

**TERMS OF REFERENCE  
(ESTABLISHMENT OF A PANEL)**

<b>To:</b>	The Bidder
<b>From:</b>	Supply Chain Management Unit

**1. BID PARTICULARS**

<b>Project Description</b>	Municipal Energy Resilience (MER) Panel of Service Providers		
<b>Bid Enquiries</b>	Siyavuya Maputi		
	021 483 9166	Siyavuya.maputi@westerncape.gov.za	
<b>Specifications Enquiries</b>	Rabelani Tshikalanke Siphokazi Mnyani	Email correspondence preferred.	
	021 483 8290 021 483 9227	<a href="mailto:Rabelani.Tshikalanke@westerncape.gov.za">Rabelani.Tshikalanke@westerncape.gov.za</a> <a href="mailto:Siphokazi.mnyani@westerncape.gov.za">Siphokazi.mnyani@westerncape.gov.za</a>	
<b>Bid Reference</b>	EDT 001-21		
<b>Bid Closing Date</b>	07 March 2023	<b>Bid Closing Time</b>	11:00 am
<b>Bid Briefing Session</b>	<p>A non-compulsory online briefing session for interested bidders will be held on <b>15 February 2023 @ 10h00</b>. Bidders will need to register their interest to attend by <b>13 February 2023 @ 16h00</b> to <a href="mailto:Siphokazi.Mnyani@westerncape.gov.za">Siphokazi.Mnyani@westerncape.gov.za</a> in order to receive the online briefing invitation.</p>		

**2. PURPOSE**

- 2.1 The Municipal Energy Resilience (MER) panel of service providers is being established to enable DEDAT to procure a range of services in the planning, design, development and preparation of cost-effective and sustainable renewable energy projects for the MER candidate municipalities<sup>1</sup> and other interested Western Cape municipalities. For this round, Bidders must submit applications to be included on the Panel. Bidders that are already registered can also apply for additional categories.

<sup>1</sup> MER candidate municipalities: Drakenstein, Mossel Bay, Overstrand, Saldanha Bay, Stellenbosch and Swartland

- 2.2 The support accessed through the panel will ensure that the renewable energy projects that are to be implemented are undertaken at an optimal scale, utilising optimal technology types, in the optimal location, at a cost that is affordable and equal to or less than the current cost of supply, meeting all compliance requirements and with a clear risk management approach in place. The advice and services that will be provided by the MER panel of service providers will help to drive the planning and development of the projects, including the commercial structuring and contractual arrangements, towards project implementation.
- 2.3 Through the establishment of the panel, DEDAT anticipates being able to register energy-related specialist expertise that will, in turn, enable the acceleration of the procurement of this expertise and specialist capability, towards urgently providing additional energy resources within the Western Cape economy.

