

JOHANNESBURG ROADS AGENCY (PTY) LTD

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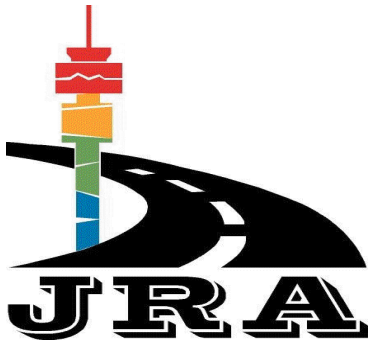
CONTRACT NO JRA/20/100

FOR

PROFESSIONAL SERVICES: APPOINTMENT OF A SUITABLY QUALIFIED CHANGE MANAGEMENT SPECIALIST TO MANAGE THE ORGANIZATIONAL CHANGE PROCESS DURING THE ROLL-OUT OF THE ORGANIZATION DESIGN PROJECT AND IMPLEMENTATION OF THE REVISED ORGANIZATIONAL STRUCTURE.

THE CONTRACT (VOLUME 3)

PART 1. AGREEMENT AND CONTRACT DATA



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PART 1: AGREEMENT AND CONTRACT DATA

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Contract Part 1
Agreement and Contract Data

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C1.1 GENERAL CONDITIONS OF CONTRACT



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NOTES

The purpose of this document is to:

Draw special attention to certain general conditions applicable to government bids, contracts and orders and;

To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government. In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter

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



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C1.1 GENERAL CONDITIONS OF CONTRACT

1. Definition

The following terms shall be interpreted as indicated:

- 1.1.** "Closing time" means the date and hour specified in the bidding documents for the receipt of bids
- 1.2.** "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3.** "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4.** "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5.** "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6.** "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7.** "Day" means calendar day.
- 1.8.** "Delivery" means delivery in compliance of the conditions of the contract or order.
- 1.9.** "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.10.** "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- 1.11.** "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12.** "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13.** "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14.** "GCC" means the General Conditions of Contract.



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- 1.15. "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16. "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17. "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18. "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19. "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20. "Project site," where applicable, means the place indicated in bidding documents.
- 1.21. "Purchaser" means the organization purchasing the goods.
- 1.22. "Republic" means the Republic of South Africa.
- 1.23. "SCC" means the Special Conditions of Contract.
- 1.24. "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25. "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.
- 1.26. NEMA is an abbreviation for National Environmental Management Act
- 1.27. ASTM is an abbreviation for American Society for Testing and Materials

2. Application

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

3. General



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- 3.1. Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
 - 3.2. With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za
- 4. Standards**
- 4.1. The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information; inspection. Obligations of the supplier covered under the contract.**
- 5.1. The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
 - 5.2. The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
 - 5.3. Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
 - 5.4. The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent rights**
- 6.1. The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance security**
- 7.1. Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
 - 7.2. The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.



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- 7.3.** The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- 7.3.1.** a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - 7.3.2.** a cashier's or certified cheque
- 7.4.** The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

- 8.1.** All pre-bidding testing will be for the account of the bidder.
- 8.2.** If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3.** If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4.** If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5.** Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6.** Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.



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8.7. Any contract supplies may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

9.1. The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

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

10. Delivery

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

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

11. Insurance

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

12. Transportation

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

13. Incidental



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- 13.1.** The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- 13.1.1.** Performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - 13.1.2.** furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - 13.1.3.** furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - 13.1.4.** performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
 - 13.1.5.** Training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2.** Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

- 14.1.** As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts
- 14.2.** Manufactured or distributed by the supplier:
- 14.2.1.** such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
 - 14.2.2.** in the event of termination of production of the spare parts:
 - 14.2.2.1.** Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - 14.2.2.2.** Following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

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



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- 15.2. This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 15.3. The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4. Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5. If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

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

17. Prices

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

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

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



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21. Delays in the supplier's performance

- 21.1. Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2. If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3. No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4. The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5. Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause without the application of penalties.
- 21.6. Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

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

23. Termination

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



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- 23.1.1.** if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- 23.1.2.** if the Supplier fails to perform any other obligation(s) under the contract; or
- 23.1.3.** if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2.** In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3.** Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4.** If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.
- 23.5.** Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6.** If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
 - 23.6.1.** the name and address of the supplier and / or person restricted by the purchaser;
 - 23.6.2.** the date of commencement of the restriction
 - 23.6.3.** the period of restriction; and
 - 23.6.4.** the reasons for the restrictions.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.



