

VOLUME 3: CONDITIONS OF CONTRACT FOR LEARNER TRANSPORT SCHEMES**1. INTRODUCTION**

- 1.1 The Bidder's Bid Response constitutes an offer by the Bidder for Learner transport services in the Western Cape Province to the WCED. After acceptance thereof by the WCED through the issuing of a WCBD 7.1 contract form, followed by a letter of acceptance forwarded to the successful Bidder, it shall become a binding Contract between the Bidder and the WCED. It should be noted that until signature of the WCBD 7.1 contract form by the WCED and the acceptance thereof by the Bidder no contract will have come into existence and no obligations will ensue between the WCED and the Bidder.
- 1.2 The completion of all portions of this Contract, where provided for, including its Annexures, are compulsory, and the WCED will reject an incomplete Bid as being non-responsive.
- 1.3 Attaching all documents required in terms of this Bid is a prerequisite for lodging a valid bid with the WCED.
- 1.4 All Annexures must be signed by the Bidder and where requested all supporting documents must be certified, except where originals are requested.
- 1.5 The checklist of documents annexed as Annexure "J" is to assist the Bidder to complete and submit a valid bid and must also be fully completed by the bidder.

2. BID (OFFER) FOR LEARNER TRANSPORT SERVICES

- 2.1 The Bidder shall duly complete and sign WCBD 1, attached to Volume 6 of the Bid Documents as Annexure "B".
- 2.2 In addition, the Bidder shall furnish details of its ownership and management structure, as provided for in Annexure "C" attached to Volume 6 of the Bid Documents.

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2.3 Notwithstanding anything to the contrary contained herein, the Bidder agrees that the WCED retains the right not to accept the lowest, highest or any bid, or to only accept part of any bid for a lesser period than advertised.

3. PROVISIONS RELATING TO BIDDERS

3.1 It is the aim of the WCED to afford all Bidders a fair and equitable opportunity to compete for this bid.

3.2 A proper evaluation process is therefore of great importance to determine the capacity and ability of the Bidder.

3.3 The information required by the WCED will assist the Bidder to make a self-assessment and it will assist the WCED to evaluate the Bidder.

3.4 The WCED reserves the right to carry out physical inspections, at any reasonable time, in order to validate any or all of the information provided by the Bidder and/or during the Term. These inspections may be repeated at any reasonable time during the Term.

3.5 As the bid is awarded on the information provided by the Bidder at the time of bid closure, the Bidder must maintain his status quo for the Validity Period of the bid and Term. Should any deviation or changes occur during the Validity Period in respect of, but not limited to, the Vehicles at its disposal for purposes of performing its obligations in terms of this bid, the Bidder must inform the WCED before the Closing Date and in the case of such deviation or change during the Term, immediately. Failure to advise the WCED as aforesaid, of any deviation or change in the Bidder's circumstances, both financially and otherwise, will entitle the WCED to reject the bid, alternatively, terminate the Contract.

3.6 The Bidder may furnish additional information in writing, and attach it as an annexure to the back of this bid, duly signed, when submitting the bid.

3.7 All information provided in this bid is of critical importance, which the Bidder acknowledges.

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- 3.8 The Bidder must be financially self-sufficient to pay all costs including salaries for the first 60 (sixty) Calendar Days from the Commencement Date. The first payment made by the District Office may only take place after 60 (sixty) Calendar Days from the Commencement Date. However, as a general rule, all payments have to be made within 30 (thirty) Calendar Days of receipt of a valid claim and the WCED will endeavour to do so throughout the Term.
- 3.9 The Bidder must indicate its compliance with the Specifications listed in Volume 4 of the Bid Documents. These Specifications are mandatory and failure to comply will invalidate the bid.