### **3. BACKGROUND**

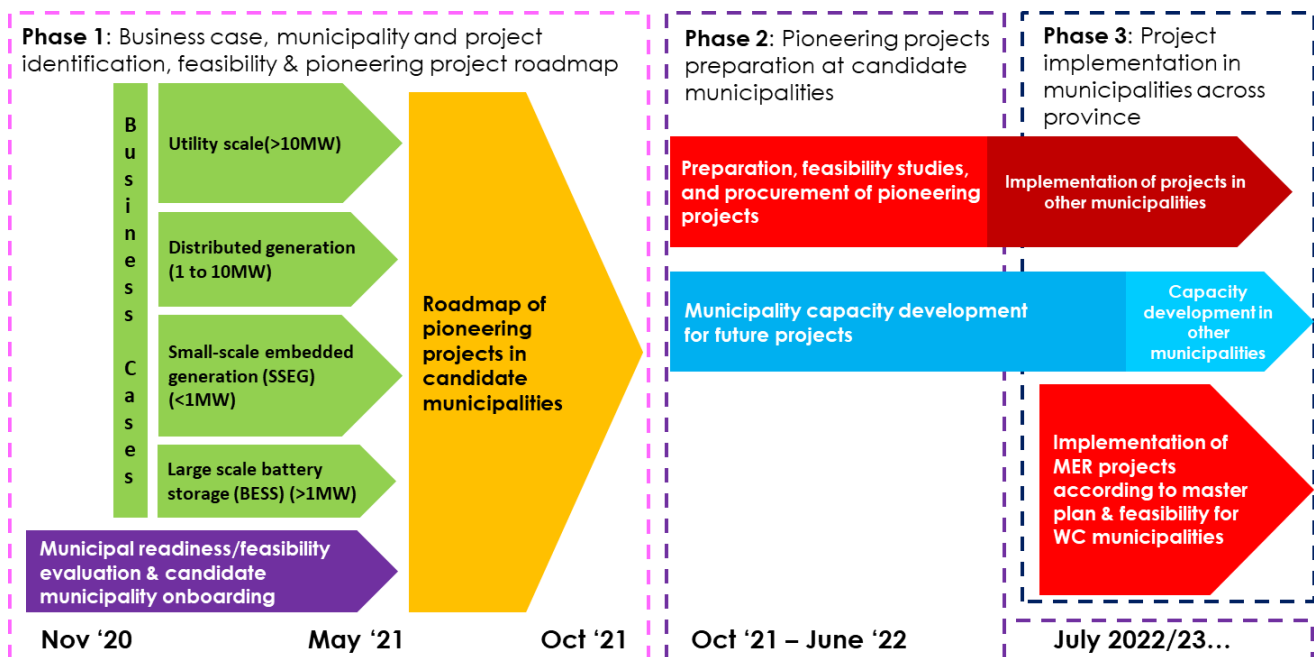
- 3.1 Without energy, the economy cannot function, and necessary growth will not be possible. Energy resilience therefore becomes a necessary condition for business competitiveness, confidence, investment, growth and job preservation and creation. To address this, the Western Cape Government (WCG)'s energy resilience objective is for an additional 500 MW of lower carbon energy to be produced in the Western Cape by 2025. This energy needs to be affordable to customers, financially sustainable for municipalities, enable the mitigation of load shedding risks and, ideally, promote local energy-related business investment and job creation.
- 3.2 Given the state of energy insecurity in South Africa and the recent regulatory changes that do and / or will allow for potential municipal and increasing private sector involvement in energy generation, procurement and trading, the WCG (led by the Department of Economic Development & Tourism (DEDAT)) has developed the Municipal Energy Resilience (MER) Initiative. This is aimed at enabling municipalities, businesses and households to generate, procure and sell their own power. Specifically, the initiative aims to assist municipalities to take advantage of the new energy regulations, which include the potential for municipalities to purchase energy directly from Independent Power Producers (IPPs). As such, the MER Initiative includes consideration of multiple renewable energy technologies and energy storage, financing and procurement/contracting mechanisms (amongst others) and presents complex sets of inter-related and inter-dependent projects that are expected to be delivered by incorporating innovative methodologies and delivery mechanisms.
- 3.3 The MER Initiative is focused on unlocking four components of renewable energy:

- a) Municipal utility scale procurement from Independent Power Producers (IPPs) (>10MW).

Municipal and other renewable energy generation at sub-utility level including:

- b) New distributed generation capacity at sub-utility scale (1-10 MW).  
 c) New self-generation at small-scale embedded generation (SSEG) scale (< 1 MW).  
 d) Energy storage: large scale battery storage.

3.4 The MER Initiative is broken up into three phases, with the high-level approach and plan illustrated below:



3.5 The first phase (phase 1) of work involves the development of business cases to unlock the complexities of legal, regulatory, financial, technical and procurement mechanisms / approaches for each of the above four components. Part of this phase involves the issuing of an RFI for potential renewable energy projects that could be implemented in the Western Cape. The projects submitted to the RFI are taken through pre-feasibility criteria to identify the kinds of pioneering projects to be implemented in candidate municipalities. The candidate municipalities have been identified through the application of criteria that considered municipal financial standing, technical capacity, human resource capacity, energy policy / by-law landscape and energy projects in order to improve the potential for success and speed of renewable energy project implementation. The current set of candidate municipalities are Drakenstein, Mossel Bay, Overstrand, Saldanha Bay, Stellenbosch and Swartland.

