



# MUNICIPALITY OF WALVIS BAY

## BIDDING DOCUMENT

**OPEN NATIONAL BIDDING (WORKS)**

**BID NO. W/ONB/MWB-101/2025**

# CONSTRUCTION OF TRADING STALLS AT EKUTU INFORMAL TRADING AREA (PHASE 2)

**CLOSING DATE: FRIDAY 6 DECEMBER 2024 @ 11H00**  
**CLARIFICATION DATE: MONDAY 18 NOVEMBER 2024 @ 10H00**

**ADMINISTRATIVE ENQUIRIES:**

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**DOCUMENT COST: N\$ 345.00 (INCLUDING 15% VAT)**

### BIDDER'S INFORMATION

<b>NAME OF BIDDER</b>	
<b>POSTAL ADDRESS</b>	
<b>TELEPHONE</b>	
<b>EMAIL ADDRESS</b>	
<b>BID PRICE (EXCL. VAT)</b>	

*Complete and attach a copy of this page to the front of your bidding envelope for ease of identification at the opening of the bid.*

## **PREAMBLE**

It is important that bidders understand the requirements for the provision of certain documentation with this bid, as well as the completion and the signing and initialing of the relevant schedules where indicated.

Any bids found to be incomplete during the opening thereof or during the process of evaluation, may be regarded as non-responsive and may result in such bid not being considered at all.



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## SECTION 1 – INSTRUCTIONS TO BIDDERS (ITB)

### A. GENERAL

#### 1 Scope of Bid

- 1.1 The Public Entity as defined<sup>1</sup> in Section 2 [**Bidding Data Sheet (BDS)**] also referred to herein as Employer invites bids for the construction of Works, as **described in the BDS** and Section 7 [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 this Bidding Document:
- (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; and
  - (c) “day” means calendar day unless otherwise stated.

#### 2 Source of Funds

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

#### 3 Public Entities Related to Bidding Documents and to Application for Review

- 3.1 The Public Entities related to these bidding documents are the Public Entity, acting as procurement entity (Employer), 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 address of the Review Panel is:

The Chairperson: Review Panel  
Ministry of Finance  
Private Bag 13295  
WINDHOEK  
Namibia

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<sup>1</sup> See GCC Clause 1 under Section 6 [General Conditions of Contract].



#### 4 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 Bidding Document:

- (a) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party<sup>2</sup>;
  - (b) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party<sup>3</sup> to obtain a financial or other benefit or to avoid an obligation;
  - (c) “collusive practice” is an arrangement between two or more parties<sup>4</sup> designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - (d) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party<sup>5</sup> or the property of the party to influence improperly the actions of a party; and
  - (e) “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 Sections 67 and 68 of the Public Procurement Act, 2015 which can be consulted on the website of the Public Procurement Portal (PPU): <https://mof.gov.na/PPU>.

#### 5 Eligible Bidders

- 5.1 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.

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<sup>2</sup> “Another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes Purchaser’s staff and employees of other organizations taking or reviewing procurement decisions.

<sup>3</sup> “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

<sup>4</sup> “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, noncompetitive levels.

<sup>5</sup> “Party” refers to a participant in the procurement process or contract execution.



- 5.2 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:
- (a) they have a controlling partner in common; or
  - (b) they receive or have received any direct or indirect subsidy from any of them; or
  - (c) they have the same legal representative for purposes of this bid; or
  - (d) 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
  - (e) 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
  - (f) 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
  - (g) a Bidder, or any of its affiliates has been hired (or is proposed to be hired) by the Employer as Engineer for the contract.
- 5.3 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. 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.
- 5.4 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.

## 6 Qualifications of Bidders

- 6.1 All bidders shall provide in Section 3 [Evaluation Criteria], a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 6.2 Bidders shall include the information and documents listed hereunder with their bids, unless otherwise **stated in the BDS**. The non-submission of these 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 5 years;
  - (c) experience in works of a similar nature and size for each of the last 5 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 3 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 5 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.

6.3 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% complete);
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the BDS;
- (d) a Contract Manager with 5 years' experience in works of an equivalent nature and volume, including no less than 3 years as Contract 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**.

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 THE BIDDING DOCUMENT**

### **7 Sections of the Bidding Document**

7.1 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 1: Instructions to Bidders (ITB)
- Section 2: Bidding Data Sheet (BDS)
- Section 3: Evaluation Criteria
- Section 4: Bidding Forms
- Section 5: Employer's Requirements
- Section 6: General Conditions of Contract (GCC)
- Section 7: Special Conditions of Contract (SCC)
- Section 8: Contract Forms

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



## **8 Clarification of the Bidding Document**

- 8.1 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.

## **9 Site Visit/Pre-Bid Meeting**

- 9.1 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.
- 9.2 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.

## **C. PREPARATION OF BIDS**

### **10 Amendment of Bidding Document**

- 10.1 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.

### **11 Cost of Bidding**

- 11.1 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.

### **12 Language of Bid**

- 12.1 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.

### **13 Documents Comprising the Bid**

- 13.1 The Bid shall comprise the following:
- (a) Bid Submission Form (in the format indicated in Section 4 [Bidding Forms]);
  - (b) Qualification information and documentary evidence establishing the Bidder's qualifications to perform the contract;
  - (c) Completed Bill of Quantities; and
  - (d) The following mandatory documentary evidence is required:



- (i) have a valid company Registration Certificate;
- (ii) have an original valid good Standing Tax Certificate;
- (iii) have an original valid good Standing Social Security Certificate;
- (iv) have a valid certified copy of Affirmative Action Compliance Certificate, 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;
- (v) have a certificate indicating SME Status (for Bids reserved for SMEs); and
- (vi) 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.

#### **14 Bid Submission Form and Schedules**

- 14.1 The Bid Submission Form, Schedules, and all documents listed under ITB 13.1 shall be prepared using the relevant forms, if so provided.

#### **15 Alternative Proposals**

- 15.1 Alternative Technical Proposals and completion dates if allowed shall be indicated in Section 5 [Project Specifications]. The evaluation methodologies for their consideration shall be given in Section 3 [Evaluation Criteria].

#### **16 Bid Prices and Discounts**

- 16.1 The Contract shall be for the whole Works, as described in ITB 1.1, based on the priced Bill of Quantities submitted by the Bidder.
- 16.2 Bidders shall fill in rates and prices for all items of the Works described in the Bill of Quantities. 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.
- 16.3 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.
- 16.4 The price to be quoted in the Bid Submission Form shall be the total price of bid after any discount offered. The discount if any and the conditions of its application shall be indicated separately.

#### **17 Currencies of Bid and Payments**

- 17.1 The bid price and rates shall be in Namibian Dollars and fixed for the duration of the contract unless otherwise **specified in the BDS**.
- 17.2 Unless otherwise **specified in BDS** interim payment for Plant and Material on site is applicable as per Subclause 39.7 of the GCC.



## 18 Documents Comprising the Technical Proposal

- 18.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section 3 [*Evaluation Criteria*] and Section 4 [*Bidding Forms*], in sufficient details to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.

## 19 Period of Validity of Bids

- 19.1 Bids shall remain valid for a period **specified in the BDS**. The bid validity period should not exceed 180 days.
- 19.2 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.

## 20 Bid Securing Declaration

- 20.1 The Bidder shall furnish either a subscription to a Bid Securing Declaration in its original form with its bid as part of its bid, if so **required in the BDS**.
- 20.2 Any bid not accompanied by a subscription to a Bid Securing Declaration, if required in accordance with ITB 20.1, shall be rejected by the Employer as non-responsive.
- 20.3 The Bid Securing Declaration shall be exercised for non-compliance on the part of the Bidder for reasons mentioned in the Bid Securing Declaration.

## 21 Format and Signing of Bid

- 21.1 The Bidder shall prepare 1 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.
- 21.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorised to sign on behalf of the Bidder.

## D. SUBMISSION AND OPENING OF BIDS

### 22 Sealing and Marking of Bids

- 22.1 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 22.2.

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.

### **23 Deadline for Submission of Bids**

23.1 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.

### **24 Late Bids**

24.1 Late bids shall not be considered. They will be returned unopened.

### **25 Withdrawal, Substitution and Modification of Bids**

25.1 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.

### **26 Bid Opening**

26.1 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.

26.2 The Bidders' names, their 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.

## **E. EVALUATION AND COMPARISON OF BIDS**

### **27 Confidentiality**

27.1 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.

27.2 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.



## **28 Clarification of Bids**

28.1 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.

## **29 Determination of Responsiveness**

29.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 13.

29.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission.

29.3 The Employer shall examine the technical aspects of the bid submitted in accordance with ITB 18, in particular, to confirm that all requirements of Section 5 (Project Specifications) have been met without any material deviation, reservation or omission.

29.4 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.

## **30 Nonconformities, Errors, and Omissions**

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.

## **31 Correction of Arithmetical Errors**

31.1 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.



### **32 Margin of Preference**

32.1 Unless otherwise **specified in the BDS**, margin of preference shall not apply.

### **33 Evaluation of Bids**

33.1 The Employer shall use the criteria and methodology defined in this clause and no other evaluation criteria or methodologies shall be permitted.

33.2 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 3 [Evaluation Criteria], and Margin of Preference, if applicable.

33.3 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 3 [Evaluation Criteria].

33.4 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 Bill of Quantities 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.

### **34 Comparison of Bids**

34.1 The Employer shall compare all substantially responsive bids in accordance with ITB 33 to determine the lowest evaluated bid.

### **35 Qualification of the Bidder**

35.1 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.

### **36 Employer's Right to Accept Any Bid and to Reject Any or All Bids**

36.1 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.



**F. AWARD OF CONTRACT**

**37 Award Criteria**

37.1 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.

**38 Notification of Award**

38.1 Prior to the expiration of the period of bid validity, the Employer shall, for contract amounts above the prescribed threshold of N\$ 2 million, 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 7 days from the issue of notification of award, the Employer shall publish on the Public Procurement Portal (<https://mof.gov.na/PPU>) and the Employer's website, the results of the bidding process identifying the bid and lot numbers and the following information:

- (a) name of the successful Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded; and
- (b) an executive summary of the Bid Evaluation Report.

38.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

**39 Signing of Contract**

39.1 Promptly upon issue of notification of award, the Employer shall send to the successful Bidder the Contract Agreement.

39.2 Within 30 days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.

**40 Performance Security**

40.1 Within 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 8 [Contract Forms].

40.2 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.





