

STEVE TSHWETE

Tel. (013) 282 5303
Fax. (013) 282 5594

Email: council@stevetshwete.gov.za
Website: www.stevetshwetelm.gov.za



P.O. Box 14, Middelburg,
Mpumalanga, 1050

Civic Centre, Wanderers
Avenue, Middelburg,
Mpumalanga

LOCAL MUNICIPALITY

REQUEST FOR FORMAL WRITTEN PRICE QUOTATIONS SERVICES

Council requires the services of a private contractor to carry out low voltage cable fault locating as and when required within MP313 licensed areas.

Kindly furnish me with a written quote for the supply of the services as detailed in the enclosed schedule.

The following conditions will apply:

- Price(s) quoted must be valid for at least sixty (60) days from date of your offer.
- Price(s) quoted must be firm.
- Bidders will be evaluated on functionality whereby 70 points has to be attained before financial proposals can be looked at.
- This quotation will be evaluated in terms of the 80/20 preference point system as prescribed in the Preferential Procurement Policy Framework Act (No 5 of 2000) and for this purpose the enclosed forms MBD 1, MBD 2, MBD 3.3, MBD 4, MBD 6.1, MBD 7.2, MBD 8 and MBD 9 must be scrutinized, completed and submitted together with your quotation.
- A compulsory clarification meeting with representatives of the Employer will take place at Electrical Workshop, C/o Walter Sisulu and Protea Avenue, MIDDELBURG on Tuesday 4th October 2016 at 10H30. Bidder's who are 10 minutes will not be allowed to sign the attendance register and will not be eligible to bid.
- The closing date of the Quotation will be Friday 7th October 2016, time will be 11:00 at Office A225 1st floor, Civic Centre, C/o Wanderers Avenue and Walter Sisulu.
- The Council is not bound to accept the lowest or any quote. The following must accompany the offer
 - Company registration certificate
 - Original Valid Tax Clearance Certificate
 - CIDB certificate grading of 1EP or higher
 - Original certified copy of valid BBBEE certificate (non-compulsory, failure to submit no points will be awarded)
 - Central supplier database summary report.

Failure to comply with these conditions may invalidate your offer.

Yours faithfully

S.M. MNGUNI
ACTING MUNICIPAL MANAGER

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MBD 1: REQUEST FOR A FORMAL WRITTEN PRICE QUOTATION – FIRM FIXED PRICE

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE STEVE TSHWETE LOCAL MUNICIPALITY

BID NUMBER: **Q50.09.16** CLOSING DATE: 07 October 2016 CLOSING TIME: 11H00.

Council requires the services of a private contractor to carry out low voltage cable fault locating as and when required within MP313 licensed areas

The successful bidder will be required to fill in and sign a written Contract Form (MBD 7.1)

Bid documents may be posted to:

The Senior Manager: Legal & Administration
Steve Tshwete Local Municipality
P.O. Box 14
Middelburg
1050

or deposited in the bid box situated at:

The Electrical Engineering Services
1st Floor, Civic Centre
Wanderers Avenue
Middelburg
Mpumalanga

Bidders should ensure that bids are delivered timorously to the correct address. If the bid is late, it will not be accepted for consideration.

The bid box is generally open 7H30 TO 16H00 hours Monday to Thursday and Friday 7H30 to 13H30

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

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

THIS BID WILL BE EVALUATED AND ADJUDICATED ACCORDING TO THE FOLLOWING CRITERIA:

1. Relevant specifications
2. Value for money
3. Capability to execute the contract
4. PPPFA and associated criteria

NB: NO QUOTATIONS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE

**THE FOLLOWING PARTICULARS MUST BE FURNISHED
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)**

Name of Bidder:

Postal Address:

Street Address:

Telephone Number:

Code Number

Cellphone Number:

Facsimile Number:

Code Number

Vat Registration Number:

Has an original tax clearance certificate been attached (MBD 2)? Yes / No

Are you the accredited representative in South Africa for the services offered by you? Yes / No

SIGNATURE OF BIDDER:

DATE:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

Central Suppliers Database Number	MAAA	
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TOTAL BID PRICE CARRIED OVER FROM MBD 3.1: R

ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:

Municipality: Steve Tshwete Local Municipality.

Department: Finance – Supply Chain Management

Contact Person: Mr. P. Van der Merwe

Tel: (013) 249 7000

Fax: (013) 243 2550

ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:

Contact Person: Ben Konig

Department: Electrical Engineering Services

Tel: 013 2497083

Fax: 013 249 7056

TERMS OF REFERENCE

1. Background information

The Service Providers are required to carry out low voltage cable fault locating, jointing and replacing, as and when required within MP313 licensed areas for the period of 3 months. The contractor will have to provide own transport and testing equipment to do the fault location.

2. Scope of Works of the services required

It will be required from the contractor on receipt of an official work order to test faulty streetlight cable (10mm concentric cable – 16mm copper and 25mm aluminium cables). The cables are on a depth of between 600mm - 800mm. Council will provide material, cables and jointing kits, the contractor will be responsible for all other consumables like ferrules. In the event of the cable that can't be repaired old aluminium cables will have to be replaced, the span between two poles.

