



# PROCUREMENT MANAGEMENT UNIT

## BIDDING DOCUMENT

### ISSUED ON

30 June 2022

### FOR

### PROCUREMENT OF

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**GENERAL PLUMBING MAINTENANCE AND REPAIRS TO NHE PROPERTIES IN VARIOUS REGIONS FOR A PERIOD OF THREE (3) YEARS**

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### PROCUREMENT REFERENCE NO:

**NCS/ONB/NHE-06/21/22**

**Cost: Free**

<b>Name of Bidder:</b>	.....
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### For NHE Properties within the jurisdiction of the following NHE Regional Offices

(Kindly tick the office for which you are bidding for)

√

Windhoek Head Office, Eros and Central Regional Offices, Katutura	<input type="checkbox"/>
South Regional Office, Keetmanshoop	<input type="checkbox"/>
West Regional Office, Walvis Bay	<input type="checkbox"/>
North Regional Office, Oshakati	<input type="checkbox"/>
North East Regional Office, Rundu	<input type="checkbox"/>

#### National Housing Enterprise

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[www.nhe.com.na](http://www.nhe.com.na)

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# **Part I – Bidding Procedures**

# Section I. Instructions to Bidders

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## Instructions to Bidders

### A. General

- 1. Scope of Bid**
- 1.1 The Public Entity referred to herein after as the Employer, as defined in the **Bidding Data Sheet (BDS)**, invites bids for the Services, as described in the **BDS**. The name and identification number of the Contract is **provided in the BDS**.
- 1.2 The successful Bidder will be expected to complete the performance of the Services during the period **provided in the BDS and the SCC Clause 2.3**.
- 1.3 Throughout these Bidding Documents:
- (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. Public Entities Related to Bidding Documents and to Application for Review**
- 2.1 The public entities related to these bidding documents are the Public Entity, acting as procuring entity (Purchaser), the Procurement Policy Unit, in charge of issuing standard bidding documents and responsible for any amendment these may require, the Central Procurement Board in charge of vetting Bidding document, receiving and evaluation of bids in respect of major contracts and the Review Panel, set up under the Public Procurement Act, 2015 (hereinafter referred to as the Act.)
- Application for Review shall be addressed to:
- The Chairperson  
Review Panel  
Ministry of Finance  
Private Bag 13295  
Windhoek, Namibia**
- 3. Corrupt or Fraudulent Practices**
- 3.1 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.
- 3.2 The Employer will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- For the purposes of this Sub-Clause:

(i) “corrupt practice”<sup>1</sup> is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(ii) “fraudulent practice”<sup>2</sup> is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(iii) “collusive practice”<sup>3</sup> is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) “coercive practice”<sup>4</sup> is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(v) “obstructive practice” is deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.

3.3 In further pursuance of this policy, Bidders shall permit the Employer to inspect any accounts and records and other documents relating to the Bid submission and contract performance, and to have them audited by auditors appointed by the Employer.

3.4 Furthermore, bidders shall be aware of the provision in Clauses 3.1 of the General Conditions of Contract.

3.5 Bidders, suppliers and public officials shall also be aware of the provisions stated in section 65 – 68 (Part 10) of the Public Procurement Act, 2015 which can be consulted on the website of the Procurement Policy Unit (PPU) : [www.mof.gov.na/procurement-policy-unit](http://www.mof.gov.na/procurement-policy-unit)

#### 4. Eligible Bidders

4.1 Subject to ITB 4.4, a Bidder, and all parties constituting the Bidder, may have the nationality of any country except in the case of open national bidding where the bidding documents may limit participation to citizens of Namibia or entities incorporated in Namibia. A Bidder shall be deemed to have the nationality of a

<sup>1</sup> For the purpose of this Contract, “another party” refers to a public official acting in relation to the procurement process or contract execution.

<sup>2</sup> For the purpose of this Contract, “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>3</sup> For the purpose of this Contract, “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

<sup>4</sup> For the purpose of this Contract, “party” refers to a participant in the procurement process or contract execution.

country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or service providers for any part of the Contract.

4.2 All bidders shall provide in Section III, Bidding Forms, a statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract.

4.3 (a) A Bidder that is under a declaration of ineligibility by the Government of Namibia in accordance with applicable laws at the date of the deadline for bid submission or thereafter, shall be disqualified.

(b) Bids from service providers 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.

Links for checking the ineligibility lists are available on the Procurement Policy Unit's website: [www.mof.gov.na/ineligible-bidders](http://www.mof.gov.na/ineligible-bidders)

4.4 A firm shall be excluded if by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Namibia prohibits any import of goods or contracting of works or services from a country where it is based or any payment to persons or entities in that country.

4.5 Government-owned enterprises in the Republic of Namibia shall be eligible only if they can establish that they:

(i) are legally and financially autonomous;

(ii) operate under commercial law, and

(iii) are not a dependent agency of the Purchaser.

4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

## 5. Qualification of the Bidder

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

5.2 (a) In the event that prequalification of potential bidders has been undertaken **as stated in the BDS**, only bids from prequalified bidders shall be considered for award of Contract, in which case the provisions of sub-clauses 5.3 to 5.6 hereafter shall not apply. These qualified bidders should submit with their bids any



information updating their original prequalification applications or, alternatively, confirm in their bids that the originally submitted prequalification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in Section IV.

(b) If, after opening of bids, where prequalification has not been undertaken, it is found that any of the document listed in 5.3 and 5.4 is missing the Employer may request the submission of that document subject to the bid being substantially responsive as per clause 27. The non-submission of the document by the Bidder within the prescribed period may lead to the rejection of its bid.

5.3 If the Employer has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids in Section IV, unless otherwise **stated in the BDS**:

- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business;
- (b) written power of attorney of the signatory of the Bid or any other acceptable document to commit the Bidder and as otherwise **specified in the BDS**.
- (c) total monetary value of Services performed for each of the last five years;
- (d) experience in Services of a similar nature and size for each of the last five years, and details of Services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;
- (e) list of major items of equipment proposed to carry out the Contract;
- (f) qualifications and experience of key site management and technical personnel proposed for the Contract;
- (g) reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past five years;
- (h) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (i) authority to the Employer to seek references from the Bidder's bankers;
- (j) information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
- (k) proposals for subcontracting components of the Services amounting to more than 10 percent of the Contract Price.

- 5.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **BDS**:
- (a) the Bid shall include all the information listed in ITB Sub-Clause 5.3 above for each joint venture partner;
  - (b) the Bid shall be signed so as to be legally binding on all partners;
  - (c) the Bid shall include a copy of the agreement entered into by the joint venture partners defining the division of assignments to each partner and establishing that all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms; alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement;
  - (d) one of the partners shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
  - (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
- 5.5 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria unless otherwise stated in the **BDS**:
- (a) a minimum average annual financial amount of work over the period **specified in the BDS**.
  - (b) experience as prime contractor in the provision of at least two service contracts of a nature and complexity equivalent to the Services over the last 5 years (to comply with this requirement, Services contracts cited should be at least 70 percent complete) **as specified in the BDS**;
  - (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment **listed in the BDS**;
  - (d) a Contract Manager with five years' experience in Services of an equivalent nature and volume, including no less than three years as Manager; 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**.
  - (f) A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.
- 5.6 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of ITB Sub-Clause 5.5 (a), (b) and (e); however,

for a joint venture to qualify the partner in charge must meet at least 40 percent of those minimum criteria for an individual Bidder and other partners at least 25% of the criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria, unless otherwise **stated in the BDS**.

6. **Conflict of Interest**
- 6.1 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.
7. **Cost of Bidding**
- 7.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer will in no case be responsible or liable for those costs.
8. **Site Visit/Pre-bid Meeting**
- 8.1 (a) The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of required Services and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for the Services. The costs of visiting the Site shall be at the Bidder's own expense.
- (b) A pre-bid meeting shall be held if so indicated **in the BDS** to allow bidders to obtain clarifications on the bidding documents. Any information given in the course of the meeting that may have an incidence in the preparation of the bids shall be issued by the Public Entity as addendum after the meeting, as per ITB 11.2, to form part of the Bidding Documents.
- (c) **No bidder shall be disqualified from the bidding process as a result of not attending the pre-bid meeting.**

## B. Bidding Documents

- 9. Content of Bidding Documents**
- 9.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with ITB Clause 11:
- |              |   |
|--------------|---|
| Section I    | Instructions to Bidders                         |
| Section II   | Bidding Data Sheet                              |
| Section III  | Evaluation Criteria                             |
| Section IV   | Bidding Forms                                   |
| Section V    | Activity Schedule                               |
| Section VI   | Scope of Service and Performance Specifications |
| Section VII  | General Conditions of Contract                  |
| Section VIII | Special Conditions of Contract                  |
| Section IX   | Contract Forms                                  |
- 9.2 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents. Failure to furnish all information required by the bidding documents or to submit a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in the rejection of its bid. Sections III and IV should be completed and returned with the Bid in the number of copies specified in the **BDS**.
- 10. Clarification of Bidding Documents**
- 10.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing or by facsimile at the Employer's address indicated in the invitation to bid. The Employer will respond to any request for clarification received earlier than 14 days prior to the deadline for submission of bids and by the date indicated in **the BDS**. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, but without identifying its source.
- 11. Amendment of Bidding Documents**
- 11.1 Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda.
- 11.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing or by cable to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum in writing to the Employer.
- 11.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with ITB Sub-Clause 21.2 below.

## C. Preparation of Bids

- 12. Language of Bid**
- 12.1 The bid prepared by the Bidder, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the

Employer shall be written in English. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the Bidding Data Sheet, in which case, for purposes of interpretation of the Bid, the translation shall govern.

**13. Documents  
Comprising  
the Bid**

13.1 The Bid submitted by the Bidder shall comprise the following:

- (a) The Form of Bid (in the format indicated in Section III);
- (b) Bid Security or Bid Securing declaration (where applicable);
- (c) Priced Activity Schedule;
- (d) Qualification Information Form and Documents;
- (e) Alternative offers where invited;
- (f) following documentary evidence (required from Namibian bidders):
  1. have a valid certified copy of company Registration Certificate.
  2. have an original/certified copy of valid Good Standing Tax Certificate.
  3. have an original/certified copy of valid Good Standing Social Security Certificate.
  4. 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.
  5. have a certificate indicating SME Status (for Bids reserved for SMEs).
  6. 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, where applicable and that it will abide to sub-clause 6.8 of the General conditions of Contract if it is awarded the contract or part thereof; and;
- (g) any other materials required to be completed and submitted by bidders, as **specified in the BDS**.

13.2 Bidders bidding for this contract together with other contracts stated in the IFB to form a package will so indicate in the bid together with any discounts offered for the award of more than one contract

**14. Bid Prices**

14.1 The Contract shall be for the Services, as described in Appendix A to the contract and in the Specifications, based on the priced Activity Schedule, Section V, submitted by the Bidder.