4. PROVISIONS RELATING TO BUSES AND DRIVERS

- 4.1 The Bidder warrants that the Vehicles indicated in Annexure "D" are in proper working order, licensed, roadworthy and available and will be used to fulfil the Bidder's obligations in terms of the Contract.
- 4.2 The Vehicles are to be used exclusively for Learners on the Route, during pickup and drop off times in the mornings and afternoons on School Days as determined by the Principal. These Vehicles can only be substituted with the prior written approval of –
- 4.2.1 the Principal in the case of a temporary replacement; and
- 4.2.2 the Head Office (Sub-directorate: Learner Transport Schemes) in the case of a permanent replacement.
- 4.3 Any substituted Vehicles must have a Roadworthy Certificate. If any of the Vehicles indicated in Annexure "D" are already being used on any other existing Learner Transport Scheme, overlapping the Commencement Date of the Contract, the bid will not be considered.
- 4.4 The Bidder must submit proof, by no later than the Closing Date of the bid, that the necessary Vehicles are registered in its name. Should the Bidder not have sufficient Vehicles registered in its name, but offer leased Vehicles, the Bidder shall submit a lease agreement together with the Bid, in the format of Annexure

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“I” annexed to Volume 6 of the Bid Documents, clearly indicating that it has the unconditional right to use the Vehicles for the duration of the Contract.

4.5 Failure to complete the schedule as contained in Annexure “D” of the bid shall invalidate the bid.

4.6 The Bidder shall be responsible for complying with all contractual and statutory requirements in respect of the Vehicles and drivers used by the Bidder.

5. ROUTE INSPECTION

5.1 Prior to bidding, the Bidder must inspect the Route to familiarise itself with the Route, the conditions of the roads and distances. Bidders must indicate any discrepancies in the Route description and distance in a covering letter, which must be submitted with this bid. Bidders must make provision in their bid prices for higher maintenance costs due to poor road conditions, where applicable.

5.2 Has the Bidder inspected the Route prior to bidding? (Please tick the appropriate box)

YES	NO

6. EXPERIENCE

The Bidder must complete Annexure “E” attached to Volume 6 of the Bid Documents relating to its experience in the transport industry.

7. STATUTORY AND CRITICAL REQUIREMENTS

7.1 Certified copies of the following documentation must be submitted to the Head Office, District Office and/or Principal on written request –

7.1.1 Public company: CM registration documents, reflecting the names of all directors.

7.1.2 Private company: CM registration documents, reflecting the names of all directors and shareholders.

7.1.3 Close corporation: CK1 or CK2 documents.

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- 7.1.4 Copy of partnership agreement and in the case of joint ventures and consortia, a memorandum of understanding recording the full particulars of such relationship.
- 7.1.5 Copy of the letters of authority in the case of trusts.
- 7.2 Upon conclusion of the SLA, the Bidder must provide copies of valid Driver's Licences with Professional Driving Permits for all drivers employed by the Bidder and who will be used to render the Services in terms of the Contract.
- 7.3 Valid Vehicle Licences and Roadworthy Certificates must be attached to the Bid Response for all Vehicles listed in Annexure "D" of Volume 6 of the Bid Documents.
- 7.4 All Vehicles must comply with all Applicable Law.
- 7.5 To participate in this tender, your business must be actively registered on the WCSD as well as the CSD. Active registration entails that a Bidder's tax clearance certificate issued by the South African Revenue Services and WCBD 4 Declaration of Interest (which documents are only valid for 12 (twelve) Calendar Months from their date of issue) must be valid on the WCSD. The WCED will use the master registration number (supplier number) that the Bidder is required to submit with its bid to verify its tax compliance status on the CSD at the award phase.
- 7.6 All information provided in terms of this section will be verified by the WCED.
- 7.7 Unless specifically directed otherwise, where documentation is required, such documentation must be the original or duly certified copies thereof.
- 7.8 The Preferential Procurement Regulations will apply to this bid and Bidders are required to acquaint themselves with such Regulations. Points for BBBEE status level of contribution will only be awarded to Bidders who claim such points through the completion of WCBD 6.1 (preference points claim form) in full (and which is required to be read in its entirety) and submit proof of such BBBEE status level of contribution, which can be in the form of the following:

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- a) a BBBEE verification certificate issued by a verification agency accredited by the South African Accreditation System;
- b) an affidavit confirming annual total revenue and level of black ownership together with the bid; or
- c) an affidavit issued by the Companies and Intellectual Property Commission.