- 3.6 Phase 2 entails implementation of pioneering projects in candidate municipalities including support to further development towards bankability and implementation. The MER Initiative is also working closely with the City of Cape Town and support will be provided to other Western Cape municipalities as budget and internal resources allow.
- 3.7 Phase 3 of the MER Initiative entails the development and start of execution of a plan for implementation of renewable energy projects across all Western Cape Municipalities.
- 3.8 In addition to the transaction and other advisory work required to develop renewable energy projects towards bankability and implementation, the feasibility of implementing pioneering projects in candidate municipalities may rely on some key foundational energy studies, such as Electricity Master Plans (EMPs), grid impact studies and Cost of Supply (CoS) studies. Developing or updating EMPs is critical for municipalities to assess where in their grid they have what available capacity and where they may need to develop further grid capacity (and the cost thereof) in order to understand the optimal locations of and potential required capital investments for new renewable energy projects. Developing or updating CoS studies is critical for municipalities to understand all costs so that they can structure their contracts and tariffs in the most effective manner. Given the long-term nature of power purchase agreements (PPAs), the accuracy of grid availability, required investments and all costs is crucial to ensure municipal financial sustainability while ensuring energy resilience.

#### **4. NATURE AND SCOPE OF SERVICES TO BE RENDERED**

- 4.1 The Department invites professional and/or specialised service providers with expertise and experience in any or all aspects of the specialist advisory and consultancy services categories, including project preparation and development to enable energy resilience as detailed further in 4.6 below to apply for registration on the Municipal Energy Resilience (MER) panel of service providers. Applicants will need to meet requirements based on their expertise, experience outlined herein and in compliance with departmental supply-chain requirements as determined in the Public Finance Management Act and its associated Regulations.
- 4.2 The primary reason for establishment of the (MER) panel of service providers is to provide WCG departments and / or Western Cape municipalities with the required technical, legal, financial, environmental, engineering and other forms of specialised / professional support to advance renewable energy projects towards bankability and implementation.
- 4.3 The panel will only be engaged where internal capacity is inadequate and / or where there is a lack of skills for the services that may be required. The use of the panel will be activated through the issuance of specific job briefs exclusively to the panel, outlining the

key requirements needed, to which service providers may choose to respond.

- 4.4 Service provider outputs will take the form of reports, models, frameworks, draft contracts, strategic documents, systems (e.g. M&E), analyses, development and implementation plans, procurement documentation, studies (e.g. electricity master plans, energy master plans, feasibility, cost of supply, grid impact), cost estimates and institutional structuring.
- 4.5 Note that **this panel is not for Engineering Procurement and Contracting (EPC) services** (i.e. project construction) as those services will be covered in separate procurement processes as and when required. Note: all outputs will require service providers to engage relevant WCG or municipal subject matter/ responsible leads in the formulation thereof.
- 4.6 Service providers will be expected to provide one or a combination of any of the following energy-related service categories (note that the column on the right-hand side reflects examples of typical services that might be covered and is not exhaustive):

Service Categories	Examples of typical services required per panel category (and sub-category)
<p><b>A. Transaction Advisory Services</b></p> <p>Note: a service provider involved in the drafting of procurement components may not be part of or bid for work for which they participated in crafting.</p>	<p><b>A.1 Project development and management</b></p> <ul style="list-style-type: none"> <li>• Provision of project development services from concept to pre-feasibility and feasibility stages of project development.</li> <li>• Project management of the implementation of individual transactions and associated project liaison with all relevant stakeholders.</li> <li>• Guidance on procurement processes, procurement documentation, and draft agreements for the implementation of identified renewable energy projects.</li> <li>• Professional inputs into the compliance and monitoring of tendering and evaluation processes</li> </ul> <p><b>A.2 Technical/engineering transaction advisory</b></p> <ul style="list-style-type: none"> <li>• Provision of relevant best practice (local and / or international) in the selection and use of each technology type</li> <li>• Provision of accurate costing estimates for the financial feasibility studies</li> <li>• Provision of advice on the technical aspects of each of the technologies, grid connection and network related issues</li> <li>• Provision of technical expertise in the preparation of bidding documents and in the evaluation of project proposals</li> </ul> <p><b>A.3 Financial transaction advisory</b></p> <ul style="list-style-type: none"> <li>• Design of the financial parameters (i.e. deal structuring) for the procurement of renewable energy projects (all stages incl. construction where relevant)</li> <li>• Professional advice on the most effective means of procurement to ensure that the renewable energy projects are optimally priced and bankable</li> </ul>