- 14.2 The Bidder shall fill in rates and prices for all items of the Services described in Section VI the Scope of Service and Performance Specifications and listed in Section V the Activity Schedule, Items for which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.
- 14.3 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of bids, shall be included in the total Bid price submitted by the Bidder.
- 14.4 If **provided for in the BDS**, the rates and prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract in accordance with the provisions of Clause 6.6 of the General Conditions of Contract and/or Special Conditions of Contract. The Bidder shall submit with the Bid all the information required under the Special Conditions of Contract and of the General Conditions of Contract.
- 14.5 For the purpose of determining the remuneration due for additional Services, a breakdown of the Time-Based price shall be provided by the Bidder in the form of Appendices D and E to the Contract.
15. **Currencies of Bid and Payment** 15 The time-based price shall be quoted by the Bidder in Namibia Dollars Only.
16. **Bid Validity** 16.1 Bids shall remain valid for the period **specified in the BDS**.
- 16.2 In exceptional circumstances, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing or by facsimile. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security/Bid Securing Declaration for the period of the extension, and in compliance with ITB Clause 17 in all respects.
- 16.3 In the case of contracts in which the Contract Price is fixed (not subject to price adjustment), if the period of bid validity is extended by more than 60 days, the amounts payable in local currency to the Bidder selected for award, shall be increased by applying to the local currency component of the payments, respectively, the factors specified in the request for extension, for the period of delay beyond 60 days after the expiry of the initial bid validity, up to the notification of award. Bid evaluation will be based on the Bid prices without taking the above correction into consideration.
17. **Bid Security** 17.1 The Bidder shall furnish, as part of the Bid, a Bid Security or a Bid-Securing Declaration, if required, as **specified in the BDS**.
- 17.2 The Bid-Securing Declaration shall be in the form of a signed subscription in the Bid Submission Form.
- 17.3 The Bid Security shall be in the amount **specified in the BDS** and denominated in Namibia Dollars, and shall:

- (a) be issued by a reputable overseas bank, located in any eligible country, with a counter guarantee from a commercial bank having its place of business in Namibia or any commercial bank operating in Namibia selected by the Bidder;
  - (b) be substantially in accordance with the form of Bid Security included in Section III, Bidding Forms;
  - (c) be payable promptly upon written demand by the Employer in case the conditions listed in ITB Sub-Clause 17.5 are invoked;
  - (d) be submitted in its original form; copies will not be accepted;
  - (e) remain valid for a period of 30 days beyond the validity period of the bids, as extended, if applicable, in accordance with ITB Sub-Clause 16.2;
- 17.4 If a Bid Security is required in accordance with ITB Sub-Clause 17.1, any bid not accompanied by a substantially responsive Bid Security in accordance with ITB Sub-Clause 17.1, shall be rejected by the Employer as non-responsive.
- 17.5 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the Performance Security pursuant to ITB Clause 35.
- 17.6 The Bid Security shall be forfeited, or the Bid Securing Declaration executed:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, except as provided in ITB Sub-Clause 16.2; or
  - (b) if a bidder refuses to accept a correction of an error appearing on the face of the Bid; or
  - (c) if the successful Bidder fails to:
    - (i) sign the Contract in accordance with ITB Clause 34; or
    - (ii) furnish a Performance Security in accordance with ITB Clause 35.
- 17.7 The Bid Security or Bid- Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security or Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent to constitute the JV.
- 17.8 If a bid security is **not required in the BDS**, and
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 16.2, or

- (b) if a bidder refuses to accept a correction of an error appearing on the face of the Bid; or
- (c) if the successful Bidder fails to:
  - (i) sign the Contract in accordance with ITB Clause 34; or
  - (ii) furnish a Performance Security in accordance with ITB Clause 35.

The Bidder may be disqualified to be awarded a public contract in the Republic of Namibia for a period to be determined by the Review Panel.

- 18. Alternative Proposals by Bidders**
- 18.1 **Unless otherwise indicated in the BDS**, alternative bids shall not be considered.
- 18.2 When alternative times for completion are explicitly invited, a statement to that effect will be **included in the BDS**, as will the method of evaluating different times for completion.
- 18.3 Except as provided under ITB Sub-Clause 18.4 below, bidders wishing to offer technical alternatives to the requirements of the bidding documents must first submit a Bid that complies with the requirements of the bidding documents, including the scope, basic technical data, graphical documents and specifications. In addition to submitting the basic Bid, the Bidder shall provide all information necessary for a complete evaluation of the alternative by the Employer, including calculations, technical specifications, breakdown of prices, proposed work methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer. Alternatives to the specified performance levels shall not be accepted.
- 18.4 When bidders are **permitted in the BDS** to submit alternative technical solutions for specified parts of the Services, such parts shall be described in the Specifications (or Terms of Reference) and Drawings, Section V. In such case, the method for evaluating such alternatives will be as **indicated in the BDS**.
- 19. Format and Signing of Bid**
- 19.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB Clause 11 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number **specified in the BDS**, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.
- 19.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to Sub-Clauses 5.3(a) or 5.4(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialled by the person or persons signing the Bid.



19.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialled by the person or persons signing the Bid.

#### **D. Submission of Bids**

- 20. Sealing and Marking of Bids**
- 20.1 The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as "ORIGINAL" and "COPIES".
- 20.2 The inner and outer envelopes shall
- (a) be addressed to the Employer at the address **provided in the BDS.**
  - (b) bear the name and identification number of the Contract as **defined in the BDS** and Special Conditions of Contract; and
  - (c) provide a warning not to open before the specified time and date for Bid opening as **defined in the BDS.**
- 20.3 In addition to the identification required in ITB Sub-Clause 20.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to ITB Clause 22.
- 20.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.
- 21. Deadline for Submission of Bids**
- 21.1 Bids shall be delivered to the Employer at the address specified above no later than the time and date **specified in the BDS.**
- 21.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with ITB Clause 11, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subject to the new deadline.
- 22. Late Bids**
- 22.1 Any Bid received by the Employer after the deadline prescribed in ITB Clause 21 will be returned unopened to the Bidder.
- 23. Modification and Withdrawal of Bids**
- 23.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in ITB Clause 21.
- 23.2 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clauses 19 and 20, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL," as appropriate.
- 23.3 No Bid may be modified after the deadline for submission of Bids.
- 23.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the BDS or as extended pursuant to ITB Sub-Clause 16.2 may result in the

forfeiture of the Bid Security or execution of the Bid Securing Declaration pursuant to ITB Clause 17.

- 23.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by submitting Bid modifications in accordance with this clause or included in the original Bid submission.

## **E. Bid Opening and Evaluation**

### **24. Bid Opening**

- 24.1 The Employer will open the bids, including modifications made pursuant to ITB Clause 23, in the presence of the bidders' representatives who choose to attend at the time and in the place **specified in the BDS.**
- 24.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 23 shall not be opened.
- 24.3 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security/subscription to Bid Securing Declaration, and such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. No bid shall be rejected at bid opening except for the late bids pursuant to ITB Clause 22; Bids, and modifications, sent pursuant to ITB Clause 23 that are not opened and read out at bid opening will not be considered for further evaluation regardless of the circumstances. Late and withdrawn bids will be returned unopened to the bidders.
- 24.4 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with ITB Sub-Clause 24.3.

### **25. Process to Be Confidential**

- 25.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process. Any effort by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of his Bid.
- 25.2 If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Employer, who will provide written explanation. Any request for explanation from one bidder should relate only to its own bid; information about the bid of competitors will not be addressed.

### **26. Clarification of Bids**

- 26.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of the prices in the Activity Schedule, and other information that the Employer may require. The request for clarification and the response shall be in writing via e-mail or facsimile, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the

correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with ITB Clause 28.

- 26.2 Subject to ITB Sub-Clause 26.1, no Bidder shall contact the Employer on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, he should do so in writing.
- 26.3 Any effort by the Bidder to influence the Employer in the Employer's bid evaluation or contract award decisions may result in the rejection of the Bidder's bid.
- 27. Examination of Bids and Determination of Responsiveness**
- 27.1 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in ITB Clause 4; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the bidding documents.
- 27.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Services; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.
- 27.3 If a Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 28. Correction of Errors**
- 28.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Arithmetical errors will be rectified by the Employer on the following basis: if there is a discrepancy between unit prices 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; 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; if there is a discrepancy between the amounts in figures and in words, the amount in words will prevail.
- 28.2 The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security shall be forfeited, or the Bid Securing Declaration exercised and in accordance with ITB Sub-Clause 17.6(b).
- 29. Currency for Bid Evaluation**
- 29 The Employer will evaluate the Bid Price in terms of ITB 15 which is corrected pursuant to ITB Clause 28 and is payable excluding Provisional Sums but including Daywork where priced competitively.

**30. Evaluation and Comparison of Bids**

- 30.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with ITB Clause 27.
- 30.2 In evaluating the bids, the Employer will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:
- (a) making any correction for errors pursuant to ITB Clause 28.
  - (b) excluding provisional sums and the provision, if any, for contingencies in the Activity Schedule, Section IV, but including Day work, when requested in the Specifications (or Terms of Reference) Section V.
  - (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with ITB Clause 18; and
  - (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITB Sub-Clause 23.5.
- 30.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors, which are more than the requirements of the bidding documents or otherwise result in unsolicited benefits for the Employer will not be considered in Bid evaluation.
- 30.4 The estimated effect of any price adjustment conditions under Sub-Clause 6.6 of the General Conditions of Contract, during the period of implementation of the Contract, will not be considered in Bid evaluation.

**31. Preference for Domestic Bidders**

- 31.1 Margin of Preference shall not be applicable.

## F. Award of Contract

- |     |   |  |
|-----|---|--|
| 32. | <b>Award Criteria</b>   | <p>32.1 Subject to ITB Clause 33, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of ITB Clause 4, and (b) qualified in accordance with the provisions of ITB Clause 5.</p> <p>32.2 If, pursuant to ITB Sub-Clause 13.2 this contract is being let on a “slice and package” basis, the lowest evaluated Bid Price will be determined when evaluating this contract in conjunction with other contracts to be awarded concurrently. Considering any discounts offered by the bidders for the award of more than one contract.</p>   |
| 33. | <b>Employer’s Right to Accept any Bid and to Reject any or all Bids</b> | <p>33.1 Notwithstanding ITB Clause 32, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders.</p>  |
| 34. | <b>Notification of Award and Signing of Agreement</b>                   | <p>34.1 Prior to the expiration of the period of bid validity, the Employer shall, for contract amount above the prescribed threshold of N\$ 2 M, notify the selected bidder of the proposed award and accordingly notify unsuccessful bidders. Subject to any application for review to the Review Panel the Employer shall notify the selected Bidder, in writing, by issuing a notification of award for the contract. It will state the sum that the Employer will pay to the Service Provider in consideration of the execution of the services by the Service Provider as prescribed by the Contract (hereinafter and in the Contract called the “Contract Price”). Within seven days from the issue of the notification of award the Employer shall publish on the Public Procurement Portal and the Employer’s website, the results of the Bidding process.</p> <p>34.2 The issue of the notification of award will constitute the formation of the Contract subject to the provisions of Section 55 (5), (6) and (7) of the Procurement Act, 2015 (Act 15 of 2015) read with Regulation 38 of the Public Procurement Regulations, 2017.</p> <p>34.3 The Contract, in the form provided in the bidding documents, will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and sent to the successful Bidder along with the notification of award. Within 21 days of receipt of the Contract, the successful bidder shall sign the Contract and return it to the Employer, together with the required performance security pursuant to Clause 35.</p> |
| 35. | <b>Performance Security</b>   | <p>35.1 Within thirty (30) days after receipt of the Notification of award, the successful Bidder shall deliver to the Employer a Performance Security in the amount and in the form of a Bank Guarantee <b>stipulated in the BDS</b>, denominated in Namibia Dollars in accordance with the General Conditions of Contract.</p>   |

- 35.2 If the Performance Security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued either at the Bidder's option, by a commercial bank located in the Republic of Namibia or a foreign bank through a correspondent commercial bank located in the Republic of Namibia.
- 35.3 Failure of the successful Bidder to comply with the requirements of ITB Sub-Clause 35.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security.
- 36. Advance Payment and Security** 36.1 The Employer will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to the amount **stated in the BDS**.
- 37. Adjudicator** 37.1 The Employer proposes the person **named in the BDS** to be appointed as Adjudicator under the Contract, at an hourly fee **specified in the BDS**, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Notification of award, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.
- 38. Debriefing** 38.1 The Employer shall promptly attend to all requests for debriefing for the contract, made in writing, and within 30 days from the date of the publication of award or date the unsuccessful bidders are informed about the award.