Contractor must comply with the following specifications:

The contractor must provide his/her own tools.

The contractor must provide his/her own transport.

The contractor must provide his/her own testing equipment (Cable fault locator).

The contractor will be required to work within a 60 km radius from Middelburg Electrical workshops Middelburg and surrounding areas, Hendrina, Kwaza, Koornfontein, Doornkop, Shomaphepha, Mafube and Blinkpan.

The person to do the work must be a qualified Artisan in the electrical field and supporting proof of such qualification must be attached to the contract submitted. (If not included will be disqualified)

Contract must be registered with CIDB and at least on 1EP.

Council will provide cables and jointing kits, the contractor will be responsible for all other consumables needed to perform the tasks.

The contractor must complete a log sheet provided by Council for each trip and must be handed to the Technical Assistant, Consumers and Support at end of each day.

The qualified Artisan must be prepared to go through an evaluation and authorization process which is intended to measure the knowledge of the following:

- Relative work experience on low voltage cable fault locating or similar jobs;

- The identification of different overhead lines and their rated voltage;
- Compliance to safe working procedure on the following:
 - Working along road surfaces;
 - Working in or along trenches;
 - Cable jointing ;
 - Streetlight maintenance;
 - Cable jointing – Knowledge and understanding.
 - Fault finding – Experience and equipment to be used.

The qualified Artisan must have first aid knowledge and at least a minimum qualification i.e. Occupational Emergency Care¹ compliant to OHS Act Regulation 3(4)(a) of 1983 CI024 of which the training institution must have been registered and accredited through the Manpower Training Act 1981. Proof of first aid certificate must be attached.

A first aid box must be in the vehicle when work is being carried out.

All work must be done in accordance with the Occupational Health and Safety Act;

All workers must be registered at the Workman's Compensation and proof must be provided of such. Proof must be attached.

Should the contractor not comply with the special conditions of the contract, the Director Electrical Engineering Services will give a written warning. All work will be stopped until the contractor has given a written response on how he will rectify the situation to the acceptance of the Director Electrical Engineering Services. If there is a reoccurrence, the order will be cancelled.

All workers of the contractor who will be involved with any work or on site must be on a register that they have been on the Occupational Health and Safety Induction course provided by Human Resources or electrical department. The document, of which the contractor will have a copy, will be held at the office of the Forman Support and Consumers.

All workers of the contractor who will be involved with any work or on site must understand and accept the following standing instructions:

- Pre Task Planning and Risk Assessment
- Workers Register;
- Refusal to work
-

No work will commence on site by the contractor until the official of Steve Tshwete who has given instruction for the work to be done, has signed the Pre Task Planning, Risk Assessment and Workers register, confirming that the contractor can commence with the work.

3. **Monitoring of process**

The Council employee who issued the is the responsible person from Council who will be responsible for:

The Council Employee who issued the task will be responsible to check the contractors' workers register to ensure that all persons working are on the register for having received the following: Occupational Health and Safety training, Safety induction course, Pre Task

Planning, Risk Assessment, workers register, refusal to work and working procedures. This must be verified on the ID card.

The Council employee who issued the task may not allow a contractor to work in an area where direct contact can be made with current carrying components. See Risk Assessment Standard entry unless under supervision of an Authorised Person.

The Council employee who issued the task must verify that the contractor has taken all risks into account that all safety measures are in place to prevent damages to services, accidents and to ensure correct work procedures.

4. The Contractors role and responsibility

The contractor will only work on site with workers that understand, accepted and have signed for the following procedures:

- First Aid;
- Safety Induction Course;
- Pre Task Planning, Risk Assessment, Workers register;
- Refusal to work;
- Work Procedure.

The contractor is responsible to supply the worker with an overall, safety hat, gloves and safety boots or other personal protective equipment that may be required.

The contractor will only execute tasks that has been given to him in writing by the council's responsible person.

5. Service Level Agreement

A service level agreement will be entered into on appointment of the contract.

6. Payment

An order will be issued on a monthly basis for work to be done;

One calendar months' notice will be given upon issuing the last order, for the cancellation of contract;

Log sheet will be used for payment and must be attached to the invoice.

If no log sheet is handed in and verified by person who issued instruction no payment will be made.

Tax invoices must be submitted before the 7th of every month in order to receive payment by the end of the month. Work instructions must be attached to invoice.

7. Undertaking for compliance to specifications:

DESCRIPTION	YES	NO
1. Will you make use of Sub-contractors?		
2. Are you aware that a qualified Artisan must do electrical work?		
3. You are aware that the Artisan must go through an evaluation process to measure his/her knowledge in order to obtain authorization.		
4. Have you attached proof of this qualification of Artisan?		
6. Are aware that work can only commence on receipt of a work instruction (issued by Council official).		
7. CIDB registration attached.		
8. Are you aware that m ^o re than one contractor can be appointed		

Evaluation Criteria

The following evaluation criteria will be used as such it is required that the contractor/service provider should provide sufficient information in this regard.