**41 Advance Payment and Security**

41.1 The Employer 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 8 [Contract Forms].

**42 Plant and Materials on Site**

42.1 Unless otherwise **specified in BDS** interim payment for Plant and Material on site is applicable as per Sub-Clause 39.7 of the GCC.

**43 Debriefing**

43.1 The Employer 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 2 – BIDDING DATA SHEET (BDS)

This Bidding Data Sheet (BDS) contains amendments and additions to the Information to Bidders (ITB). Where there is a conflict, the provisions herein shall prevail over those in ITB.

ITB REFERENCE	DESCRIPTION
<b>ITB 1.1</b> <b>Name of Public Entity</b> <b>Description of Works</b>	The Public Entity is Municipality of Walvis Bay. The Works are <b>CONSTRUCTION OF TRADING STALLS AT EKUTU INFORMAL TRADING AREA (PHASE 2).</b>
<b>ITB 1.2</b> <b>Intended Completion Period</b>	The intended completion period is 6 months after the Start Date, including the annual builders' holiday during December/January (maximum 28 days per annum) and all other statutory holidays.
<b>ITB 1.3(a)</b> <b>Written Communication</b>	The term "in writing" means communicated in written form (e.g. by post, courier or e-mail) with proof of receipt.
<b>ITB 5.1</b> <b>Eligible Bidders</b>	Bids submitted by joint ventures (JVs) must be accompanied by a valid document signed by Authorised Signatories from all parties to the JV, stating the name of the Authorised Representative of the JV and confirming their intent to constitute a new legally enforceable JV, or the constitution of an existing legally enforceable JV. Each company in the JV must submit the mandatory documents as set in ITB. 13.1(e)
<b>ITB 5.3</b> <b>Bidders under Debarment/ Suspension</b>	The list of entities under debarment/suspension is available on the eProcurement Portal of the Public Procurement Unit (PPU): <a href="https://egp2.gov.na/forms/SearchSuspendedBidders.jsf">https://egp2.gov.na/forms/SearchSuspendedBidders.jsf</a> .
<b>ITB 6.1</b> <b>Work Method and Schedule</b>	N/A
<b>ITB 6.2</b> <b>Qualification of Bidders</b>	it is not mandatory for Bidders to submit the following information/documents with their bids: <ul style="list-style-type: none"><li>• total monetary value of construction works performed for each of the last 5 years;</li><li>• report on the financial standing of the Bidder for the last 3 years, such as certified copies of Financial Statements/Audited Accounts as filed at the Registrar of Companies;</li><li>• authority to seek references from the Bidder's bankers;</li><li>• information regarding any litigation, current or during the last 5 years, in which the Bidder was/is involved, the parties concerned, the issues involved, the disputed amounts, and awards; and</li><li>• proposals for subcontracting components of the Works amounting to more than 10% of the Contract Price.</li></ul>
<b>ITB 6.2(d)</b> <b>Construction Equipment</b>	The following construction plant and equipment are considered essential for the successful execution of the works under the contract: <ul style="list-style-type: none"><li>• 1 x LDV/bakkie</li><li>• 1 x 5-ton truck</li></ul>



ITB REFERENCE	DESCRIPTION
	<ul style="list-style-type: none"> <li>• Storage container(s), concrete mixers, compactors, scaffolding, etc.</li> </ul>
<p><b>ITB 6.2(e)</b>  <b>Key Site Personnel</b></p>	<p>The following key personnel, with the indicated minimum years of experience in construction of new bitumen surfaced roads and/or the upgrading or rehabilitation of existing ones, are considered essential for the successful execution of the works under the Contract:</p> <p>(a) <u>Contract Manager</u></p> <ul style="list-style-type: none"> <li>• Must have minimum experience of 5 years in building construction (<u>mandatory requirement</u>).</li> <li>• Must ensure that all materials are ordered on time.</li> <li>• Must have a good understanding of contract administration and ensure that the project is run accordingly.</li> <li>• Must be the official correspondent between the Contractor and the Project Manager.</li> </ul> <p>(b) <u>Site Manager</u></p> <ul style="list-style-type: none"> <li>• Must have minimum experience of 5 years in building construction (<u>mandatory requirement</u>).</li> <li>• Must be on site at all times during working hours over the duration of the project.</li> <li>• Must be able to plan ahead for material ordering, and control staff coordination.</li> <li>• Must supervise Sub-Contractors and monitor their work.</li> <li>• Must be able to read plans, understand construction methods and follow the approved construction program.</li> </ul> <p>(c) <u>Electrician</u></p> <ul style="list-style-type: none"> <li>• Must have minimum experience of 5 years in electrical wiring (<u>mandatory requirement</u>).</li> <li>• Must possess at least an electrical trade diploma (<u>mandatory requirement</u>).</li> <li>• Must be registered with Erongo RED (<u>mandatory requirement</u>).</li> </ul>
<p><b>ITB 6.2(g)</b>  <b>Working Capital</b></p>	<p>It is mandatory for Bidders to submit with their bids <b>written confirmation of access to adequate working capital (cash or an existing credit facility) equivalent to at least 10% of the Bid Brice (excl. VAT)</b>, provided by a financial institution registered with Bank of Namibia (BON) or Namibia Financial Institutions Supervisory Authority (NAMFISA).</p>
<p><b>ITB 6.2(j)</b>  <b>Subcontracting a Portion of the Works</b></p>	<p>Only the electrical portion of the Works may be subcontracted.</p>
<p><b>ITB 6.3</b>  <b>Minimum Qualifying Criteria</b></p>	<p>N/A</p>



ITB REFERENCE	DESCRIPTION
<b>ITB 7.1</b> <b>Volumes/Sections of the Bidding Document</b>	<p>This Bidding Document consists of all the sections indicated below and should be read in conjunction with any addenda issued in accordance with ITB 10:</p> <ul style="list-style-type: none"><li>• Section 1: – Instructions to Bidders (ITB)</li><li>• Section 2 – Bidding Data Sheet (BDS)</li><li>• Section 3 – Bidding Forms</li><li>• Section 4 – Evaluation Criteria</li><li>• Section 5 – Project Specifications</li><li>• Section 6 – Drawings</li><li>• Section 7 – Bill of Quantities</li><li>• Section 8 – General Conditions of Contract (GCC)</li><li>• Section 9 – Special Conditions of Contract (SCC)</li><li>• Section 10 – Contract Forms</li></ul>
<b>ITB 8.1</b> <b>Clarifications</b>	<p>Administrative and technical requests for clarification must be emailed to <a href="mailto:pmunit@walvisbaycc.org.na">pmunit@walvisbaycc.org.na</a> and <a href="mailto:jlanders@walvisbaycc.org.na">jlanders@walvisbaycc.org.na</a> respectively, no later than 18 November 2024.</p>
<b>ITB 9.2</b> <b>Pre-Bid Meeting</b>	<p>A non-compulsory pre-bid meeting is scheduled for <b>18 November 2024</b> at Municipality of Walvis Bay, Dolphin Conference Room at 10am.</p>
<b>ITB 13.1(e)</b> <b>Mandatory Documentary Evidence</b>	<p>The following mandatory documentary evidence is required:</p> <ul style="list-style-type: none"><li>(a) Certified copies of a valid company/close corporation registration documents, issued by Business and Intellectual Property Namibia (BIPA).</li><li>(b) Original or Certified copy of a valid tax good standing certificate, issued by Namibia Revenue Agency (NamRA).</li><li>(c) Original or Certified copy of a valid social security good standing certificate, issued by the Social Security Commission of Namibia (SSC), dated not older than 3 months before the deadline for the submission of bids.</li><li>(d) Certified copy of a valid Affirmative Action Compliance Certificate, proof from Employment Equity Commissioner that bidder is not a relevant employer, or exemption issued by the Office of the Employment Equity Commissioner.</li><li>(e) A written undertaking as contemplated in section 138(2) of the Labour Act, 2007 (only use the pages provided in this document, no substitution will be accepted).</li></ul>
<b>ITB 19.1</b> <b>Bid Validity Period</b>	<p>Bids must be valid for 150 days after the deadline set for the submission of bids.</p>
<b>ITB 20.1</b> <b>Bid Securing Declaration</b>	<p>Subscription to a Bid Securing Declaration in the original form provided under Section 3 [<i>Bidding Forms</i>] is mandatory.</p>
<b>ITB 21.1</b> <b>Copies of Bidding Document</b>	<p>Bidders are only required to submit the completed original bidding document. Bidders are however encouraged to keep a copy of their submitted bidding document.</p>



ITB REFERENCE	DESCRIPTION
<b>ITB 21.2</b> <b>Completion and Signing of Bids</b>	The bidding document must be typed or written in indelible ink and signed by the Bidder's Authorised Signatory where a signature is required.
<b>ITB 23.1</b> <b>Submission of Bids</b>	The deadline for submission of bids is <b>6 December 2024 at 11am</b> . Sealed Bids must be deposited in the Bid Box located in the foyer of the Civic Centre, Nangolo Mbumba Drive, WALVIS BAY, not later than 11h00 on the date set as the deadline for submission of bids. Bids by post, courier or hand delivered should reach the Procurement Management Unit (PMU), Civic Centre, Nangolo Mbumba Drive, WALVIS BAY, not later than 10h00 on the date set as the deadline of submission of bids. Bids submitted electronically will not be accepted.
<b>ITB 26.1</b> <b>Opening of Bids</b>	The bid opening shall take place in the <b>Fiscus Board Room</b> , Civic Centre, Nangolo Mbumba Drive, WALVIS BAY on <b>6 December 2024 at 11h00</b> .
<b>ITB 32.1</b> <b>Margin of Preference</b>	N/A
<b>ITB 33.1</b> <b>Evaluation of Bids</b>	<p>The procedure to be followed in the evaluation of bids is summarised below:</p> <ul style="list-style-type: none"><li>(a) Bids will be checked for compliance with all mandatory bidding requirements. Bids which do not comply with a single mandatory requirement will be rejected as non-responsive.</li><li>(b) All remaining bids will undergo a technical evaluation, where all bids which fail to obtain a Technical Score (T<sub>s</sub>) of at least 60 points will be rejected as non-responsive.</li><li>(c) All remaining bids will be checked for arithmetic errors and the necessary corrections made.</li><li>(d) The corrected bid prices will be compared with the construction cost estimate and all bids with bid prices which are 15% lower or higher than the cost estimate will be rejected as non-responsive.</li><li>(e) Tendered rates will be compared with current market rates to determine if they are realistic and justifiable. Rates which are deemed unrealistically too low or too high may result in the bid being rejected as non-responsive.</li><li>(f) All remaining bids will be evaluated further to determine the Price Score (P<sub>s</sub>), using the formula <math>P_s = (P_L / P_N) \times 100</math>, where:<ul style="list-style-type: none"><li>(i) <i>P<sub>L</sub></i> is the lowest bid price; and</li><li>(ii) <i>P<sub>N</sub></i> is the bid price under consideration.</li></ul></li><li>(g) The T<sub>s</sub> and P<sub>s</sub> for each bid will then be used to calculate the Bid Index (I<sub>B</sub>), using the formula <math>I_B = (70\% \times T_s) + (30\% \times P_s)</math>, where:<ul style="list-style-type: none"><li>(i) <i>T<sub>s</sub></i> is the Technical Score for the bid under consideration; and</li><li>(ii) <i>P<sub>s</sub></i> is the Price Score for the bid under consideration.</li></ul></li></ul>