## Section II. Bidding Data Sheet

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

<b>A. General</b>	
<b>ITB 1.1</b>	<p><b>The Employer is</b> National Housing Enterprise</p> <p><b>The name and identification number of the Procurement is</b> General Plumbing Maintenance and Repairs Services to NHE Properties in Various Regions for a Period of Three (3) Years</p> <p><b>Procurement Reference Number:</b> NCS/ONB/NHE-06/21/22</p>
<b>ITB 1.2</b>	<p><b>The Intended Contract Period</b></p> <p>The contract shall be based on fixed rates for an initial period of three (3) years, with an option to extent for not more than 12 months, based on the satisfactory performance of the bidder</p>
<b>ITB 4.3</b>	<p>(a) A Bidder that is under a declaration of ineligibility by the Government of Namibia in accordance with applicable laws at the date of the deadline for bid submission or thereafter, shall be disqualified</p> <p>(b) Bids from service providers 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</p>
<b>ITB 5.2(a)</b>	Pre-qualifications have not been carried out.
<b>ITB 5.3</b>	Refer to Section III: Evaluation Criteria
<b>ITB 5.3(a)</b>	<p>Copies of original documents defining the constitution of or legal status, place of registration and principal place of business.</p> <p>The following documents must be provided:</p> <p>Copies of company registration indicating bidder is registered for the provision of services of a similar nature as principal business.</p> <p>Proof of local supplier indicating the principal place of business of bidder in the regions under the jurisdiction of the respective NHE Regional Offices.</p> <ul style="list-style-type: none"> <li>• fitness certificate from the local authority and/or</li> <li>• proof of ownership of property from where bidder is operating, such as a copy of a title deed or rental agreement of office space where the bidder is operating from, located within the regions where NHE Regional Offices are situated.</li> <li>• municipal account in the name of the bidder and/or</li> <li>• conformation letters from the Regional Councillors and/or Regional Governors.</li> </ul>
<b>ITB 5.3(b)</b>	<p>A written power of attorney is not required.</p> <p>The bidder must however complete the bid submission form in full and state the name of the person who is duly authorised to sign the bid for and on behalf of the bidder, as well as the person acting as the contractor's representative, if awarded the contract.</p> <p>A certified copy of ID or valid passport of the representative should be attached.</p>

<b>ITB 5.4</b>	Joint ventures are not allowed for this bid.
<b>ITB 5.5</b>	The qualification criteria in Sub-Clause 5.5 are modified as follows:
<b>ITB 5.5(a)</b>	A minimum average annual financial amount of N\$ 2,000,000.00, for the provision of services of a similar nature (plumbing works, maintenance and/or repairs) over the last 5 years.
<b>ITB 5.5 (b)</b>	<p>Experience as prime contractor in the provision of at least three (3) service contracts of a nature and complexity equivalent to this service over the last 5 years. 70% of the service contracts cited should at least be complete.</p> <p>Service contracts should pertain to the following areas:</p> <ol style="list-style-type: none"> <li>i. Repair of leaks in pipes.</li> <li>ii. Repair of burst pipes.</li> <li>iii. General plumbing repairs.</li> <li>iv. Replace plumbing parts.</li> <li>v. Unblocking drains.</li> <li>vi. Pump services and replacements.</li> <li>vii. Sealing of pipe fittings.</li> </ol> <p>Submit at least three (3) references for provision of services of similar nature in the last 5 years</p>
<b>ITB 5.5(c)</b>	<p>Proposal for the timely acquisition (own, lease hire, etc.) of essential equipment required for the performance of this contract such as:</p> <ul style="list-style-type: none"> <li>- Company vehicles.</li> <li>- Trucks, trailers, transport of materials.</li> <li>- List of tools.</li> <li>- List of various equipment; and/or</li> <li>- Any other items relevant for the performance of this contract.</li> </ul> <p>The proposal should be justified by proof of ownership and/or lease hire account and/or agreement with a third party/tool hire companies.</p> <p>Recent commitment letters and/or cash or credit accounts, not older than 12 months, from suppliers of materials and tools (tool hire companies) will be accepted.</p>
<b>ITB 5.5(d)</b>	<p>Contract Manager with five (5) years' experience in services of an equivalent nature and volume, including no less than three (3) years as Manager. A CV indicating the required experience should be submitted with relevant certified copies of qualifications.</p> <p>If the experience and qualifications of the Contract Manager does not relate to the services, CVs, and qualifications of a foreman and two support staff with the relevant experience and qualifications related to the services can be submitted</p>
<b>ITB 5.5(e)</b>	<p>Bank <b>rating</b> Letter to be issued by a commercial bank operating in Namibia. Only ratings of A, B or C are considered acceptable.</p>
<b>ITB 5.6</b>	Subcontracting is not allowed
<b>B. Bidding Data</b>	
<b>ITB 8.1 (b)</b>	<p>A site meeting will not be held.</p> <p>Bidders are free to visit the relevant NHE Offices and/or Properties at own will.</p>
<b>ITB 9.2 and 19.1</b>	<p>The number of copies of the Bid to be completed and returned shall be:</p> <p><b>One (1) original and one (1) copy</b></p>



<b>C. Preparation of Bids</b>	
<b>ITB 10.1</b>	The deadline to seek clarifications is: <b>22 July 2022</b>
<b>ITB 13.1</b>	<p>The Bid shall comprise the following:</p> <ul style="list-style-type: none"> <li>(a) Bid Submission Form, (in accordance with the format indicated in Section IV), duly completed, and stating full names of Contractor’s representative. Attach certified copy of identity document (ID) or certified copy of a valid passport of representative.</li> <li>(b) Qualification information and documentary evidence establishing the Bidder’s qualifications to perform the contract.</li> <li>(c) Completed Activity Schedule; and</li> <li>(d) <b>The following documentary evidence is required and compulsory: (Failure to submit will result in disqualification)</b> <ul style="list-style-type: none"> <li>i. Valid Certified Copy of Company Registration Certificate. <i>(the bid is limited to entities incorporated in Namibia in terms of section 29(b) of the Act. The company registration document must clearly indicate ownership in the entity. In addition, bidder must complete the <b>Entity’s Ownership Form</b> enclosed in the bidding document.</i></li> <li>ii. Original/Certified Copy of Valid Good Standing Tax Certificate.</li> <li>iii. Original/Certified Copy of Valid Good Standing Social Security Certificate.</li> <li>iv. 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. <i>(in the event that the Affirmative Action Compliance Certificate submitted is over 12 months from the date of issue, bidder must furnish a confirmation letter from the Employment Equity Commission indicating that the bidder did submit the report for the period following from the date when the certificate was issued)</i></li> <li>v. Completion of the Written Undertaking as Contemplated in Section 138(2) of the Labour Act,2007; and</li> </ul> </li> <li>(e) Bidders are advised to observe the following, of which failure will result in disqualification of bids: <ul style="list-style-type: none"> <li>i. Bidding document must be submitted in original with one extra copy.</li> <li>ii. Bidding document must be fully signed and initialled on every page; and</li> <li>iii. Bid Securing Declaration must be fully completed and signed (in accordance with the format indicated in Section IV).</li> <li>iv. Eligibility Self Declaration Form must be fully completed and signed (in accordance with the format provided in the bidding document)</li> </ul> </li> </ul>
<b>ITB 14.1</b>	Local inputs shall be quoted in Namibian Dollars Only
<b>ITB 14.4</b>	The Contract is not subject to price adjustment in accordance with Sub-Clause 6.6 of the Conditions of Contract.

<b>ITB 16.1</b>	The Bid shall be valid for 90 days after the deadline set for the submission of bid, the deadline being counted as day one of the validity period.
<b>ITB 17.1</b>	The Bidder shall subscribe to a Bid Securing Declaration by signing the Bid Submission Form containing the provision with regard thereto.
<b>ITB 18.1</b>	Alternative bids are not permitted.
<b>ITB 18.2</b>	Alternative times for completion are not permitted
<b>ITB 18.4</b>	Alternative technical solutions shall not be permitted
<b>D. Submission of Bids</b>	
<b>ITB 20.2</b>	<p>The Employer's address for the purpose of bid submission is:  <b>7 General Murtala Mohammed Avenue, Eros in Windhoek</b></p> <p>Attention:  <b>Noreen Siyanga</b> (Head: Procurement Management Unit)</p> <p>Address:  <b>7 General Murtala Mohammed Avenue, Eros in Windhoek</b></p> <p>Bids in sealed envelopes clearly marked with description and reference number of the bid must be deposited in the bid box placed at NHE Reception.</p>
<b>ITB 21.1</b>	<p>The deadline for submission of bids shall be:  <b>05 August 2020 @ 11h00 pm</b></p>
<b>E. Bid Opening and Evaluation</b>	
<b>ITB 24.1</b>	<p>The bid opening shall take place at:  <b>7 General Murtala Mohammed Avenue, Eros in Windhoek</b>  <b>NHE Head Office (Lecture Hall)</b></p> <p>Date and time:  <b>05 August 2022 @ 11h15 am</b></p>
<b>F. Award of Contract</b>	
<b>ITB 35.1</b>	No Performance Guarantee required
<b>ITB 36.1</b>	The Advance Payment is not applicable
<b>ITB 37.1</b>	The Adjudicator proposed by the Employer is anybody recommended by the Labour Commissioner of Namibia. The hourly fee for this proposed Adjudicator shall be agreed upon by the parties. The biographical data of the proposed Adjudicator is as follows: Shall be somebody who is well acquainted with the matter at hand in terms of academic qualifications and experience.

## Section III.- Evaluation Criteria

This section contains supplementary criteria that NHE shall use to evaluate bids.

### 1) Evaluation Method

This Section complements the Instructions to Bidders. It contains the criteria that NHE will use to evaluate a bid and determine whether a Bidder meet the requirements.

The Criteria hereunder are derived from the bidding document. No other criteria but those indicated here shall be used during evaluation.