NB: Evaluation criteria is only used once all requirement have been met.

Description of Quality Criteria	Maximum number of evaluation points
Bidder's experience (Track record etc)	60
Organisation, staffing and physical resources	40
Maximum total evaluation points for quality (70 points)	100

Please note:

A minimum of 70 points score will ensure qualification for the evaluation of financial proposals.

EVALUATION: BIDDER’S EXPERIENCE

The experience of the Bidder in similar projects or nature or similar areas and conditions in relation to the scope of work will be evaluated here.

Briefly describe company or individual experience in regard to the above scope of work and attach this to this schedule.

NB: Proof of previous work history must be attached for e.g. purchase order, appointment **or reference letter etc.**

The scoring of the Bidder’s experience will be as follows:

Non-responsive (score 0)	No information has been provided, or the information provided is not relevant to the project objectives
Poor (max score 10)	Completed 1 project for cable fault locating
Fair (max score 20)	Completed 2 projects for cable fault locating
Satisfactory (score 30)	Completed 3 projects for cable fault locating
Good (score 40)	Completed 4 projects for cable fault locating
Very good (score 50)	Completed 5 projects for cable fault locating
Excellent (score 60)	Completed 6 projects for cable fault locating

The undersigned, who warrants that he / she is duly authorized to do so on behalf of the enterprise, confirms that the contents of this schedule are within my personal knowledge and are to the best of my belief both true and correct.	
SIGNED AT	AUTHORIZED SIGNATURE (UNDERSIGNED)
DATE	NAME AND CAPACITY

ORGANISATION, STAFFING AND PHYSICAL RESOURCES

A CV of each key staff member of not more than 2 pages should be attached to this schedule. The CV should be structured under the following headings:

Personal particulars

Name

Date and place of birth

Place (s) of tertiary education and dates associated therewith

Name of current employer and position in enterprise

Outline of recent assignments / experience that has a bearing on the scope of work

The scoring of the experience of key staff will be as follows:

Scoring	Organisation, staffing and physical resources
Maximum 40 points	Trade test certificate – 5 Points ORHVS certificate – 5 Points Experience in – 5 Points ECB registration as Installation electrician (in the name of company) – 5 Points Valid First aid Level 1 certificate - 5 Points Valid Fire fighter Level 1 certificate - 5 Points Vehicle in the name of the company - 5 Points

The undersigned, who warrants that he / she is duly authorized to do so on behalf of the enterprise, confirms that the contents of this schedule are within my personal knowledge and are to the best of my belief both true and correct.

SIGNED AT	AUTHORIZED SIGNATURE (UNDERSIGNED)
DATE	NAME AND CAPACITY

NB: Only bidders who score a minimum of 70 will be further evaluated on price and BBEE.

MBD 2: TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

1. In order to meet this requirement bidders are required to complete in full form TCC001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids. Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website www.sars.gov.za.
2. SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
3. **The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.**
4. In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
5. Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sars.gov.za.
6. Exemption to the provision of a Tax Clearance Certificate will be granted provided that:
 - a) The bidder is registered on the vendor database of the municipality and a valid tax clearance certificate was submitted together with the application for registration
 - b) If the closing date of the price quotation or bid falls within the expiry date of the tax clearance certificate that is in the municipality's possession.

MBD 3.3: PRICING SCHEDULE – FIRM PRICES (SERVICES)

NOTE:

ONLY FIRM RATES WILL BE ACCEPTED. NON-FIRM RATES (INCLUDING PRICES SUBJECT TO EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of Bidder:.....	Bid Number: Q50.09.16
Closing Time: 11:00	Closing Date: 07 October 2016

ITEM		UNIT	ESTIMATED QUANTITY	RATE	AMOUNT
1	Streetlight Cable Testing				
1.1	Cable location and fault finding	Each	150		
1.2	Open cables, jointing / repair, close trenches and clean the site	Each	150		
1.3	Confirming by testing the cable is clean	Each	150		
2	Replace redundant cables				
2.1	Open cable, replace cables, close trenches and clean the site	meter	1500		
3	Travelling costs	km	1200		
	Sub-total				
	VAT at 14%				
	NETT TOTAL (carried forward to MBD 1)				

The price quoted must be a firm price inclusive of labour and traveling costs.

Payment will only be done if log sheets handed in and verified by person who issued instructions.

Tax invoices must be submitted before the 7th of every month in order to receive payment by the end of the month. Work instructions must be attached to invoice.

Council can consider appointing more than one contractor for the duration of the contract and the quantities can vary.

Appointment will be done on rates and actual quantities will be confirmed on the completion of the project

OFFER TO BE VALID FOR **60 DAYS** FROM THE CLOSING DATE OF BID

Reference no.	Pricing Instruction
1	Price as a fully inclusive lump sum, inclusive of all time related costs.
2	Rate per hour or portion thereof. Note that no payment may be claimed for travelling time.
3	Rate as per AA rate for a vehicle with an engine capacity of not more than 2000 cc.