	<ul style="list-style-type: none"> <li>• Potential sourcing of external grant funding that could affect a project's financial structuring</li> <li>• Conducting financial evaluation of proposals in accordance with the procurement plan</li> <li>• Advice on possible credit enhancement or guarantee options and other financial instruments that may be required to support bankability or for buyers</li> </ul> <p><b>A.4 Legal and regulatory transaction advisory</b></p> <ul style="list-style-type: none"> <li>• Application of the overall project procurement plan to each technology type towards developing standard, bankable power purchase agreements suited for the South African market</li> <li>• Provision of advice on the compliance of all procurement in relation to the procurement plan</li> <li>• Professional advice on the development of bidding documents for selected projects</li> <li>• Development and finalization of the relevant project agreements</li> <li>• Professional advice on contingent liability reports and close out reports for each project</li> <li>• Application of legal/regulatory advisory services within the context of the MFMA, PFMA, Municipal Systems Act (MSA), Electricity Regulations Act (ERA) and other applicable related legislation.</li> </ul> <p><b>A.5 Economic Development (ED) transaction advisory</b></p> <ul style="list-style-type: none"> <li>• Develop a technology specific ED plan with components such as local content, skills development, BBBEE etc. based on the characteristics of this technology type that is compliant with legislative requirements and current best practice</li> <li>• Design of the ED plans per project to maximise the economic development potential of each</li> <li>• Set ED criteria and input the costs and impacts of these into the financial transaction advisory workstream</li> <li>• Develop the ED procurement requirements for the procurement documentation and ensure that the ED details are contained in the RFP and the various agreements and signed off by the legal transaction advisors.</li> <li>• Develop the ED evaluation criteria and carry out the ED evaluation/economic impact assessments on proposals received.</li> <li>• Design and implement an ED contract management, monitoring and reporting system using the concept of an Independent ED Monitor.</li> </ul>
<p><b>B. Economic growth and planning programme advisory</b></p>	<p>Provision of techno-economic analysis (including energy planning and modelling) to strategically plan for an optimal mix of projects and programmes</p>

<p><b>C. Consulting engineering, environmental &amp; town planning services</b></p>	<p>Provision of engineering, and/or electro-technical services to undertake various technical analyses including:</p> <ul style="list-style-type: none"> <li>• Development / updating of electricity master plans, compliant to NERSA's requirements, to accommodate renewable energy supply</li> <li>• Development / updating of grid impact studies to ensure that network operational and other parameters can accommodate the implementation of renewable energy projects</li> <li>• Development / updating of cost of supply studies to ensure apportionment of all costs between each customer class in a fair and equitable manner and to promote sustainability of the electricity supply industry (including municipal revenues) while protecting customers against unduly high prices.</li> <li>• Provision of EIAs and / or other environmental services</li> <li>• Provision of other engineering services (e.g. geotechnical, geological)</li> <li>• Provision of services such as rezoning, land surveys, land transfers etc.</li> </ul>
<p><b>D. Municipal finance and revenue advisory</b></p>	<p>Provision of financial and/or revenue analysis services to undertake various analyses relating to municipal finance including:</p> <ul style="list-style-type: none"> <li>• Development / updating of cost of supply studies to ensure apportionment of all costs between each customer class in a fair and equitable manner and to promote sustainability of the electricity supply industry (including municipal revenues) while protecting customers against unduly high prices.</li> <li>• Evaluation of the municipal tariff structures to ensure that they are fair and equitable with the addition of renewable energy projects to be implemented</li> <li>• Provision of revenue and expenditure modelling and associated services to support renewable energy project/s implementation while maintaining municipal financial sustainability.</li> </ul>

## 5. EVALUATION METHODOLOGY

5.1 Bids shall be evaluated in terms of the following process<sup>2</sup>:

5.1.1 **Phase 1:** Compliance to compulsory requirements: during this phase, bids will be verified against the minimum eligibility requirements as set out in sections 9 and 10 of this Terms of Reference. If bids do not meet the minimum eligibility requirements, they will be deemed non-responsive and will not be evaluated further.