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23.7. If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

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

25. Force Majeure

25.1. Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2. If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

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

27. Settlement of Disputes



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

28. Limitation of liability

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

29. Governing language

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

30. Applicable law

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

31. Notices

- 31.1.** Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice



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31.2. The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties

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

33. National Industrial Participation (NIP) Programme

- 33.1. The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

34. Prohibition of Restrictive practices

- 34.1. In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 19100, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2. If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 19100.
- 34.3. If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

General Conditions of Contract

C1.2 CONDITIONS OF BID FOR BIDDER



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- BIDDER TO SATISFY HIMSELF AS TO CONDITIONS AND CIRCUMSTANCES OF BID**
- The Bidder shall be deemed to have satisfied himself as to all the conditions and circumstances affecting the Bid.
- COMPLETE ACCEPTANCE OF CONDITIONS**
- The Bidder shall be deemed to know and understand the Bid Documents, which must be General Conditions and Conditions of Bid.
 - Subject to the provisions of the foregoing sub-clause, the Bid may qualify any one or more of the said conditions; but no qualification of a conditions shall, if this Bid be accepted, form part of the Contract unless, at the time of Bidding, he shall have indicated in writing, specifically in relation to each and every condition so qualified, the number of the conditions and the exact extent to which it is qualified.
- ALTERNATIVES**
- The Bidder may submit alternatives, which, in his opinion, are to the JRA's advantage economically and technically.
- VARIATIONS**
- In the event of Bids being offered for goods differing or varying from the requirements of the Specification, all such variations shall be clearly indicated and described in the Bid.
- PARTICULARS TO BE SUPPLIED**
- No Bid shall be considered unless it is Goods accompanied by sufficient information to show whether or not the goods offered comply with the Specification.
 - Bids must state the country of origin and the name of the manufacturer of the Goods offered. Documentary proof must be produced, if required.
- BID PRICES**
- All prices must be quoted in South African Rand and must include Value Added Tax (VAT). The rate of Value Added Tax used must be stated on the Form of Bid. Any discounts allowed to the JRA must be stated on the Form of Bid.
 - Any form of levy or charge such as customs duty, excise duty and import surcharge must be included in the Bid price(s). All price(s) must be nett with all discount already deducted. Price(s) must include the cost of supply, delivery, off-loading, stacking etc. as specified on the form of Bid. Should there be any difference, or difference, or discrepancy, between the prices, or particulars stated on the official Form of Bid and those contained in a covering



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- letter or other document submitted with the Bid, the former shall prevail.
- BID PRICE**
- Bidders shall submit Bid Prices, which shall be free from fluctuations. All prices shall be quoted in South African currency and any discounts allowed to the JRA must be stated in the Form of Bid.
- VARIABLE BIDS**
- Where Bid is based on the Contract Price being subject to adjustment:-
 - The Bid price(s) stated on the Form of Bid must be based on Cost to Bidder and Rates and Charges ruling at the date of compilation of the Bid, which date shall be as near as possible to the Date of Bid.
 - The Bid must be clearly marked as being subject to Contract Price Adjustment.
 - For Goods, which are to be imported, in whole or in part, from outside the Republic of South Africa, the Bidder must state in his Bid the rate of exchange on which the Bid is based, such rate to be that ruling at the Date of Bid.
 - Bidders must state whether the exchange rate is adjustable to that ruling at date of the adjustment shall be based on the rate ruling at date of shipment of Goods
- PREFERENCES**
- Bids claiming preferences must complete the "Certificate of Preferences Claimed by Bidder" attached to the Bid Document. Claims for preferences which are not received by the JRA by the Date of Bid, will not be considered.
- DELIVERY**
- Bidders must state in their Bids the lead time required for delivery.
- SUBMISSION OF BID**
- The complete Bid documents must be placed in a sealed envelope endorsed in the manner indicated on the Cover of Bid and in the advertisement calling for Bids and must be submitted complete in all respect.
 - A specific box subsequent to the Date of Bid will be considered, the onus of ensuring that the Bid is placed in the correct box lies with the Bidder. No Bid will be considered if it is received after the closing Date and Time of Bid and proof of posting will not be accepted as proof of delivery. No Bid submitted by fax or other electronic means will be considered.



