

ONGWEDIVA TOWN COUNCIL
B I D D I N G D O C U M E N T S

Request for Quotation (RFQ)
for NCS

Procurement of
Servicing and Maintenance of Fire Extinguishing Equipment -
3 years Contract to
Ongwediva Town Council

Procurement Reference No: NCS/RFQ/OngweTC-01/2023/24

Cost: FREE

PARTICULARS OF BIDDER

Business Name : -----

Postal Address : -----

Contact No. : -----

Fax No. : -----

Contact Person : -----

E-mail Address : -----

VAT Registration No : -----

Total Bid Amount (15% VAT Incl.): -----

Private Bag 5549, Ongwediva; Tel: 065-233700; Fax: 065-230521

jhainana@otc.com.na (Administration)

smatheus@otc.com.na (Technical)

Due date: 01 August 2023

TO THE BIDDER

The original document, will be fully completed all pages initialed and signed where applicable
and shall be placed in a sealed envelope marked



All official correspondence must be addressed to the Chief Executive Officer

Our Vision: To be a leading urban centre in Namibia that is built on quality municipal services and promotes sustainable local economic development.

Standard Bidding Document

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PART 1 - Bidding Procedures
Section 1 - Instructions to Bidders

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Invitation for Bids (IFB)

Republic of Namibia

Servicing and Maintenance of Fire Extinguishing Equipment -
3 years Contract
Ongwediva Town Council

NCS/RFQ/OngweTC-01/2023/24

1. Bids are invited through Open Advertised Bidding (OAB) procedures for **Servicing and Repair Maintenance of Ongwediva Town Council Fire Extinguishers 3 Years Contract** and the invitation is open to all Namibian Bidders.
2. Interested eligible Bidders may obtain further information from Ongwediva Town Council, Ground Floor, Town House, C/o Mandume Ndemufayo Road & Dr.Libertine Amathila Street and inspect the Bidding Documents at the address given below.
3. Qualifications requirements include: financial, legal and other requirements. A margin of preference for certain goods manufactured domestically shall be applied. Additional details are provided in the Bidding Documents.
4. A complete set of Bidding Documents in English may be purchased by interested Bidders on the submission of a written application to the address below and upon payment of a non-refundable fee N\$ 100.00. The method of payment will be cash or EFT. The Bidding Documents will be sent by 01st August 2023.
5. Bids must be delivered to the address stated below before 01st August 2023. Electronic bidding will *not* be permitted. Late bids will be rejected. Bids will be opened in the presence of the bidders' representatives who choose to attend in person or on-line at the address stated below at 14H30 on the 01st August 2023. All bids must be accompanied by a Bid-Securing Declaration.

SECRETARY: PROCUREMENT COMMITTEE

Ongwediva Town Council
Ground Floor, Town House,
C/o Mandume Ndemufayo Road & Dr.Libertine Amathila Street
Private Bag 5549 Ongwediva

Section I - Instructions to Bidders

A. General

Scope of Bid

1.1 The Public Entity as defined¹ in Section II “Bidding Data Sheet” (BDS) also referred to herein as Employer invites bids for the construction of Works, as described in the BDS and Section VII, “Special Conditions of Contract” (SCC).

The name and identification number of the Contract are **provided in the BDS and the SCC.**

1.2 The successful Bidder shall be expected to complete the Works by the Intended Completion Period **specified in the BDS.**

1.3 Throughout these bidding documents, the terms:

- (a) the term “in writing” means communicated in written form (e.g. by mail, e-mail, fax,) with proof of receipt;
- (b) if the context so requires, “singular” means “plural” and vice versa;
- (c) “day” means calendar day unless otherwise stated; and

Source of Fund

2.1 The Works shall be financed by the Public Entity’s own budgetary allocation, **unless otherwise stated in the BDS.**

Public Entities Related to Documents to application review & to Bidding for

3.1 The public entities related to these bidding documents are the Public Entity, acting as procurement entity (Purchaser), the Procurement Policy Unit, in charge of issuing standard bidding documents and responsible for any amendment these may require, the Central Procurement Board in charge of vetting Bidding document, receiving and evaluation of bids in respect of major contracts and the Review Panel, set up under the Public Procurement Act, 2015 (hereinafter referred to as the Act.)

The Chairperson

Review Panel

Ministry of Finance

Private Bag 13295

Windhoek, Namibia

Fraud and Corruption

4.1 The Government of the Republic of Namibia requires that bidders/suppliers/contractors, participating in procurement in Namibia, observe the highest standard of ethics during the procurement process and execution of contracts.

4.2 The Employer will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;

For the purposes of this Sub-Clause:

- (i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

¹ See Section IV, “General Conditions of Contract,” Clause 1. Definitions.

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- (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (v) “obstructive practice” is deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.
- 4.3. Bidders, suppliers and public officials shall also be aware of the provisions stated in section 67 and 68 of the Public Procurement Act, 2015 which can be consulted on the website of the Procurement Policy Unit (PPU) : www.mof.gov.na/procurement-policy-unit

Eligible Bidders

A Bidder may be a natural person, private entity, or government owned entity or any combination of them in the form of a joint venture, under an existing agreement, or with the intent to constitute a legally-enforceable joint venture. All partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.

A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if :

they have a controlling partner in common; or

they receive or have received any direct or indirect subsidy from any of them; or

they have the same legal representative for purposes of this bid; or

they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or

a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or

a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid; or

a Bidder, or any of its affiliates has been hired (or is proposed to be hired) by the Employer as Engineer for the contract.

- 1.2 (a) A bidder that is under a declaration of ineligibility by the Government of Namibia in accordance with applicable laws at the

date of the deadline for bid submission and thereafter shall be disqualified

- (b) Bids from contractors appearing on the ineligibility lists of African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and World Bank Group shall be rejected.

- 1.3 Government-owned enterprises in the Republic of Namibia shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law, and that they are not a dependent agency of the Government.

Qualifications of Bidders

- 1.4 All bidders shall provide in Section III, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

- 1.5 Bidders shall include the information and documents listed hereunder with their bids, unless otherwise **stated in the BDS**. The non-submission of the documents by the Bidder within the prescribed period may lead to the rejection of its bid.

- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business of the Bidder;
- (b) total monetary value of construction works performed for each of the last five years;
- (c) experience in works of a similar nature and size for each of the last five years or as otherwise **stated in the BDS**; and clients who may be contacted for further information on those contracts;
- (d) major items of construction equipment proposed to carry out the Contract;
- (e) qualifications and experience of key site personnel and technical personnel proposed for the contract;
- (f) report on the financial standing of the Bidder for the last three years, such as certified copies of Financial Statements/Audited Accounts as filed at the Registrar of Companies;
- (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (h) authority to seek references from the Bidder's bankers; and
- (i) information regarding any litigation, current or during the last five years, in which the Bidder was/is involved, the parties concerned, the issues involved, the disputed amounts, and awards;
- (j) proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.