Delivery period from date of Order = Days

MBD 4

DECLARATION OF INTEREST

- 1. No bid will be accepted from persons in the service of the state¹.
- 2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.

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

3.1 Full Name of bidder or his or her representative:.....

3.2 Identity Number:

3.3 Position occupied in the Company (director, trustee, hareholder²):.....

3.4 Company Registration Number:

3.5 Tax Reference Number:.....

3.6 VAT Registration Number:

3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

3.8 Are you presently in the service of the state? **YES / NO**

3.8.1 If yes, furnish particulars.

.....

¹MSCM Regulations: "in the service of the state" means to be –

- (a) a member of –
 - (i) any municipal council;
 - (ii) any provincial legislature; or
 - (iii) the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

² Shareholder” means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 Have you been in the service of the state for the past twelve months? **YES / NO**

3.9.1 If yes, furnish particulars.....

.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.10.1 If yes, furnish particulars.

.....
.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.11.1 If yes, furnish particulars

.....
.....

3.12 *Are any of the company’s directors, trustees, managers, principle shareholders or stakeholders in service of the state?* **YES / NO**

3.12.1 If yes, furnish particulars.

.....
.....

3.13 Are any spouse, child or parent of the company’s directors trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars.

.....
.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. **YES /**

NO

3.14.1 If yes, furnish particulars:

.....

4. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	State Employee Number

.....

Date

.....

Signature

.....

Capacity

.....

Name of Bidder

CERTIFICATION

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

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

I ACCEPT THAT THE STATE MAY ACT AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
...
Position

.....
Name of Bidder

MBD 6.1

**BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) STATUS
LEVEL CERTIFICATES**

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 T 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 for out of 90 or 80 for price only and **zero** points out of 10 or 20 for B-BBEE.

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2011

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, 2011.

1. GENERAL CONDITIONS

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

- the 80/20 system for requirements with a Rand value of up to R1 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to exceed/not exceed R1 000 000 (all applicable taxes included) and therefore the.....system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

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

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

	POINTS
1.3.1.1 PRICE
1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION
Total points for Price and B-BBEE must not exceed	100

1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.5. 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

2.1 “**all applicable taxes**” includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

2.2 “**B-BBEE**” means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

- 2.3 **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 2.4 **“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 services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- 2.5 **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.6 **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- 2.7 **“consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- 2.8 **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- 2.9 **“EME”** means any enterprise with an annual total revenue of R5 million or less;
- 2.10 **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 **“non-firm prices”** means all prices other than “firm” prices;
- 2.13 **“person”** includes a juristic person;
- 2.14 **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.16 **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- 2.17 **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.18 **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.

3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.

3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

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

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

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

Where

P_s = Points scored for comparative price of bid under consideration

P_t = Comparative price of bid under consideration

P_{\min} = Comparative price of lowest acceptable bid

5. Points awarded for B-BBEE Status Level of Contribution

5.1 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.

5.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person 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.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

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 CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1.

- 7.1 B-BBEE Status Level of Contribution: = (maximum of 10 or 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 means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA).

8 SUB-CONTRACTING

- 8.1 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)
- 8.1.1 If yes, indicate:
 - (i) what percentage of the contract will be subcontracted?%
 - (ii) the name of the sub-contractor?
 - (iii) the B-BBEE status level of the sub-contractor?
 - (iv) weather the sub-contractor is an EME? YES / NO (delete which is not applicable)

9 DECLARATION WITH REGARD TO COMPANY/FIRM

- 9.1 Name of 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

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

9.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional service provider
- Other service providers, e.g. transporter, etc.
[TICK APPLICABLE BOX]

9.7 MUNICIPAL INFORMATION

Municipality where business is situated.....

Registered Account Number

Stand Number

9.8 TOTAL NUMBER OF YEARS THE COMPANY/FIRM HAS BEEN IN BUSINESS?

9.9 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 contribution indicated in paragraph 7 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 paragraph 7, 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 contribution 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) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution.

WITNESSES:

- 1.
- 2.

.....
 SIGNATURE(S) OF BIDDER(S)

DATE:

ADDRESS:

.....

.....

CONTRACT FORM - RENDERING OF SERVICES

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SERVICE PROVIDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SERVICE PROVIDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution) in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
 - (i) Bidding documents, viz
 - Invitation to bid;
 - Tax clearance certificate;
 - Pricing schedule(s);
 - Filled in task directive/proposal;
 - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
 - Declaration of interest;
 - Declaration of Bidder's past SCM practices;
 - Certificate of Independent Bid Determination;
 - Special Conditions of Contract;
 - (ii) General Conditions of Contract; and
 - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES	
1
2
DATE:	

CONTRACT FORM - RENDERING OF SERVICES

PART 2 (TO BE FILLED IN BY THE PURCHASER)

1. I..... in my capacity as.....
 accept your bid under reference numberdated.....for the rendering of services indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating service delivery instructions is forthcoming.
3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