### 2) Evaluation Process

Evaluation will be conducted by a Bid Evaluation Committee (BEC) appointed in accordance with the Procurement Act and Regulations and evaluated in accordance with the criteria stated here below in two (2) stages.

Offers that are substantially responsive during the two (2) stages shall be compared based on evaluated cost stated in the activity schedule (schedule of rates) to determine the lowest evaluated bid.

### 3) General Information

- NHE may seek clarification during the examination of bids from any bidder to facilitate evaluation, but it may neither ask nor permit any bidder to change the price or substance of the bid.
- NHE will conduct due diligence on any service provider, which may include interviewing customer/clients used as reference or other activities to verify the services provided by the bidder.
- This might include visits to the service provider's premises to verify local supplier requirements and verification of any other information furnished in the bidding document.
- Bidder will be obliged to provide NHE with all necessary access, assistance, and/or information which NHE may reasonably request and to respond within the given time frame set by NHE. Failure may lead to disqualification.

#### Stage 1: Evaluation of Administrative and Legal Compliance

The eligibility criteria will be assessed based on a Yes or No. The bidders who score a **Yes** for all the required (mandatory) documents and satisfy the formal documentary evidence as indicated in ITB and as stated in **TABLE 1**, will proceed to the next phase of technical evaluation.

#### Strage2: Evaluation of Technical Compliance

Bidders will be assessed against the technical evaluation criteria as stated in **TABLE 2** as per the weights stated therein. The total technical evaluation is out of 100%. For a bidder to proceed to the last phase of pricing comparison, the bidder must score 70% and above. Bidders who fail to achieve the required minimum score of 70% will be deemed as "technically non-responsive". Such bidders will be excluded from being considered for further evaluation.

#### Stage 3: Pricing Comparison

Only Bids that have passed with a minimum technical score of **70 %** shall have their prices evaluated. The lowest Price from the technically compliant Bids will be recommended for award.

#### Bank Confirmation Letters

Any letter from the bank (bank rating letter and/or credit facilities conformation letter) should be from a bank operating from Namibia and it must be dated not more than one month prior to the closing date of submission of bids.

Only bidders who score the minimum bank rating of **C** - will be considered for award. Following are the definitions of the different bank rating codes:

**A-** Undoubted for Enquiry; **B-** Good for amount quoted; **C-** Good for amount quoted if strictly in way of business; **D-** Fair trade risk; **E-** Figures considered too high; **F-** Financial position unknown; **G-** Paper occasionally dishonoured; **H-** Paper frequently dishonoured.

The procurement contract will be awarded to the **lowest** quoted substantially **responsive** and **technically compliant** bid.

### **RESERVATION TO LOCAL SUPPLIERS**

The proposed procurement will be carried out in terms of a directive issued by the Procurement Policy Unit on reservation to local suppliers for the procurement of works.

For the procurement of services, reservation for maintenance services shall be given to service providers based and operating from the 14 regions of Namibia where the services are required.

The procurement will however be extended to bidders from other regions in Namibia if there are no bids submitted by local suppliers in the region or if bids from local suppliers do not meet the qualification criteria.

Please note that NHE Offices are in the following places as listed below and not in all the regions. For the sake of inclusivity, bidders may apply for the provision of services to any office of their choice.

NHE Head Office – Windhoek

NHE Central Regional Office – Katutura – Windhoek

NHE South Regional Office – Keetmanshoop

NHE West Regional Office – Walvis Bay

NHE North Regional Office – Oshakati

NHE North East Regional Office – Rundu

The award will be based on the jurisdiction of the various NHE Regional Offices, but the successful bidder will be required to provide the services at any other place where there are NHE properties.

Therefore, bidders are advised to include in their pricing schedule, the rate per kilometre to be charged should they be required to travel from their place of operation. Place of operation will be determined by means of proof of local supplier document submitted.

Proof that the bidder is operating from the respective region should be provided to substantiate local supplier status. This proof can be in a form of a fitness certificate from the local authority or any other proof such as deed of sale, lease agreement or confirmation letter from the constituency councillor and/or Regional Governor.

**STAGE 1: PRELIMINARY EVALUATION**

The table below will be used for evaluation of the first stage. Bidders shall comply with all the criteria listed in the table below for further evaluation. All certifications are to be done by a **Commissioner of Oath**.

<b>Table 1: Preliminary Evaluation</b>			
<b>Mandatory Requirements</b>			
<b>Criteria</b>	<b>Yes/Pass</b>	<b>No/Fail</b>	<b>Supporting Document</b>
Company Registration ITB 13.1(d)(i)			Certified copy of Founding Statement or Company Registration Certificate
Ownership complies with section 29(b) ITB 13.1(d)(i)			Entity's Ownership Form (p.37)
A valid original or certified copy of Good Standing Tax Certificate – ITB 13.1(d)(ii)			Good Standing Tax Certificate
A valid original or certified copy of Good Standing Social Security Certificate – ITB 13.1(d)(iii)			Good Standing Social Security Certificate
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. <i>(in the event that the Affirmative Action Compliance Certificate submitted is over 12 months from the date of issue, bidder must furnish a confirmation letter from the Employment Equity Commission indicating that the bidder did submit the report for the period following from the date when the certificate was issued – ITB 13.1(d)(iv)</i>			Affirmative Action Compliance Certificate
Bid Submission Form -ITB 13.1(a)			Form – (p.31)
Bid Securing Declaration – ITB 13.1(e)(iii) & ITB 17.1			Form – (p.34)
Local Sourcing Declaration Form – ITB 5.3(a)			Form – (p.38)
An Undertaking in terms of section 138 of the Labour Act, form – ITB 13.1(d)(v)			Form – (p.35)
Proof of SME Status (Optional) (Not ground for disqualification)			SME Certificate and/or any other proof
<b>Eligibility Criteria</b>			
Self-Declaration form to be fully completed and signed (p.33)			
<b>Criteria</b>	<b>Yes/Pass</b>	<b>No/Fail</b>	<b>Supporting Document</b>
Bidder shall not be declared ineligible by the Government of Namibia at deadline of RFQ submission. -ITB 4.3(a)			Form – (p.33)
Bidder shall not appear on ineligibility list of African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and World Bank Group. – ITB 4.3(b)			Form – (p.33)
Bidder shall submit statement on past and present declaration of ineligibility if any.			Form – (p.33)

Bidder who fully comply with Stage 1: Preliminary Evaluation, will be further evaluated technically in Stage 2.

**STAGE 2: EVALUATION OF TECHNICAL COMPLIANCE**

This section contains supplementary criteria that the Employer shall use to evaluate bids.

<b>TABLE 2: TECHNICAL EVALUATION CRITERIA</b>				
<b>#</b>	<b>DESCRIPTION</b>	<b>SCORING NOTES</b>		<b>WEIGHT</b>
<b>1</b>	<b>PROVISION OF SERVICES OF A SIMILAR NATURE</b>			
	A minimum average annual financial amount of N\$ 2,000,000.00, for the provision of services of a similar nature (plumbing works, maintenance and/or repairs) over the last 5 years ITB 5.5(a)	Minimum average below N\$1million	0%	<b>20%</b>
		Minimum average of N\$1million but not more than N\$ 2 million	10%	
		Minimum average of N\$2million or more	20%	
<ul style="list-style-type: none"> <li>• Detailed company profile listing the provision of similar services in the past 5 years, with the value of each service.</li> <li>• Appointment/award letters and/or contract/agreements of such services.</li> <li>• Please provide proof of value for each project listed.</li> </ul>				
<b>2</b>	<b>EXPERIENCE</b>			
	Experience as prime contractor in the provision of at least three (3) service contracts of a nature and complexity equivalent to this service over the last 5 years. 70% of the service contracts cited should at least be complete. Please attach sample of service checklist Service contracts should pertain to the following areas: <ul style="list-style-type: none"> <li>• Repair of leaks in pipes.</li> <li>• Repair of burst pipes.</li> <li>• General plumbing repairs.</li> <li>• Replace plumbing parts.</li> <li>• Unblocking drains.</li> <li>• Pump services and replacements.</li> <li>• Sealing of pipe fittings</li> <li>• Please attach sample of service checklist</li> </ul> ITB 5.5(b)	1 or no service contracts	0%	<b>15%</b>
		2 service contracts	5%	
		3 service contracts	10%	
		70% or more of service contracts complete	5%	
		Less than 70% service contracts complete	0%	
Submit at least three (3) references for provision of services of similar nature in the last 5 years. Completion certificates will also be accepted as proof.				
<b>3</b>	<b>ESSENTIAL EQUIPMENT</b>			
	Proposal for the timely acquisition (own, lease hire, etc.) of essential equipment required for the performance of this contract such as: <ul style="list-style-type: none"> <li>• Company vehicles.</li> <li>• Trucks, trailers, transport of materials.</li> <li>• List of tools.</li> <li>• List of various equipment; and/or</li> <li>• Any other items relevant for the performance of this contract.</li> </ul> ITB 5.5(c)	List of equipment with no satisfactory proof of ownership OR No satisfactory proof of commitment letters and/or proof of credit/cash accounts / proof older than 12 months	0%	<b>10%</b>
		List of equipment with satisfactory proof of ownership OR Satisfactory proof of commitment letters and/or proof of credit/cash accounts (not older than 12 months)	10%	
The proposal should be justified by proof of ownership and/or lease hire account and/or agreement with a third party/tool hire companies. Recent commitment letters and/or proof of cash or credit accounts, not older than 12 months, from suppliers of materials and tools (tool hire companies) will be accepted.				