ITB REFERENCE	DESCRIPTION
	<p>(h) Bids where the total for Section 1 of the Bill of Quantities is more than 10% of the Bid Price (excl, 15% VAT) will be rejected as non-responsive.</p> <p>(i) The bid with the highest Bid Index (I<sub>B</sub>) is the lowest substantially responsive bid and will be recommended for award.</p> <p>(j) A minimum Bid Index (I<sub>B</sub>) of 70 points is required for a Bidder to be considered for award.</p>
<b>ITB 40</b> <b>Performance Security</b>	<p>The Contractor shall obtain at his own cost a Performance Security for the Works, in the amount equivalent to 10% percent of the Contract Price (inclusive of provisional sums, contingencies and VAT).</p> <p>The Contractor shall deliver the Performance Security in its original form to the Employer within 30 days after receiving the Letter of Award and shall send a copy to the Project Manager. The Performance Security shall be issued by a commercial bank operating within the Republic of Namibia and registered with the Bank of Namibia (BON) and shall be in the format provided under Section 9 [<i>Contract Forms</i>]. Any proposed changes to this format must be approved by the Employer. No amount will be certified or paid until the Project Manager has received and approved the Performance Security.</p> <p>The Employer will not make any payments to the Contractor under this Contract until a Performance Security is submitted to the Employer as described in the preceding paragraph.</p> <p>The Contractor shall ensure that the Performance Security is valid and enforceable until he has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Defects Liability Certificate by the date 30 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects remedied.</p> <p>The Employer shall not make a claim to the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:</p> <p>(a) failure by the Contractor to extend the validity of the Performance Security as described in the preceding paragraph, in which event the Employer may claim the full amount of the Performance Security;</p> <p>(b) failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or determined under any claims and payments due to the Employer, within 30 days after this agreement or determination;</p>



ITB REFERENCE	DESCRIPTION
	<p>(c) failure by the Contractor to remedy a default within 30 days after receiving the Employer's notice requiring the default to be remedied; or</p> <p>(d) circumstances which entitle the Employer to termination under Clause 57 [<i>Termination</i>], irrespective of whether notice of termination has been given.</p> <p>The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses resulting from a claim under the Performance Guarantee to the extent to which the Employer was not entitled to make the claim. The Employer shall return the Performance Security to the Contractor within 30 days after receiving a copy of the Defects Liability Certificate.</p>
<b>ITB 41.1 Advance Payments</b>	N/A
<b>ITB 42.1 Payments for Plant and Material on Site</b>	<p>No interim payment shall apply for Plant on Site. Interim payments for Material on Site shall however apply. Only 80% of the value of the purchased material will be paid by the Employer, provided the following information is submitted with the payment certificate:</p> <ul style="list-style-type: none"><li>• Invoices issued by suppliers.</li><li>• Proof of payments to suppliers.</li><li>• Delivery notes from suppliers confirming that materials have been delivered to site.</li><li>• The amount claimed for Material on Site shall be subject to a reduction for retention at the rate stated in Subclause 45.1 of the GCC.</li></ul>



## SECTION 3 – BIDDING FORMS

This section contains the forms listed hereunder, which are to be completed by the Bidder and submitted as part of the bid:

- Form 1: Bid Submission Form
- Form 2: Bid Securing Declaration (Section 45 and Regulation 37 of the Public Procurement Act, 2015)
- Form 3: Written Undertaking (Section 138 of the Labour Act, 2007 and Section 50 of the Public Procurement Act, 2015)
- Form 4: Projects Completed Since 2018
- Form 5: Key Personnel
- Form 6: Vehicles and Plant





## FORM 1: BID SUBMISSION FORM

BID NO. W/ONB/MWB-101/2025

The Chief Executive Officer  
Municipality of Walvis Bay  
Private Bag 5017  
WALVIS BAY

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 for **UPGRADING OF EKUTU COMMUNITY MARKET (PHASE 2)**.
- (c) The total price of our bid after discounts, if any, offered in item (d) below is:  
  
N\$ \_\_\_\_\_
- (d) The discounts offered is:  
  
N\$ \_\_\_\_\_
- (e) Our bid shall be valid for a period of one-hundred-and-twenty (120) 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) We do not have any conflict of interest in accordance with ITB 5.2;
- (h) We are not participating, as a Bidder in more than 1 bid in this bidding process other than alternative offers submitted in accordance with ITB 15;
- (i) 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;
- (j) We are not a government owned entity / We are a government owned entity but meet the requirements of ITB 5.4;<sup>6</sup>

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<sup>6</sup> Use one of the two (2) options as appropriate.



- (k) 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;
- (l) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive; and

**Name:**

\_\_\_\_\_ *[insert name of Authorised Signatory]*

**In the capacity of:**

\_\_\_\_\_ *[indicate legal capacity of Authorised Signatory]*

**Signed:**

\_\_\_\_\_ *[insert signature of Authorised Signatory]*

**Duly authorised to sign the  
Bid for and on behalf of:**

\_\_\_\_\_ *[insert complete name of Bidder]*

Completed and signed on this \_\_\_\_\_ day of \_\_\_\_\_ 2024

**THE BID WILL BE REJECTED AS NON-RESPONSIVE IF THIS BID SUBMISSION FORM IS NOT FULLY COMPLETED AND SIGNED. SUBSTITUTION OF THIS BID SUBMISSION FORM WILL ALSO RESULT IN THE BID BEING REJECTED AS NON-RESPONSIVE.**



**FORM 2: BID SECURING DECLARATION**  
Section 45 and Regulation 37 of the Public Procurement Act, 2015

The Chief Executive Officer  
Municipality of Walvis Bay  
Private Bag 5017  
WALVIS BAY

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.

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

**Name:**

\_\_\_\_\_  
*[insert complete name of Authorised Signatory]*

**In the capacity of:**

\_\_\_\_\_  
*[indicate legal capacity of Authorised Signatory]*

**Signed:**

\_\_\_\_\_  
*[insert signature of Authorised Signatory]*

**Duly authorised to sign the  
Bid for and on behalf of:**

\_\_\_\_\_  
*[insert complete name of Bidder]*

Completed and signed on this \_\_\_\_\_ day of \_\_\_\_\_ 2024

**THE BID WILL BE REJECTED AS NON-RESPONSIVE IF THIS BID SECURING DECLARATION IS NOT FULLY COMPELETED AND SIGNED. SUBSTITUTION OF THIS BID SECURING DECLARATION WILL ALSO RESULT IN THE BID BEING REJECTED AS NON-RESPONSIVE.**

**FORM 3: WRITTEN UNDERTAKING**  
 Section 138 of the Labour Act, 2007 and Section 50 of the Public Procurement Act, 2015



**Republic of Namibia**  
**Ministry of Labour, Industrial Relations and Employment Creation**

**1. EMPLOYERS DETAILS**

<b>Company Trade Name:</b>	
<b>Registration Number:</b>	
<b>VAT Number:</b>	
<b>Industry/Sector:</b>	
<b>Place of Business:</b>	
<b>Physical Address:</b>	
<b>Telephone No.:</b>	
<b>Fax No.:</b>	
<b>Email Address:</b>	
<b>Postal Address:</b>	
<b>Full Name of Owner/ Accounting Officer:</b>	
<b>Email Address:</b>	

**2. PROCUREMENT DETAILS**

**Procurement Reference No.:** W/ONB/MWB-101/2025

**Procurement Description:** Construction of trading stalls at Ekutu Informal trading area (Phase 2)

**Anticipated Contract Duration:** 6 Months

**Location Where the Works Will Be Done:** Erf 5825 Khomas Hochland Street, Kuisebmond

**3. UNDERTAKING**

I, \_\_\_\_\_, *[name of owner/representative]*

of \_\_\_\_\_ *[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 is not limited to, the cancellation of the contract/license/grant/permit or concession.

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 is not limited to, the cancellation of the contract/license/grant/permit or concession.