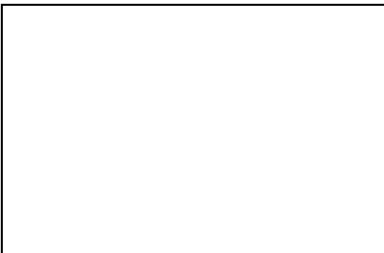
DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

4. I confirm that I am duly authorised to sign this contract.

SIGNED AT ON

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP 

WITNESSES	
1.
2.
DATE

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

1. This Municipal Bidding Document must form part of all bids invited.
2. It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
3. The bid of any bidder may be rejected if that bidder, or any of its directors have:
 - a) abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
 - b) been convicted for fraud or corruption during the past five years;
 - c) willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - d) been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
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>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.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>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)?</p> <p>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.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	<p>Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		

Item	Question	Yes	No
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME)

CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM 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

MBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Municipal Bidding Document (MBD) 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 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - a. take all reasonable steps to prevent such abuse;
 - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 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.

MBD 9

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 Municipality / Municipal Entity)

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

GENERAL CONDITIONS OF CONTRACT

The General Conditions of Contract is not included in this document and may be downloaded from the following website:

<http://www.treasury.gov.za/legislation/pfma/public%20entities/PFMA%20GCC%20July%202010.pdf>

SERVICE LEVEL AGREEMENT

MEMORANDUM OF AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN STEVE TSHWETE LOCAL MUNICIPALITY

herein represented by **STANLEY MANDLA MNGUNI** in his capacity as **MUNICIPAL MANAGER** or **DEPUTY MUNICIPAL MANAGER** or **ANDRIES MDUDUZI MASILELA** in his capacity as **DIRECTOR: LEGAL AND ADMINISTRATION** duly authorised by resolution of Steve Tshwete Local Municipality dated **30 JANUARY 2014**

(hereinafter referred to as the “**MUNICIPALITY**”)

AND

IDENTITY / REGISTRATION NO: _____

herein represented by _____ with identity no. _____ in his/her capacity as _____ of the Company / Close Corporation / Organization* duly authorised hereto (**delete whichever is not applicable*)

(hereinafter referred to as the “**SERVICE PROVIDER**”)

WHEREAS the SERVICE PROVIDER has bid for the to carry out low voltage cable fault locating as and when required within MP313 licensed areas for the period of 3 months. in terms and accordance with bid number **Q--/09/2016**;

AND WHEREAS the MUNICIPALITY by signature of this Agreement accepts the bid by the SERVICE PROVIDER subject to the conditions set out in the award letter and any Addendum to the bidder’s document;

AND WHEREAS the parties wish to enter into this Agreement to ensure a mutual understanding and to clarify and formalize the expectation of both parties with regard to the service expectations and commitments between the two parties;

NOW THEREFORE the PARTIES agree as follows:

1.

DEFINITIONS AND TERMINOLOGY:

In this Agreement, unless the context otherwise indicates, the under mentioned words and expressions shall bear the following meanings:

Agreement	Means this Agreement with all annexures and schedules attached hereto as duly signed by the parties. It is an express term of this Agreement that it will be read together with the award letter, the bidder's document and any Addendum thereto.
Department	Means the relevant implementing Department of the Steve Tshwete Local Municipality as determined from time to time.
Effective date	Means the date upon which the representative of the last party signing this Agreement affixed his/her signature hereto.
Commencement date	Means ----- notwithstanding the date of signature of this Agreement;
End date	Means -----;
Parties	means the parties to this Agreement mentioned hereinabove;
Party	means either of the parties to this Agreement mentioned hereinabove;
Relevant Authorised Person	Director and/or Acting Director of the Department as defined hereinabove of the Steve Tshwete Local Municipality or any other person delegated by the Municipal Manager or Acting Municipal Manager;
Goods and/or Services	means the goods, works, services and/or labour to be provided by the SERVICE PROVIDER as specified in the bidding document;
Site and Target Area	means the area at which the Service Provider has to deliver or render the goods and/or services, being within a 60 km radius from Middelburg Electrical workshops Middelburg and surrounding areas, Hendrina, Kwaza, Koornfontein, Doornkop, Shomaphepha, Mafube and Blinkpan. ;
Municipal Bidding Document	means the municipal bidding document (Q--/09/2016) as submitted by the SERVICE PROVIDER and any Addendum thereto;

2.

INTERPRETATION:

2.1 The clause headings in this Agreement shall be deemed to have been included for purposes of reference and convenience only and shall not influence the

interpretation or the contents of this Agreement.