<sup>2</sup> Note that the phases referred to here are phases of supply chain evaluation rather than the phases of the MER Initiative.

5.1.2 **Phase 2:** Responsive bids will, thereafter, be evaluated for compliance / non-compliance to the minimum requirements as per the table outlined below:

#	CRITERIA: MINIMUM REQUIREMENTS	REFERENCE
1.	An indication in Annexure A of the categories of services (or sub-categories where applicable) that the service provider can offer.	Paragraphs 4.6, 8.1 and 8.2
2.	<p>Identify at least one senior member(s) in the organisation who possesses / possess a minimum of 5 years of local and/or international energy and/or catalytic infrastructure related experience for each of the identified service categories (e.g. transaction advisory services) and / or for each sub-category where applicable (e.g. financial transaction advisory) for which you are applying.</p> <p>Although you are only required to identify 1 senior member per service category (and per sub-category where applicable) that you are applying to be registered for, by identifying more than 1 senior member you will enable your organisation to maintain registration on the panel for a specific category should 1 of the relevant senior members leave the organisation. Note that including more than one senior member will not lead to preferential scoring of the submission.</p> <p>(The CVs of members indicated must be attached, and a very brief summary of their relevant experience provided in Annexure A).</p>	Paragraphs 4.6, 8.1 and 8.3
3.	Service providers are to clearly indicate the organisational structure of the team for which they are submitting a registration application (including any JV, consortium or sub-contracting arrangements). Please refer to the specific organisational structures as stipulated in Paragraph 11 and Paragraph 12.	Paragraphs 4.6, 8.1 and 8.4



4.	<p>Proven track record of relevant / related projects undertaken in the past 5 years. The service provider will be required to provide <b>ONE written</b> and contactable work reference on the relevant company / government department / organisation letterhead <b>for each of the service categories (and for each sub-category where applicable)</b> for which they are registering. A summary of all references must be provided using the Annexure B template.</p> <p>{Note of clarity: if you are applying to be registered for more than one service category, you need to submit a separate reference letter for each service category applied for (you may submit more if you wish - note that including more than one letter will not lead to preferential scoring of the submission). If a reference letter covers more than one service category (or more than one sub-category where applicable), this is allowed, but needs to be indicated as such on the summary table (Annexure B)}.</p>	<p>Paragraphs 4.6, 8.1 and 8.5</p>
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- 5.2 Only service providers that meet all minimum criteria above will be listed on the panel and will be eligible to submit proposals/quotations for job briefs as and when these are issued. Job briefs will be issued as relevant and will contain their own unique requirements and evaluation criteria.
- 5.3 JVs and consortia that are registering on the panel need to provide the required information for each member as appropriate. JVs and consortia must be established upfront and will **not** be allowed to be formed at the job brief stage.
- 5.4 Written work reference letters indicating previous work done by at least one contactable client reference per service category (and for each sub-category where applicable) registering for will be checked for relevance to the service category / sub-category and may be subject to reference checking.
- 5.5 There is no guarantee that job briefs will be issued for all categories of services listed on the panel and being registered on the panel does not guarantee that a service provider will be awarded work. Some of the services reflected on the panel may also be procured directly from the market (i.e. not from the panel) by Western Cape municipalities that have the funding and SCM capacity to do so.

## 6. DURATION OF CONTRACT

- 6.1 The service providers who meet the minimum eligibility requirements and minimum compliance criteria will be appointed to the Municipal Energy Resilience Panel of Service Providers for a period of three/3 years until March 2025, subject to the performance of the service provider(s). The performance of appointed service provider(s) will be reviewed on completion of a specific project.
- 6.2 Requests for service providers to submit applications for inclusion on the Panel will remain open for the remainder of the 3-year period and this process will be managed through bid readvertising windows.

## 7. TRAINING AND TRANSFER OF SKILLS

- 7.1 Should this be required, job briefs for the request for quotations from panel members for specific services may include appropriate training and transfer of skills pertaining to that unique service to enable further future development and implementation of energy projects. In this event, the project manager for each specific service will be expected to nominate a suitable official for practical training and skills development on the job.