1.6 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:

- (a) a minimum average annual financial amount of construction work over the period **specified in the BDS**.
- (b) experience as prime contractor in the construction of a minimum number of works of a nature and complexity equivalent to the Works over a period as **specified in the BDS** (To comply with this requirement, works cited should be at least 70 percent complete);
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment **listed in the BDS**;
- (d) a Contract Manager/Supervisor with five years' experience in works of an equivalent nature and volume, including no less than three years as Manager or as otherwise **specified in the BDS**; and
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount **specified in the BDS**.²

A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.

B. Contents of Bidding Document

7. Sections of Bidding Document

1.7 The Bidding Document consists of all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 10.

Section I - Instructions to Bidders (ITB)

Section II- Bidding Data Sheet

Section III - Evaluation Criteria

Section IV - Bidding Forms

Section V - Employer's Requirements

Section VI - General Conditions of Contract

Section VII- Special Conditions of Contract

Section VIII - Contract Forms

1.8 The Invitation for Bids issued by the Employer is not part of the Bidding Document.

9. Clarification of Bidding Document

1.9 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer's address **indicated in the BDS**.

The Employer will respond in writing to any request for clarification, provided that such request is received 14 days prior to the deadline for submission of bids.

Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 10.

² Usually the equivalent of the estimated payments flow over 4-6 months at the average (straight line distribution) construction rate. The actual period of reference shall depend on the speed with which the Government shall pay the Contractor's monthly certificates.

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- 10. Site visit/Pre-bid meeting**
- 1.10 Bidders, at the Bidders' own responsibility and risk, are encouraged to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing their Bids and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidders' own expense.
- 1.11 The Bidder or its designated representative is invited to attend a pre-bid meeting, as **provided for in the BDS**. The purpose of the pre-bid meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- Non-attendance at the pre-bid meeting will not be a cause for disqualification of a bidder.
- Amendment of Bidding Document**
- 1.12 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Document by issuing addenda and extend the deadline for submission of bids, if needed.

c. Preparation of Bids

- Cost of Bidding**
- The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall in no case be responsible or liable for those costs irrespective of the outcome of the bidding process.
- Language of Bid**
- The Bid, supporting documents as well as all correspondence relating to the bid exchanged by the Bidder and the Employer shall be in English Language.
- Documents Comprising the Bid**
- 1.13 The Bid shall comprise the following:
- (a) Bid submission Form (in the format indicated in Section IV);
 - (b) Qualification information and documentary evidence establishing the Bidder's qualifications to perform the contract;
 - (c) completed Bill of Quantities / Activity Schedule;
 - (d) the following documentary evidence is required
 1. have a certified copy of a valid Company Registration Certificate;
 2. have an original valid or certified Good Standing Tax Certificate, which must be valid by the date of bid closure;
 3. have an original valid or certified good Standing Social Security Certificate; which must be valid by the date of bid closure;
 4. have a valid or certified copy of Affirmative Action Compliance Certificate, and in the event that the Affirmative Action Certificate is over 12 months from the date of issue, a confirmation letter from the Employment Equity Commission indicating that the employer did submit the report for the period following from the date when the certificate issued, proof from Employment Equity Commissioner that bidder is not a relevant employer, or exemption issued in terms of Section 42 of the Affirmative Action Act, 1998;(which must be valid by the date of bid closure)
 5. An undertaking on the part of the Bidder that the salaries and wages payable to its personnel in respect of this

proposal are compliant to the relevant laws, Remuneration Order, and Award, where applicable and that it will abide to sub-clause 4.6 of the General conditions of Contract if it is awarded the contract or part thereof;

6. have a valid / certified certificate of fitness from any Local Authority

Bid Submission Form and Schedules	The Bid Submission Form, Schedules, and all documents listed under ITB 13.1 shall be prepared using the relevant forms, if so provided.
Alternative Proposal	Alternative Technical Proposals and completion dates if allowed shall be indicated in Section V- Specifications. The evaluation methodologies for their consideration shall be given in Section III.
Bid Prices and Discounts	<p>The Contract shall be for the whole Works, as described in ITB Sub-Clause 1.1, based on the priced Activity Schedule/Bill of Quantities³ submitted by the Bidder.</p> <p>1.14 Bidders shall fill in rates and prices for all items of the Works described in the Bill of Quantities.⁴ Items for which no rate or price is entered by Bidders, shall not be paid for by the Public Entity when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. Corrections, if any, shall be made by crossing out, initialing, dating and rewriting.</p> <p>1.15 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 14 days prior to the deadline for submission of bids, shall be included in the rates, prices, and total Bid price submitted by Bidders.⁵</p> <p>1.16 The price to be quoted in the Bid Submission Form shall be the total price of bid after any discount offered.</p> <p>The discount if any and the conditions of its application shall be indicated separately.</p>
Currencies of Bid and Payment	<p>1.17 The bid price and rates shall be in Namibian Dollars and fixed for the duration of the contract unless otherwise specified in the BDS.</p> <p>1.18 Unless otherwise specified in BDS interim payment for Plant and Material on site is applicable as per GCC 39.7.</p>
Documents Comprising the Technical Proposal	1.19 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in the Bidder Qualification Form (section IV), in sufficient details to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.
Period of Validity of Bids	<p>Bids shall remain valid for a period specified in the BDS. The Bid Validity period should not exceed 180 days.</p> <p>In exceptional circumstances, prior to expiry of the original bid validity period, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing.</p>
Bid Security/Bid Securing Declaration	<p>1.20 The Bidder shall furnish either a subscription to a Bid Securing Declaration or a Bid Security in its original form with its bid as part of its bid, if so required in the BDS.</p> <p>1.21 Bid Security shall be in the form of a Bank Guarantee from a local commercial bank as per the format contained in section IV and shall</p>

³ In lump sum contracts, delete "priced Bill of Quantities" and replace with "priced Activity Schedule."

⁴ In lump sum contracts, delete "described in the Bill of Quantities" and replace with "described in the drawings and specifications and listed in the Activity Schedule."

⁵ In lump sum contracts, delete "rates, prices, and."

be valid for a period of 30 days beyond the validity period of the bid or beyond any period of extension.

1.22 Any bid not accompanied by an enforceable and substantially compliant Bid Security or a subscription to a Bid Securing Declaration in the Bid Submission Form, if required in accordance with ITB 20.1, shall be rejected by the Employer as non-responsive.

1.23 Bid Security shall be forfeited or the Bid Securing declaration exercised for non-compliance on the part of the Bidder for reasons mentioned in the Bid Security format contained in Section III or the Bid Suring Declaration contained as Appendix to the Bid Submission Form.

Format and Signing of Bid 1.24 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 13.1 and clearly mark it "Original". In addition, the Bidder shall submit the number of copies **as specified in the BDS**, clearly mark with the label "Copy." In the event of any discrepancy between the original and the copies, the original shall prevail.

1.25 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder.

Submission and Opening of Bids

Sealing and Marking of Bids 1.26 Bidders may always submit their bids by mail or by hand. Procedures for submission, sealing and marking are as follows:

(a) Bidders submitting bids by mail or by hand shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB 15, in separate sealed envelopes, duly marking the envelopes as "Original", "Alternative" and "Copy." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB sub-Clauses 22.2.