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- The act of the submitting a Bid to the JRA shall be deemed to constitute an agreement between the Bidder and the JRA whereby such Bid shall remain open for acceptance by the JRA for a period of one hundred and twenty (120) days from the Date of Bid, during which period the Bidder agrees not to withdraw the same or impair or derogate from its Effect.
- EXAMINATION OF BIDS AND DETERMINATION OF RESPONSIVENESS
- A responsive Bid is one, which conforms to all the terms, conditions and Specifications of the Contracts without material deviation or qualification. A material deviation or qualification is one which, in the JRA's opinion:
 - Could detrimentally affects the scope, quality, or performance of the Works;
 - Changes the JRA's or the Bidder's risks and responsibilities under the Contract; or
 - Would affect the competitive position of other Bidders presenting responsive Bids, if it were to be rectified.
 - If the Bid does not meet the requirements or is not responsive (as described below), it will be rejected by the JRA, and not subsequently be made acceptable to the employer by correction or withdrawal of the non-conforming deviation or reservation.
- ADJUDICATION OF BIDS
- Prior to the detailed evaluation of Bids, the Employer shall determine whether each Bid:
 - Meets the requirements of these Conditions of Bid
 - Has been properly signed;
 - Is responsive to the requirements of the Contractor documents i.e., all required documents as stated and requested within this document have been complied with and any non-compliance whatsoever may result in disqualification;
 - Provides any clarification and or/ substantiation that the Employer may require;
 - Complies with the Bid submission requirements in all other respects.
 - Fulfils all of the requirements included within the SCC in evaluating the bid submission (i.e. evaluation criteria)
- ADJUDICATION USING A POINT SYSTEM
- Responsive Bids (based on the compliance with all required and described documents as explained above) will be adjudicated by the Employer using a system which awards points on the basis of:



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- Functional Evaluation (explained in the SCC section of document)
 - The Bided price (NP);
 - The B-BBEE Status Level Verification Certificate.
- The Employer will normally award the Contract to the Bidder obtaining the highest number of points, but will not bind itself to do so.

EVALUATION OF BIDS

- Bids are subject to compliance of requirements structured in the bid document. This bid is subject to the following evaluation process
- **Phase 1:** The first phase is the pre-compliance evaluation of the SCM returnable schedules. Bidders that are not compliant with the minimum requirements of phase one, will not go through to the second phase.

- **Phase 2:**

In this phase, only bids that were responsive to the submission requirements in phase 1 and stage 1 are further evaluated technically to determine the extent their offer meet the employer's requirements. Only technically compliant bids to the requirements will further be evaluated for price and B-BBEE.

Phase 3: The third phase is to perform an evaluation of Price and B-BBEE on the bidders that successfully qualified on the technical functionality evaluation. The 80/20 principles will be applied. The 80/20 principle applies to bids with a contract value not exceeding R50 Million, where price counts 80 points and 20 points are allocated to B-BBEE levels. The highest point for price is 80 points. Points for price is calculated in the following manner:

$$NP = 80 \times \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

- Where:

NP = Points Scored for Bid under Consideration
Pmin = Rand value of lowest acceptable Bid
Pt = Rand Value of Bid under Consideration

- Points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:



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

- The total number of Bid adjudication points may be awarded (N), is the sum of:
$$N = NP + B-BBEE$$

- Contracts are awarded to bidders based on the points bidders scored for price and B-BBEE. The highest point scoring bidder is normally awarded the contract.

ACCEPTANCE OF BID

- The lowest, or any, Bid will not necessarily be accepted and the JRA reserves the right to:

- Not to appoint the highest scoring bidder.
- Not to appoint any bidder at all.
- To appoint to more than one bidder, if so required
- To appoint the bid in part / by item to various bidders, if so required
- In the event of multiple bids for similar scope of works, the JRA reserves the right to appoint more than one bidder for such similar work.

