

SETSOTO LOCAL MUNICIPALITY

and

ATNOM GROUP MOTAGANE CHEM WORKS JV

PROJECT: SUPPLY AND DELIVERY OF WATER CLEANING CHEMICALS \ MATERIAL FOR SETSOTO LOCAL MUNICIPALITY ON AN AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THREE (3) YEARS

TENDER NO: T 08 (17\18)

CONTRACT MANAGEMENT TEAM:

B MONARE -Acting Director Corporate Services
AM MOKOENA -Contracts Management
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- 3.1.7 "Force Majeure" means any inability, on the part of any of the Parties, to perform any of its obligations in terms of this Agreement due to an event which was beyond its control, these events include, but not limited to, war, civil war, armed conflict or terrorism, natural disasters such as violent storms, floods, earthquakes, destruction by lightning, explosions and fires;
- 3.1.8 "Municipality" means Setsoto Local Municipality being a local municipality;
- 3.1.9 "Month/monthly" shall mean a calendar month, and more specifically a calendar month commencing on that date or same date of any subsequent month thereafter;
- 3.1.10 "Parties" means the parties to this agreement;
- 3.1.11 "Persons under the control of the Service Provider" means any person being an employee, partner, director, shareholder or legal person under the control of the Service Provider, or a person acting on behalf of or with the knowledge of the Service Provider;
- 3.1.12 "Services" means the scope of work as set out in this agreement, bid document and any attached Annexure;
- 3.1.13 "Service Provider" means Atnom Group Motagane Chem Works, a Joint Venture with registration numbers: (2014 \ 2656 90 \ 07 and 2008/030426/23)

4 INTERPRETATION

- 4.1 In constructing this agreement and all related written instruments thereof, the grammatical and ordinary sense of the word is to be adhered to, unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the terms of this agreement.
- 4.2 If, however, the ordinary sense of the word leads to some absurdity or some repugnancy or inconsistency with the rest of the terms of this agreement, then the words may be modified just so much as to avoid that absurdity, or repugnancy or inconsistency but no more.

5 AGREEMENT AND DELIVERABLES AND SERVICE PROVIDER'S OBLIGATIONS

Service Providers Obligation

- 5.1 5.1.1 The parties herein enter into an agreement in terms of which the service provider is a key role player in the supply of water purification chemicals for the purpose of cleaning, treatment and purification.
- 5.1.2 Supply a wide range of water purification \ treatment chemicals \ equipment including transport and these are categorized as follows:
- 5.1.2.1 Flocculants \ Coagulants
 - 5.1.2.2 Disinfection agents, such as chlorine (gas, liquid, and HTH granular)
 - 5.1.2.3 PH Correction agents such as lime, soda ash, and caustic soda
 - 5.1.2.4 Dosing equipment – pumps
 - 5.1.2.5 Chlorination equipment such as chlorinators, injectors, valve connectors etc.
- 5.1.3 Supply and deliver goods within 5-10 working days at the quantity and quality as per the official order.
- 5.1.4 Deliver goods (chemicals) at the specified sites
- 5.1.5 Adhere to all safety regulations requirements and conditions, further advise the client on such.
- 5.1.6 To comply with the specification at all times
- 5.1.7 The service provider shall furnish the municipality with a valid tax invoice accompanied by substantiating documentation of such invoice relating to the fulfilment and deliverables stipulated in the contract and bid documents
- 5.1.8 Take back empty cylinders of material that warrant such.
- 5.1.9 Further collect hazardous chemicals \ materials with vehicles and personnel which is Hazchem approved
- 5.2 The parties specifically record that:
- 5.2.1 They do not envisage that the relationship that is created by this agreement is to be a partnership or a contract of employment;
 - 5.2.2 The service provider will not be entitled to any benefit of whatever nature that employees of the municipality may be contractually or in equity be entitled to; and,

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8.6 The method and conditions of payment to be made to the supplier under this contract shall be by electronic funds transfer or otherwise by prior notification to the supplier.

9. PRICES

9.1 Prices charged by the service provider for services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's bid submission or request for bid validity extension, as the case may be.

10. MANAGEMENT, COMMUNICATION AND REPORTING

10.1 The municipality, service provider and any other relevant person shall meet as required and shall, *inter alia*, continuously monitor and reassess the service in the best interest of the Municipality.

10.2 Matters of mutual interest will be discussed and decided on from time to time at these meetings as well as operational procedures, service levels and performance measurements may be revised here.

10.3 The supplier will report on its periodic assessment to the need of establishing a depot or warehouse within the municipal jurisdiction.

10.4 Matters agreed upon for operational purposes will be added as addenda to the agreement.

11. CONFIDENTIALITY

11.1 Both parties acknowledge that in their dealings with each other they may come across confidential information which may, if disclosed, compromise the business of the other party and that they (parties) herein undertake not to disclose such information to any third party, save where such disclosure is authorized by law or by written consent from the other party.

11.2 This clause shall continue to be binding on the parties despite any termination or cancellation of this agreement or any part thereof.

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13. DISPUTES

- 13.1. The parties undertake to resolve any dispute arising out of the implementation or interpretation of this agreement amicably by negotiating, if attempts to do so within seven (7) days fail, then by way of mediation.
- 13.2. The decision of the mediator shall be binding upon the parties and the cost of the mediation thereof shall be determined by the mediator himself or herself.
- 13.3. In the event the dispute concerns an amount claimed by the municipality and the service provider fails to rectify the dispute, the municipality shall be entitled to deduct the disputed amount from the amount payable in terms of the invoice for the following billing period and the amount may then be referred to mediation.
- 13.4. The parties agree that should the dispute relate to finance the mediator shall be an independent accountant of not less than ten (10) years in practice as selected by the chairperson of the Board of South African Institute of Chartered Accountants. Where a dispute relates to the interpretation of the clause/s of this agreement the mediator shall be an attorney or advocate of not more than ten (10) years in practice as selected by the chairperson of the Law Society of South Africa or the Bar Council in case of an advocate.
- 13.5. The provisions of this clause shall not operate to prevent either party from seeking urgent interim relief, pending mediation, by way of interdict or other legal action.

14. TERMINATION

14.1 This agreement can only be terminated in the event of:

- i. default on the part of any of the contracting parties as provided for in clause 12,
- ii. Poor Performance after the service provider has been advised in writing of the failure to meet the duties and responsibilities, and given a reasonable period of time of at least seven (7) days to cure the poor performance.
- iii. the service provider instituting insolvency proceedings or has insolvency proceedings involuntarily instituted against it, and
- iv. "Force Majeure" if, as a result of "Force Majeure", the parties can no longer continue performing the obligation of the agreement or it would be undesirable to continue with the agreement.
- v. any of the parties serving to the other party a written notice of termination for a period of three months prior to the termination.

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- i. Street Address: STAND 1060
MPHELENG
DENNILTON
1030

- ii. Postal Address: P.O BOX 354
Dennilton
1030

- iii. Tel: 012 757 6583 \ 073 358 5488

- iv. Fax: 086 666 6214

17. JURISDICTION

17.1 The parties hereby consent to the Jurisdiction of the Magistrates Court of South Africa located in the Province.

18. GENERAL

- 18.1 This agreement is the whole agreement between the parties in regard to its subject matter. No party shall be bound by any express, implied or tacit term, representation, warranty, promise or the like, not recorded in writing in this agreement and its annexure.

- 18.2 Should any of the terms and conditions of this agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

- 18.3 This agreement is governed by South African law, without giving effect to any conflict of laws;

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