**Signature:** \_\_\_\_\_

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

**Official Company 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.*

**THE BID WILL BE REJECTED AS NON-RESPONSIVE IF THIS WRITTEN UNDERTAKING IS NOT FULLY COMPLETED AND SIGNED. SUBSTITUTION OF THIS WRITTEN UNDERTAKING WILL ALSO RESULT IN THE BID BEING REJECTED AS NON-RESPONSIVE.**



**FORM 4: PROJECTS COMPLETED SINCE 2018**

CONTRACT/PROJECT NAME	CLIENT NAME AND REFERENCES	CONTRACT AMOUNT (N\$)

***NO POINTS WILL BE SCORED IF COMPLETION OR DEFECTS LIABILITY CERTIFICATES FOR THE LISTED PROJECT ARE NOT SUBMITTED WITH THE BID. ADDITIONALLY NO POINTS WILL BE GIVE IF BIDDERS FAIL TO PROVIDE NAMES AND CONTACT DETAILS OF CONTACTABLE CLIENT REFERENCES.***



## FORM 5: KEY PERSONNEL

POSITION	NAME AND SURNAME	YEARS OF EXPERIENCE
Contract Manager		
Site Manager		
Electrician		

***NO POINTS WILL BE SCORED WHERE CVs AND/OR PROOF OF QUALIFICATIONS ARE NOT SUBMITTED WITH THE BID.***





**SECTION 4 – EVALUATION CRITERIA**

**A. EVALUATION PROCEDURE**

1. Bids will be checked for compliance with all mandatory bidding requirements. Bids which do not comply with a single mandatory requirement will be rejected as non-responsive.
2. All remaining bids will undergo a technical evaluation, where all bids which fail to obtain a Technical Score (TS) of at least 60 points will be rejected as non-responsive.
3. All remaining bids will be checked for arithmetic errors and the necessary corrections made.
4. The corrected bid prices will be compared with the construction cost estimate and all bids with bid prices which are 15% lower or higher than the cost estimate will be rejected as non-responsive.
5. Tendered rates will be compared with current market rates to determine if they are realistic and justifiable. Rates which are deemed unrealistically too low or too high may result in the bid being rejected as non-responsive.
6. All remaining bids will be evaluated further to determine the Price Score (PS), using the formula  $PS = (PL / PN) \times 100$ , where:
  - (i)  $P_L$  is the lowest bid price; and
  - (ii)  $P_N$  is the bid price under consideration.
7. The TS and PS for each bid will then be used to calculate the Bid Index (IB), using the formula  $IB = (70\% \times T_s) + (30\% \times P_s)$ , where:
  - (i)  $T_s$  is the Technical Score for the bid under consideration; and
  - (ii)  $P_s$  is the Price Score for the bid under consideration.
8. Bids where the total for Section 1 of the Bill of Quantities more than 10% of the Bid Price (excl. VAT) will be rejected as non-responsive.
9. The bid with the highest Bid Index ( $I_B$ ) is the lowest substantially responsive bid and will be recommended for award.
10. A minimum Bid Index ( $I_B$ ) of 70 points is required for a Bidder to be considered for award.

**B. MANDATORY BIDDING REQUIREMENTS**

A checklist of the mandatory requirements is provided under **Table 1** to assist the Bidder in preparing his bid.

**Table 1: Mandatory Requirements Checklist**

No.	Mandatory Requirement and Reference	Yes / No / N/A
1	If JV, valid document signed by Authorised Signatories from all parties to the JV, stating the name of the Authorised Representative of the JV and confirming their intent to constitute a new legally enforceable JV, or the constitution of an existing legally enforceable JV.	
2	Bidder not under debarment/suspension.	
3	Written confirmation of access to adequate working capital (cash or an existing credit facility) equivalent to at least 10% of the Bid Price (excl. VAT),	

No.	Mandatory Requirement and Reference	Yes / No / N/A
	provided by a financial institution registered with Bank of Namibia (BON) or Namibia Financial Institutions Supervisory Authority (NAMFISA).	
4	Original or certified copies of a valid company/close corporation registration document(s), issued by Business and Intellectual Property Namibia (BIPA).	
5	Original or certified copy of a valid tax good standing certificate, issued by Namibia Revenue Agency (NamRA).	
6	Original or certified copy of a valid social security good standing certificate, issued by the Social Security Commission of Namibia (SSC).	
7	Original or certified copy of a valid Affirmative Action Compliance Certificate, proof from Employment Equity Commissioner that bidder is not a relevant employer, or exemption issued by the Office of the Employment Equity Commissioner.	
8	Fully completed and signed Form 1 [ <i>Bid Submission Form</i> ].	
9	Fully completed and signed Form 2 [ <i>Bid Securing Declaration</i> ].	
10	Fully completed and signed Form 3 [ <i>Written Undertaking</i> ].	
11	Fully completed Bill of Quantities (BOQ).	
12	Total for Section 1 of the BOQ not exceeding 10% of the total Bid Price (excl. VAT).	

**C. TECHNICAL EVALUATION CRITERIA**

The detailed criterion for technical evaluation is set out in **Table 2**.

**Table 2: Technical Evaluation Criteria**

Evaluation Criteria	Maximum Points
<b>Experience of Bidder</b>	<b>15</b>
<p>Experience in building construction, with individual projects successfully completed since 2018 where the Bidder was the Main Contractor. A maximum of 3 projects will be scored.</p> <ul style="list-style-type: none"> <li>Contract value <math>\geq</math> N\$ 2.0 million (<u>5 points</u>)</li> <li>N\$ 1.0 million <math>\geq</math> Contract value <math>&lt;</math> N\$ 2.0 million (<u>3 points</u>)</li> <li>N\$ 0.5 million <math>\geq</math> Contract value <math>&lt;</math> N\$ 1.0 million (<u>2 points</u>)</li> <li>Contract value <math>&lt;</math> N\$ 0.5 million (<u>no points</u>)</li> </ul> <p>Bidders must list the completed projects and provide names and contact details of Client or Project Manager references in the form provided under Section 4 [<i>Bidding Forms</i>]. Certified copies of valid Completion or Defects Liability Certificates for the listed projects must be attached for scoring purposes. The Employer may contact the references during the evaluation of bids.</p>	
<b>Experience of Key Personnel</b>	<b>50</b>
<p>No single individual may be proposed for more than 1 position. CVs indicating previous relevant experience, and the individuals' contact numbers and email addresses must be submitted for evaluation purposes. The Employer reserves the right to contact the individuals during evaluation. Bidders who fail to submit CVs will not obtain a score for the specific position a CV is not provided</p>	
(a) <u>Contract Manager</u>	25



Evaluation Criteria	Maximum Points
<ul style="list-style-type: none"> <li>• Must have minimum experience of 5 years in building construction (<u>mandatory requirement</u>).</li> <li>• Diploma in Civil Engineering/Building/Quantity Surveying (<u>10 points</u>)</li> <li>• Experience in building construction:               <ul style="list-style-type: none"> <li>➢ Experience ≥ 10 years (<u>15 points</u>);</li> <li>➢ 7 years ≥ Experience &lt; 10 years (<u>7 points</u>);</li> <li>➢ 5 years ≥ Experience &lt; 7 years (<u>3 points</u>);</li> <li>➢ Experience &lt; 5 years (<u>no points</u>).</li> </ul> </li> </ul>	
(b) <u>Site Manager</u> <ul style="list-style-type: none"> <li>• Must have minimum experience of 5 years in building construction (<u>mandatory requirement</u>).</li> <li>• Experience in building construction:               <ul style="list-style-type: none"> <li>➢ Experience ≥ 10 years (<u>15 points</u>);</li> <li>➢ 7 years ≥ Experience &lt; 10 years (<u>10 points</u>);</li> <li>➢ 5 years ≥ Experience &lt; 7 years (<u>5 points</u>);</li> <li>➢ Experience &lt; 5 years (<u>no points</u>).</li> </ul> </li> </ul>	15
(c) <u>Electrician</u> <ul style="list-style-type: none"> <li>• Must have minimum experience of 5 years in electrical wiring (<u>mandatory requirement</u>).</li> <li>• Must possess at least an electrical trade diploma (<u>mandatory requirement</u>).</li> <li>• Must be registered with Erongo RED (<u>mandatory requirement</u>).</li> <li>• Experience in electrical wiring:               <ul style="list-style-type: none"> <li>➢ Experience ≥ 10 years (<u>10 points</u>);</li> <li>➢ 7 years ≥ Experience &lt; 10 years (<u>7 points</u>);</li> <li>➢ 5 years ≥ Experience &lt; 7 years (<u>3 points</u>);</li> <li>➢ Experience &lt; 5 years (no points).</li> </ul> </li> </ul>	10
<b>Vehicles/Plant/Equipment</b>	<b>25</b>
Bidders must provide proof of ownership of the following vehicle/plant/equipment by submitting certified copies of valid registration certificates in the name of the Bidder or their member(s), or a valid letter of undertaking/intent to lease. <ul style="list-style-type: none"> <li>• 1 x LDV/bakkie (<u>10 points</u>)</li> <li>• 1 x 5-ton truck (<u>10 points</u>)</li> <li>• 1 x TLB (<u>5 points</u>)</li> </ul>	
<b>Attendance of Pre-Bid Meeting</b>	<b>10</b>
Bidder must sign the attendance register provided at the pre-bid meeting to confirm attendance of such meeting.	
<b>TOTAL</b>	<b>100</b>



## SECTION 5 – PROJECT SPECIFICATIONS

### A. GENERAL DESCRIPTION OF THE WORKS

#### A1 The Site

The Site for the works is Erf 5825 Khomas Hochland Street in Kuisebmond.

#### A2 Scope of the Works

The works are comprised of the following:

- (a) Site establishment
- (b) Setting out of the works
- (c) Construction of foundations
- (d) Construction of concrete and brickwork superstructure elements
- (e) Demolition of empty ablution block
- (f) Demolition of part of boundary walls at 2 new entrances
- (g) Finishing works and installations (floor finishes, windows, doors, paintwork, etc.)
- (h) Provision of electrical installations
- (i) Provision of sewer and water reticulation installations
- (j) Installation of sliding gates
- (k) Installation of precast paving and layer works
- (l) Finishing off and handing over of works

All Works shall be done in accordance with the Architectural and Engineering Bidding Drawings provided. The Bills of Quantities (BOQ) provides the full specification of the Works and the quantities thereof. Upon appointment, the Contractor shall be issued with all Construction Drawings.

The Contractor should take note that the General Description of the Works serves to outline the extent of the works but does not limit the amount of work which may be required of the Contractor. Reference must be made to the Technical Specifications, Standard and Amended Specifications, the BOQ, and the Bidding Drawings for a more detailed description of the works.

### B. STANDARD SPECIFICATIONS

#### B1 General

The following documents form part of this contract documentation and shall be deemed to be included herewith:

- (a) The Model Preambles for Trades (2008 Edition), as approved and recommended by the Association of South African Quantity Surveyors (ASAQS).
- (b) The following codes in their entirety or specific sections thereof of the South African National Standards (SANS) will be applicable, and will supplement the Model Preambles for Trades (2008 Edition):



SANS 630	High Gloss Synthetic Enamel Paint (Alkyd Type)
SANS 633	PVA Paint (Interior)
SANS 634	PVA Paint (Exterior)
SANS 678	Primer for wood
SANS 679	Priming Paints for Metal
SANS 681	Undercoating SANS 1200 A General
SABS 794	Aggregates of low density
SANS 831	Portland Cement
SANS 952	Polyolefin film for damp- and waterproofing in buildings
SABS 1025	Concrete masonry units
SANS 1083	Aggregates from natural sources - Aggregates for concrete
SANS 1200 AA	General (Small Works)
SANS 1200 AB	Engineer's Office (referring to Project Manager's Office)
SANS 1200 C	Site Clearance
SANS 1200 D	Earthworks
SANS 1200 DB	Earthworks (Pipe Trenches)
SANS 1200 GA	Concrete (Small Works)
SANS 1200 LB	Bedding (Pipes)
SANS 1200 LD	Sewer
SANS 1783	Stress-graded softwood general structural timber
SANS 10142-1	The wiring of premises Part 1: Low-voltage installations
SANS 10904	Fibre-cement sheets (flat and profiled)
SANS 50197	Cement

## **B2 Equivalency of Standards and Codes**

Wherever reference is made in this contract to specific standards and codes to be met by the goods and materials to be furnished, and work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the contract.