OFFERING COMMISSION OR GRATUITY

OF - If the Bidder, or any person employed by him, is found to have either directly or indirectly offered, promised or given to any Board member, person in the employ of the JRA, any commission, gratuity, gift or other consideration, the Agency shall have the right summarily and without recourse to law and without prejudice to any other legal remedy which it may have in regard to any loss or



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additional cost or expensed, to disqualify the Bid without paying any compensation to the Bidder.

PROCESS TO
CONFIDENTIAL

- BE - Information supplied by Bidders and information relating to the clarification evaluation and the award of a contract will not be disclosed to Bidders or any other person not officially concerned with such processes.
- Any effort by a Bidder to influence the Employers processing of Bids or the award of the Contract may result in the rejection of his Bid.

PENALTIES

- Should it transpire, after the award of the Contract, that some, or all Bid adjudication points claimed by the successful Bidder and awarded to him were based on incorrect or false information, or the conditions pertaining to the awarding of points are not adhered to, the Contractor will be required to pay to the Employer penalties in an amount equal to one and a half times the number of such falsely-claimed points multiplied by the Bided Amount, excl. VAT, ÷ 100.



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C1.3 CONDITIONS PERTAINING TO AFFIRMATIVE PROCUREMENT

PREFERENCES FOR AFFIRMABLE BUSINESS ENTERPRISE STATUS/WOMAN EQUITY OWNERSHIP:

Definitions and Interpretation

- The following words and expressions shall have the meanings indicated including the interpretation and use for the purposes of this document as per the General Conditions of Contract (GCC); some of which may be further explained as required, within the document.

AFFILIATED BUSINESS ENTITY - A business entity which has control of or the power to control another business entity, albeit indirect, e.g. where a third person has control of or has the power to control both entities. Indicators of control shall, without limitation, include inter locking management or ownership, identity of interests among family members, shared facilities and equipment, or common use of employees.

CONTROL - The possession exercise of legal authority and power to manager the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial; authority and power in determining the policies and directing the operations of the business.

COMMERCIALLY USEFUL FUNCTION - The performance or real and actual work, or the provision of services, in the discharge of any contractual obligation, which shall include but not be limited to the performance of a district element of work which the business has the skill and expertise to undertake, and the responsibility for management and supervision of such work

EXECUTIVE DIRECTOR - A fulltime partner in a partnership a director of a company established in terms of the Companies Act, 1973 (Act 61 of 1973) or a member of close corporation registered in terms of the Close Corporation Act, who, jointly and severally with his/her other partners, co-directors or co-members, as the case may be, bears the risk of business and takes responsibility for the management and liabilities of the partnership, company, or close corporation on a day to day basis.

- NOTE: Non-executive directors of public companies are specifically excluded. A sole proprietor may be regarded as being an Executive Director.

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- MANUFACTURER - A firm that operates or maintains a factory or establishment that produces on this premises materials or suppliers required by the Prime Contractor for the performance of the Contract.
- OWNED - Having all the customary incidents of ownership including the right of disposition, and sharing all the risks and profits commensurate with the degree of ownership interests as demonstrated by an examination of the substance, rather than the form of ownership arrangements.
- BROAD BASED BLACK ECONOMIC EMPOWERMENT - 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.
- Bidders who do not submit B-BBEE Status Level Verification Certificates or are non-compliant contributors to B-BBEE do not qualify for preference points for B-BBEE but should not be disqualified from the bidding process. They will score points out of 90 or 80 for price only and zero (0) points out of 10 or 20 for B-BBEE.
- PRIME CONTRACTORS - A Contractor who contractors with an employer as the principal or main Contractor or as a joint venture partner to such Contractors, to provide goods, services and works.
- SUPPLIER - A firm that:
• Owns, operates or maintains a store, warehouse or other establishment in which materials or supplies required for the performance of the Contractor are bought, kept in stock and regularly sold to the public in the usual course of business; and
• Engages as its principal business, and in its own name, in the purchase and sale of the products in question.
- WOMEN - A female person who is a South African citizen and a female at birth.
- WOMEN EQUITY OWNERSHIP (WEO) - The collective Ownership percentage of Executive Directors within an enterprise who are Women.