The inner and outer envelopes shall:

- (a) bear the name and address of the Bidder;
- (b) be addressed to the Employer as indicated in ITB 22.1;
- (c) bear the specific identification of this bidding process indicated in accordance with ITB 1.1; and
- (d) bear a warning not to open before the time and date for bid opening.

Deadline for Submission of Bids 1.27 Bids shall be delivered to the Employer at the address and no later than the time and date **specified in the BDS**.

The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 10.

Late Bids 1.28 Late bids shall not be considered. They will be returned unopened

Withdrawal, Substitution, and Modification of Bids 1.29 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid submission Form or any extension thereof.

Bid Opening 1.30 The Employer shall open the bids at the time place and address **specified in the BDS** in the presence of Bidders` designated representatives who choose to attend.

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- 1.31 The bidders' names, the Bid Prices, the total amount of each bid, any discounts, any alternative bid, bid modifications and withdrawals, the presence or absence of bid security, and such other details as the Employer may consider appropriate, will be announced and recorded by the Employer at the opening.

Evaluation and Comparison of Bids

- Confidentiality**
- 1.32 Information relating to the examination, evaluation, comparison, and post-qualification of bids and recommendation of contract award, shall not be disclosed to Bidders or any other person not officially concerned with such process.
- 1.33 Any attempt by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.

Clarification of Bids

To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetical errors discovered by the Employer in the evaluation of the bids, in accordance with ITB 31.

- Determination of Responsiveness**
- 1.34 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB13.
- 1.35 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission.
- 1.36 The Employer shall examine the technical aspects of the bid submitted in accordance with ITB 18, Technical Proposal, in particular, to confirm that all requirements of Section V (Employer's Requirements) have been met without any material deviation, reservation or omission.

If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

Nonconformities, Errors, Omissions and

30.1 Provided that a bid is substantially responsive, the Employer may waive any non-material non-conformity in the bid, request that the Bidder submit the necessary information or documentation, to rectify nonmaterial nonconformities in the bid related to documentation requirements but not related to any aspect of the price of the bid; and shall rectify quantifiable nonmaterial nonconformities related to the Bid Price.

Correction of Arithmetical Errors

Provided that the bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:

- (a) only for unit price contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

	(c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
Margin of Preference	32.1 Unless otherwise specified in the BDS , Margin of preference shall not apply.
Evaluation of Bids	1.37 The Employer shall use the criteria and methodology defined in this clause and no other evaluation criteria or methodologies shall be permitted.
	1.38 To evaluate a bid, the Employer shall consider the following:
	(a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities for admeasurement contracts or Schedule of Prices for lump sum contracts, but including Daywork items, where priced competitively; and
	(b) price adjustment for correction of arithmetic errors, discounts, non-conformities, due to the supplementary criteria as defined in Section III, and Margin of Preference, if applicable.
	1.39 If this Bidding Document allows Bidders to quote separate prices for different contracts, and to award multiple contracts to a single Bidder, the methodology to determine the lowest evaluated price of the contract combinations, including any discount offered in the Bid Submission Form, is specified in Section III (Evaluation and Qualification Criteria).
	1.40 If the bid for an admeasurement contract, which results in the lowest Evaluated Bid Price, is seriously unbalanced, front loaded or substantially below updated estimates or if any item in the Priced Activity Schedule is front loaded or contains an erroneous amount in the opinion of the Employer, the Employer may after clarification require the Bidder to produce detailed price analysis for any or all items that the amount of the performance security be increased at the expense of the Bidder.
Comparison of Bids	1.41 The Employer shall compare all substantially responsive bids in accordance with ITB 33 to determine the lowest evaluated bid.
Qualification of the Bidder	1.42 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated substantially responsive bid meets the qualifying criteria.
Employer's Right to Accept Any Bid, and to Reject Any or All Bids	1.43 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders.
Award of Contract	
Award Criteria	1.44 Subject to ITB 36.1, the Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.
Notification of Award	1.45 Prior to the expiration of the period of bid validity, the Employer shall, for contract amount above the prescribed threshold of N\$ 2 M, notify the selected bidder of the proposed award and accordingly notify unsuccessful bidders. Subject to Challenge, the Employer shall notify the selected Bidder, in writing, by a Notification of award for award of contract. The Notification of award shall specify

the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”) and the requirement for the Contractor to remedy any defects therein as prescribed by the Contract. Within seven days from the issue of notification of award, the Purchaser shall publish on the Public Procurement Portal (www.mof.gov.na/procurement-policy-unit) and the Purchaser’s website, the results of the Bidding Process identifying the bid and lot numbers and the following information:

- (i) name of the successful Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded; and
 - (ii) an executive summary of the Bid Evaluation Report.
- 1.46 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.
- Signing of Contract** 1.47 Promptly upon issue of notification of award, the Employer shall send to the successful Bidder the Contract Agreement.
- 1.48 Within thirty (30) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.
- Performance Security** 1.49 Within thirty (30) days of the receipt of the notification of award from the Employer, the successful Bidder shall furnish the Performance Security in accordance with the conditions of contract, using for that purpose the Performance Security Form included in Section VIII (Contract Forms).
- 1.50 Failure of the successful Bidder to submit the above-mentioned Performance Security or to sign the Contract Agreement within the prescribed delay shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security.
- Advance Payment and Security** 1.51 The Public Entity shall provide an Advance Payment on the Contract Price as stipulated in the GCC, subject to a maximum amount, as **stated in the BDS**. The Advance Payment shall be guaranteed by a security as per the format contained in Section VIII.
- Plant and Materials on site** 1.52 Unless otherwise **specified in BDS** interim payment for Plant and Material on site is applicable as per GCC 39.7.
- Debriefing** 1.53 The Purchaser shall promptly attend to all debriefing for the contract made in writing and within 30 days from the date of the publication of the award or date the unsuccessful bidders are informed about the award.

Section II. Bidding Data Sheet (BDS)

The following specific data for the works to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB).
Whenever there is a conflict, the provisions herein shall prevail over those in ITB.