7.9 Bidders shall ensure that all Vehicles and drivers at all times comply with the provisions of the NRTA, NLTA and any other Applicable Law with which provisions they acknowledge they are fully acquainted with.

7.10 The Bidder shall submit any valid Driver's Licences and Professional Driving Permits when requested to do so by representatives of the WCED or law enforcement officials.

7.11 The Bidder shall submit additional information regarding the Contract as and when requested to do so by the Head Office and/or District Office and/or Principal.

8. UTILISATION OF VEHICLES ON OTHER LEARNER TRANSPORT ROUTES

8.1 Have any of the Vehicles indicated in Annexure "D" of Volume 6 of the Bid Documents been offered on any other Learner transport bid still under consideration or against any other bid with the same Closing Date as this bid? (Please tick the appropriate box)

YES	NO
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8.2 Are any of the Vehicles indicated in Annexure "D" of Volume 6 of the Bid Documents being utilised on any other current Learner transport contracts with the WCED? (Please tick the appropriate box)

YES	NO
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8.3 If the response to paragraphs 8.1 and/or 8.2 is yes, the following section must be completed –

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Complete the table below if Vehicles indicated in Annexure "D" of Volume 6 to the Bid Documents have been offered on other bids still under consideration or on other bids with the same Closing Date as this Bid		
Bid No./Contract No.	Closing Date	Vehicle registration No.

9. CONTRACT PERIOD

The Term of the Contract shall be for the period indicated in clause 1 of the Specifications unless a lesser period is determined by the WCED at the award phase.

10. BID EVALUATION CRITERIA

10.1 The evaluation of all bids is based on –

10.1.1 compliance with all the provisions specified in the Bid Documents;

10.1.2 the validity of all documents that are required to be submitted with the Bid Response;

10.1.3 prices offered in terms of Annexure "F" contained in Volume 6 of the Bid Documents and the total points allocated to each compliant Bidder in terms of the preference point system of the Preferential Procurement Regulations pertaining to the PPPFA.

10.2 The lowest acceptable bid that conforms to the Specifications forms the basis to calculate price points for all other compliant bids received. To this is added preference points which are claimed in terms of the Preferential Procurement

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Regulations and as supported by a valid BBBEE status level of contribution certificate as referred to in paragraph 7.8 above. These points can only be allocated provided that the applicable claim form contained in Annexure "H" of Volume 6 of the Bid Documents has been duly completed and signed by the Bidder.

10.3 In terms of Regulation 6(8) of the Preferential Procurement Regulations, only the Bidder scoring the highest total number of points may be selected.

10.4 The WCED may, in terms of Regulation 13(1) of the Preferential Procurement Regulations, prior to the award of a bid, cancel a bid if -

10.4.1 due to changed circumstances, there is no longer a need for the Services; or

10.4.2 funds are no longer available to cover the total envisaged expenditure; or

10.4.3 no acceptable tenders are received; or

10.4.4 there is a material irregularity in the tender process.

10.5 For the purposes of this bid, the following points categories will be used in the 80/20 point system of the Preferential Procurement Regulations –

POINTS	SCORE
Price	80
BBBEE status level contribution	20
Total points for Price and BBBEE must not exceed	100

11. ALLOCATION OF LEARNER TRANSPORT FUNCTIONS TO SCHOOL GOVERNING BODIES

The Head Office (Sub-directorate: Learner Transport Schemes) retains the right to allocate the function of paying for Learner transport services as contemplated in section 21 of the South African Schools Act 84 of 1996 to a School governing

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body to administer with financial support from the WCED.

12. PENALTIES

The Services shall be monitored and penalties will be imposed as set out in the Specifications.

13. PAYMENT

13.1 The payment for Learner Transport Schemes shall be in accordance with the Learner Transport Policy which provides that remuneration to a Service Provider shall be for the total kilometres travelled. As such, no Service Provider will be paid per Learner conveyed but rather will be paid per kilometre travelled per day. If for any reason a trip is not made by the Service Provider, no remuneration will be paid to the Service Provider.