- 2.2 In this Agreement, unless the context otherwise indicates, a reference to:
- 2.2.1 the singular shall be deemed to include a reference to the plural and *vice versa*;
 - 2.2.2 any one gender shall be deemed to include a reference to the other gender; and
 - 2.2.3 a natural person shall be deemed to include a reference to a legal entity (whether incorporated or unincorporated) and *vice versa*.
- 2.3 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.
- 2.4 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.5 Reference to day, month or year shall be construed as calendar day, month or year. Where a number of days are prescribed, it shall consist of calendar days, unless expressly indicated otherwise, and shall be reckoned exclusively of the first and inclusively of the last day. to this Agreement which do not themselves contain their own definitions.
- 2.6 Expressions defined in this Agreement shall bear the meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 2.7 All schedules and annexures hereto shall be deemed to be incorporated herein and shall form an integral part hereof.
- 2.8 It is an express term of this Agreement that it will be read in conjunction with the municipal bidding document / tender document, any Addendum thereto, the General or Special Conditions of Contract and award letter and should in no way be construed as a replacement and/or waiver of the bidding document as a whole or any portion thereof.
- 2.9 If there is any conflict between this Agreement and:
- 2.9.1 the bidding document, the contradicting condition / stipulation in this Agreement shall prevail, unless otherwise specified in this Agreement;
 - 2.9.2 the General Conditions of Contract or Special Conditions of Contract, the contradicting condition / stipulation in the General and/or Special Conditions of Contract shall prevail.
- 2.10 If there is any conflict between this Agreement and any of the documents specified in 2.9 above, such conflict or contradiction shall not render this Agreement or any of such specified documents ineffective or null and void *in toto*.

- 2.11 References in this Agreement to any statute or statutory provision shall include any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instrument or other subordinate legislations made under the relevant statute or statutory provision.

3.

DURATION:

- 3.1 Notwithstanding the date of signature of this Agreement, this Agreement shall be deemed to have come into effect on the Effective Date.
- 3.2 Notwithstanding the date of signature of this Agreement or the Effective Date, the goods and/or services will be delivered and/or rendered within the period commencing of the Commencement Date and ending on the End Date, unless this Agreement is properly terminated prior to the end date in accordance with the provisions of this Agreement.
- 3.3 No extension of the period stated in 3.2 will be valid unless reduced to writing and duly signed by the parties.

4.

SCOPE OF SERVICES & OBLIGATION OF PARTIES:

- 4.1 The SERVICE PROVIDER shall and hereby undertakes to deliver the goods and/or execute the Services to the MUNICIPALITY as listed or set out in and in the manner and within the time frames set out more fully in the bidding document, subject to the terms and conditions of this Agreement for the period commencing on the Commencement Date and ending on the End Date.
- 4.2 Payment of the SERVICE PROVIDER will be made in accordance with the provisions and determinations set out in the bidding document and **SCHEDULE B** hereto.
- .3 Unless otherwise agreed upon in writing, the SERVICE PROVIDER shall at its own risk and expense, provide all resources such as labour (including employees) and equipment required to execute or render the Services and/or deliver the goods set out in the bidding document.
- 4.4 The SERVICE PROVIDER is further obliged:
- 4.4.1 to perform and/or execute all its obligations set out in this Agreement read with the bidding document;
- 4.4.2 to perform and/or provide the services and/or goods with all reasonable care, diligence and skill in accordance with the specifications and stipulations set out herein, in compliance with the Key Performance indicators specified in **SCHEDULE A**, as well as the generally accepted professional techniques

and standards;

- 4.4.3 to regularly inspect the goods and/or services to satisfy itself that it is being rendered and/or delivered in line with this Agreement, the municipal bidding / tender document, prevailing legislations and industry standards;
 - 4.4.4 to give any instructions and/or explanations and/or variations to its employees and/or subcontractors including any relevant advice to perform the services or deliver the goods in line with this Agreement as well as the prevailing legislation and industry standards; and
 - 4.4.5 to comply with and hereby subjects itself to the penalty clause set out in **SCHEDULE B** hereto.
- 4.5 The MUNICIPALITY is obliged to:
- 4.5.1 to perform and/or execute all its obligations set out in this Agreement
 - 4.5.2 provide access to the SERVICE PROVIDER and/or its employees and/or subcontractors to the Site; and to
 - 4.5.3 make payment for goods delivered and/or services rendered in terms of this Agreement which are found to be in good order, in terms of the conditions set out in **SCHEDULE B** hereto.
- 4.6 The MUNICIPALITY is entitled to continuously monitor and inspect the Goods and/or Services at any reasonable time for compliance and quality control purposes and may reject same if found not to comply with the requirements of the Agreement.

5.

SUBCONTRACTORS AND CESSION:

- 5.1 The SERVICE PROVIDER is not entitled to subcontract the Services or any part thereof to a subcontractor without the prior written consent of the MUNICIPALITY.
- 5.2 The SERVICE PROVIDER may not transfer, cede or relinquish in any manner any of its rights or duties without the written permission from the MUNICIPALITY.
- 5.3 Any such sub-contracting permitted by the MUNICIPALITY shall not relieve the SERVICE PROVIDER of its liability in terms of this Agreement.

6.