4	<b>CONTRACT MANAGER / SUPPORT STAFF</b>			
	Contract Manager with five (5) years' experience in services of an equivalent nature and volume, including no less than three (3) years as Manager. A CV indicating the required experience should be submitted with relevant certified copies of qualifications. ITB 5.5(d)	No CV, Qualification & Experience	0%	<b>10%</b>
		CV Without Proof of Relevant Qualifications & Experience (or one of each without the other two)	2.5%	
		CV With Relevant Qualification & No Experience (or two of each without the other one)	7.5%	
		CV With Relevant Qualification & Relevant Experience	10%	
	<b>OR</b>			
	If the experience and qualifications of the Contract Manager does not relate to the services, CVs, and qualifications of a foreman and two support staff with the relevant experience and qualifications related to the services may be submitted ITB 5.5(d)	No CV, Qualification & Experience	0%	
		CV Without Proof of Relevant Qualifications & No Experience – Foreman/Support Staff only or Foreman & 1 Support Staff	2.5%	
CV With Relevant Qualification & No Experience – Foreman & 2 Support Staff		7.5%		
CV With Relevant Qualification & Relevant Experience – Foreman & 2 Support Staff		10%		
6	<b>BANK RATING LETTER</b>			
Bank <b>rating</b> Letter to be issued by a commercial bank operating in Namibia. Only ratings of A, B or C are considered acceptable. ITB 5.5(e)	Rating below C	0%	<b>10%</b>	
	Ratings A, B or C	10%		
7	<b>PROOF OF LOCAL SUPPLIER</b>			
<ul style="list-style-type: none"> <li>• fitness certificate from the local authority and/or</li> <li>• proof of ownership of property from where bidder is operating, such as a copy of a title deed or rental agreement of office space where the bidder is operating from, located within the regions where NHE Regional Offices are situated.</li> <li>• municipal account in the name of the bidder and/or</li> <li>• conformation letters from the Regional Councillors and/or Regional Governors.</li> </ul> ITB 5.3(a)	No Proof provided	0%	<b>15%</b>	
	Proof provided	10%		
8	<b>REGISTERED FOR PROVISION OF SERVICES AS PRINCIPAL BUSINESS</b>			
Copies of company registration indicating bidder is registered for the provision of services of a similar nature as principal business. ITB 5.3(a)	Bidder not registered for provision of services of similar nature as principal business	0%	<b>20%</b>	
	Bidder registered for provision of services of similar nature as principal business	20%		
<b>TOTAL</b>			<b>100%</b>	

**Margin of Preference: None.**

## Section IV.- Bidding Forms

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## Form – Bid submission

*The Bidder must prepare the Bid Submission Form on stationery with its letterhead clearly showing the Bidder's complete name and address.*

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

Bidder's Reference No.: \_\_\_\_\_

Procurement Reference No: **NCS/ONB/NHE-06/21/22**

To:

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB);
- (b) We offer to execute in conformity with the Bidding Documents the following Works:  
\_\_\_\_\_;
- (c) The total price of our Bid, offered is (expressed in words and figures):  
\_\_\_\_\_  
\_\_\_\_\_;
- (d) Prompt payment discounts are as offered in the Bidding Forms.
- (e) Our bid shall be valid for a period of \_\_\_\_\_ *[insert validity period as specified in ITB 19.1.]* days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- (f) We hereby confirm that we have read and understood the content of the Bid Securing Declaration attached hereto and subscribe fully to the terms and conditions contained therein, if required. We understand that non-compliance to the conditions mentioned may lead to disqualification.
- (g) If our bid is accepted, we commit to obtain a Performance Security and a Preference Security (if applicable) in accordance with the Bidding Document.
- (h) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 5.2.
- (i) We are not participating, as a Bidder in more than one bid in this bidding process other than alternative offers submitted in accordance with ITB 15.
- (j) Our firm, its affiliates, or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been declared ineligible under the laws of Namibia.
- (k) We are not a government owned entity / We are a government owned entity but meet the requirements of ITB 5.4.
- (l) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (m) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive; and

- (n) If awarded the contract, the person named below shall act as Contractor's Representative: ***(Provide certified copy of identity document (ID) or certified copy of a valid passport of representative, including Evidence of signatory authorized to sign the bid)***

\_\_\_\_\_

Name of Representative: .....

In the capacity of: .....

Signed: .....

Duly authorized to Sign the Bid for and on behalf of:

Name of Bidder: .....

Physical Address: .....

Postal Address: .....

Tel no. (Office): .....

Cell: .....

email: .....

Date: .....

Seal of Company .....

## Form – Self Declaration

**Procurement Reference No: NCS/ONB/NHE-06/21/22**

**Title**

I/We the undersigned declare that:

1. I / we are not blacklisted by the Government of Namibia in accordance with applicable laws at the date of the deadline for bid submission.
2. I/ we are not blacklisted by African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and World Bank Group.
3. I/ we will submit a statement on past and present declaration of ineligibility, if any, by any local/international agency or any termination of contract for unsuccessful completion of assignment, giving adequate details to enable a fair assessment.
4. I/ we will inform the contracting authority, without delay, of any situation constituting a conflict of interest or could give rise to a conflict of interest.
5. I/ we have not sought, attempted to obtain or accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal or corrupt practice, either directly or indirectly, as an incentive or reward relating to the award of the contract.

Declared at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2022

Signature (of duly authorised officer): \_\_\_\_\_.

Full Name and Designation: \_\_\_\_\_

# Form – Bid Securing Declaration

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

Date: .....[Day|month|year]

Procurement Ref No.: NCS/ONB/NHE-06/21/22

To: .....[insert complete name of Public Entity and address]

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

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

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

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

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

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

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

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

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
[insert date of signing]

Corporate Seal (where appropriate)  
[Note\*: In case of a joint venture, the bid securing declaration must be in the name of all partners to the joint venture that submits the bid.]  
**\*delete if not applicable / appropriate**

# Form – Written Undertaking



## Republic of Namibia

### Ministry of Labour, Industrial Relations and Employment Creation

Written undertaking in terms of section 138 of the Labour Act, 2007 and section 50(2)(D) of the Public Procurement Act, 2015

#### 1. EMPLOYERS DETAILS

Company Trade Name:.....

Registration Number :.....

Vat Number: .....

Industry/Sector: .....

Place of Business:.....

Physical Address:.....

Tel No.:.....

Fax No.:.....

Email Address:.....

Postal Address:.....

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

.....

Email Address:.....

#### 2. PROCUREMENT DETAILS

Procurement Reference No.:.....

Procurement Description:  
.....  
.....

.....  
 Anticipated Contract Duration: .....  
 Location where work will be done, good/services will be delivered: .....  
 .....

**3. UNDERTAKING**

I .....[insert full name], owner/representative  
 of .....[insert full name of company]

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

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

**Signature:** .....

**Date:** .....

**Seal:**.....

*Please take note:*

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

## Form- Entity's Ownership

<b>Procurement Reference No: NCS/ONB/NHE-06/21/22</b>					
<b>List of names of Shareholders / Directors / Members and percentage owned</b>					
Name of Shareholder / Director / Member	Namibian	Previously Disadvantaged Namibian	Non-Namibian Citizen (if non-Namibian State nationality)	Percentage shares owned by women / youth	Shareholders /Directors Percentage / Members Interest in Percentage
	Yes / No	Yes / No	Yes / No	%	%
Copies of Identification Documents (IDs) of the shareholders or members as certified by the Commissioner of Oaths					

## Form- Local Sourcing Declaration

Kindly complete this form and provide proof that the bidder is operating from the respective region to substantiate local supplier/bidder status. This proof can be in a form of a fitness certificate from the local authority or any other proof such as deed of sale, lease agreement or confirmation letter from the constituency councillor.

### ANNEXURE 1: LOCAL SOURCING DECLARATION

(Section 73 of Act)  
(Regulation 37(5) and 56(2))

Bid No: **NCS/ONB/NHE-06/21/22**

Date: .....

To:.....  
[insert complete name of Public Entity]

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 local sourcing declaration by the bidders.

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

(a) If found that the goods, works and services are found to be not meeting the local content and is not supplied by the suppliers based and operating from the 14 regions of Namibia, and where the goods are required

(b)

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

Signed:

\_\_\_\_\_  
[insert signature of person whose name and capacity are shown]

Capacity of: [indicate legal capacity of person(s) signing the local sourcing declaration] Name:

\_\_\_\_\_  
[insert complete name of person signing the local sourcing declaration]

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

-----

Dated on.....day.....of..... [insert date of signing]

Corporate Seal (where appropriate)

[Note\* : In case of a joint venture, the local sourcing declaration must be in the name of all partners to the joint venture that submits the bid,] \*delete if not applicable appropriate.



## Qualification Information

**1. Individual Bidders**

1.1 Constitution or legal status of Bidder..... [attach copy]

Place of registration.....

Principal place of business.....

Evidence of signatory authorized to sign the bid (if applicable): [attach]

1.2 Total annual volume of Services performed in five years, in the internationally traded currency specified in the BDS: *[insert]*

1.3 Services performed as prime Service Provider on the provision of Services of a similar nature and volume over the last five years. The values should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date.

Project name and country	Name of employer and contact person	Type of Services provided and year of completion	Value of contract
(a)			
(b)			

1.4 Major items of Service Provider's Equipment proposed for carrying out the Services. List all information requested below. Refer also to ITB Sub-Clause 5.5(c).

Item of equipment	Description, make, and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
(a)			
(b)			

1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to ITB Sub-Clause 5.5(e) and GCC Clause 4.1.

Position	Name	Years of experience (general)	Years of experience in proposed position
(a)			
(b)			

1.6 Proposed subcontracts and firms involved. Refer to GCC Clause 4.1.

Sections of the Services	Value of subcontract	Subcontractor (name and address)	Experience in providing similar Services
(a)			
(b)			

- 1.7 Financial reports for the last three years: balance sheets, profit and loss statements, auditors' reports, etc. List below and attach copies.
- 1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents. We certify/confirm that we comply with eligibility requirements as per ITB Clause 4.
- 1.9 Name, address, and telephone and facsimile numbers of banks that may provide references if contacted by the Employer.
- 1.10 Information regarding any litigation, current or within the last five years, in which the Bidder is or has been involved.

Other party(ies)	Cause of dispute	Details of litigation award	Amount involved
(a)			
(b)			

- 1.11 Statement of compliance with the requirements of ITB Sub-Clause 4.2.
- 1.12 Proposed Program (service work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the bidding documents.

**2. Joint Ventures**

- 2.1 The information listed in 1.1 - 1.11 above shall be provided for each partner of the joint venture.
- 2.2 The information in 1.12 above shall be provided for the joint venture.
- 2.3 Attach the power of attorney or other acceptable document of the signatory (ies) of the Bid authorizing signature of the Bid on behalf of the joint venture.
- 2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that
  - (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

- (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
- (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

**3. Additional Requirements**

- 3.1 Bidders should provide any additional information required in the BDS and to fulfill the requirements of ITB Sub-Clause 5.1, if applicable.

## **Part II – Activity Schedule**

## Section V. Activity Schedule

### SCHEDULE OF RATES

Procurement Reference Number: **NCS/ONB/NHE-06/21/22**

[Complete the unit and total prices for each item listed below in Namibia Dollars. Authorize the prices quoted in the signature block below. The table shown hereunder may be redesigned and customized as per the type of services required].

**Currency of Bid: Namibia Dollars**

Item No	Brief Description of Services	Quantity	Unit of Measure	Unit Price	Total Price
A*	B*	C*	D*	E	F
1	First call out fee to NHE to include the following: <ul style="list-style-type: none"> <li>• Travel to and from NHE.</li> <li>• Assessment of what is required.</li> <li>• One (1) hour of onsite labour.</li> </ul>	1	Each		
Should more than one visit be required for a request after the first callout or additional labour on the day of the first call out, the applicable travel and labour rates below will apply					
2	Call out fee WEEKDAYS – NORMAL HOURS	1	Each		
3	Call out fee WEEKDAYS – AFTER HOURS	1	Each		
4	Call out fee WEEKENDS & PUBLIC HOLIDAYS	1	Each		
5	Standard labour per hour NORMAL HOURS	1	Hour		
6	Standard labour per hour AFTER HOURS INCL SATURDAYS	1	Hour		
7	Standard labour per hour SUNDAYS	1	Hour		
8	Standard labour per hour PUBLIC HOLIDAY	1	Hour		
9	Rate per kilometre	1	Kilometre		
10	Percentage for mark-up on materials to be used for work requests/callouts	N/A	%		
(Supplier Invoices for materials used for requests/callouts must be provided during duration of contract)					
				<b>Other additional costs</b>	
				<b>Subtotal</b>	
				<b>VAT @      %</b>	
				<b>Total</b>	

*Enter 0% VAT rate if VAT exempt.*

\* Columns A to D to be completed as applicable by Public Entity

**Priced Activity Schedule Authorised By:**

Name:		Signature:	
Position:		Date:	
Authorised for and on behalf of:	Company		

## Section VI. Scope of Service and Performance Specifications

(Describe Outputs and Performances, rather than Inputs, wherever possible)

### SCOPE OF WORK

The scope of work is for the provision of General Building Maintenance and Minor Works and Repairs to NHE Properties in Various Regions

This will be on an "as - needed and when - requested" basis including emergency response at all times.