13.2 The Bidder shall bid a tariff per Learner category in Annexure "F" contained in Volume 6 of the Bid Documents. Although bids will be evaluated based on the actual Learner number indicated in this Bid, the WCED may increase or decrease the amount of Learners from time to time in line with the requirements of the Schools included on the Route.

13.3 The Bidder shall indicate a price for the entire contract period in Annexure "F" contained in Volume 6 of the Bid Documents and shall make provision for increases in operating expenditure between years. Bidders should take note that the tariffs indicated in Annexure "F" contained in Volume 6 of the Bid Documents must remain firm for the duration of the Term.

13.4 Payments shall be made in accordance with the Specifications and Special Conditions of Contract, in the following way –

Payment amount = (equals)

(Tariff for applicable Learner category X (multiplied by) Return Distance of Route X (multiplied by) number of School days in a Claim month) – (less) penalties

14. INSURANCE

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14.1 The Bidder must take reasonable steps to ensure the safety of passengers and property. The WCED shall not be liable for any loss or damages resulting from damage to property or the death of or injury to any person which is caused by an intentional or negligent act or omission of the Bidder or its agents or employees when rendering the Services.

14.2 The Service Provider shall obtain public liability insurance, which is to the satisfaction of the WCED and in particular to cover claims that may lead to liability resulting from incidents not covered by the Road Accident Fund, at its own cost commensurate with the risks associated with rendering the Services.

15. CESSION AND TERMINATION OF LEARNER TRANSPORT CONTRACT

15.1 The Head Office (Directorate: Procurement Management) reserves the right to cede and delegate to the School concerned its rights and obligations in terms of the Contract, in which case the School shall replace the WCED as party to the Contract. The WCED further undertakes in such cases to give the Service Provider proper notice of such cession and delegation.

15.2 Should the Head Office (Directorate: Procurement Management) determine that there is no longer a need for the Services, it reserves the right to cancel the Contract on one School term's written notice to the Service Provider.

15.3 The Service Provider shall not transfer, cede, delegate, and assign the Contract or part thereof without the prior written approval of the Head Office (Directorate: Procurement Management), which shall not be unreasonably withheld, nor shall the Service Provider abandon the Contract.

15.4 Approval to transfer, cede, delegate or assign the Contract within 3 (three) months after conclusion thereof shall only be granted by the Head Office (Directorate: Procurement Management) in compelling circumstances.

15.5 In terms of Regulation 12(1) of the Preferential Procurement Regulations, a Bidder to whom a Contract is awarded may only enter into a subcontracting arrangement with the approval of the relevant organ of state. In such instances, Regulation 12(3) of the Preferential Procurement Regulations provides that the Service Provider may not subcontract more than 25% of the value of the

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Contract to any enterprise that does not have an equal or higher BBBEE status level of contribution than that of the Service Provider, unless the Contract is subcontracted to an emerging micro enterprise that has the capability and ability to execute the subcontract.

16. COMPLIANCE WITH STATUTORY REQUIREMENTS

The Service Provider must comply with all Applicable Law and in particular, the following –

- NLTA;
- NRTA;
- The South African Schools Act 84 of 1996;
- The Employment Equity Act 55 of 1998;
- The Basic Conditions of Employment Act 75 of 1997; and
- The Labour Relations Act 66 of 1995.

17. FORCE MAJEURE

17.1 Should circumstances, which were not foreseeable with reasonable foresight or unavoidable with reasonable care, arise which delay or have the potential to delay the rendering of the Services, whether in whole or in part, the Service Provider must advise the WCED thereof as soon as possible.

17.2 Neither the WCED nor the Service Provider shall be liable for a failure to perform any of its obligations insofar as it proves –

17.2.1 that the failure was due to an impediment beyond its control;

17.2.2 that it could not reasonably be expected to have taken the impediment and its effects upon the Party's ability to perform into account at the time of the conclusion of the Contract; and

17.2.3 that it could not reasonably have avoided or overcome the impediment or its effects.

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17.3 An impediment, as aforesaid, may result from events such as the following (this list is not exhaustive) –

17.3.1 war, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage;

17.3.2 natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;

17.3.3 explosions, fires, destruction of machines, of factories and of any kind of installations;

17.3.4 acts of authority, whether lawful or unlawful, part from acts from which the party seeking relief has assumed the risk by virtue of any other provisions of this Agreement.