FORCE MAJEURE:

- 6.1 Notwithstanding anything to the contrary herein contained, should either of the parties be prevented from fulfilling in whole or in part its obligation in terms of this Agreement, whether such prevention arises from *force majeure*, Acts of God, war, civil commotion, curtailment of electricity, strikes, lockouts, revolutions, fires, explosions, floods, political disturbances, act of any Governmental or local authority,

or any other cause whatsoever over which that party has no reasonable control, such Party shall be relieved from liability to the extent and for the period it is thereby prevented from fulfilling its obligations.

- 6.2 The abovementioned term is subject to the conditions that the Party so prevented from fulfilling its obligations hereunder shall immediately notify the other party to that effect in writing, giving a full and complete explanation of the circumstances responsible for such failure or occurrence as well the estimated duration thereof. If requested, the party shall furthermore set out in writing the actions such Party is taking or proposes to take to remove the said circumstances with the least possible delay.

7.

LAWS AND REGULATIONS:

Both parties shall at its own expense comply with all applicable laws, regulations, by laws and requirements of local and other authorities, as well as all relevant policies that may be applicable to this Agreement and both parties hereby guarantees knowledge of and adherence to all such relevant and applicable laws, regulation by-laws and requirements of local and other authorities.

8.

WARRANTY:

- 8.1 The SERVICE PROVIDER warrants that:
- 8.1.1 all equipment used by the SERVICE PROVIDER and/or its subcontractor/-s in the execution of the Services are fit and suitable in all respects for the purposes used;
 - 8.1.2 it and its employees and/or subcontractor/-s can and is fit, capable and competent to execute the Services;
 - 8.1.3 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 or bidding document;
 - 8.1.4 all goods and/or services supplied under this contract shall have no defect, arising from design, materials, or workmanship or from any act or omission of the SERVICE PROVIDER, or that may develop under normal use of the supplied goods in the conditions prevailing at the site or final destination;
 - 8.1.5 all goods and/or service supplied or rendered in terms of this Agreement shall comply with the specifications set out in the bidding document; and
 - 8.1.6 any additional warranties (if any) specified in the bidding document.
- 8.2 This warranty shall remain valid for twelve (12) months after the goods and/or

services, or any portion thereof as the case may be, have been delivered to and accepted at the site / final destination indicated in the Agreement or for such period stipulated in the bidding document, whichever period is the longest;

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

9.

JURISDICTION:

The parties also hereby agree to the jurisdiction of the Magistrate's Court in respect of any claims which may arise from any of the parties' breach of any of the terms of this Agreement, any remedies available to the aggrieved party in terms of the Agreement, applicable legislation or the common law notwithstanding that such claim or dispute may fall outside the jurisdiction of the said Court.

10.

BREACH:

- 10.1 If any of the parties commit a breach of any provision of this Agreement, the other Party may call in writing on the Party in breach to remedy the breach within a period of 14 (fourteen) days;
- 10.2 If the breach remains unremedied after the aforesaid notice period has expired, the Party calling on the breach will be entitled in addition to any right it may have in terms of this Agreement, the General or Special Conditions of Contract and/or common law, but not compelled, to terminate this Agreement in whole or in part with immediate effect in writing to the Party in breach and claim damages from the defaulting Party.
- 10.3 If this Agreement is terminated in part, the SERVICE PROVIDER shall continue performance in terms of this Agreement to the extent not terminated.
- 10.4 Where the MUNICIPALITY terminates the contract in whole or in part, the MUNICIPALITY may decide to impose a restriction penalty on the SERVICE PROVIDER as set out more fully in **SCHEDULE B**.

11.

DISPUTE RESOLUTION:

11.1 In the event of a dispute between the parties in respect of any condition / stipulation contained in this agreement or the interpretation thereof:

11.1.1 The aggrieved party will notify the other party in writing about the existence and nature of the dispute and thereafter the parties will negotiate in good faith to settle the dispute in question as expeditiously as possible but in any event within a period of 30 (thirty) days of the matter being referred to them, or any further period agreed to by the parties in writing.

11.1.2 Should the other party be unsuccessful in settling such dispute within the aforesaid period or such longer period as the parties may agree to, either party may and will be entitled to refer the dispute to arbitration to be determined under the provisions of the Arbitration Act No. 42 of 1965 and is required to notify the other party of its intention to do so within 10 (ten) days of the expiry of the period specified in clause 11.1.1 above. Should both parties fail to give notice as aforesaid, both parties will be regarded as having waived their rights in terms of this clause.

11.1.3 The decision of the arbitrator shall be final in all respects and the parties' agreement to such decision may be made an order of court on application by either party. The costs of any such arbitration shall be awarded by the arbitrator.

11.1.4 The arbitrator shall be an independent person mutually nominated by both parties. Should the parties not agree on a specific arbitrator within 10 (ten) days of notice being given of a dispute and request for arbitration, the selection shall be made by the South African Local Government Association (SALGA) as soon as possible after the expiry of the 10 (ten) day period referred to herein.

11.2 This clause is severable from the rest of this Agreement and will remain in effect even if this agreement is terminated or cancelled for any reason.

11.3 This clause will not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the finalization of the arbitration process.