A. General	
ITB 1.1	<p>The Public Entity is: Ongwediva Town Council</p> <p>The Works are: Servicing and Maintenance of Fire Extinguishing Equipment - 3 years Contract to Ongwediva Town Council</p> <p>The name and identification of the Contract are: NCS/RFQ/OngweTC-01/2023/24</p> <p>The Project is Servicing and Maintenance</p>
ITB 1.2	The Intended Completion period is year 2023 to year 2026
ITB 2.1	The Funding Agency is: N/A
ITB 5.3	<p>A list of firms debarred from participating in Public Procurement in Namibia is available at http://www.mof.gov.na/procurement-policy-unit</p> <p>A list of firms debarred by World Bank is available at http://www.worldbank.org/debarr</p>
ITB 6.2	N/A
ITB 6.2 (d)	Contractors should have at least three years of experience for works.
ITB 6.3 (a)	The Contractor must have a minimum average annual financial amount of construction: N/A
ITB 6.3 (b)	<p>The number of works is: Three (3) of works of a nature and amount similar to the Works performed as prime Contractor over the last three (3) years.</p> <p>The period is: three (3) years</p> <p style="padding-left: 40px;"><i>i.</i> to mention experience in terms of the nature, complexity and works method as acceptable in lieu of similar works.</p>
ITB 6.3 (c)	<p>The essential equipment to be made available for the Contract by the successful Bidder shall be:</p> <ul style="list-style-type: none"> ✓ Nitrogen Cylinder (provide proof of ownership or lease agreement) ✓ Tool box (standard tools) (provide proof of ownership or lease agreement) ✓ Vehicle (pick-up size) (provide proof of ownership or lease agreement)
ITB 6.3 (d)	<p>Technician: Five (5) Years of experience (general) minimum</p> <p>General labourer: Five (5) Years of experience (general) minimum</p>
ITB 6.3 (e)	The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be: 0%
B. Bidding Documents	
ITB 8.1	The Public Entity's address for clarification is:

	<p>Attention: : Josephine Hainana</p> <p>Address: Ongwediva Town Council Private Bag 5549 Ongwediva</p> <p>Town: ONGWEDIVA</p> <p>Telephone: +264 65 233700</p> <p>Email: jhainana@otc.com.na</p>
ITB 9.2	A pre-bid meeting: 20 July 2023 at 10H00 (not compulsory)
C. Preparation of Bids	
ITB 13.1(e)	Any additional materials required to be completed and submitted by the Bidders are none .
ITB 17.1	The Contract is not subject to price adjustment in accordance with GCC Clause 44. Price adjustment will not be considered before contract completion time.
ITB 17.2	Interim Payment for Plant and Material on site is not applicable.
ITB 19.1	The Bid shall be valid for 180 days after the deadline set for the submission of bid, the deadline being counted as day one of the validity period.
ITB 20.1	a) Bid shall include a subscription to a Bid Securing Declaration
D. SUBMISSION AND OPENING OF BIDS	
ITB 21.1	In addition to the original of the bid, the number of copies is: 0
ITB 23.1	The deadline for submission of bids shall be on Tuesday the 01st August 2023 at 14H30;
ITB 23.1	<p>The Employer's address for the purpose of Bid submission is <i>[insert the receiving address provided in the Invitation for Bids]</i></p> <p style="text-align: center;">ONGWEDIVA TOWN COUNCIL Private Bag 5549 ONGWEDIVA C/o Mandume Ndemufayo Rd & Dr. Libertina Amadhila</p> <p>Attention: Mrs. Josephine Hainana</p>
ITB 26.1	<p>The bid opening shall take place at:</p> <p>Place:</p>

	<p style="text-align: center;">ONGWEDIVA TOWN COUNCIL</p> <p>Street Address: C/o Mandume Ndemufayo Rd & Dr. Libertina Amadhila Street</p> <p>Floor: Ground Floor, Town House</p> <p>Town: Ongwediva</p> <p>Date: 01st August 2023; Time: 14H30</p>
E. Evaluation and Comparison of Bids	
ITB 32.1	<p>A margin of preference shall apply.</p> <p>If a margin of preference applies the application methodology shall be defined in Section IV - Evaluation and Qualification Criteria.</p>
F. AWARD OF CONTRACT	
ITB 40.1	N/A
ITB 41.1	N/A
ITB 42.1	Interim Payment for Plant and Material on site is not applicable.

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Bid Submission Form

Date: _____

Bidder's Reference No.: _____

Procurement Reference No.: _____

To: _____

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) Clause 10;
- (b) We offer to execute in conformity with the Bidding Documents the following Works:
_____;
- (c) The total price of our Bid after discounts, if any, offered in item (d) below is:

_____;
- (d) The discounts offered and the methodology for their application are:

_____;
- (e) Our bid shall be valid for a period of _____ [*insert validity period as specified in ITB 19.1.*] days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) We hereby confirm that we have read and understood the content of the Bid Securing Declaration attached hereto and subscribe fully to the terms and conditions contained therein, if required. We understand that non-compliance to the conditions mentioned may lead to disqualification.
- (g) If our bid is accepted, we commit to obtain a Performance Security and a Preference Security (if applicable) in accordance with the Bidding Document;
- (h) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 5.2;
- (i) We are not participating, as a Bidder in more than one bid in this bidding process other than alternative offers submitted in accordance with ITB 15;
- (j) Our firm, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been declared ineligible under the laws of Namibia;
- (k) We are not a government owned entity / We are a government owned entity but meet the requirements of ITB 5.4;⁶
- (l) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed;

⁶ Use one of the two options as appropriate.

-
- (m) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive; and
 - (n) If awarded the contract, the person named below shall act as Contractor's Representative: _____

Name: _____

In the capacity of: _____

Signed: _____

Duly authorized to sign
the Bid for and on
behalf of: _____

Date: _____

Seal of Company _____

BID SECURING DECLARATION
(Section 45 of Act)
(Regulation 37(1)(b) an 37(5))

Date:

Procurement Ref No.:

To:

I/We* understand that in terms of section 45 of the Act a public entity must include in the bidding document the requirement for a declaration as an alternative form of bid security.

I/We* accept that under section 45 of the Act, I/we* may be suspended or disqualified in the event of

- (a) a modification or withdrawal of a bid after the deadline for submission of bids during the period of validity;
- (b) refusal by a bidder to accept a correction of an error appearing on the face of a bid;
- (c) failure to sign a procurement contract in accordance with the terms and conditions set forth in the bidding document, should I/We* be successful bidder; or
- (d) failure to provide security for the performance of the procurement contract if required to do so by the bidding document.

I/We* understand this bid securing declaration ceases to be valid if I am/We are* not the successful Bidder

Signed:
[insert signature of person whose name and capacity are shown]

Capacity of:.....
[indicate legal capacity of person(s) signing the Bid Securing Declaration]

Name:
[insert complete name of person signing the Bid Securing Declaration]

Duly authorized to sign the bid for and on behalf of: [insert complete name of Bidder]

Dated on _____ day of _____, _____
[insert date of signing]

Corporate Seal (where appropriate)





Republic Of Namibia

Ministry of Labour, Industrial Relations and Employment Creation

Witten undertaking in terms of section 138 of the Labour Act, 2015 and section 50(2)(D) of the Public Procurement Act, 2015

1. EMPLOYERS DETAILS

Company Trade Name:.....

Registration Number :.....

Vat Number:

Industry/Sector:

Place of Business:.....

Physical Address:.....

Tell No.:.....

Fax No.:.....

Email Address:.....

Postal Address:.....

Full name of Owner/Accounting Officer:.....

Email Address:.....

2. PROCUREMENT DETAILS

Procurement Reference No.:.....

Procurement Description:

Anticipated Contract Duration:

Location where work will be done, good/services will be delivered:

.....