Where such standards and codes are national, or relate to a particular country or region, other authoritative standards that ensure a substantially equal or higher quality than the standards and codes specified shall be accepted subject to the Project Manager's prior review and written consent.

Differences between the standards specified and the proposed alternative standards shall be fully described in writing by the Contractor and submitted to the Project Manager at least 30 days prior to the date when the Contractor desires the Project Manager's consent. In the event the Project Manager determines that such proposed deviations do not ensure substantially equal or higher quality, the Contractor shall comply with the standards specified in the documents.



### **B3 Regulations**

The following acts and regulations shall be applicable for the construction of the works under this contract:

- Labour Act, 1992 (Act 6 of 1992)
- Local Authorities Act, 1992 (Act 23 of 1992)
- SANS 10400 (The Application of the National Building Regulations)

### **C. TECHNICAL REQUIREMENTS**

#### **C1 Contractor's Site Camp**

The area to be used for the establishment of the site camp will be pointed out to the Contractor by the Project Manager on the day of the Site Handover Meeting.

All existing cables, pipelines, and any other services within or near the site camp shall be protected at the Contractor's expense to the satisfaction of the Project Manager.

The site camp shall be properly fenced off and have a swing gate, to the satisfaction of the Project Manager. A 5 metre firebreak shall be provided around the perimeter of the camp outside the fence line and shall be kept clean of rubbish and vegetation at all times. Debris generated from clearing the site camp and firebreak shall be removed and disposed to the municipal dump site.

No fireplace in the camp shall be located within 20 metres from the perimeter fence or from a fuel storage area, nor shall any open fire be permitted unless made in a drum of similar container.

No informal settlement shall be allowed to be established at or near the site camp.

The Contractor shall be responsible for the collection and removal of refuse from the site camp and working areas.

No domestic animals shall be allowed in the camp, and no undue interference with the free movement of animals and birds will be allowed.

#### **C2 Construction Programme**

The time for completion of the works shall be 3 months after the date of the site handover, unless agreed otherwise with the Project Manager.

The Contractor will be penalised an amount of N\$ 500.00 (excl. VAT) for every day the agreed completion date is delayed.

### **C3 Working Hours**

Normal working hours are between 7h00 and 18h00 on weekdays, and 7h00 to 13h00 on Saturdays. No work is permitted outside these hours and on public holidays without prior approval from the Project Manager.

### **C4 Site Supervision**

The Contractor shall have a competent Site Manager on site, who is fully conversant in English and in construction work and shall not make any changes to the approved key personnel without the approval of the Project Manager.

The Contractor must take note that the concrete works shall be done by an experienced concrete cast team.

### **C5 Site Conditions**

No geological survey was conducted on the Site. The nature of the ground is assumed to be loose sandy material, therefore "earth".

The Contractor must familiarise himself with all existing services on site and report them to the Project Manager so that mitigating action can be implemented.

No ground water is expected at the levels of excavation proposed for these works.

The above-mentioned information is a general guideline and will not relieve the Contractor of his responsibilities in terms of the General Conditions of Contract to satisfy himself with the site conditions.

### **C6 Occupation of the Site**

The site will be occupied during construction and the Contractor will have to work in co-operation with the Project Manager to co-ordinate market and construction ongoings in correspondence with the Works Programme. The works will have to be executed with the least possible inconvenience and disturbance to the normal day to day operations of the stadium.

### **C7 Service Connections**

The Contractor shall make his own arrangements for water, sewer and electricity required for the execution of the Works. The Bidder shall allow in the BOQ for the cost of all such arrangements.

Water, sewer and electricity required for the works may be taken from suitably situated supply points after obtaining prior approval from the Municipality of Walvis Bay and/or Erongo RED.

The provision of sewer and water reticulation installations shall only be performed by someone with a relevant plumbing trade certificate or equivalent.



All electrical installations shall strictly be performed by someone in possession of a Wireman's License, who must be registered with Erongo RED as an Electrician.

**C8 Ablution Facilities**

The Contractor shall provide and maintain adequate and proper ablution facilities for his site personnel. Latrines shall be effectively screened from view and maintained in a clean and sanitary condition. The Contractor shall make all the necessary arrangements for the regular removal and emptying of the ablution facilities at his own cost.

**C9 Safety and Security on Site**

It shall be the responsibility of the Contractor to control access to the site during construction to prevent entry by any unauthorised persons.

The Contractor will be responsible for the safety of his personnel and the site in general. All laws, rules, and regulations including the Health & Safety Regulations shall be strictly followed in this regard and all the necessary precautions and measures shall be taken to ensure the safety of personnel, the public, and equipment.

**C10 Disposal of Spoil and Surplus Material**

All costs related to the disposal of unwanted rubble and waste shall be deemed to be included in the tendered rates and no additional claims in this regard will be considered. Good quality surplus material obtained from on-site excavations and not used as selected fill upon instruction to do so must be removed from site.

Building rubble and domestic waste shall be removed from site and be dumped at approved municipal waste disposal sites. Burning of any kind of waste on site will not be allowed.

**C11 Quality Control and Testing**

It will be the full responsibility of the Contractor to undertake appropriate quality control and quality assurance measures on site.

Compaction tests on back fill materials to trenches shall be compulsory. The Bidder shall include in his rates the testing of compaction effort as specified in the particular specifications.

From time to time the Project Manager may require that samples of any of the materials used in the construction under this contract be submitted for testing purposes.

The submission or taking of samples for quality control, as required under the respective provisions of the standard specification, shall be deemed to be included in the price offered.





**C12 Clearing of Site on Completion of the Works**

Upon completion of the Works, the Contractor shall completely remove from Site all his plant, materials and storage containers and leave the Site in a tidy condition to the satisfaction of the Project Manager.

The work will not be accepted as complete if the any assets belonging to the Contractor are left in place, which will hamper the full and efficient working of any of the facilities completed under this contract.

**C13 Guarantees on Workmanship**

The Contractor will be required to guarantee all installations for a minimum 10 years and any specialist paint applications for a minimum 5 years.

**C14 General Safety on Site**

The Contractor shall provide, at his expense, all necessary Personal Protective Equipment (PPE) to his employees on site. These PPE shall consist of reflective waistcoats, overalls, protective goggles, gloves, hard hats, waterproof clothing, etc. as required and shall be worn at all times when in the working area. Where no adequate PPE is worn by employees on site as required, the Contractor will be penalised N\$ 2,000.00 (excl. VAT) per event.



## SECTION 6 – DRAWINGS

### A. GENERAL

The Drawings forming part of the bidding document are as listed below. These Drawings are however for costing and information purposes only and may be supplemented or amended during the execution of the Works.

It is the responsibility of the Bidder to familiarise themselves with all the Drawings, and no claim resulting from not being familiar with the Drawings at bidding stage will be considered. All Drawings are available for inspection by Bidders at the Employer's office during bidding stage.

The Contractor will be supplied with 2 complete sets of construction drawings, and shall thereafter, at his own cost, make further prints of the drawings required by him for the construction of the Works.

### B. LIST OF BIDDING DRAWINGS

DRAWING NO.	DESCRIPTION	SIZE
<b>CIVIL DRAWINGS</b>		
P-001	Site Layout (colour coded)	A3
P-101	Layout Plan & Elevations: Existing Stalls – Block 1	A3
P-102	Layout Plan & Elevations: Existing Stalls – Block 2	A3
P-103	Layout Plan & Elevations: Existing Stalls – Block 3	A3
P-201	Section A-A	A3
P-104	Wash Up – Plan	A4
DT-11	Wash Up – Basin Section	A3
DT-13	Wash Up – Wash Trough Section	A3
DT-16	Main Entrance 02 – Plan	A3
DT-18	Main Entrance 02 – Elevation & Detail	A3
DT-20	Entrance 04 – Plan	A3
DT-22	Entrance 04 – Elevation & Detail	A3
DT-26	Restaurant Kitchen Serving Hatch	A4
WS-01	Window Schedule – Type 1	A4
WS-02	Window Schedule – Type 2	A4
WS-03	Window Schedule – Type 3	A4
DS-02	Entrance 04 Gate	A4
DS-03	Main Entrance 02 Gate	A4
WML-57421-01	Site Sewer Plan	A3



## SECTION 7 – BILL OF QUANTITIES

### A. PREAMBLE TO BILL OF QUANTITIES

A1 For the purposes of this Bill of Quantities (BOQ), the following words and abbreviations shall have the meanings hereby assigned to them:

- (a) “Unit” is the unit of measurement for each item of work.
- (b) “Quantity” is the number of units of work for each item.
- (c) “Rate” the amount of payment per unit of work at which the Bidder bids to do the work.
- (d) “Amount” is the product of the quantity and the rate for an item.

A2 The quantities set out in the BOQ are subject to change.

A3 The Bidder shall fill in a rate or a lump sum for each item where this is provided for, even where no quantity is given.

A4 The rates and amounts to be inserted in the BOQ shall be fully inclusive for the works required for the different items as described, and shall cover the costs of all general risks, profits and taxes, but exclude Value Added Tax (VAT).

A5 Completed work will be measured for payment in accordance with the methods determined by the Project Manager. Except where otherwise specified, the nett measurements for completed work will be include in the payment certificate. Payment shall strictly be for work completed.

A6 The amount of work or the quantities of materials stated in the BOQ shall not restrict nor extend the amount of work to be done or the quantities of materials to be supplied by the Contractor.

A7 The quantities in the BOQ shall not be regarded as authorisation for the Contractor to order materials or to execute work. The Contractor shall obtain detailed instructions and/or construction drawings from the Project Manager for all work before ordering any materials or executing work in this regard.