The awarded Contractor is expected to be available in order to respond to emergencies on a twenty-four (24) hours per day, seven (7) days per week, 365 days per year, as determined by the nature of a given situation and/or emergency.

A Service Level Agreement will be signed with the awarded Contractor which will spell out detailed terms and conditions for this bid.

### Requirements for General Maintenance Works

Provide general maintenance work to all NHE properties which include, but are not limited to:

- Repair of leaks in plumbing/piping systems.
- Underground and wall covered plumbing/pipe repair.
- Patch or repair of sanitary drain blockages.
- Unblocking of drains.
- Maintenance and repairs on sewer systems.
- Pumps.
- Leak sealing.
- Sealing of pipe fittings and valves
- Replace of various plumbing equipment (sink, toilets, faucets etc.)
- Any other plumbing related works as it may be determined.
- Procure and obtain parts and supplies for self-performed work.
- Produce reports detailing work performed (job cards), costs, man-hours and personnel.

This will also include small construction works from time to time as maybe needed and determined by NHE.

### Notes on Drawings

NHE will provide detailed building plans, site layout, engineering drawings and equipment specifications to the successful bidder/s.

## **Part III –Contract**

# **Section VII. General Conditions of Contract**

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## Section VII. General Conditions of Contract

### A. General Provisions

#### 1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) The Adjudicator is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder **as specified in SCC.**
- (b) "Activity Schedule" is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Bid;
- (c) "Contract Period" means the period which the Services are required to be provided by the Service Provider as certified by the Employer **as indicated in the SCC;**
- (d) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract **as indicated in the SCC;**
- (e) "Contract Price" means the price to be paid for the performance of the Services, in accordance with Clause 6.2;
- (f) "Dayworks" means varied work inputs subject to payment on a time basis for the Service Provider's employees and equipment, in addition to payments for associated materials and administration.
- (g) "Employer" means the party who employs the Service Provider **as specified in the SCC**
- (h) "GCC" means these General Conditions of Contract;
- (i) "Government" means the Government of the Republic of Namibia;
- (j) "Local Currency" means Namibia Dollars;
- (k) "Member," in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; "Members" means all these entities, and "Member in Charge" means the entity **specified in the SCC** to act on their behalf in exercising all the Service Provider' rights and obligations towards the Employer under this Contract;
- (l) "Party" means the Employer or the Service Provider, as the case may be, and "Parties" means both of them;
- (m) "Personnel" means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;
- (n) "Service Provider" is a person or corporate body whose Bid to provide the Services has been accepted by the Employer;

- (o) "Service Provider's Bid" means the completed bidding document submitted by the Service Provider to the Employer
- (p) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- (q) "Specifications" means the specifications of the service included in the bidding document submitted by the Service Provider to the Employer
- (r) "Services" means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider's Bid.
- (s) "Subcontractor" means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4.

- 1.2 Applicable Law** The Contract shall be interpreted in accordance with the laws of Namibia.
- 1.3 Language** This Contract has been executed in English, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
- 1.4 Notices** Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, or facsimile to such Party at the address **specified in the SCC.**
- 1.5 Location** The Services shall be performed at such locations as are specified in **Appendix A**, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Republic of Namibia or elsewhere, as the Employer may approve.
- 1.6 Authorized Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Employer or the Service Provider may be taken or executed by the officials **specified in the SCC.**
- 1.7 Inspection and Audit by the Public Entity** The Service Provider shall permit the Employer to inspect its accounts and records relating to the performance of the Services and to have them audited by auditors appointed by the Employer, if so required by the Latter.
- 1.8 Taxes and Duties** The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

## 2. Commencement, Completion, Modification, and Termination of Contract

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be **stated in the SCC**, no later than 30 days after the notification of award was issued.
- 2.2 Commencement of Services**
- 2.2.1 Program** Before commencement of the Services, the Service Provider shall submit to the Employer for approval a Program showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.
- 2.2.2 Starting Date** The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC**.
- 2.3 Intended Completion Date** Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC**. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.10. In this case, the Completion Date will be the date of completion of all activities.
- 2.4 Modification** Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.
- 2.5 Force Majeure**
- 2.5.1 Definition** For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.
- 2.5.2 No Breach of Contract** The failure of a Party to fulfil any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.
- 2.5.3 Extension of Time** Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- 2.6 Termination**
- 2.6.1 By the Employer** The Employer may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given

after the occurrence of any of the events specified in paragraphs (a) through (d) of this Sub-Clause 2.6.1:

- (a) if the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Employer may have subsequently approved in writing;
- (b) if the Service Provider become insolvent or bankrupt;
- (c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Service Provider, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purposes of this Sub-Clause:

- (i) “corrupt practice”<sup>5</sup> is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) “fraudulent practice”<sup>6</sup> is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) “collusive practice”<sup>7</sup> is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice”<sup>8</sup> is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” is
  - (aa) 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

<sup>5</sup> For the purpose of this Contract, “another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

<sup>6</sup> For the purpose of this Contract, “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>7</sup> For the purpose of this Contract, “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

<sup>8</sup> For the purpose of this Contract, “party” refers to a participant in the procurement process or contract execution.

its knowledge of matters relevant to the investigation or from pursuing the investigation.

(e) In case the liquidated damage reaches the maximum as per sub-clause 3.10.1.

(f) Notwithstanding the above the Employer may terminate the contract for its convenience after giving a prior notice of 30 days.

#### **2.6.2 By the Service Provider**

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Employer, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause:

- (a) if the Employer fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 8 within Sixty (60) days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

#### **2.6.3 Payment upon Termination**

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Employer shall make the following payments to the Service Provider:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

### **3. Obligations of the Service Provider**

#### **3.1 General**

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Employer, and shall at all times support and safeguard the Employer's legitimate interests in any dealings with Subcontractors or third parties.

#### **3.2 Conflict of Interests**

##### **3.2.1 Service Provider Not to Benefit from**

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contract or the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar

- Commissions and Discounts.** payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.
- 3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project** The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.
- 3.2.3 Prohibition of Conflicting Activities** Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:
- (a) during the term of this Contract, any business or professional activities in the Republic of Namibia which would conflict with the activities assigned to them under this Contract;
  - (b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;
  - (c) after the termination of this Contract, such other activities as may be **specified in the SCC.**
- 3.3 Confidentiality** The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Employer's business or operations without the prior written consent of the Employer.
- 3.4 Assignment** The Service Provider shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of the Employer.
- 3.5 Indemnification** The Service Provider shall indemnify, hold and save harmless, and defend, at its own expense, the Employer, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Service Provider, or the Service Provider's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of Employer's liability and Workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this clause do not lapse upon termination of this Contract.

- 3.6 Insurance to be Taken Out by the Service Provider**
- (a) The Service Provider shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.
- (b) The Service Provider shall provide and thereafter maintain all appropriate Employer's Liability and Workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.
- (c) The Service Provider shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, or other equipment owned or leased by the Service Provider or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.
- (d) Except for the Employer's Liability and Workmen's compensation insurance, the insurance policies under this clause shall:
- (i) Name the Employer as additional insured;
- (ii) Include a waiver of subrogation of the Service Provider's rights to the insurance carrier against the Employer;
- (iii) Provide that the Employer shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.
- 3.7 Service Provider's Actions Requiring Employer's Prior Approval**
- The Service Provider shall obtain the Employer's prior approval in writing before taking any of the following actions:
- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),
- (c) changing the Program of activities; and
- (d) any other action that may be **specified in the SCC**.
- 3.8 Reporting Obligations**
- The Service Provider shall submit to the Employer the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.
- 3.9 Documents Prepared by the Service Provider to Be the Property of the Employer**
- All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.8 shall become and remain the property of the Employer, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Employer, together with a detailed inventory thereof. The Service Provider may retain a copy of such



documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.

### **3.10 Liquidated Damages**

#### **3.10.1 Payments of Liquidated Damages**

The Service Provider 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 Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

#### **3.10.2 Correction for Over-payment**

If the Intended Completion Date is extended after liquidated damages have been paid, the Employer shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.

#### **3.10.3 Lack of performance penalty**

If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC**.

### **3.11 Performance Security**

The Service Provider shall provide the Performance Security to the Employer no later than the date specified in the Notification of award. The Performance Security shall be issued in an amount and form and by a bank acceptable to the Employer, and denominated in Namibia Dollars. The performance Security shall be valid until a date 30 days from the Completion Date of the Contract.

## **4. Service Provider's Personnel**

### **4.1 Description of Personnel**

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the Employer.

### **4.2 Removal and/or Replacement of Personnel**

(a) Except as the Employer may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.

(b) If the Employer finds that any of the Personnel have:

(i) committed serious misconduct or have been charged with having committed a criminal action, or

(ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel,

then the Service Provider shall, at the Employer's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Employer.

- (c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

## 5. Obligations of the Employer

- 5.1 Assistance and Exemptions** The Employer shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as **specified in the SCC.**
- 5.2 Change in the Applicable Law** If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2 (a) or (b), as the case may be.
- 5.3 Services and Facilities** The Employer shall make available to the Service Provider the Services and Facilities listed under Appendix E.

## 6. Payments to the Service Provider

- 6.1 Time-Based Remuneration** The Service Provider's remuneration shall not exceed the Contract Price rates and shall be subject to the quantities performed as agreed with the purchaser including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.4 and 6.3.
- 6.2 Contract Price** The price payable in Namibia Dollars is the corrected bid price accepted in terms of the award or the total amount in terms of the Contract Agreement signed by the Parties, whichever is applicable.
- 6.3 Payment for Additional Services, and Performance Incentive Compensation** 6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, an increase in the remuneration may be done by increasing the quantities multiplied by the unit price thereto provided in Appendices D and E.
- 6.4 Terms and Conditions of Payment** 6.4 Payments will be made to the Service Provider according to the payment schedule **stated in the SCC. Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee from a bank operating in Namibia for the same amount, and shall be valid for the period **stated in the SCC.** Any other payment shall be made after the

conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the Employer specifying the amount due.

**6.5 Interest on Delayed Payments**

6.5 If the Employer has delayed payments beyond fifteen (15) days after the due date stated in the SCC, interest shall be paid to the Service Provider for each day of delay at the rate stated in the SCC.