## 8. SERVICE PROVIDERS PROPOSAL

- 8.1 Service providers are required to submit the documents mentioned below. **Failure to comply, will render the service provider's application non-compliant** (please use the checklist in Table 1 below to ensure all required project proposal documents are provided):

**Table 1:** List of required documents in response to nature & scope of services to be rendered

Document that must be submitted	Description/ Instructions
Organisational structure	Organisational structure of the team for which they are submitting a registration application (including any JV, consortium or sub-contracting arrangements)

<b>Annexure A</b>	Table of categories of services (or sub-categories where applicable) & team member(s) experience: <ul style="list-style-type: none"> <li>• Indication of the categories of services (or sub- categories as applicable) that the service provider can offer.</li> <li>• Summaries of expertise covered in the submitted CVs. The summaries must include titles of previous work with a short summary of what the work entailed.</li> </ul>
<b>Annexure B</b>	Summary of references provided
<b>Reference letters</b>	Copies of all reference letters indicated in Annexure B
<b>CVs</b>	CVs provided must reflect years of relevant professional experience.

- 8.2 An indication in Annexure A of the categories of services that the service provider can offer.
- 8.3 The names, CVs, and fields of expertise for at least one senior individual per category of services (and per sub-category where applicable) that the service provider is registering for (CVs must reflect years of relevant professional experience). The senior members of the organisation being registered for a particular category of services (and sub-categories where applicable) must have at least 5-years of experience in that particular category of services (and sub-categories where applicable). Information contained in the CVs should be summarised in Annexure A. The summaries must include titles of previous work with a short summary of what the work entailed.
- 8.4 Service providers are to clearly indicate the organisational structure of the team for which they are submitting a registration application (including any JV or consortium arrangements).
- 8.5 **ONE written** and contactable relevant work reference on the relevant company / government department / organisation letterhead where similar work was undertaken in the last 5-years for each of the categories of services (and for each sub-category where applicable) for which a service provider is registering. A summary of all references must be provided using the Annexure B template. {Note of clarity: if you are applying to be registered for more than one service category, you need to submit a separate reference letter for each service category applied for (you may submit more if you wish - note that including more than one letter will not lead to preferential scoring of the submission). If a reference letter covers more than one category of service, this is allowed, but needs to be indicated as such on the summary table (Annexure B)}.

## 9. MINIMUM REQUIREMENTS FOR A VALID BID

- 9.1 Minimum compliance requirements are listed in the table in section 5.
- 9.2 Service providers that fail to adhere to any of the following, will be rendered non-responsive:
- Bidders must be registered on Central Supplier Database (CSD).
  - All service providers applying to register on the database should be tax compliant.
  - Each party participating in a joint venture or consortium must be tax compliant and must provide a WCBD 4. Signed agreements as satisfactory proof for the existence of a joint venture and/or consortium arrangement must be submitted

## 10. RETURNABLE DOCUMENTS

- 10.1 Bidders must submit the documents listed in the Table 2 below. All documents must be completed and signed by the duly authorised representative of the prospective bidder(s). The bidders' proposal may be disqualified for non-submission of any of the documents.

**Table 2: Documents which must be submitted for Pre-qualification**

Document to be submitted	Disqualification	Description / Instruction
Proposal portfolio of evidence	Yes	Bidder's proposal and supporting documentation.
WCBD 1	Yes	<b>Invitation to Bid</b> 1) Authorised representative to sign bid. 2) Complete and sign.
* WCBD 4	Yes	<b>Declaration of Interest, Declaration of Bidder's Past Supply Chain Management Practices and Certificate of Independent Bid Determination</b> 1) Complete and sign.
* WCBD 6.1	No	<b>Preference Points Claim Form</b> 1) Non-submission will lead to zero (0) score for B-BBEE points. 2) Only the B-BBEE status stated on the completed WCBD 6.1 will apply to the evaluation of this bid and not the B-BBEE status on the WCSEB or CSD. 3) Complete and sign.