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1. LIST OF ABBREVIATIONS

2. THE JRA RESERVES THE RIGHT:

- a) To cancel and / or terminate the bid process at any stage, including after the closing date and or after the presentation has been made, and / or after the bid have been evaluated and / or after the preferred bidder/s have been notified of their status of such;
- b) To cancel and/or terminate the contract or part thereof, post the award/s with consultation with the Supplier if is deemed necessary
- c) To negotiate with one or more preferred bidder/s identified in the evaluation process, regarding any terms and conditions, including prices without offering the same opportunity to any other bidder/s who has not been awarded the status of the preferred bidder/s.
- d) To accept part of the tender rather than the whole tender
- e) To carry out site inspections, product evaluations or explanatory meetings in order to verify the nature and quality of the goods and services offered by the bidder/s, whether before or after adjudication of the bid.
- f) To request presentations for shortlisted bidders (Bidders that that were shortlisted after Functional evaluation)
- g) Not to award to the highest scoring bidder.
- h) To terminate or amend the requirements of this contract as per the General Conditions of Contract.
- i) To implement the project in phases, prioritised locations or parts
- j) To pilot the project in a single location prior implementation at JRA's cost.

3. A COMPULSORY BRIEFING SESSION IS NOT A REQUIREMENT AND IT IS NOT APPLICABLE TO CONTRACT NO JRA 20/100.

C1.5 STANDARD CONDITIONS OF TENDER

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STANDARD CONDITIONS OF TENDER

The standard conditions of tender for procurements make several references to the tender data for details that apply specifically to this tender. The tender data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the standard conditions of tender.

F.1 General

F.1.1 Actions

The employer and each tenderer submitting a tender offer shall comply with these conditions of tender. In their dealings with each other, they shall discharge their duties and obligations, as set out in item 2 and 3 below, timeously and with integrity, and behave equitably, honestly and transparently.

F.1.2 Tender documents

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

F.1.3 Interpretation

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

F.1.3.2 These conditions of tender, the tender data and tender schedules which are only required for tender evaluation purposes, shall not form part of any contract arising from the invitation to tender.

F.1.4 Communication and employer's agent

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

F.1.5 The Employer's right to accept or reject any tender offer

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F.1.5.1 The employer may accept or reject any variation, deviation, tender offer, or alternative tender offer, and may cancel the tender process and reject all tender offers at any time before the formation of a contract. The employer shall not accept or incur any liability to a tenderer for such cancellation and rejection, but shall give reasons for such action.

F.1.5.2 After the cancellation of a tender process or the rejection of all tender offers the employer may abandon the proposed procurement and re-issue a similar tender notice and invitation to tender not less than six months after the closing date for tender offers or have it performed in another manner at any time.

F.2 Tenderer's obligations

F.2.1 Eligibility

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

F.2.2 Cost of tendering

Accept that the employer will not compensate the tenderer for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer comply with requirements.

F.2.3 Check documents

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

F.2.4 Confidentiality and copyright of documents

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

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F.2.5 Reference documents

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

F.2.6 Acknowledge addenda

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

F.2.7 Site visit and clarification meeting

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

F.2.8 Seek clarification

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

F.2.9 Insurance

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

F.2.10 Pricing the tender offer

F.2.10.1 Include in the rates, prices and the tendered total of the prices (if any) all duties, taxes (except value-added tax (VAT)), and other levies payable by the successful tenderer, such duties, taxes and levies being those applicable 14 days before the closing time stated in the tender data.



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

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

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

F.2.11 Alterations to documents

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

F.2.12 Alternative tender offers

F.2.12.1 Submit alternative tender offers only if main tender offer, strictly in accordance with all the requirements of the tender documents, is also submitted. The alternative tender offer is to be submitted with the main tender offer together with a schedule that compares the requirements of the tender documents with the alternative requirements the tenderer proposes.

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

F.2.13 Submitting a tender offer

F.2.13.1 Submit a tender offer to provide the whole of the works, services or supply identified in the contract data, unless stated otherwise in the tender data.

F.2.13.2 Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing in **BLACK INK**.