3. UNDERTAKING

I[insert full name], owner/representative

of[insert full name of company]

hereby undertake in writing that my company will at all relevant times comply fully with the relevant provisions of the Labour Act and the Terms and Conditions of Collective Agreements as applicable.

I am fully aware that failure to abide to such shall lead to the action as stipulated in section 138 of the labour Act, 2007, which include but not limited to the cancellation of the contract/licence/grant/permit or concession.

Signature:

Date:

Seal:.....

Please take note:

1. *A labour inspector may conduct unannounced inspections to assess the level of compliance*
2. *This undertaking must be displayed at the workplace where it will be readily accessible and visible by the employees rendering service(s) in relations to the goods and services being procured under this contract.*

SCORING AND WEIGHTING FACTOR

The following scoring and weighting factor shall be use during evaluation:

Priority	Name of criteria	Proportional value in %
1	a) Capabilities of the Company (Bidder) (At least 3 reference letters (1 ref = 5 and 3 ref = 15)	15
2	a) Pick-up Vehicle (ITB 6.3 (c)). Registration certificate = 15 Roadworthy Registration certificate = 15.	30
3	a) Professional registration or recognized registered service agent certificate/Recommendation letter for servicing fire extinguisher equipment	15
I	Total Additional Criteria (1+2+3)	60
II	Bid Price (Financial Proposal)	40
III	Sum Total (I+II)	100

RERVATION OR MARGIN OF PREFERENCES

- a) Margin of preferences applicable for Exclusive Preferences to Local Suppliers.
The maximum cumulative allowable margin of preference applicable to exclusive preferences for price evaluation purposes is 10%.
- b) The Board or public entity, when evaluating bids for exclusive preference must apply the margins of preference specified in the Code of Good Practice on Preferences to qualifying bidders per each qualifying category.
- c) A bidder must include a declaration in its bid, outlining the preferences the bidder qualifies for and the grounds for such qualifications.

A margin of preference shall be applicable and they are as indicated below:

Formula to calculate margins of preference:

$$A = \frac{MP \times BP}{100}$$

in which formula -

- a) "A" represents the amount to be determined;
- b) "MP" represents the total percentage of all margins of preferences granted in respect of the bid; and
- c) "BP" represents the bid price.

This Code of Good Practice illustrates how the margins of preference must be applied to the different nature of procurements.

CATEGORY OF BIDDERS	MARGIN OF PREFERENCE	DOCUMENTARY EVIDENCE
Manufacturer	2%	<ul style="list-style-type: none"> • Certificate of Registration from a registering authority • Declaration by the bidder that the manufactured goods meet the local content as determined in Annexure 6 as per the cost structure for Value Added Calculation and as certified by an Accountant
Micro, Small and Medium Enterprise	1%	<ul style="list-style-type: none"> • SME registration certificate • Declaration indicating the percentage of Namibian MSME
Women owned enterprise	1%	<ul style="list-style-type: none"> • IDs of all shareholders • Founding statement/company registration indicating ownership structure /shareholder certificate • Declaration indicating the percentage of Namibian female ownership
Youth owned enterprise	2%	<ul style="list-style-type: none"> • IDs of all shareholders • Founding statement/company registration indicating ownership structure/shareholder certificate • Declaration indicating the percentage of Namibian youth ownership
Previously Disadvantaged Person owned enterprise	2%	<ul style="list-style-type: none"> • IDs of all shareholders • Founding statement/company registration indicating Ownership structure/shareholder certificates • Declaration indicating the percentage of Namibia PDPs ownership
Suppliers providing environmental protection	1%	<ul style="list-style-type: none"> • Declaration and proof that the bidder meets the requirements set out in the bidding document
Suppliers providing employment to Namibian	1%	<ul style="list-style-type: none"> • Declaration the bidder employs 50% or more Namibia citizens
TOTAL	10%	

QUALIFICATION INFORMATION

(Mandatory & Attached Proof)

1. Individual Bidders or Individual Members of Joint Ventures

1.1 Constitution or legal status of Bidder: _____

Place of registration: _____

Principal place of business: _____

1.2. **Three (3)** of works of a nature and amount similar to the Works performed as prime Contractor over the last three (3) years.

Project/Contract name and country	Name of client and contact person	Type of work performed and year of completion
(a)		
(b)		

1.3. Major items of Contractor's Equipment proposed for carrying out the Works

Item of equipment	Description, make, and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
Nitrogen Cylinder			
Tool box (standard tools)			
Vehicle (pick-up size)			

1.4. Minimum two (2) Qualifications and experience of key personnel proposed for administration and execution of the Contract.

Position	Name	Five (5) Years of experience (general) minimum	Years of experience in proposed position
Technician	1.		
	2.		
General labour	1.		
	2.		

1.6 Proof residential workshop.

Sections of the Works	Residential address	✓ Provide proof
(a) Workshop/Building		

PART 2 - Employer's Requirements

Section V - Employer's Requirements

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BIDDER SPECIFICATIONS

SPECIFICATIONS: SERVICING AND MAINTENANCE OF ONGWEDIVA TOWN COUNCIL FIRE EXTINGUISHERS 3 YEARS CONTRACT

1. PROJECT SCOPE

To ensure the effective repair maintenance/ servicing of all fire equipment's within the Ongwediva Council premises as prescribed in terms of SANS 1475, for the period of 3 years.

2. SERVICE TO BE RENDERED:

Supply, fit and repair maintenance/servicing the Council with the fire and emergency equipment as identified.

2.1. Bidder must provide the refilling of all fire equipment.

2.2. Bidder must provide certain spare parts for fire equipment's.

2.3. Fit or installed specified fire equipment when is identified

2.4. The bidder must make provision for three (3) year maintenance of all fire extinguisher equipment.

2.5. The service provider must issue a certificate of compliance on completion of maintenance or service of fire equipment.

3. CERTIFICATION

3.1. Fire equipment can only be serviced by bidder that is registered and have proof of professional registration must be provided with the bid document.

3.2. Service provider must provide a list 3 of previous similar projects that has been conducted by the service provider with contactable references, submitted with the bid document.

3.3. No sub-contractors will be considered.

3.4. Failure to provide the proof of registration and list of previous similar work conducted by the service provider will lead to a disqualification

4. SCOPE OF WORK

- Test of water, Carbon dioxide & dry chemical powder
- Filling up Carbon dioxide & dry chemical nitrogen
- Replacement of maintenance label
- Replacement of service seals

PRICED ACTIVITY SCHEDULE

Procurement Reference Number: NCS/RFQ/OngweTC-01/2023/24

ITEMS NO	DESCRIPTION OF WORKS	QTY	UNIT OF MEASURE	UNIT PRICE N\$
1	Complete Servicing of Carbon dioxide fire extinguishers	1	5kg	
2	Complete Servicing of Carbon dioxide fire extinguishers	1	2kg	
3	Complete Servicing of Dry Chemical Powder fire extinguishers	1	4.5kg	
4	Complete Servicing of Dry Chemical Powder fire extinguishers	1	9kg	
5	Refilling (recharge) of Dry Chemical Powder fire extinguishers	1	9kg	
6	Dry Chemical Powder Nitrogen refill	1	2kg	
7	Dry Chemical Powder Nitrogen refill	1	4.5kg	
8	Dry Chemical Powder Nitrogen refill	1	9kg	
9	Carbon dioxide refill	1	2kg	
10	Carbon dioxide refill	1	5kg	
11	Fire Hose Reel Nozzle Replacement	1	-	
12	Fire Hose Reel 30m Hose Replacement	1	-	
13	Complete Servicing of Fire Hose Reels	1	-	
14	Fire Extinguishers Brackets	1	-	
15	PVC/STEEL Fire Hose Reel Extinguisher Cabinet	1	-	
16	PVC/Steel Fire Extinguisher Cabinet	1	-	

PLEASE TAKE NOTE!!