11.4 Notwithstanding any dispute being referred to arbitration in terms of this clause, both parties will continue to carry out their obligations under this agreement, pending the resolution of such dispute or difference.

12.

NOTICES AND DOMICILIA:

12.1 Any notice, request, order, statement or other communication required or permitted to be given in terms of this Agreement shall be in writing and may be given by means of registered post, facsimile or electronic mail to the following addresses:

12.1.1 Notices addressed to the SERVICE PROVIDER:

Postal address: _____

Fax: _____

E-mail: _____

12.1.2 Notices addressed to the MUNICIPALITY:

P.O. Box 14

Middelburg

1050

Fax: 013 243 2550

E-mail: council@stevetshwetelm.gov.za

12.2 For the purposes of this agreement and all actions arising there from, the parties accept the following addresses as their respective *domicilium citandi et executandi*:

12.2.1 *Domicilium* of the SERVICE PROVIDER:

12.2.2 *Domicilium* of the MUNICIPALITY:

Corner of Walter Sisulu & Wanderers Streets

Municipal buildings, Civic Centre

Middelburg, Mpumalanga

12.3 The SERVICE PROVIDER undertakes to notify the MUNICIPALITY in writing within 10 (ten) days of a change of *domicilium*. The SERVICE PROVIDER also undertakes to notify the MUNICIPALITY of a change of management within the same period as above.

13.1 This agreement, read together with the award letter, General and/or Special Conditions of Contract and the bidding document, as amended (if applicable), embodies the entire Agreement between the Parties and no alteration, addition or variation of any of the terms or conditions of this Agreement shall be of any force or effect unless it is recorded in writing and signed by both Parties.

13.2 The Parties, by signing this Agreement, shall be deemed to have satisfied themselves as to all the terms and conditions of this Agreement.

THUS DONE AND SIGNED AT _____ ON THIS THE _____ DAY
OF _____ 20_____.

AS WITNESSES:

1. _____

2. _____

SERVICE PROVIDER

THUS DONE AND SIGNED AT _____ ON THIS THE _____ DAY
OF _____ 20_____.

AS WITNESSES:

1. _____

2. _____

MUNICIPALITY

SCHEDULE A: KEY PERFORMANCE INDICATORS

The following Key Performance Indicators will be used to assess the performance of the Service Provider:

1. The Key Performance indicators specified in the bidding document; and
2. In addition to the above, the following:

- _____
- _____
- _____
- _____
- _____

SCHEDULE B: PAYMENT AND PENALTIES

1. PAYMENTS

- 1.1 All payments due to the Service Provider for goods delivered and/or services rendered will be in accordance with the price or rates tendered by the Service Provider, unless otherwise agreed upon by the parties, and the Key Performance Indicators (subject to the deduction of any penalties to be paid or invoked or any other monies to be deducted in terms of this Agreement or the bidding document).
- 1.2 A valid invoice must be submitted by the Service Provider with all mandatory information and reporting as indicated in the scope of work. Payment will be made within 30 (thirty) days from receipt of invoice by the Finance Department.

2. PENALTIES

- 2.1 Penalties for which the Service Provider will be liable in terms of this Agreement, will be as determined in the bidding document and/or the General or Special Conditions of Contract.
- 2.2 Should the SERVICE PROVIDER make itself liable for the imposition of penalties, it will also make itself liable to the termination of the Agreement. In addition to the imposing of penalties, the MUNICIPALITY may therefore also consider termination of the Agreement.
- 2.3 The Relevant Authorised Person and/or MUNICIPALITY may, without prejudice to any other method of recovery, deduct the amount of the penalty or penalties from any payment due to the SERVICE PROVIDER in terms of this Agreement. The payment or deduction of such penalty or penalties shall not relieve the SERVICE PROVIDER of its obligations and responsibilities under the Agreement and in particular for any damages or losses suffered by the MUNICIPALITY as a result of the SERVICE PROVIDER's default.
- 2.4 In the event of difficulties which result in the application of penalties being due to industrial and strike action, the MUNICIPALITY will be entitled to waive such penalties should the SERVICE PROVIDER prove to the satisfaction of the MUNICIPALITY and/or Relevant Authorised Person that the cause was beyond the SERVICE PROVIDER'S control.

3. RESTRICTION PENALTIES

- 3.1 Where the MUNICIPALITY terminates the contract in whole or in part, the MUNICIPALITY may decide to impose a restriction penalty on the SERVICE PROVIDER by prohibiting the SERVICE PROVIDER from doing business with the MUNICIPALITY or public sector.
- 3.2 Such restriction or blacklisting will be executed according to the guidelines and procedures stipulated in the General Conditions of Contract and the MUNICIPALITY'S policies, such as Council's Supply Chain Management Policy, Blacklisting Policy, etc.
- 3.3 Any restriction imposed on any person by the MUNICIPALITY will, at the discretion of the MUNICIPALITY, 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 SERVICE PROVIDER, and with which enterprise or person the SERVICE PROVIDER, is or was in the opinion of the MUNICIPALITY