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- F.2.13.3** Submit the parts of the tender offer communicated on paper as an original plus the number of copies stated in the tender data, with an English translation of any documentation in a language other than English, and the parts communicated electronically in the same format as they were issued by the employer.
- F.2.13.4** Sign the original and all copies of the tender offer where required in terms of the tender data. The employer will hold all authorized signatories liable on behalf of the tenderer. Signatories for tenderers proposing to contract as joint ventures shall state which of the signatories is the lead partner whom the employer shall hold liable for the purpose of the tender offer.
- F.2.13.5** Seal the original and each copy of the tender offer as separate packages marking the packages as “**ORIGINAL**” and “**COPY**”. Each package shall state on the outside the employer’s address and identification details stated in the tender data, as well as the tenderer’s name and contact address.
- F.2.13.6** Where a two-envelope system is required in terms of the tender data, place and seal the returnable documents listed in the tender data in an envelope marked “financial proposal” and place the remaining returnable documents in an envelope marked “technical proposal”. Each envelope shall state on the outside the employer’s address and identification details stated in the tender data, as well as the tenderer’s name and contact address.
- F.2.13.7** Seal the original tender offer and copy packages together in an outer package that states on the outside only the employer’s address and identification details as stated in the tender data.
- F.2.13.8** Accept that the employer will not assume any responsibility for the misplacement or premature opening of the tender offer if the outer package is not sealed and marked as stated.
- F.14** Information and data to be completed in all respects

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

F.2.14 Closing time

F.2.14.1 Ensure that the employer receives the tender offer at the address specified in the tender data not later than the closing time stated in the tender data. Proof of posting shall not be accepted as proof of delivery. The employer shall not accept tender offers submitted by telegraph, telex, facsimile or e-mail, unless stated otherwise in the tender data.

F.2.14.1 Accept that, if the employer extends the closing time stated in the tender data for any reason, the requirements of the conditions of tender apply equally to the extended data.

F.2.15 Tender offer validity

F.2.15.1 Hold the tender offer(s) valid for acceptance by the employer at any time during the validity period stated in the tender data after the closing time stated in the tender data.

F.2.15.1 If requested by the employer, consider extending the validity period stated in the tender date for an agreed additional period.

F.2.16 Clarification of tender offer after submission

Provide clarification of a tender offer in response to a request to do so from the employer during the evaluation of tender offers. This may include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the total of the prices or substance of the tender offer should be sought, offered, or permitted. The total of the prices stated by the tenderer shall be binding upon the tenderer.

F.2.17 Provide other material

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- F.2.17.1** Provide, on request by the employer, any other material that has a bearing on the tender offer, the tenderer's commercial position (including notarized joint venture agreements), preferencing arrangements, or samples of materials, considered necessary by the employer for the purpose of full and fair risk assessment. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the employer's request, the employer may regard the tender offer as being non-responsive.
- F.2.17.2** Dispose of samples of materials, where required.
- F.2.18** **Inspections, test and analysis**
- Provide access during working hours to premises for inspections, test and analysis as provided for in the tender data.
- F.2.19** **Submit securities, bonds, policies, etc.**
- If requested, submit for the employer's acceptance before formation of the contract, all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the contract data.
- F.2.20** **Check final draft**
- Check the final draft of the contract provided by the employer within the time available for the employer to issue the contract.
- F.2.21** **Return of other tender documents**
- If so instructed by the employer, return all retained tender documents within 28 days after the expiry of the validity period stated in the tender data.
- F.2.21** **Certificates**
- Include in the tender submission or provide the employer with any certificates as stated in the tender data.



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F.3 Employer's undertakings

F.3.1 Respond to clarification

Respond to a request for clarification received up to five days before the tender closing time stated in the tender data and notify all tenderers who drew procurement documents.

F.3.2 Issue addenda

If necessary, issue addenda that may amend or amplify the tender documents to each tenderer during the period from the date of the tender notice until 7 days before the tender closing time stated in the tender data. If, as a result of the issuing of addenda, a tenderer applies for an extension to the closing time stated in the tender data, the employer may grant such extension and shall then notify all tenderers who drew documents.

F.3.3 Return late tender offers

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

F.3.4 Opening of tender submissions

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

F.3.4.2 Announce at the public meeting held immediately after the opening of tender submissions, at a venue indicated in the tender data, the name of each tenderer whose tender offer is opened the total of his prices, preferences claimed and time for completion, if any, for the main tender offer only.

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F.3.4.3 Make available the name of each tenderer whose tender offer is opened, the total of his prices, if applicable, preferences claimed and time for completion (if any) for the main tender offer only.

