

## Request for Proposals (RFP)

### Supply, Installation and Commissioning of SANReN Underground Fibre Optic Infrastructure for South African Radio Astronomy Observatory (SARAO)

RFP No. RFP No. 3259/08/02/2019

#### Intent to Provide a Performance Guarantee

This tender document provides for the provision of a performance guarantee from an approved financial institution which the *CSIR* has accepted.

**For this contract only Performance Guarantee provided by a financial institution registered in South Africa will be accepted.**

**Bidders' Instruction:** The organisation providing the guarantee does so by copying the pro forma document onto its letterhead without any change to the text or format and completing the required details. The completed document is then given to the CSIR within the time stated in the contract.

It is hereby agreed that a Performance Guarantee drafted **exactly** as provided in the tender documents will be provided by the Surety named below, which is a bank or insurer registered in South Africa:

Name of Surety (Bank/insurer)

.....

Address

.....

The Performance Guarantee shall be provided within 4 (four) weeks after the Commencement Date defined in the contract unless otherwise agreed to by the parties.

Signed

.....

Name

.....

Capacity

.....

On behalf of (name of tenderer)

.....

Date

.....

**CONFIRMED BY Surety's Authorised Representative**

Signature(s)

.....

Name (print)

.....

Capacity

.....

On behalf of Surety (Bank/insurer)

.....

Date

.....

Pro forma Performance Guarantee

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Bond / Guarantee)

[Insert CSIR's name and registered address]

Bank reference No.

Date:

Dear Sirs,

**Performance Guarantee for [insert name of Supplier] required in terms of contract [insert Supplier's contract reference number or title]**

1. In this Guarantee the following words and expressions shall have the following meanings: -

|   |  |
|---|--|
| 1.1. "Bank or Guarantor" means                  | [Insert name of Bank], [ ] Branch, Registration No. [ ]  |
| 1.2. Bank's Address" means                      | [Insert physical address of Bank]  |
| 1.3. "Contract" means                           | the written agreement relating to providing the goods and services, entered into between the CSIR and the Supplier, on or about the [ ] day of [ ] 200[ ] (Contract Reference No. [RFP No. ]) as amended, varied, restated, novated or substituted from time to time;  |
| 1.4. "Supplier" means                           | [ ] a company registered in accordance with the laws of [ ] under Registration No [ ].   |
| 1.5. "CSIR" means                               | [ ] a company registered in accordance with the laws of the Republic of South Africa under Registration Number [ ]   |
| 1.6. "Expiry Date" means                        | the earlier of <ul style="list-style-type: none"><li>the date that the Bank receives a notice from the CSIR Project Manager stating that all amounts due from the Supplier as certified in terms of the contract have been received by the CSIR and that the Supplier has fulfilled all his obligations under the Contract, or</li><li>the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by the CSIR Project Manager.</li></ul> |
| 1.7. "Guaranteed Sum and total liability" means | the sum of R[ ], ([ ] Rand)  |
| 1.8. "goods and services" means                 | Supply, Installation and Commissioning of SANReN Underground Fibre Optic Infrastructure for South African Radio Astronomy Observatory(SARAO)   |

2. At the instance of the Supplier, we the undersigned \_\_\_\_\_ and \_\_\_\_\_, in our respective capacities as \_\_\_\_\_ and \_\_\_\_\_ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of the CSIR as security for the proper performance by the Supplier of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to the CSIR, on written demand from the CSIR received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.

3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:

- be signed on behalf of the CSIR by a Project Manager of the CSIR;
- state the amount claimed ("the Demand Amount");
- state that the Demand Amount is payable to the CSIR in the circumstances contemplated in the Contract.

4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:
- is and shall be absolute provided demand is made in terms of this guarantee in all circumstances; and
  - is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
5. The Bank's obligations in terms of this Guarantee:
- shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum, which the Bank undertakes to pay to the CSIR to the full value of or the full outstanding balance upon receipt of the first written Demand from the CSIR Project Manager calling up this Guarantee;
  - shall renounce all benefits from any legal exceptions which might or could be pleaded against the validity of this Guarantee; and
  - shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between the *CSIR* and the *Supplier*.
6. The *CSIR* shall be entitled to arrange its affairs with the *Supplier* in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the *Supplier* or any variation under or to the Contract.
- 6.1. The Bank shall have no right to claim its release on account of any conduct alleged to be prejudicial to the Bank. Without derogating from the foregoing compromise, extension of the construction period, variations, indulgence, release of the *Supplier's* obligation/s shall not affect the validity of this Guarantee.
7. Should the *CSIR* cede its rights against the *Supplier* to a third party where such cession is permitted under the Contract, then the *CSIR* shall be entitled to cede to such third party the rights of the *CSIR* under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
- shall expire on the earlier of the Expiry Date until which time it is irrevocable; It shall be always provided that this Guarantee shall not lapse in the event that the Guarantor is notified by the CSIR Project Manager (before the Expiry Date/s) of the CSIR's intention to institute claims and the particulars thereof, in which event this Guarantee shall remain in force until all such claims are paid and settled;
  - is, save as provided for in 7 above, personal to the *CSIR* and is neither negotiable nor transferable;
  - shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
  - accompanied by the required demand notice and letter of termination, shall be regarded as a liquid document for the purposes of obtaining a court order;
  - shall be regarded as a liquid document for the purpose of obtaining a court order; and
  - shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

For and on behalf of the Bank

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

Bank Signature(s)

Name(s) (printed)

Position(s) in Bank

Signature of Witness(s)

Name(s) (printed)

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