A8 The rates and lump sums provided by the Bidder in the BoQ shall be final and binding for submitting the bid and may not be adjusted should there be any mistakes in the extensions thereof and in the total sums appearing in the bid.

A9 The units of measurement indicated in the BOQ are metric units.

A10 The following abbreviations may appear in the Bills of Quantities:

%	= percent	m <sup>3</sup>	= cubic metre
h	= hour	m <sup>3</sup> -km	= cubic metre-kilometre
km	= kilometre	No.	= number
km-pass	= kilometre-pass	P Sum	= provisional sum
m	= metre	t	= ton (1,000 kg)



m<sup>2</sup> = square metre

- A11 The Bidder is required to enter a rate or price against every item listed in the BOQ. Zero rates or prices and indications that compensation for an item is included elsewhere will not be accepted.
- A12 Total for Section 1 of the BOQ not exceeding than 10% of the total Bid Price.

## B. PROVISIONAL SUMS

Each Provisional Sum shall only be used in accordance with the Project Manager's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the project Manager shall have instructed.

For each Provisional Sum, the Project Manager may instruct:

- (a) work to be executed by the Contractor and valued under Clause 37 [*Variations*] of the General Conditions of Contract; and/or
- (b) Plant, Materials, or services to be purchased by the Contractor, from a nominated Subcontractor, and for which there shall be included in the Contract Price:
  - (i) the actual amounts paid (or due to be paid) by the Contractor; and
  - (ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate stated in the BOQ..

The Contractor shall, when required by the Project Manager, produce quotations, invoices, accounts, or receipts in substantiation.



## SECTION 8 – GENERAL CONDITIONS OF CONTRACT

### A. GENERAL

#### 1. Definitions

##### 1.1 Boldface type is used to identify defined terms:

- (a) “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) “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) “Adjudicator” is the single person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Clause 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 Clause 41.
- (f) “Completion Date” is the date of completion of the works as certified by the Project Manager, in accordance with Subclause 53.1.
- (g) “Contract” is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Subclause 2.3.
- (h) “Contractor” is the party whose Bid to carry out the Works has been accepted by the Employer.
- (i) “Contractor’s Bid” is the completed bidding document submitted by the Contractor to the Employer.
- (j) “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, and “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) “Defect” is any part of the works not completed in accordance with the Contract.
- (n) “Defects Liability Certificate” is the certificate issued by Project Manager upon correction of defects by the Contractor.
- (o) “Defects Liability Period” is the period **named in the SCC** pursuant to Subclause 33.1 and calculated from the Completion Date.
- (p) “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.
- (q) “Employer” is the party who employs the Contractor to carry out the Works, as **specified in the SCC**.
- (r) “Equipment” is the Contractor’s machinery and vehicles brought temporarily to the site to construct the works.
- (s) “In writing” or “written” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (t) “Initial Contract Price” is the Contract Price listed in the Employer’s Notification of award.

- (u) "Intended Completion Date" is the date on which it is intended that the Contractor shall complete the Works, as **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.
- (v) "Materials" are all supplies, including consumables, used by the Contractor for incorporation in the works.
- (w) "Party" means the Employer or the Contractor, as the context requires.
- (x) "Plant" is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (y) "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) "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) "Start Date" is the latest date when the Contractor shall commence execution of the Works, as **given in the SCC**. It does not necessarily coincide with any of the Site Possession Dates.
- (ee) "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) "Variation" is an instruction given by the Project Manager which varies the works.
- (hh) "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) Specifications;

- (g) Drawings;
- (h) Bill of Quantities, and
- (i) 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 GCC 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 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 7 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:

- (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 affect 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 Programme 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.

## 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 Programme for the Works all as per requirements, give possession of all parts of the Site to the Contractor within 30 days for execution of works in accordance with the Programme 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 authorised 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 Subcontractors 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 thirty (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 30 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 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. Programme

- 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 Programme 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 Programme shall be consistent with those in the Activity Schedule.
- 25.2 An update of the Programme shall be a Programme 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 Programme at intervals no longer than the period **stated in the SCC**. If the Contractor does not submit an updated Programme 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 Programme 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 Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Project Manager again at any time. A revised Programme 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 Clause 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.

- 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%, provided the change exceeds 1% 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%, 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 Programme 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 Programmes, 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 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 Subclause 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 Programme, 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 Subclause 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.
  - (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:
    - (i) reason of any exceptionally adverse weather conditions (as **specified in the SCC**); and
    - (ii) 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 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 coefficients specified in the SCC, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency "c"; and

$I_{mc}$  is the index prevailing at the end of the month being invoiced and  $I_{lc}$  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 Subclause 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 Subclause 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 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 (N\$). The Performance Security shall be valid until a date 30 days from the date of issue of the Completion Certificate 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 eighty (80) percent 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 million, 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 Namibia.

- (c) For contracts up to N\$ 5 million, 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 Clause 53.
- (e) The cost of providing the security shall be borne by the Contractor.

49.3 Where a Preference Security is applicable:

- (a) 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;
- (b) the Contractor shall submit the local manpower employment reports as often as it is reasonably requested by the Employer's Representative.;
- (c) 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;
- (d) 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; and
- (e) The preference security shall be forfeited by the employer in case of failure on the part of the contractor to employ at least eighty (80) percent 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 2 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 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; and
  - (c) containing such other information as the Chief Executive Officer of the Public Body administering the contract may require satisfying 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, 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 Completion Certificate 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 7 days of the Project Manager's issuing a Completion Certificate.



## 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 certifies any final payment that is due to the Contractor within sixty (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 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 Programme and the stoppage has not been authorised 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 sixty (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 for 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 Sub-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 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.

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:

- (a) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (b) "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;
- (c) "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;
- (d) "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;
- (e) "obstructive practice" is:
  - (i) 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
  - (ii) 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 payment 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 payment 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 9 – SPECIAL CONDITIONS OF CONTRACT

These Special Conditions of Contract (SCC) contains amendments and additions to the general Conditions of Contract (GCC). Where there is a conflict, the provisions herein shall prevail over those in GCC.

GCC REFERENCE	DESCRIPTION
<b>Subclause 1.1(o) Defects Liability Period</b>	The Defects Liability Period is 12 months after the date of issuing the Contractor with a Completion Certificate signed by both Parties and the Project Manager.
<b>Subclause 1.1(q) Employer</b>	The Employer is Municipality of Walvis Bay.
<b>Subclause 1.1(u) Intended Completion Date</b>	The Intended Completion Date is 6 months after the Start Date indicated in Subclause 1.1(dd).
<b>Subclause 1.1(y) Project Manager</b>	Karen Miller Architect 10 Hendrik Witbooi Street PO Box 1753 SWAKOPMUND Telephone: 064 407 121 Email: <a href="mailto:karenmil@iway.na">karenmil@iway.na</a>  Project Manager's Representative: Mrs. Karen Miller
<b>Subclause 1.1(aa) Site</b>	Erf 5825 Khomas Hochland Street in Kuisebmond.
<b>Subclause 1.1(dd) Start Date</b>	The Start Date shall be 7 days after the date of the Site Handover Meeting.
<b>Subclause 1.1(hh) Works</b>	The Works are the upgrading of the Ekutu Community Market, which involve the following activities: <ul style="list-style-type: none"><li>• Site establishment</li><li>• Setting out of the works</li><li>• Construction of foundations</li><li>• Construction of concrete and brickwork superstructure elements</li><li>• Demolition of empty ablution block</li><li>• Demolition of part of boundary walls at 2 new entrances</li><li>• Finishing works and installations (floor finishes, windows, doors, paintwork, etc.)</li><li>• Provision of electrical installations</li><li>• Provision of sewer and water reticulation installations</li><li>• Installation of sliding gates</li><li>• Installation of precast paving and layer works</li><li>• Finishing off and handing over of works</li></ul>
<b>Subclause 1.1 Definitions</b>	<i>Add the following definitions to this subclause:</i>



<b>GCC REFERENCE</b>	<b>DESCRIPTION</b>
	(ii) "Drawings" means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by the Project Manager in accordance with the Contract. (jj) "Interim Payment Certificate" means a payment certificate issued under Clause 39 [ <i>Payment Certificates</i> ], other than the Final Payment Certificate. (kk) "Payment Certificate" means a payment certificate issued under Clause 39 [ <i>Payment Certificates</i> ]. (ll) "Provisional Sum" means a sum which is specified in the Contract as provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Section 7 [ <i>Bill of Quantities</i> ] of the Project Specifications. (mm) "Retention Money" means the accumulated retention moneys which the Employer retains under Subclause 45.1.
<b>Subclause 2.2</b> <b>Sectional Completion</b>	N/A
<b>Subclause 2.3</b> <b>Documents forming the Contract</b>	The documents forming the Contract are as listed under Subclause 2.3, and any Addendums issued by the Project Manager.
<b>Subclause 5.1</b> <b>Delegation</b>	The Project Manager may delegate his duties.
<b>Subclause 6.1</b> <b>Communications</b>	Communications between the Parties shall be by letter or e-mail, with confirmation of receipt. All such communications shall be made through the Project Manager, who is representing the Employer in supervising the Works and managing the Contract.
<b>Subclause 8.1</b> <b>Schedule of Other Contractors</b>	N/A
<b>Subclause 9.2</b> <b>Contractor's Personnel</b>	<p>The Contractor's Personnel shall be appropriately qualified, skilled, and experienced in their respective trades and occupations. The Project Manager may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works who:</p> <ul style="list-style-type: none"> <li>(a) persists in any misconduct or lack of care;</li> <li>(b) carries out duties incompetently or negligently;</li> <li>(c) fails to conform with any provisions of the Contract; or</li> <li>(d) persist in nay conduct which is prejudicial to safety, health, or the protection of the environment.</li> </ul> <p>If appropriate, the Contractor shall the appoint (or cause to be appointed) a suitable replacement person.</p>
<b>Subclause 13.1</b> <b>Insurance</b>	Except for the cover mentioned in (d)(i) hereunder, all other insurance covers shall be in the joint names of the Contractor and the Employer and the minimum insurance amounts shall be:



GCC REFERENCE	DESCRIPTION
	<p>(a) <u>Loss of or Damage to the Works, Plant, and Materials (including Material on Site included in Interim Payment Certificates)</u></p> <p>(i) Contract Price plus 20%, from the Start Date until the issuing of a Defect Liability Certificate to the Contractor.</p> <p>(b) <u>Loss of or Damage to Equipment</u></p> <p>(i) N\$ 2 million for each and every claim occurrence without a limit to the number of occurrences, from the Start Date until the issuing of a Completion Certificate to the Contractor.</p> <p>(c) <u>Loss of or Damage to Property</u></p> <p>(i) N\$ 2 million for each and every claim occurrence without a limit to the number of occurrences, from the Start Date until the issuing of a Completion Certificate to the Contractor.</p> <p>(d) <u>Personal Injury or Death</u></p> <p>(i) Contractor's employees: N\$ 2 million for each and every claim occurrence without a limit to the number of occurrences, from the Start Date until the issuing of a Completion Certificate to the Contractor.</p> <p>(ii) General public: N\$ 2 million for each and every claim occurrence without a limit to the number of occurrences, from the Start Date until the issuing of a Completion Certificate to the Contractor.</p> <p>Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.</p> <p>When each premium is paid, the Contractor shall submit evidence of payment to the Project Manager. Whenever evidence or policies are submitted, the Contractor shall also give notice to the Project Manager.</p> <p>The Contractor shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.</p> <p>No amount will be certified or paid until the Project Manager has received and approved the Insurance cover.</p>
<p><b>Subclause 14.1 Site Data</b></p>	<p>The Bidder is strongly advised to visit the Site and acquaint himself with its conditions.</p> <p>The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Project Manager.</p>



GCC REFERENCE	DESCRIPTION
	<p>The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions, or alignment of the Works.</p> <p>The Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.</p> <p>If the Contractor suffers delay and/or incurs cost from executing work which was necessitated by an error in these items of reference, and an experienced Contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Project Manager and shall be entitled subject to Subclause 41.1 to:</p> <ul style="list-style-type: none"><li>(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 26; and</li><li>(b) payment of any such Cost plus profit, which shall be included in the Contract Price and Final Account.</li></ul> <p>After receiving this notice, the Project Manager shall proceed in accordance with Subclause 4.1 to agree or determine:</p> <ul style="list-style-type: none"><li>(i) whether and to what extent the error could not reasonably have been discovered; and</li><li>(ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.</li></ul> <p>The area of the Works to be occupied by the Contractor, any restriction on the area and the limit of construction will be pointed out to the Contractor by the Project Manager on the date of handing over of the Site to the Contractor.</p> <p>Known existing services and points of connection are shown on the Site plan or will be pointed out on the Site by the Project Manager.</p>
<b>Subclause 18.1 Safety</b>	<p>The Contractor shall:</p> <ul style="list-style-type: none"><li>(a) comply with all applicable safety regulations;</li><li>(b) take care for safety of all persons entitled to be on the Site;</li><li>(c) use reasonable efforts to keep the Site and Works clear of unnecessary obstructions so as to avoid danger to these persons;</li><li>(d) provide fencing, lighting, guarding, and watching of the Works until completion and taking over under Clause 54 [<i>Taking Over</i>]; and</li><li>(e) provide any Temporary Works which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.</li></ul>



GCC REFERENCE	DESCRIPTION
<b>Subclause 20.1 Possession of the Site</b>	The date of the possession of the Site shall be 7 days after signing of the Contract by both Parties.
<b>Subclauses 23.1 and 23.2 Appointing Authority of the Adjudicator</b>	The Appointing Authority to appoint the Adjudicator shall be the President of the Association of Consulting Engineers of Namibia (ACEN).
<b>Subclause 24.3 Payment of the Adjudicator</b>	The Adjudicator shall be paid based on the rates approved by ACEN and gazetted by the Government of the Republic of Namibia.
<b>Subclause 24.4 Procedure for Arbitration</b>	The Arbitration process shall be in accordance with the Rules for the Conduct of Arbitrations published by the Professional Association for Mediation and Arbitration of Namibia (PAMAN) or, failing that, the Association of Arbitrators (Southern Africa).
<b>Subclause 25.1 Submission of Programme</b>	The Contractor shall submit to the Project Manager for approval a detailed Programme of the Works within 14 days after the Site Handover Meeting.
<b>Clause 25.3 Updating of Programme</b>	<p>The Contractor shall submit to the Project Manager for approval an updated Programme at intervals no longer than 30 days.</p> <p>If the Contractor does not submit an updated Programme within this period, the Project Manager may withhold an amount of N\$ 1,000.00 (excl. VAT) from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted.</p> <p>If, during the progress of the Works, the quantities of work performed per week fall below what was originally programmed, or if the Programme is deviated from in any other way, the Contractor shall, within 1 week after being notified by the Project Manager, submit a revised Programme.</p> <p>Such a revised Programme shall be based on the rate of progress of the works achieved by the Contractor up to the date of revision. Any proposal to increase the rate of progress must be accompanied by positive steps to increase production and the use of labour and plant in a more efficient manner. Such a revised Programme will not relieve the Contractor of his obligations to complete the Works by not later than the Contractual completion date.</p> <p>The Contractor will keep the Project Manager informed about the progress of the work. Continued failure on the part of the Contractor to work according to the Programme or revised Programme shall be sufficient reason for the Project Manager to take steps as provided for in the General Conditions of Contract.</p>
<b>Clause 26 Extension of the Intended Completion Date</b>	<p><i>Add the following Subclause 26.3:</i></p> <p>In addition to Clause B1215 of the Standard Specifications, the Contractor shall be entitled to an extension of the Intended Completion</p>



GCC REFERENCE	DESCRIPTION
	<p>Date if and to the extent that completion for the purpose of Clause 54 [Taking Over] is or will be delayed by any of the following causes:</p> <ul style="list-style-type: none"> <li>(a) a Variation</li> <li>(b) a cause of delay giving an entitlement to extension of time;</li> <li>(c) exceptionally adverse climatic conditions;</li> <li>(d) unforeseeable shortages in the availability of personnel or materials caused by epidemic or government actions; or</li> <li>(e) any delay, impediment or prevention caused by or attributed to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site.</li> </ul>
<p><b>Clause 30 Early Warning</b></p>	<p><i>Delete Subclauses 30.1 and 30.2, and replace with the following:</i></p> <p>If the Contractor considers himself to be entitled to any extension of the Intended Completion Date and/or any additional payment under any Clause of these Conditions or otherwise in connection with the Contract, he shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 14 days after the Contractor became aware, or should have become aware, of the event or circumstance.</p> <p>If the Contractor fails to give notice of a claim within such period of 14 days, the Intended Completion Date shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Subclause shall apply.</p> <p>The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.</p> <p>The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at any other location acceptable to the Project Manager. Without admitting the Employer's liability, the Project Manager may, after receiving any notice under this Subclause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records and shall (if instructed) submit copies to the Project Manager.</p> <p>Within 30 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager fully detailed claim which included full supporting</p>



GCC REFERENCE	DESCRIPTION
	<p>particulars of the basis of the claim and of the extension of time and/or additional payment claimed.</p> <p>If the event or circumstance giving rise to the claim has a continuing effect:</p> <ul style="list-style-type: none"><li>(a) this fully detailed claim shall be considered as interim;</li><li>(b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and</li><li>(c) the Contractor shall send a final claim within 14 days after the end of the effects resulting from the even or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.</li></ul> <p>Within 30 days after receiving a claim or further particulars supporting a previous claim, or within such a period as may be proposed by the Project Manager an approved by the Contactor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request and necessary further particulars but shall nevertheless give his responses on the principles of the claim within such time.</p> <p>Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.</p> <p>The Project Manager shall proceed in accordance with Clause 62 [<i>Determinations</i>] to agree or determine:</p> <ul style="list-style-type: none"><li>(a) the extension (if any) of the Intended Completion Date (before or after its expiry) in accordance with Clause 26 [<i>Extension of the Intended Completion Date</i>]; and/or</li><li>(b) the additional payment (if any) to which the Contractor is entitled under the Contract.</li></ul> <p>The requirements of the Subclause are in addition to those of any other Subclause which may apply to a claim. If the Contractor fails to comply with this or another Subclause in relation to a claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of</p>



GCC REFERENCE	DESCRIPTION
	<p>the claim, unless the claim is excluded under the second paragraph of this Subclause.</p>
<p><b>Clause 33</b>  <b>Correction of Defects</b></p>	<p><i>Add the following to Subclause 33.1:</i></p> <p>In order that the Works shall be in the condition required by the Contract by the expiry date of the Defects Liability Period or as soon as applicable thereafter, the Contractor shall:</p> <ul style="list-style-type: none"> <li>(a) complete any work which is outstanding on the date stated in the Completion Certificate, within such reasonable time as instructed by the Project Manager; and</li> <li>(b) execute all work required to remedy the defects or damage, as may be notified by the Project Manager on or before the expiry date of the Defects Liability Period.</li> </ul> <p>If a defect or damage appears, the Contractor shall be notified accordingly by the Project Manager.</p> <p>The Defects Liability Period cannot be extended by more than 2 years.</p> <p><i>Add the following Subclause 33.3 [Cost of Remedying Defects] to Clause 33:</i></p> <p>All works, referred to in sub-paragraph (b) of Subclause 33.1 above shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:</p> <ul style="list-style-type: none"> <li>(a) any design for which the Contractor is responsible;</li> <li>(b) Plant, Materials, or workmanship not being in accordance with the Contract; or</li> <li>(c) failure by the Contractor to comply with any other obligation.</li> </ul> <p>If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by the Project Manager, and Clause 37 [Variations] shall apply.</p>
<p><b>Subclause 39.7</b>  <b>Interim Payment for Plant and Material on Site</b></p>	<p>No interim payment shall apply for Plant on Site. Interim payments for Material on Site shall however apply. Only 80% of the value of the purchased material will be paid by the Employer, provided the following information is submitted with the payment certificate:</p> <ul style="list-style-type: none"> <li>(a) Invoices issued by suppliers.</li> <li>(b) Delivery notes/slips issued by suppliers.</li> <li>(c) Proof of payments to suppliers.</li> <li>(d) Written confirmation from the Project Manager that the materials are safely stored on the project Site, or an extended Site.</li> <li>(e) Cession Form is signed by contractor and Municipality.</li> </ul>