**\* If registered on the WCSEB and the information as per the completed forms**

**submitted are still the same and valid, there would be no need to complete and resubmit.**

## **11. JOINT VENTURE / CONSORTIUM / TRUST**

- 11.1 A joint venture, consortium or trust must submit a consolidated B-BBEE scorecard if they are claiming preference points.
- 11.2 A joint venture, consortium or trust will qualify for points on evaluation of their B-BBEE status level as a legal entity, provided that the entity submits the requisite B-BBEE status level certificate.
- 11.3 Bidders must submit substantive proof of the existence of joint ventures and/or consortium arrangements. The department will accept signed agreements as satisfactory proof for the existence of a joint venture and/or consortium arrangement.
- 11.4 Joint venture and/or consortium agreements must clearly set out the roles and responsibilities of the lead partner. The agreement must also clearly identify the lead partner that is accordingly provided with a power of attorney to bind the other co-parties in all matters pertaining to the joint venture and/or consortium arrangement.
- 11.5 Each party participating in a joint venture, consortium or trust must submit a WCBD 4.
- 11.6 Each party participating in a joint venture, consortium or trust must be tax compliant.
- 11.7 The organisational structure of the team for which a registration application is being submitted (including any joint venture, consortium or trust arrangements) must be provided as per Table 1 of paragraph 8.
- 11.8 Joint ventures, consortia or trusts may not be formed with service providers that are also independently registered on the MER Panel.

## **12. SUBCONTRACTING**

- 12.1 A service provider awarded a contract may only enter into a subcontracting arrangement to a maximum of 25% of the value of the contract.
- 12.2 Subcontracting may only be with service providers that are not also independently registered on the Panel.
- 12.3 The organisational structure of the team for which a registration application is being

submitted (including any sub-contracting arrangements) must be provided as per Table 1 of paragraph 8.

### 13. REGISTRATION ON SUPPLIER DATABASES

- 13.1 Prospective bidders must be registered on the Central Supplier database (CSD) at the time of bid closure.
- 13.2 All prospective bidders who are not registered on the Central Supplier Database are requested to self-register on [www.csd.gov.za](http://www.csd.gov.za). For further assistance with the registration process, please contact Alfonso Jacobs at (021) 483 9091 or e-mail [alfonso.jacobs@westerncape.gov.za](mailto:alfonso.jacobs@westerncape.gov.za).
- 13.3 **Registration on databases and compliance of tax status will be verified at the time of the award.** Where the successful bidder is not tax compliant, the department will notify the bidder in writing of their non-compliant status and the bidder will be requested to submit written proof from SARS of their tax compliance status or proof that they have arranged to meet their outstanding tax obligations within 7-working days.

### 14. CONTRACTUAL ASPECTS

- 14.1 The contents of this document shall be deemed to constitute the Special Conditions of Contract applicable to this bid and shall be read together with the General Conditions of Contract issued in accordance with Chapter 16A of the Treasury Regulations.
- 14.2 Where, however, the Special Conditions of Contract conflict with the General Conditions of Contract, the Special Conditions of Contract shall prevail.
- 14.3 The bid document, together with the specifications contained in this document, shall constitute part of the Contract.
- 14.4 Bidders shall not perform any work or render any services in terms of the Contract unless in receipt of a written instruction to this effect by the Department.
- 14.5 The successful bidder may not assign his/ her obligations.
- 14.6 The successful bidder must advise the Head of Department of Economic Development and Tourism immediately when unforeseeable circumstances will adversely affect their performance on the panel. Full particulars of such circumstances as well as the period of delay must be furnished.

## 15. DISCLAIMER

- 15.1 Bidders must make and rely on their own investigations and satisfy themselves as to the correctness of all aspects of the bid. The Department will not be liable for any incorrect or potentially misleading information in relation to any part of this document and any accompanying bid documents.
- 15.2 The department reserves the right not to appoint any contracted partner who does not comply with the conditions of this bid or if information is obtained by the department about a bidder that could put the department at risk.
- 15.3 The department reserves the right to cancel this bid should the budget not be available at the time of award to cover the full quote of this tender or if the need does not exist anymore or the specification has changed.