17.4 Relief from liability for non-performance by reason of the provisions contained herein shall commence on the date upon which the party seeking relief gives notice of the impediment relied upon, and shall terminate upon the date upon which such impediment ceases to exist; provided that if such impediment continues for a period of more than 60 (sixty) Business Days, either of the parties shall be entitled to terminate this Agreement.

18. FRAUD

18.1 If, at any time during the Term, the WCED reasonably determines that the Service Provider or its members or employees has, in respect of the Contract –

18.1.1 acted dishonestly and/or in bad faith; and/or

18.1.2 made any intentional or negligent misrepresentation to the WCED whether at the time of the bid evaluation, in the completion of the Bid documents or in the execution of the Contract;

then the WCED shall be entitled by written notice to the Service Provider to forthwith terminate the Contract. The Service Provider may also be held liable for

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any costs incurred by the WCED to make good the loss of Services that were supposed to be rendered by the Service Provider.

19. CANVASSING, GIFTS, INDUCEMENTS AND REWARDS

19.1 If the WCED is of the opinion that –

19.1.1 A Bidder, in relation to the obtaining of the Contract with the WCED, or a Service Provider, in relation to the execution of the Contract with the WCED, has or has caused to be promised, offered or given to an official, employee or any other person any bribe, commission, gift, loan, advantage or any other consideration whatsoever; or

19.1.2 The Bidder or Service Provider or any enterprise or person with whom the Bidder or Service Provider is actively associated or, where the Bidder or Service Provider is a company or partnership, any manager, director or any person who wholly or partly exercises or may exercise control over such a company or partnership, has acted fraudulently or in bad faith or in any improper manner in the obtaining of or in the execution of the Contract with the WCED, the Western Cape Government, a public body or company or firm or person; or

19.1.3 If the entity mentioned in paragraph 19.1.1, in conducting its business, has contravened or neglected to comply with any statutory requirements and as a result thereof has been found guilty of a criminal offence;

19.2 Then the WCED may –

19.2.1 in the case of a Bidder, reject any of its bids; and

19.2.2 in the case of a Service Provider, cancel the Contract without prejudice to any other remedies it may have.

20. BREACH & REMEDIES

20.1 Should a Service Provider –

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- 20.1.1 cease or be unable for any reason whatsoever to conduct its business in an ordinary or regular manner, except in the instance of force majeure, and fails to remedy such situation within a period of 7 (seven) Business Days' written notice from the WCED calling on it to remedy the situation; or
- 20.1.2 abandon, transfer, assign, cede, delegate or sub-contract the Contract or purport to abandon, transfer, assign, cede, delegate or sub contract the Contract without the prior written approval of the Head Office (Directorate: Procurement Management); or
- 20.1.3 breach any term of the Contract and fails to remedy such breach within a period of 7 (seven) Business Days' written notice from the Head Office (Directorate: Procurement Management) calling on it to do so,

the Contract will be terminated summarily.

20.2 Notwithstanding the above, the following breaches are regarded as serious and will lead to cancellation of the Contract if –

- 20.2.1 Learners are dropped off late at School in the morning or picked up late after School in the afternoon more than 3 (three) times in a Calendar Month or as a regular occurrence;
- 20.2.2 Learners have to stand in overloaded buses;
- 20.2.3 the Bidder does not transport the Learners and does not inform the Principal or make alternative arrangements;
- 20.2.4 the drivers should jeopardise the lives of the Learners being transported by, for example, driving the Vehicles while intoxicated with alcohol or other illegal substances or suffer from any medical condition precluding him/her from operating a Vehicle or rendering him/her unfit to do so;
- 20.2.5 the Bidder uses the same Vehicle on different Routes;

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- 20.2.6 the Bidder uses unlicensed or unroadworthy Vehicles;
- 20.2.7 the Department becomes aware that a driver does not have a valid Driver's License and Professional Permit; and
- 20.2.8 the Bidder does not have his Vehicle tested for roadworthiness as required by the NRTA or on request by the WCED.