**6.6 Price Adjustment**

6.6.1 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, after 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:

$$P_c = A_c + B_c \frac{L_{mc}}{L_{oc}} + C_c \frac{I_{mc}}{I_{oc}}$$

Where:

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

$A_c$ ,  $B_c$  and  $C_c$  are coefficients specified in the SCC, representing:  $A_c$  the nonadjustable portion;  $B_c$  the adjustable portion relative to labor costs and  $C_c$  the adjustable portion for other inputs, of the Contract Price payable in that specific currency "c"; and

$L_{mc}$  is the index prevailing at the first day of the month of the corresponding invoice date and  $L_{oc}$  is the index prevailing 30 days before Bid opening for labor; both in the specific currency "c".

$I_{mc}$  is the index prevailing at the first day of the month of the corresponding invoice date and  $I_{oc}$  is the index prevailing 30 days before Bid opening for other inputs payable; both in the specific currency "c".

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor  $Z_o/Z_n$  will be applied to the respective component factor of  $p_n$  for the formula of the relevant currency.  $Z_o$  is the number of units of currency of the country of the index, equivalent to one unit of the currency payment on the date of the base index, and  $Z_n$  is the corresponding number of such currency units on the date of the current index.

6.6.2 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.

**6.7 Dayworks**

6.7.1 If applicable, the Daywork rates in the Service Provider's Bid shall be used for small additional amounts of Services only when the

Employer has given written instructions in advance for additional services to be paid in that way.

6.7.2 All work to be paid for as Dayworks shall be recorded by the Service Provider on forms approved by the Employer. Each completed form shall be verified and signed by the Employer representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

6.7.3 The Service Provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated in Sub-Clause 6.7.2

## **6.8 Labour Clause**

6.8.1 (a) The remuneration and other conditions of work of the employees of the Service Provider shall not be less favourable than those established for work of the same character in the trade concerned-

- (i) by collective agreement applying to a substantial proportion of the employees and employers in the trade concerned;
- (ii) by arbitration awards; or

(b) Where remuneration and conditions of work are not regulated in a manner referred to at (a) above, the rates of the remuneration and other conditions of work shall be not less favourable than the general level observed in the trade in which the contractor is engaged by employers whose general circumstances are similar.

6.8.2 No Service Provider 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) showing the rates of remuneration and hours of work of the various categories of employees employed in the execution of the contracts;
- (b) stating whether any remuneration payable in respect of work done is due;
- (c) containing such other information as the Accounting Officer of the Public Entity administering the contract may require to satisfy himself that the provisions under this clause have been complied with.

6.8.3 Where the Accounting Officer of the Public Entity administering the contract is satisfied that remuneration is still due to an employee employed under this contract at the time the claim for payment is filed under subsection 1, he may, unless the remuneration is sooner paid by the Service Provider, arrange for the payment of the remuneration out of the money payable under this contract.

6.8.4 Every Service Provider shall display a copy of this clause of the contract at the place at which the work required by the contract is performed.

## 7. Quality Control

- 7.1 Identifying Defects** The principle and modalities of Inspection of the Services by the Employer shall be as **indicated in the SCC**. The Employer shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The Employer may instruct the Service Provider to search for a Defect and to uncover and test any service that the Employer considers may have a Defect. Defect Liability Period is as **defined in the SCC**.
- 7.2 Correction of Defects, and lack of Performance Penalty**
- (a) The Employer shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
  - (b) Every time notice of a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Employer's notice.
  - (c) If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, the Employer will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.10.3

## 8. Settlement of Disputes

- 8.1 Amicable Settlement** The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.
- 8.2 Dispute Settlement**
- 8.2.1 If any dispute arises between the Employer and the Service Provider in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be referred to the Adjudicator within 15 days of the notification of disagreement of one party to the other.
- 8.2.2 The Adjudicator shall give a decision in writing within 30 days of receipt of a notification of a dispute.
- 8.2.3 The Adjudicator shall be paid by the hour at the rate **specified in the BDS and SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Employer and the Service Provider, 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 will be final and binding.
- 8.2.4 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place **shown in the SCC**.

8.2.5 Should the Adjudicator resign or die, or should the Employer and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Employer and the Service Provider. In case of disagreement between the Employer and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 15 days of receipt of such request.

## Section VIII. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

*[The Purchaser shall select/insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics]*

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	Arbitration will be as per Laws of Namibia. The arbitration procedures of the following institutions will be used: "Following notice of intention to commence arbitration issued by either party an Arbitrator shall be appointed by both parties to the dispute or in any case of disagreement, by an Arbitrator to be appointed by a judge in Chambers of Namibia. The Arbitrator fees will be borne by the losing party. Any decision of the Arbitrator shall be final and binding to both parties"
1.1(c)	The Contract Period is for a period of three (3) years from day of award.  The contract maybe extended for another period not exceeding twelve (12) months, subject to satisfactory performance.  This contract shall be based on fixed rates as per the pricing schedule for Year 1, Year 2, Year 3 and/or Year 4.
1.1(d)	The contract name is  <b>Provision of General Plumbing Maintenance and Repairs to NHE Properties in Various Regions for a Period of Three (3) Years –</b>  Procurement Reference Number: <b>NCS/ONB/NHE-06/21/22</b>
1.1(g)	The Employer is  <b>National Housing Enterprise (NHE)</b>
1.1(k)	The Member in Charge is (Bidder's representative)
1.4	The addresses for delivery of notices are:  Employer: <u>National Housing Enterprise</u>  Attention: <u>Ms. Noreen Siyanga (Head of Procurement Management Unit)</u>  e: mail <a href="mailto:procurement@nhe.com.na">procurement@nhe.com.na</a>  Service Provider: _____  Attention: _____  Facsimile: _____

<p><b>1.6</b></p>	<p>The Authorized Representatives are:</p> <p>For the Employer: <u>Mr. Gisbertus Mukulu (NHE Chief Executive Officer)</u></p> <p>For the Service Provider: _____</p>
<p><b>2.1</b></p>	<p>The date on which this Contract shall come into effect is:</p> <p>Date of award</p>
<p><b>2.2.2</b></p>	<p>The Intended Starting Date for the commencement of Services is</p> <p>Date of award</p>
<p><b>2.3</b></p>	<p>The Intended Completion Date is within three (3) after award.</p> <p>The contract is for an initial period of 36 months (three years) from the intended commencement date renewable thereafter for an additional period not exceeding twelve (12) months, subject to the satisfactory performance of the Service Provider as assessed by NHE</p>
<p><b>2.5.1.</b></p>	<p>Public Entity to define was considered as extreme conditions:</p> <p>The contractor may not cede or pledge his responsibilities and rights without prior written agreement of NHE.</p> <p>A change in member shareholding will be regarded as cession or pledge.</p> <p>Failure to render service according to agreed standard.</p> <p>Removal of NHE property without prior written permission from any person authorised by NHE.</p> <p>For more special conditions, refer to annexure below.</p>
<p><b>3.2.3</b></p>	<p>Activities prohibited after termination of this Contract are:</p> <p>Access to any NHE Property without special permission</p>
<p><b>3.7(d)</b></p>	<p>The other actions are</p> <p>N/A</p>
<p><b>3.9</b></p>	<p>Restrictions on the use of documents prepared by the Service Provider are:</p> <p>NHE commit to comply with the requirements of Industrial Property Act 1 of 2012,</p>



	<p>NHE regards any document from the contractor as Intellectual property and this will not be transferred or used for any purpose other than what it was intended for,</p> <p>NHE will not share any document or template from the contractor with any organization without the contractor's permission.</p> <p>All documents submitted by bidders for the purpose of this bid shall become the property of NHE and will not be returned to bidder under any circumstances.</p>
<b>3.10.1</b>	<p>The liquidated damages rate is 1% per week.</p> <p>The maximum amount of liquidated damages for the whole contract is 5% of the final Contract Price.</p>
<b>3.10.3</b>	<p>The percentage to be used for the calculation of Lack of performance Penalty/(ies) is 2%</p> <p>The Defects Liability Period is 2 months</p>
<b>5.1</b>	<p>The assistance and exemptions provided to the Service Provider are:</p> <p>Access to NHE properties as it may be determined and needed</p>
<b>6.4</b>	<p>Payments shall be made according to the following schedule:</p> <ul style="list-style-type: none"> <li>• The service provider will submit all job cards of completed jobs for the month together with total hours claimed.</li> <li>• Quotations, job card/s, invoice</li> <li>• The service provider will prepare and submit invoices and statement before the 1st of each month.</li> <li>• Should the certification not be provided or refused in writing by the employer within one month of the date of the milestone, or of the date of receipt of the corresponding invoice, the certification will be deemed to have been provided, and the progress payment will be released at such date.</li> </ul>
<b>6.5</b>	<p>Payment shall be made within thirty (30) days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within sixty (60) days in the case of the final payment.</p> <p>The interest rate is nil.</p>
<b>6.6.1</b>	<p>Price adjustment will not be applied in accordance with Sub-Clause 6.6.</p>
<b>7.1</b>	<p>The procedures for inspection of the Services by NHE are as follows:</p> <ul style="list-style-type: none"> <li>• Implement trouble diagnosis on occurrence of fault, logging in logbook and reporting to Contractor by both telephone and/or email.</li> <li>• Provide safe prompt and reasonable access to the Contractor for maintenance activities, as well as use of all necessary facilities.</li> <li>• Brief the Contractor on general housekeeping rules.</li> <li>• Approve quotations submitted by the Contractor for spares and materials.</li> <li>• Record equipment downtime.</li> <li>• Authorised person of NHE will sign off the Contractor's Job Cards / Service Report/s to certify that work has been done by the Contractor, but</li> </ul>

	<p>not accepting responsibility for the quality and adequacy of the work performed.</p> <ul style="list-style-type: none"> <li>• The contractor shall ensure that the site is declared safe before handing back the site</li> <li>• The Defects Liability Period is 2 Months for labour and 12 Months for products.</li> </ul>
<b>8.2.3</b>	The Adjudication as per the Laws of Namibia
<b>8.2.4</b>	<p>The arbitration procedures of the following institutions will be used:</p> <p>“Following notice of intention to commence arbitration issued by either party an Arbitrator shall be appointed by both parties to the dispute or in any case of disagreement, by an Arbitrator to be appointed by a judge in Chambers of Namibia. The Arbitrator fees will be borne by the losing party. Any decision of the Arbitrator shall be final and binding to both parties”.</p>
<b>8.2.5</b>	The designated Appointing Authority for a new Adjudicator is the Accounting Officer

### **OTHER APPLICABLE SPECIAL CONDITIONS OF CONTRACT AS PER 2.5.1 ABOVE**

#### **The Contractor undertakes to:**

1. Render a service of the highest possible standard and quality whilst striving to improve efficiency, reduce costs and meet the standards, service levels and criteria as required by NHE and as specified in this Agreement. The Contractor shall to this end allow NHE to undertake inspections and to submit the services rendered to an independent audit if requested to do so by NHE.
2. The onus probandi shall vest with the Contractor to prove that services were rendered according required standards.
3. To make available its time and service to NHE to ensure the highest degree of skill, expertise, care, and diligence is exercised in the performance of the service.
4. Provide, subject to exceptions provided for in this Agreement, all required materials, equipment machines and vehicles to meet and carry out its obligations in terms of this Agreement.
5. At all times, keep an inventory list of all materials, equipment and/or furniture (if applicable) that were issued to him by NHE.
6. At all times comply with procedures and requirements regarding complaints and client liaison as stipulated in this Agreement.
7. Comply with the general rules and regulations of NHE at any of its premises as applicable to employees, as amended from time to time, during the rendering of his contractual obligations in terms of this Agreement at such premises.