F.3.5 Two envelope system (NOT APPLICABLE TO CONTRACT NO JRA 20/100)

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

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

F.3.6 Non-disclosure

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

F.3.7 Grounds for rejection and disqualification

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

F.3.8 Test for responsiveness

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

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

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

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

F.3.8.2 Reject a non-responsive tender offer, and do not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

F.3.9 **Arithmetical errors**

F.3.9.1 Check responsive tender offers for arithmetical errors, correcting them in the following manner:

- a) Where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern.
- b) If a bill of quantities (or schedule of quantities or schedule of rates) applies and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be

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corrected. Where there is an obvious gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate shall be corrected.

- c) Where there is an error in the total of the prices, either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the prices shall govern and the tenderer will be asked to revise selected items prices (and their rates if a bill of quantities applies) to achieve the tendered total of the prices.

F.3.9.2 Consider the rejection of a tender offer if the tenderer does not correct or accept the correction of his arithmetical errors in the manner described in Item 3.9.1.

F.3.10 Clarification of a tender offer

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

F.3.11 Evaluation of tender offers

Appoint an evaluation panel of not less than three persons. Reduce each responsive tender offer to a comparative offer and evaluate it using the tender evaluation methods that are indicated in the tender data and described as methods 1, 2, 3 and 4.

F.3.11.1 Method 1: In the case of a financial offer:

- a) Rank tender offers from the most favourable to the least favourable comparative offer.
- b) Recommend the highest ranked tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.

F.3.11.2 Method 2: In the case of a financial offer and preferences:

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- a) Score tender evaluation points for each financial offer.
- b) Confirm that tenderers are eligible for the preferences claimed and, if so, score tender evaluation points for preferencing.
- c) Calculate total tender evaluation points.
- d) Rank tender offers from the highest number of tender evaluation points to the lowest.
- e) Recommend the tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

F.3.11.3 Method 3: In case of a financial offer and quality:

- a) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the tender data, if any.
- b) Score tender evaluation points for each financial offer.
- c) Calculate the total tender evaluation points.
- d) Rank tender offers from the highest number of tender evaluation points to the lowest.
- e) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

F.3.11.4 Method 4: In the case of a financial offer, quality and preferences:

- a) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the tender data, if any.

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- b) Score tender evaluation points for each financial offer.
- c) Confirm that tenderers are eligible for the preferences claimed and, if so, score tender evaluation points for preferencing.
- d) Calculate total tender evaluation points.
- e) Rank tender offers from the highest number of tender evaluation points to the lowest.
- f) Recommend the tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

F.3.11.5 Score financial offers, preferences and quality, as relevant, to two decimal places.

F.3.12 Scoring financial offers

Score the financial offers of the remaining responsive tender offers using the following formula:

$$N_{FO} = W_1 \times A$$

Where

N_{FO} is the number of tender evaluation points awarded for the financial offer;

W_1 is the maximum possible number of tender evaluation points awarded for the financial offer as stated in the tender data;

A is the number calculated using the formula and option described in table F.1 as stated in the tender data.

Table F.1 – Formula for calculating the value of A^a

1	2	3	4
Formula	Basis for comparison	Option 1	Option 2

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1	Highest price or discount	$\left(1 + \frac{(P - P_m)}{P_m}\right)$	P/P_m
2	Lowest price or percentage commission/fee	$\left(1 - \frac{(P - P_m)}{P_m}\right)$	P_m/P
^a P_m is the comparative offer of the most favourable tender offer. P is the comparative offer of the tender offer under consideration.			

F.3.13 Scoring quality

Score quality in each of the categories in accordance with the tender data and calculate the total score for quality.

F.3.14 Insurance provided by the employer

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

F.3.15 Acceptance of tender offer

F.3.15.1 Accept the tender offer only if the tenderer complies with the legal requirements, if any, stated in the tender data.

F.3.15.2 Notify the successful tenderer of the employer's acceptance of his tender offer by completing and returning one copy of the form of offer and acceptance before the expiry of the validity period stated in the tender data, or agreed additional period. Provided that the form of offer and acceptance does not contain any qualifying statements, it will constitute the formation of a contract between the employer and the successful tenderer as described in the form of offer and acceptance.