20.3 If any term or condition as stated in this Contract is breached, the WCED shall have the right –

- 20.3.1 to claim specific performance on 7 (seven) Business Days' written notice to the Bidder, alternatively claim damages from the Bidder in terms of the Contract, and shall further have the right upon any period of delay to forthwith arrange for the execution of the Service not rendered or not rendered in conformity with the Contract by another entity;
- 20.3.2 to immediately cancel the Contract and claim damages from the Bidder;
- 20.3.3 in the event of the WCED availing itself of the remedies provided for in paragraph 20.3.1 above, the Service Provider shall bear any adverse difference in price of the said Services and these amounts plus any other damages which may be suffered by the WCED shall be paid by the Service Provider to the WCED immediately on written demand, or the WCED may deduct such amounts from moneys otherwise payable to the Service Provider in respect of Services rendered or to be rendered in terms of the Contract or in terms of any other contract or any other amount due to the Service Provider by the WCED; and/or
- 20.3.4 in the event of the Contract being terminated by the WCED, the Service Provider shall be liable to pay to the WCED any losses sustained and/or additional costs or expenditure incurred as a result of such cancellation and the WCED shall have the right to recover such losses, damages or additional costs by means of set-off from moneys due or which may become due in terms of the Contract or any other contract that the WCED may have with the Service Provider.

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21. REMEDIES IN THE CASE OF DEATH, SEQUESTRATION, LIQUIDATION OR JUDICIAL MANAGEMENT

21.1 In the event of the death of a Service Provider, or the provisional or final sequestration of his/her estate, or of the surrender of his/her estate, or of his/her reaching a compromise with his/her creditors, or of the provisional or final liquidation of a Service Provider, or the placing of its affairs under judicial management, the Head Office (Directorate: Procurement Management) may, without prejudice to any other rights it may have –

21.1.1 immediately after becoming aware thereof, cancel the Contract and accept any of the bids which were submitted originally with that of the Service Provider or any offer subsequently received to complete the Contract, provided that the estate of the Service Provider shall not be relieved from liability for any claim which has arisen or may arise against the Service Provider in respect of Services not rendered by him in terms of the Contract, and the WCED shall have the right to hold and retain all or any of the securities and retention moneys held by it at the date of the aforesaid occurrence until such claim has been satisfied; or

21.1.2 allow the executor, curator, trustee, liquidator or judicial manager, as the case may be, for and on behalf of and at the cost and expense of the estate of the Service Provider to carry on with and complete the Contract; or

21.1.3 in the event of the executor, curator, trustee, liquidator or judicial manager, opting to continue with the Contract, it shall give notice to make provision to the satisfaction of the WCED for the fulfilment of such requirements within 14 (fourteen) Business Days of the occurrence mentioned in paragraph 21.1. Should no executor, trustee, liquidator or judicial manager be appointed, the WCED may apply any remedy open to it in terms of the Contract as if a breach thereof had taken place.

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22. DECLARATION OF INTERESTS, BIDDERS PAST SCM PRACTICES AND INDEPENDENT BID DETERMINATION

Annexure "G" contained in Volume 6 of the Bid Documents relating to a Bidder's declaration of interest, past supply chain management practices and independent bid determination must be completed in full and signed by the Bidder in the presence of a Commissioner of Oaths.

23. CLAIM OF PREFERENCE POINTS

The Bidder is to fully complete Annexure "H" contained in Volume 6 of the Bid Documents, in terms of the Preferential Procurement Regulations, insofar as the form is applicable to the Bidder. Preference points cannot be awarded unless Annexure "H" contained in Volume 6 of the Bid Documents is completed in full and signed by the Bidder.

24. CHECKLIST

The Bidder is required to complete in full and sign the checklist at Annexure "J" contained in Volume 6 of the Bid Documents.

THUS DONE AND SIGNED AT _____ ON _____ in the presence of the undersigned witnesses:

Witnesses:

1.....

2.....

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FOR AND ON BEHALF OF THE BIDDER (duly authorised representative or in the case of a joint venture or consortium, the authorised signatory must sign or else all parties are required to sign if one party has not been granted signing rights)

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