#### **The Contractor and any of the Contractor’s employees provided, undertake:**

- a. Not to harm or damage NHE and/or his assets, products, business, equipment, staff, or clients in any way.
- b. Not to damage any furniture and/or equipment when moving, placing, or replacing it during the maintenance process and to handle it with absolute care.

- c. To keep safe any furniture and/or equipment and to maintain and clean office-, storage and/or change room facilities allocated by NHE to the Contractor to perform its duties.
- d. Not to transgress any rules, codes, policy documents, procedures, and safety standards of NHE, which are available on request and of which the Contractor must take notice.
- e. Not to disclose any information concerning the business of NHE to any person or Institution.
- f. Not to violate the copyright on any of the material, information, or programs of NHE.
- g. Not to remove any property of NHE, its employees, contractors, or students from the premises without the written consent of NHE first being obtained.
- h. To abide by the security arrangements of the which may take any one or a combination of the following:
  - i. Body search.
  - ii. Presentation of personal or ID cards of the Bank concerned.
  - iii. Searching of personal bags/handbags/pockets/lockers.
  - iv. Finger printing.
  - v. Any other measure that may be required by NHE.
  - vi. To hand in any lost item found to NHE.
- i. Ensure that the tendered number of and sufficient appropriately trained staff is always present to ensure that contractual obligations can be met.
- j. Ensure that its employees (apart from visiting managers) designated to the contract, perform their duties at the premises of NHE and not to be used for or to perform other, adhoc or non-related tasks.
- k. Ensure that workers, supervisors are replaced with equally competent (trained) personnel when they are absent, whether owing to leave, illness or any other reason.
- l. Provide and maintain in good order and condition all the required equipment, vehicles, and machines necessary to meet and carry out its obligations in terms of this contract.
- m. Ensure that equipment and material are only used in designated areas and that no material or equipment is used between contracts our outside the parameters of NHE.
- n. Ensure that all workers are familiar with NHE's emergency evacuation program and that the correct emergency procedures will be followed in the event of an emergency or when an exercise is held.
- o. Ensure that its employees at the site are always familiar with and comply with the provisions of all relevant Labour Legislation as well as the Safety and Security Regulations promulgated by NHE from time to time.
- p. NHE maintains the right to appoint other service providers to perform specific services in the Contractor's operations and it is expected from the Contractor to co-operate with the provision of these specific services.
- q. Perform the service without causing any interruption or disturbance to everyday client or student activities, including but not limited to the academic processes such as lectures, study, research, conducting practical classes or writing examinations.

- r. The Contractor and its employees shall inform the designated person at NHE of any action or behaviour of staff, students and/or visitors that are in all probabilities unauthorized, illegal, or against normal practices. Reporting shall also include removal of and damages to equipment and/or installations and the malfunctioning thereof.
- s. Adjust the maintenance frequency in high volume/traffic areas to ensure and maintain fully functional facilities.
- t. Inform NHE in writing of every failure or foreseeable failure by NHE, which could result in a position where the Contractor is unable to fulfil its obligations in terms of this Agreement.
- u. The Contractor acts as independent contractor and not as an agent or employee of NHE and shall not incur any liability on behalf of NHE or in any way pledge or purport NHE's credit. The Contractor also has no authority to bind NHE contractually and hereby indemnifies NHE concerned against any losses and/or damages resulting from such actions or applications.
- v. The Contractor shall not cede, assign, transfer, or sub-contract the Service or any part thereof to any third party without obtaining the written consent of the Institution, who in the exercise of its discretion shall have regard to the extent to which such consent shall adversely affect the standard of the service.
- w. NHE shall not be liable towards the Contractor for any loss or damage of whatsoever nature, which the Contractor may suffer because of any defect, or damage that may arise in or in respect of the facility or other means, which is provided to the Contractor in terms of this contract.
- x. The Contractor is liable for any damage or loss caused by himself, his employees, agents, contractors, clients or invited persons on or to the property of NHE.
- y. The Contractor hereby indemnifies NHE from any injury or damage whatsoever caused by the Contractor, its officials, employees, agents, subcontractors or representatives and from which a claim of whatever nature against NHE may result and undertakes not to hold NHE or any employee, agent or representative of NHE liable for any damage that the Contractor may sustain in the course of or arising from the activities out of this Agreement, and that was caused by the negligent act or omission of NHE, its employees, agents or representatives regardless of whether the damage occurs on or off the premises of NHE.
- z. The Contractor is not allowed to rent, sell, or provide a service, time and/or property to any department, person or third party.
- aa. Where keys for access to buildings, offices, houses, etc. are given to the contractor, the necessary care and responsibility for their safekeeping must be observed. The Contractor must ensure that keys are not misused or used to allow access to buildings by unauthorized persons.
- bb. Liaise with the designated person at NHE prior to the replacement of the Contracts Manager and/or Supervisor.
- cc. Ensure that its Contract Manager conducts regular meetings (at least once a month) with the dedicated person at NHE to monitor the Contractor's performance in respect of the requirements of the agreement. NHE will be responsible for the submission of minutes of such meetings.
- dd. The Contractor shall use any equipment supplied to him by NHE with care, at his own risk and shall replace it with the same should it get stolen or damaged.

- ee. Discipline: The contractor shall ensure that all personnel comply with the contractor's and employer's disciplinary procedures, to apply necessary steps and act when it is required.
- ff. Monitoring & Control: NHE reserves the right to monitor the performance of the contractor,
- gg. Occurrence Records: The contractor shall keep a logbook for reporting all call outs and completion certificates, incidents and matters related to maintenance service on the campuses.
- hh. Identification: The contractor shall provide all personnel with identification cards and ensure that all the identification cards are always displayed
- ii. Medical Fitness:
  - i. NHE reserves the right to require any of the Contractor's staff be certified fit for duty.
  - ii. In such instance, a medical practitioner appointed by NHE if NHE does not approve the medical practitioner appointed by the Contractor may carry out the fitness checks.
- jj. Uniforms: All contractors' staff whilst on duty on the campus must wear the uniform. The contractor shall supply all the uniform.
- kk. Relief staff: It is the responsibility of the contractor to provide all the relief staff enough to cover all the shift rotations.
- ll. First Aid:
  - i. The contractor is responsible for ensuring that all his staff is trained on safety and are familiar with positions of first aid boxes and fire extinguishers in case of emergency.
  - ii. In any emergency cases where ambulance is required, the ambulance will be summoned in by NHE.
- mm. Complaints Register: The complaints register, in which complaints in respect of the service have been recorded, will be made available at an agreed point. The foreman must ensure that all complaints receive attention within 24 hours.
- nn. Working hours: These are maintenance services and may be required to execute some job card outside normal working hours. In such cases, the contractor shall arrange with NHE for access to the site.
- oo. Supporting structure and meetings: The contract manager will be the liaison person between the contractor and NHE. On monthly basis or where required, there will be formal meetings between NHE and the Contractor.
- pp. Independent Audit: NHE will conduct regular independent audits to determine the performance and compliance of the contractor to both legal and the service level agreement

# Section IX. Contract Forms

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## Form of Contract



### TIME-BASE REMUNERATION

This CONTRACT (hereinafter called the “Contract”) is made the [day] day of the month of [month], [year], between, on the one hand, [name of Employer] (hereinafter called the “Employer”) and, on the other hand, [name of Service Provider] (hereinafter called the “Service Provider”).

**[Note: In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows: “...(hereinafter called the “Employer”) and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the Employer for all the Service Provider’s obligations under this Contract, namely, [name of Service Provider] and [name of Service Provider] (hereinafter called the “Service Provider”).]**

### WHEREAS

- (a) the Employer has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the “Services”);
- (b) the Service Provider, having represented to the Employer that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of..... at a rate of N\$ per unit;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:

- (a) the Notification of award;
- (b) the Service Provider’s Bid
- (c) the Special Conditions of Contract;
- (d) the General Conditions of Contract;
- (e) the Scope of Service and Performance Specifications;
- (f) the Priced Activity Schedule; and
- (g) The following Appendices:

**[Note: If any of these Appendices are not used, the words “Not Used” should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.]**

Appendix A: Description of the Services

Appendix B: Schedule of Payments

Appendix C: Key Personnel and Subcontractors

Appendix D: Breakdown of Contract Price in Local Currency

Appendix E: Services and Facilities Provided by the Employer

- 2. The mutual rights and obligations of the Employer and the Service Provider shall be as set forth in the Contract, in particular:
  - (a) the Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
  - (b) the Employer shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[name of Employer]*

\_\_\_\_\_  
*[Authorized Representative]*

For and on behalf of *[name of Service Provider]*

\_\_\_\_\_  
*[Authorized Representative]*

**[Note:** *If the Service Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:*

For and on behalf of each of the Members of the Service Provider

\_\_\_\_\_  
*[name of member]*

\_\_\_\_\_  
*[Authorized Representative]*

\_\_\_\_\_  
*[name of member]*

\_\_\_\_\_  
*[Authorized Representative]*





**National Housing Enterprise**

P.O.BOX 20192  
7 Gen. Murtala Muhammed Ave, Eros, Windhoek, NAMIBIA  
Tel: 061 2927111, Fax: 061 222 941,  
[procurement@nhe.com.na](mailto:procurement@nhe.com.na)  
[www.nhe.com.na](http://www.nhe.com.na)

**Invitation for Bids (IFB)**

**General Plumbing Maintenance and Repairs to NHE Properties in Various Regions for a Period of Three (3) Years**

**PROCUREMENT REFERENCE NO:**

**NCS/ONB/NHE-06/21/22**

1. Bids are invited through Open National Bidding (ONB) procedures for **General Plumbing Maintenance and Repairs to NHE Properties in Various Regions for a Period of Three (3) Years - NCS/ONB/NHE-06/21/22** and the invitation is open to all Namibian bidders.
2. Interested eligible bidders may obtain further information from **NHE, Ms. Noreen Siyanga or Mr. Oscar Kanovengi** at [procurement@nhe.com.na](mailto:procurement@nhe.com.na)
3. Qualifications requirements include:
  - a. Administrative and Legal requirements.
  - b. Technical requirements.
  - c. Evaluation of schedule of rates (pricing comparison)
4. A complete set of Bidding Documents in **English** may be downloaded from the NHE website, [www.nhe.com.na](http://www.nhe.com.na) at any time.
5. Bids must be delivered to the address stated below at or before **11h00, 05 August 2022**. Electronic bidding **will not** be permitted. Late bids will be rejected. Bids will be opened in the presence of the bidders' representatives who choose to attend in person at

**NHE Head Office (Lecture Hall)  
7 General Murtala Mohammed Avenue  
Eros, Windhoek  
NAMIBIA  
at 11h15 on 05 August 2022.**

All bids must be accompanied by a **Bid Securing Declaration**.

6. The address referred to above is:

**National Housing Enterprise  
7 General Murtala Mohammed Avenue  
Eros, Windhoek  
NAMIBIA**

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