated in clause 28.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

28.6.4. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

29. GOVERNING LAW

29.1. Notwithstanding the conflict of law principles which might otherwise have prevailed, this Agreement shall be governed by and interpreted in accordance with the substantive laws of the Republic of South Africa.

30. STIPULATIO ALTERI

30.1. No part of this Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a Party to the agreement, unless the revision in question expressly provides that it does constitute a *stipulatio alteri*.

31. EXECUTION IN COUNTERPARTS

31.1. This Agreement may be executed in several counterparts, each of which shall together constitute one and the same instrument, which shall include facsimile and/or electronic copies of any relevant counterpart and/or all counterparts, as the case may be.

Signed in Johannesburg on behalf of EWSETA

on _____ day of
_____ 2020.

(representative)

CEO

Who warrants that he/she is duly authorised to sign this agreement

Who warrants that he/she is duly authorised to sign this agreement

Signed in Johannesburg

on behalf of the Service Provider

on _____ day of
_____ 2020.

(name of representative)

(Position)