The purchaser (Council) shall have the right to make changes additions in the procurement of the item (s) in terms of quantities, depending on Council affordability during issuing the purchasing order.

PRICED ACTIVITY SCHEDULE BY:

Name		Signature:	
Position		Date:	
Company Name			

PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS
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GENERAL CONDITIONS OF CONTRACT

A. General

1. Definitions

1.1 Boldface type is used to identify defined terms.

- (a) The Accepted Contract Amount means the amount accepted in the Notification of award for the execution and completion of the Works and the remedying of any defects.
- (b) The Activity Schedule is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity.
- (c) The Adjudicator is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.
- (d) Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.
- (e) Compensation Events are those defined in GCC Clause 41 hereunder.
- (f) The Completion Date is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 53.1.
- (g) The Contract is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.
- (h) The Contractor is the party whose Bid to carry out the Works has been accepted by the Employer.
- (i) The Contractor's Bid is the completed bidding document submitted by the Contractor to the Employer.
- (j) The Contract Price is the Accepted Contract Amount stated in the Notification of award and thereafter as adjusted in accordance with the Contract.
- (k) Days are calendar days; months are calendar months unless otherwise stated.
- (l) Dayworks are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- (m) A Defect is any part of the Works not completed in accordance with the Contract.
- (n) The Defects Liability Certificate is the certificate issued by Project Manager upon correction of defects by the Contractor.
- (o) The Defects Liability Period is the period **named in the SCC** pursuant to Sub-Clause 33.1 and calculated from the Completion Date.
- (p) Adjudicator means the single person appointed under Clause 23.
- (q) Drawings means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the

Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.

- (r) The Employer is the party who employs the Contractor to carry out the Works, **as specified in the SCC.**
- (s) Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (t) "In writing" or "written" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (u) The Initial Contract Price is the Contract Price listed in the Employer's Notification of award.
- (v) The Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the SCC.** The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (w) Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (x) Plant is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (y) The Project Manager is the person **named in the SCC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- (z) SCC means Special Conditions of Contract
- (aa) The Site is the area **defined as such in the SCC.**
- (bb) Site Investigation Reports are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (cc) Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (dd) The Start Date is **given in the SCC.** It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (ee) A Subcontractor is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (ff) Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (gg) A Variation is an instruction given by the Project Manager which varies the Works.

-
- (hh) The Works are what the Contract requires the Contractor to construct, install, and turn over to the Employer, **as defined in the SCC.**
- 2. Interpretation**
- 2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is **specified in the SCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
- (a) Agreement,
 - (b) Notification of award,
 - (c) Contractor's Bid,
 - (d) Special Conditions of Contract,
 - (e) General Conditions of Contract,
 - (f) Bill of Quantities,⁷ and
 - (g) any other document **listed in the SCC** as forming part of the Contract.
- 3. Language and Law**
- 3.1 The language of the Contract must be English and the law governing the Contract is the Law of Namibia.
- 4. Project Manager's Decisions**
- 4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.
- 5. Delegation**
- 5.1 Otherwise **specified in the SCC**, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.
- 6. Communications**
- 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing to the addresses **specified in the SCC**. A notice shall be effective only when it is delivered.
- 7. Subcontracting**
- 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
- 8. Other Contractors**
- 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as **referred to in the SCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the

⁷ In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."

-
- Schedule of Other Contractors, and shall notify the Contractor of any such modification.
- 9. Personnel and Equipment**
- 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
- 10. Employer's and Contractor's Risks**
- 10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
- 11. Employer's Risks**
- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
 - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
 - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
 - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to
- (a) a Defect which existed on the Completion Date,
 - (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
 - (c) the activities of the Contractor on the Site after the Completion Date.
- 12. Contractor's Risks**
- 12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.
- 13. Insurance**
- 13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the SCC** for the following events which are due to the Contractor's risks:

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- (a) loss of or damage to the Works, Plant, and Materials;
 - (b) loss of or damage to Equipment;
 - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
 - (d) personal injury or death.
- 13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval within 21 days after issue of notification of award. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- 13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 13.4 Alterations to the terms of insurance shall not be made without the approval of the Project Manager.
- 13.5 Both parties shall comply with any conditions of the insurance policies.
- 13.6 The policies which are in the joint names of the Contractor and the Employer shall contain a clause to include a waiver of subrogation of the Contractor's rights to the insurance carrier against the Employer.
- 14. Site Data**
- 14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the SCC**, supplemented by any information available to the Contractor.
- 15. Contractor to Construct the Works**
- 15.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 16. The Works to Be Completed by the Intended Completion Date**
- 16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
- 17. Approval by the Project Manager**
- 17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.
- 17.2 The Contractor shall be responsible for design of Temporary Works.
- 17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.
- 18. Safety**
- 18.1 The Contractor shall be responsible for the safety of all activities on the Site.

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19. **Discoveries** 19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
20. **Possession of the Site** 20.1 The Employer shall, after receiving the Performance security, the insurance covers and the Program for the Works all as per requirements, give possession of all parts of the Site to the Contractor within thirty days for execution of works in accordance to the Program for the Works. If possession of a part is not given by the date **stated in the SCC**, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
21. **Access to the Site** 21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
22. **Instructions** 22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 22.2 The Contractor shall permit persons appointed by the Employer to inspect the Site and/or the accounts and records of the Contractor and its sub-contractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Employer if required by the Employer. The Contractor's attention is drawn to Sub-Clause 57.1 which provides, inter alia, that acts intended to materially impede the exercise of the inspection and audit rights provided for under Sub-Clause 22.2 constitute a prohibited practice subject to contract termination.
23. **Appointment of the Adjudicator** 23.1 The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Notification of award. If, in the notification of award, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority **designated in the SCC**, to appoint the Adjudicator within 15 days of receipt of such request.
- 23.2 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 30 days of receipt of such request.
24. **Procedure for Disputes** 24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 15 days of the notification of the Project Manager's decision.
- 24.2 The Adjudicator shall give a decision in writing within 30 days of receipt of a notification of a dispute.
- 24.3 The Adjudicator shall be paid by the hour at the **rate specified in the SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator.

Either party may refer a decision of the Adjudicator to an Arbitrator within thirty (30) days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above thirty (30) days, the Adjudicator's decision shall be final and binding.