GCC REFERENCE	DESCRIPTION
	<p>The amount claimed for Material on Site shall be subject to a reduction for retention at the rate stated in Subclause 45.1.</p>
<p><b>Clause 39 Payment Certificates</b></p>	<p><i>Add the following to Subclause 39.8:</i>          The Contract shall submit an Interim Payment Certificate to the Project Manager after the end of each calendar month, in a form approved by the Project Manager, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during the specific month</p>
<p><b>Sub-subclause 41.1(l) Adverse Weather Conditions</b></p>	<p>Adverse weather conditions will be determined at each occurrence and will be confirmed within 24 hours of occurrence with the Project Manager.</p> <p>The meaning of “adverse weather conditions” will be deemed to be weather which is not only extreme or severe but exceeding that which, on evidence of past years, could be reasonably not have been expected.</p> <p>The Contractor is expected to have a rain gauge on-site at all times during the duration of Contract. In the case of excessive rain, readings will be compared with the local meteorological data for verification.</p> <p>The Contractor is, in addition to the above, to make allowance for normal vagaries of the weather in the programming of the Works. It is recommended to allow for 5 days for extreme east-wind weather conditions.</p>
<p><b>Subclause 43.1 Currencies</b></p>	<p>All claims and payments shall be made in the Namibia Dollar (N\$) currency.</p>
<p><b>Subclause 44.1 Price Adjustment</b></p>	<p>Price adjustment is not applicable.</p>
<p><b>Subclause 45.1 Retention</b></p>	<p>The Employer shall retain from each payment due to the Contractor 10% of the value of Works completed. The limit of retention shall be 5% of the Contract Price (including any Variations).</p> <p>When the Completion Certificate has been issued to the Contractor, half of the retention money shall be certified by the Project Manager for payment to the Contractor.</p> <p>Promptly after the latest expiry date of the Defects Liability Period, the outstanding balance of retention money shall be certified by the Project Manager for payment to the Contractor.</p>
<p><b>Subclause 46.1 Liquidated Damages</b></p>	<p>The rate for liquidated damages (penalties) for the whole of the Works is N\$ 1,500.00 (excl. VAT) for each day that the Intended Completion Date is delayed. The total amount of liquidated damages shall not exceed N\$ 45,000.00 (excl. VAT).</p>



GCC REFERENCE	DESCRIPTION
<b>Subclause 47.1 Bonus</b>	N/A
<b>Subclause 48.1 Advance Payment</b>	N/A
<b>Subclause 49.1 Performance Security</b>	<p>The Contractor shall obtain at his own cost a Performance Security for the Works, in the amount equivalent to 10% percent of the Contract Price (inclusive of provisional sums, contingencies and VAT).</p> <p>No amount will be certified or paid until the Project Manager has received and approved the Performance Security.</p> <p>The Contractor shall deliver the Performance Security in its original form to the Employer within 30 days after receiving the Letter of Award and shall send a copy to the Project Manager. The Performance Security shall be issued by a commercial bank operating within the Republic of Namibia and registered with the Bank of Namibia and shall be in the format provided under Section 10 [<i>Contract Forms</i>]. Any proposed changes to this format must be approved by the Employer.</p> <p>The Employer will not make any payments to the Contractor under this Contract until a Performance Security is submitted to the Employer as described in the preceding paragraph.</p> <p>The Contractor shall ensure that the Performance Security is valid and enforceable until he has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Defects Liability Certificate by the date 30 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects remedied.</p> <p>The Employer shall not make a claim to the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:</p> <ul style="list-style-type: none"><li>(a) failure by the Contractor to extend the validity of the Performance Security as described in the preceding paragraph, in which event the Employer may claim the full amount of the Performance Security;</li><li>(b) failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or determined under any claims and payments due to the Employer, within 30 days after this agreement or determination;</li></ul>



GCC REFERENCE	DESCRIPTION
	<p>(c) failure by the Contractor to remedy a default within 30 days after receiving the Employer's notice requiring the default to be remedied; or</p> <p>(d) circumstances which entitle the Employer to termination under Clause 57 [<i>Termination</i>], irrespective of whether notice of termination has been given.</p> <p>The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses resulting from a claim under the Performance Guarantee to the extent to which the Employer was not entitled to make the claim.</p> <p>The Employer shall return the Performance Security to the Contractor within 30 days after receiving a copy of the Defects Liability Certificate.</p>
<b>Subclause 53.1 Issuing of a Completion Certificate</b>	<p><i>Delete Subclause 53.1 and replace with the following:</i></p> <p>The Contractor may apply by notice to the Project manager for a Completion Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over.</p> <p>The Project Manager shall, within 30 days after receiving the Contractor's application:</p> <p>(a) issue the Completion Certificate to the Contractor, stating the date on which the Works were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works for their intended purpose; or</p> <p>(b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Completion Certificate to be utilised. The Contractor shall then complete this work before issuing a further notice under the Subclause.</p> <p>If the Project Manager fails either to issue the Completion Certificate or to reject the Contractor's application with the period of 30 days, and if the Works are substantially in accordance with Contract, the Completion Certificate shall be deemed to have been issued on the last day of that period.</p>
<b>Subclauses 56.1 &amp; 56.2 Submission of As-Built Drawings</b>	<p>The Contractor will be responsible to complete the as-built drawings, in accordance with the requirements of the Employer, and they shall be made available to the Project Manager before half the total amount retained can be repaid to the Contractor, and the Completion Certificate issued.</p>
<b>Subclause 57.5 Leaving Site after Termination of Contract</b>	<p><i>Delete Subclause 57.5 and replace with the following:</i></p> <p>If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site within 30 days after the date of termination of the Contract.</p>



MUNICIPALITY OF WALVIS BAY  
CONSTRUCTION OF TRADING STALLS AT EKUTU  
INFORMAL TRADING AREA (PHASE 2)

BID NO. W/ONB/MWB-101/2025

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GCC REFERENCE	DESCRIPTION
<b>Subclause 59.1 Payment upon Termination</b>	The percentage to apply to the value of the work not completed, representing the Employer's additional cost for completing the Works, is 10%.



## SECTION 10 – CONTRACT FORMS

The Contract forms included under this Section are:

- The Example Form of Performance Guarantee to be issued by the Contractor to the Employer as per Sub-Clause 49.1 of the GCC.
- The Contract Agreement to be signed by both the Contractor and the Employer.



**EXAMPLE FORM OF PERFORMANCE SECURITY**

*[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]*

**DATE:** *[insert day, month, and year]*

Municipality of Walvis Bay  
Walvis Bay Civic Centre  
Nangolo Mbumba Drive  
Private Bag 5017  
WALVIS BAY

**CONTRACT NO. W/ONB/MWB-101/2025**  
**UPGRADING OF EKUTU COMMUNITY MARKET (PHASE 2)**  
**PERFORMANCE SECURITY NO.:** *[insert performance guarantee number]*

We have been informed that *[insert full name of Contractor]* (hereinafter called "the Contractor ") is your appointed Contractor under such contract, which requires them to obtain a performance guarantee.

At the request of the Contractor, we *[insert full name of Bank]* hereby irrevocably undertake to pay **MUNICIPALITY OF WALVIS BAY** any sum(s) not exceeding in total the amount of *[insert amount equivalent to 10% of the contract amount (inclusive of provisional sums, contingencies and VAT)]*, upon receipt by us of your first demand in writing and your written statement stating:

- (a) that the Contractor is in breach of his obligation(s) under the Contract; and
- (b) the respect in which the Contractor is in breach.

Any demand for payment must contain your Accounting Officer's signature which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before *[the date 30 days after the expected expiry of the Defects Liability Period for the works]* (the "expiry date"), when this guarantee shall expire and shall be returned to us.

We have been informed that **MUNICIPALITY OF WALVIS BAY** may require the Contractor to extend this guarantee if the Defects Liability Certificate under the Contract has not been issued by the date 30 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 30 days of your demand in writing and your written statement that the Defects Liability Certificate has not been issued, for reasons attributed to the Contractor, and that this guarantee has not been extended.

This guarantee shall be governed by, and be subject to, the laws of the Republic of Namibia.

*[Name, position, and signature]*

.....**Bank's Official Stamp**.....



## CONTRACT AGREEMENT

*[The successful Bidder shall fill in this form in accordance with the instructions indicated]*

THIS CONTRACT AGREEMENT is made

the \_\_\_\_\_ day of \_\_\_\_\_, 2024

BETWEEN

- (1) **Municipality of Walvis Bay**, having its principal place of business at **Civic Centre, Nangolo Mbumba, Walvis Bay, Namibia** (hereinafter called "the Purchaser"),  
and
- (2) \_\_\_\_\_, a company incorporated under the laws of \_\_\_\_\_ and having its principal place of business at \_\_\_\_\_ (hereinafter called "the Supplier").

WHEREAS the Purchaser invited bids for certain Goods and related services, viz., **Construction of trading stalls at Ekutu informal trading area (Phase 2)** and has accepted a Bid by the Supplier for the supply of those Goods in the sum of N\$ \_\_\_\_\_ 15% Vat (Excluded) Words

\_\_\_\_\_  
(Hereinafter called "the Contract Price").

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall constitute the Contract between the Purchaser and the Supplier, and each shall be read and construed as an integral part of the Contract:
  - a) This Contract Agreement
  - b) Special Conditions of Contract
  - c) General Conditions of Contract
  - d) Technical Requirements (including Schedule of Requirements and Technical Specifications)
  - e) The Supplier's Bid and original Price Schedules
  - f) The Purchaser's Notification of Award
  - g) \_\_\_\_\_  
\_\_\_\_\_ (Add any other document if applicable).
3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
4. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.



IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Namibia on the day, month and year indicated above.

For and on behalf of the Purchaser

Signed: \_\_\_\_\_

in the capacity of \_\_\_\_\_

in the presence of \_\_\_\_\_

For and on behalf of the Supplier

Signed: \_\_\_\_\_

in the capacity of \_\_\_\_\_

in the presence of \_\_\_\_\_





(Important: This sheet must be completed and be attached on the outside of the sealed envelope)

**THE PROCUREMENT MANAGEMENT UNIT  
MUNICIPALITY OF WALVIS BAY  
PRIVATE BAG 5017  
WALVIS BAY**

**BID NO: W/ONB/MWB-101/2025**

**CONSTRUCTION OF TRADING STALLS AT EKUTU INFORMAL TRADING AREA (PHASE 2)**

**DATE ISSUED: FRIDAY, 25 OCTOBER 2024**  
**CLOSING DATE: FRIDAY, 6 DECEMBER 2024**

**BIDDER: .....**