## 16. ABSENCE OF OBLIGATION

- 16.1 No legal or other obligation shall arise between bidders and the Department unless and until the formal appointment documentation has been signed. The Department is not obliged to proceed with any proposals of any bidder. The Department also reserves the right to request changes to any proposed consortia.

## 17. INDEMNITY

- 17.1 The successful bidder will indemnify, protect, defend and hold harmless the Department from and against any and all claims, demands, actions and proceedings whatsoever including all fees, costs and expenses incurred in respect thereof arising out of:
- a) Any claim of any taxes payable by the bidder.
  - b) Any claim for Workmen's Compensation Insurance or for any loss for which the bidder is liable.
- 17.2 Any claim by a third party including any employees of the Department or of the bidder for any loss resulting from any bodily injury and or damages to property by any act or omission of the bidder or any of its employees, servants or agents.

## 18. FRONTING

- 18.1 The department supports the spirit of broad based black economic empowerment and recognises that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and garnering

opportunities in an honest, fair, equitable, transparent, and legally compliant manner. Against this background the department strongly condemns any form of fronting.

- 18.2 The department, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct, or initiate the necessary enquiries / investigations in determining the accuracy of the representations made in bid documents / proposals. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade Industry and Competition ("dtic"), be determined during such enquiry / investigation, the onus will be on the bidder to prove that the allegation of fronting does not exist. Failure to do so within a period of 14-days from date of notification may invalidate the bid / contract and may also result in the restriction of the bidder to conduct business with the public sector for a period not exceeding 10-years, in addition to any other remedies the department may have at its disposal and accordingly wish to institute against such bidder concerned.

## **19. CONFLICT OF INTEREST, CORRUPTION AND FRAUD**

- 19.1 The department reserves the right to disqualify any potential bidding agency who either itself, or through any of its members (save for such members who hold a minority interest in the bidding agency through shares listed on any recognised stock exchange), indirect members (being any person or entity who indirectly holds at least a 15% interest in the bidder other than in the context of shares listed on a recognised stock exchange), directors or members of senior management, whether in respect of the department or any other department organ or entity and whether from the Republic of South Africa or otherwise:
- a) Engages in any collusive tendering, anti-competitive conduct, or any other similar conduct, including but not limited to any collusion with any other bidder in respect of the subject matter of this bid.
  - b) Seeks any assistance, other than assistance officially provided by a department, from any employee, advisor or other representative of a department in order to obtain any unlawful advantage in relation to the procurement or services provided or to be provided to the department, officers, directors, employees, advisors or other representatives.
  - c) Makes or offers any gift, gratuity, anything of any value or other inducement, to any departmental officers, directors, employees, advisors or other representatives in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a department.
  - d) Accepts anything of value or an inducement that would or may provide financial gain, advantage or benefit in relation to procurement or services provided or to be provided to a department.



- e) Pays or agrees to pay to any person any fee, commission, percentage, brokerage fee, gift, or any other consideration, that is contingent upon or results from, the awarding of any tender, contract, right or entitlement which is in any way related to procurement or the rendering of any services to the department.
- f) Has in the past engaged in any matter referred to above.
- g) Has been found guilty in a court of law on charges of fraud and/or forgery, regardless of whether or not a prison term was imposed and despite such a bidding agency, member or director's name(s) not specifically appearing on the List of Tender Defaulters kept at National Treasury.

## 20. MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT

- 20.1 The bidding agency should note that the terms of its tender will be incorporated in the proposed contract by reference and that the department relies upon the bidder's tender as a material representation in making an award to a successful bidding agency and in concluding an agreement with said bidding agency.
- 20.2 It follows therefore that misrepresentations in a tender may give rise to service termination and a claim by the department against the bidder notwithstanding the conclusion of the SLA between the Department and the bidding agency for the provision of the service(s) in question. In the event of a conflict between the bidder's proposal and the SLA concluded between the parties, the contents of the SLA will prevail.
- 20.3 Throughout this bid process and thereafter, bidding agencies must secure the department's written approval prior to the release of any information that pertains to **(i)** the potential work or activities to which this bid relates; or **(ii)** the process which follows this bid. Failure to adhere to this requirement may result in disqualification from the bid process and civil action.

**END.**