- 24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified in the SCC.

B. Time Control

25. Program

- 25.1 Within the time stated in the SCC, after the date of the Notification of award, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 25.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 25.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the SCC. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the SCC from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 15 days of being instructed to by the Project Manager.
- 25.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

26. Extension of the Intended Completion Date

- 26.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event(as defined in GCC 41) occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 26.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

27. Acceleration

- 27.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.

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- 27.2 If the Contractor's priced proposals for acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.
- 28. Delays Ordered by the Project Manager**
- 28.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 29. Management Meetings**
- 29.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 29.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 30. Early Warning**
- 30.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 30.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

- 31. Identifying Defects**
- 31.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 32. Tests**
- 32.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 33. Correction of Defects**
- 33.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the SCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 33.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.
- 34. Uncorrected Defects**
- 34.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the

cost of having the Defect corrected, and the Contractor shall pay this amount.

D. Cost Control

- 35. Contract Price**
- 35.1 In the case of an admeasurement contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
- 35.2 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to prepare interim valuations of works done.
- Any errors or inconsistencies including front loading detected in the Activity Schedule at any time during the execution of the project shall be resolved as directed as by the Project Manager.
- 36. Changes in the Contract Price**
- 36.1 In the case of an admeasurement contract:
- (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.
 - (b) The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.
 - (c) If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.
- 36.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.
- 37. Variations**
- 37.1 All Variations shall be included in updated Programs, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.
- 37.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 37.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
- 37.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without

delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

37.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

37.6 In the case of an admeasurement contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

38. Cash Flow Forecasts

38.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast.

39. Payment Certificates

39.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

39.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

39.3 The value of work executed shall be determined by the Project Manager.

39.4 The value of work executed shall comprise:

(a) In the case of an admeasurement contract, the value of the quantities of work in the Bill of Quantities that have been completed; or

(b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.

39.5 The value of work executed shall include the valuation of Variations and Compensation Events.

39.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

39.7 Unless **otherwise specified in the SCC** Interim Payment may be made for Plant and Material delivered on site ready for incorporation within reasonable period of time in the permanent works, subject to the Contractor transferring ownership to the Employer and providing, where applicable, the right of the transfer of ownership vested upon the Contractor by its supplier.

Notwithstanding the transfer of ownership the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor until taking over of the works or part thereof in which such Plant and Materials are incorporated and shall make good at its own cost any loss or damage that may occur to the

works or part thereof from any cause whatsoever during such period prior to the taking over.

40. Payments

- 40.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest at the legal rate.
- 40.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 40.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions to the Contract Price.
- 40.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

41. Compensation Events

- 41.1 The following shall be Compensation Events:
- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.
 - (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
 - (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
 - (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
 - (e) The Project Manager unreasonably does not approve a subcontract to be let.
 - (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Notification of award from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
 - (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
 - (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.

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- (i) The advance payment is delayed.
 - (j) The effects on the Contractor of any of the Employer's Risks.
 - (k) The Project Manager unreasonably delays issuing a Certificate of Completion.
 - (l) In situations of Force Majeure which makes the contractor's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances. Such events shall be limited to:
 - (a) reason of any exceptionally adverse weather conditions (as specified in the BDS) and
 - (b) reason of civil commotion, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works.
- 41.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
- 41.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.
- 41.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.
- 42. Tax**
- 42.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 30 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.
- 43. Currencies**
- 43.1 Where payments are made in currencies other than the currency of the Employer's country **specified in the SCC**, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.
- 44. Price Adjustment**
- 44.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the

payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \text{ Imc/loc}$$

where:

P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency “c.”

A_c and B_c are coefficients⁸ **specified in the SCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c;” and

Imc is the index prevailing at the end of the month being invoiced and loc is the index prevailing 28 days before Bid opening for inputs payable; both in the specific currency “c.”

44.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

45. Retention

45.1 The Employer shall retain from each payment due to the Contractor the proportion **stated in the SCC** until Completion of the whole of the Works.

45.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 53.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” Bank guarantee.

46. Liquidated Damages

46.1 The Contractor shall pay liquidated damages to the Employer at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.

46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 40.1.

47. Bonus

47.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day **stated in the SCC** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify

⁸ The sum of the two coefficients A_c and B_c should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A_c , for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sums of the adjustments for each currency are added to the Contract Price. [To be transferred to the User Guide]

that the Works are complete, although they may not be due to be complete.

48. Advance Payment

- 48.1 The Employer shall make advance payment to the Contractor of the amounts **stated in the SCC** by the date **stated in the SCC**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.
- 48.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.
- 48.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

49. Securities

- 49.1 The Performance Security shall be provided to the Employer no later than the date specified in the Notification of award and shall be issued in an amount **specified in the SCC**, by a bank and denominated in the Namibian Dollars. The Performance Security shall be valid until a date 30 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee.
- 49.2 (a) Where the contractor has benefitted from the application of the Margin of Preference for employment of local manpower, it shall:
- (i) in the execution of the contract, fulfill its obligation of maintaining local manpower force for 80 % or more of the man-days deployed in the execution of the Works with which it satisfied the criteria of eligibility for being awarded the contract in application of the Margin of Preference; and
 - (ii) concurrently with the above performance security, provide a preference security to guarantee it will fulfill its obligation in that respect.
- (b) For contracts above N\$ 5 M, the preference security shall be in the form of an “on demand” bank guarantee for an amount in a convertible currency equivalent to the difference between its bid price and the bid price of the lowest bid if the Margin of Preference was not applicable. It shall be issued by a commercial bank located in the Republic of [Insert name of country].
- (c) For contracts up to N\$ 5 M, an amount equal to the value of the preference security shall be retained from progressive payments to the contractor, to constitute the guarantee for the preference security.

(d) The preference security shall be valid until the Contractor has completed the Works and a Completion Certificate has been issued by the Employer's Representative as per GCC 53.

(e) The cost of providing the security shall be borne by the Contractor.

49.3 Where a Preference Security is applicable:

(i) the Employer's Representative shall monitor the employment of local manpower throughout the execution of the contract and shall from time to time request a report from the contractor on the percentage of total men-days deployed using local manpower.

(ii) the Contractor shall submit the local manpower employment reports as often as it is reasonably requested by the Employer's Representative.

(iii) the Employer's and Contractor's representatives shall consult each other to ensure that the Contractor's obligation towards local manpower employment is met during the Works execution.

(iv) At the time of works completion, the Contractor shall submit a certified audited report to the Employer to substantiate the actual percentage of local manpower employed throughout the execution of the works.

(v) The preference security shall be forfeited by the employer in case of failure on the part of the contractor to employ at least 80% of the local manpower in the execution of the Works.

50. Dayworks

50.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

50.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.

50.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

51. Cost of Repairs

51.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

52. Labour Clause

52.1 (a) The rates of remuneration and other conditions of work of the employees of the Contractor shall not be less favorable than those established for work of the same character in the trade concerned-

(i) by collective agreement applying to a substantial proportion of the workers and employers in the trade concerned;

(ii) by arbitration awards; or

(iii) by Remuneration Regulations made under the Labour Act, 2007.

(b) Where remuneration and conditions of work are not regulated in a manner referred to at (a) above, the rates of the remuneration and other conditions of work shall be not less favourable than the general

level observed in the trade in which the contractor is engaged by employers whose general circumstances are similar.

52.2 No Contractor shall be entitled to any payment in respect of work performed in the execution of the contract unless he has, together with his claim for payment, filed a certificate:

(a) stating the rates of remuneration and hours of work of the various categories of employees employed in the execution of the contracts;

(b) stating whether any remuneration payable in respect of work done is due;

(c) containing such other information as the Chief Executive Officer of the Public Body administering the contract may require to satisfy himself that the provisions under this clause have been complied with.

52.3 Where the Chief Executive Officer of the Public Entity administering the contract is satisfied that remuneration is still due to an employee employed under this contract at the time the claim for payment is filed under subsection N/A, he may, unless the remuneration is sooner paid by the Contractor, arrange for the payment of the remuneration out of the money payable under this contract.

52.4 Every Contractor shall display a copy of this clause of the contract at the place at which the work required by the contract is performed.

E. Finishing the Contract

53. Completion

53.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.

54. Taking Over

54.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

55. Final Account

55.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 60 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 60 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

56. Operating and Maintenance Manuals

56.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates **stated in the SCC**.

56.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the SCC** pursuant to GCC Sub-Clause 55.1, or they do not receive the Project Manager's approval, the Project Manager shall

withhold the amount **stated in the SCC** from payments due to the Contractor.

57. Termination

57.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

57.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 60 days of the date of the Project Manager's certificate;
- (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Contractor does not maintain a Security, which is required;
- (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the SCC**; or
- (h) if the Contractor, in the judgment of the Employer, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC Clause 57.1.

57.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.

57.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

57.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

58. Fraud and Corruption

58.1 If the Employer determines that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 15 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 57 shall apply as if such expulsion had been made under Sub-Clause 57.5 [Termination by Employer].

58.2 Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice

during the execution of the Works, then that employee shall be removed in accordance with Clause 9.

58.3 For the purposes of this Sub-Clause:

- (i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” is
 - (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (b) acts intended to materially impede the exercise of an inspection and audit rights provided for under Sub-Clause 22.2.

59. Payment upon Termination

59.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **indicated in the SCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.

59.2 If the Contract is terminated for the Employer’s convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

60. Property

60.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor’s default.

61. Release from Performance

61.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work

carried out before receiving it and for any work carried out afterwards to which a commitment was made.

SECTION VII. SPECIAL CONDITIONS OF CONTRACT

These clauses should be read in conjunction with the General Conditions of Contract

A. General	
GCC 1.1 (r)	The Employer is: Ongwediva Town Council Private bag 5549 Ongwediva C/o Mandume Ndemufayo & Dr Libertina Amathila street
GCC 1.1 (v)	The Intended Completion Date for the whole of the Works shall be from year 2023 to year 2026
GCC 1.1 (y)	The Project Manager is: Chief Fire Officer Sam Matheus
GCC 1.1 (aa)	The Site is located at: <ol style="list-style-type: none"> 1. Ongwediva Town House 2. Ongwediva Trade fair centre 3. Ongwediva Open market 4. Ongwediva Fire station 5. Sam Nujoma Multi-Purpose Centre
GCC 1.1 (dd)	“The Start Date shall be N/A
GCC 1.1 (hh)	The Works consist of SERVICING AND MAINTENANCE OF ONGWEDIVA TOWN COUNCIL FIRE EXTINGUISHERS 3 YEARS CONTRACT.
GCC 2.2	Sectional Completions are: <i>N/A</i>
GCC 2.3(i)	The following documents also form part of the Contract: <ol style="list-style-type: none"> 1. have a certified copy of a valid Company Registration Certificate; 2. have an original valid or certified Good Standing Tax Certificate, which must be valid by the date of bid closure; 3. have an original valid or certified good Standing Social Security Certificate; which must be valid by the date of bid closure; 4. have a valid or certified copy of Affirmative Action Compliance Certificate, and in the event that the Affirmative Action Certificate is over 12 months from the date of issue, a confirmation letter from the Employment Equity Commission indicating that the employer did submit the report for the period following from the date when the certificate issued, proof from Employment Equity Commissioner that bidder is not a relevant employer, or exemption issued in terms of Section 42 of the Affirmative Action Act, 1998;(which must be valid by the date of bid closure) 5. An undertaking on the part of the Bidder that the salaries and wages payable to its personnel in respect of this proposal are compliant to the relevant laws, Remuneration Order, and Award, where applicable and that it will abide to sub-clause 4.6 of the General conditions of Contract if it is awarded the contract or part thereof;

	6. have a valid / certified certificate of fitness from any Local Authority.
GCC 5.1	The Project manager may delegate any of his duties and responsibilities.
GCC 6.1	N/A
GCC 8.1	Schedule of other contractors: N/A
GCC 13.1	<p>(d) for personal injury or death: (i) of the Contractor's employees: The Contractor shall take an adequate insurance cover for its employees for any claim arising in the execution of the works].</p> <p>The Contractor shall choose to take the insurance covers indicated above as separate covers or a combination of the Contractor's All Risks coupled with the Employer's liability and First Loss Burglary, after approval of the Employer. All insurance covers shall be of nil or the minimum possible deductibles at sole expense of the contractor.</p>
GCC 14.1	N/A
GCC 20.1	N/A
GCC 23.1 & GCC 23.2	Appointing Authority for the Adjudicator: No Adjudicator shall be appointed for this Contract.
GCC 24.	<p>In case a dispute of any kind arises between the Employer and the Contractor in connection with, or arising out of, the contract or the execution of works or after completion of works and whether before or after repudiation or other termination of Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Employer's Representative, the matter in dispute shall, in the first place, be referred in writing to the employer's representative, with a copy to the other party.</p> <p>The Employer and the Contractor shall make every effort to resolve the dispute amicably by direct informal negotiation. If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Public Entity or the Contractor may give notice to the other party of its intention to refer the matter to:</p> <p>“ the competent courts of Namibia”</p>
GCC 24.3	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: Not applicable.
GCC 24.4	<p>Any dispute or difference in respect of which a notice of intention to commence arbitration has been given shall be finally settled by arbitration in accordance with Namibian Laws by an Arbitrator to be appointed by both parties to the dispute or in any case of disagreement, by an Arbitrator to be appointed by a judge in Chambers of Namibia. The Arbitrator fees will be borne by the losing party. Any decision of the Arbitrator shall be final and binding to both parties”.</p> <p>Not Applicable</p>
B. Time Control	
GCC 25.1	The Contractor shall submit for approval a Program for the NCS within 21 days from the date of the Notification of award.

GCC 25.3	The period between Program updates is N/A . The amount to be withheld for late submission of an updated Program is N/A
