

Tender no. 8/2019 for In-Situ Ground Water Remediation and Construction of Ground Water Pumping System in IMI "Magen" compound

Volume 1

RFP

Request for Proposals For In-Situ Ground Water Remediation and Construction of Ground Water Pumping System in IMI "Magen" compound

Tender no. 8/2019

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1. Introduction

- 1.1. The Municipality of Tel Aviv-Yafo ("Municipality") jointly with the Israel Land Authority wish to advance the construction of a residential and commercial complex in the Magen Compound identified in Section 1 to **Annex B (The Site)**. One of the preconditions stipulated under the District Building Plan 4491 / תע"ש השלום – תחום תא for commencing the development and construction of the project is treatment of contaminated groundwater.
- 1.2. In view thereof the Municipality invites Local Companies and foreign companies which comply with the terms set forth under this **Volume 1 (request for Proposals)** to participate in a public international tender for the selection of a contractor who shall design and execute the Project including an In-Situ treatment and the supply, construction, installation and commissioning of a Pumping System, all as further elaborated, detailed and stipulated in the Tender Documents.
- 1.3. The Municipality intends to award the Contract to the Preferred Tenderer, subject to its fulfillment of all Preconditions set forth under Section 20.2 (*Selection of the Preferred Tenderer and Signature of Contract*) and requirements of all Laws and Regulations.
- 1.4. Upon Signature Date the Preferred Tenderer shall thereafter be referred to as the '**Contractor**' who shall bear the full and sole responsibility for the timely and adequate execution of the Project.
- 1.5. The Tender Documents, which, *inter alia*, include this **Volume 1 (Request for Proposals)**, are intended to direct entities who wish to participate in the Tender with respect to the preparation of their Proposals, including but not limited to the technical, engineering, financial and legal information required to be submitted within the Proposal.

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1.6. **Magen Compound** - the Magen Compound is a 43,000 m² plot located in Nahalat Yitzhak, Tel Aviv which was held during 1950-1997 by the Israel Military Industry ("IMI") "Magen" factory. The IMI's operation in the Magen Compound resulted in severe contamination to both soil and groundwater. A soil excavation was executed under the instructions and supervision of the Ministry of Environmental Protection and around approximately 12,000 tons of contaminated soil was disposed. As stipulated under the District Building Plan referred to in Section 1.1 above, in order to commence development and construction of the Magen Compound and surroundings - the contaminated groundwater must first be treated. The groundwater contamination includes Chlorinated Solvents and byproducts (such as Trichloroethylene, Tetrachloroethylene, 1,1-Dichloroethylene, 1,2-Dichloroethylene, 1,2-Dichloroethane), Cyanide, and Heavy Metals (such as Chromium, Cadmium and Lead). Most of the contaminants found have been declared by the USEPA as toxic, mutagenic, teratogenic and/or suspected carcinogenic. Updated and historical concentrations and additional information is included in **Appendix A (Technical Specifications)** of **Volume 2 (Contract)**. The Project main elements include an In Situ treatment and a Construction of a Pumping System, as follows:

- 1.6.1. **In-Situ Treatment**- In Situ Treatment is intended to address the high concentrations of VOCs in the groundwater. Tenderers may propose one of the following In-Situ technologies: **either** (a) ISCO; **or** (b) ISCR. The main objective of the In Situ treatment is to reduce the concentrations of the Chlorinated Solvents.
- 1.6.2. **Construction of a Pumping System** – construction of an underground Pumping System intended to pump the contaminated groundwater from three Production Wells and dispose the pumped water to the sewage system. The objective of the Pumping System is to create a hydraulic containment. The Pumping System shall be operated by an entity that will be determined by the Municipality. The operation of the Pumping System is not included in the Project's scope of work but the transfer of the Pumping System to the entity who shall operate it and the acceptance thereof by this entity is included in the scope of the Project.

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1.6.3. **Note:** the Municipality may initiate, separately, a tender for construction and operation of a treatment facility. The initiation of such tender is, *inter alia*, dependent upon the treated water quality. In this regard see the provisions of Section 22.8 (*Optional Tender for the design and execution of Contaminated Groundwater Treatment*).

2. Tender – General

2.1. Tender Time Schedule

Without derogating from Municipality's discretion as provided in the provisions of Section 22.1 (*Postponement of Dates*) to postpone any of the dates provided in the Tender Documents – unless notified otherwise by the Municipality – the Tender shall be conducted per the following dates:

Mandatory* 1st Tenderers' Conference and Site Visit: (participation in one of the three Tenderers' Conference and Site Visits shall satisfy the Threshold Requirement set forth under Section 7.1.2)	<u>4.3.2019</u>
Mandatory* 2nd Tenderers' Conference and Site Visit.	<u>11.3.2019</u>
Mandatory* 3rd Tenderers' Conference and Site Visit.	<u>18.4.2019</u>
Last date for submission of the Proposed RI Program per Section 4.1	<u>13.5.2019</u> <u>(inclusive)</u>
Last date for submission of queries and requests for clarifications	<u>5.12.2019 (inclusive)</u>
Proposals submission time frame	<u>29.12.2019-2.1.2020 (by no later than 14:00 local time)</u>

All dates and times identified under the Tender Documents or corresponded pursuant thereto shall be Israel time (local time).

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2.2. Tender Documents

The Tender Documents consist of the following **Volumes** and their respective **Annexes** (of **Volume 1**) and **Appendices** (of Volume 2), together with any amendments issued in accordance with Section 16.2 (*Amendment of Tender Documents*):

2.2.1. **Volume 1 - Request for Proposals (RFP), Tender Forms and Annexes:**

(a) **Volume 1 - Tender Forms**

Tender Form	Title
A	Letter of Acknowledgement and Application to Attend Mandatory Tenderers' Conference and Site Visit
B	Tenderer's Letter; Attachment 1: Authorized Representative
C	Remedial Investigation Program
D	Affidavit as per the Public Entities Transactions Law, 5736 – 1976 (*) Approvals as per the Public Entities Transactions Law, 5736 - 1976 shall be attached to the Affidavit
E	Parent Company Undertaking
F	In-Situ Subcontractor's Undertaking
G	Financial Robustness
H	Price Proposal
I	Professional Threshold Requirements - Demonstration Information
J	Tenderer's Information for Technical Score (TS)
K	Industrial Cooperation Undertaking and Implementation Plan
L	Municipality's Advisor's and Tenderer's No Conflict of Interests Declaration
M	Confirmation of Merging Company

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The Tender Forms detailed under this Section 2.2.1, are forms which the Tenderer is required to complete and submit as part of its Proposal. **Tender Form A** (*Letter of Acknowledgement and Application to Attend Mandatory Tenderers' Conference and Site Visit*) is to be completed and submitted by Entities who wish to participate in the Tenderers' Conference and Site Visit – prior to submittal of the Proposal - in accordance to the provisions set forth in Section 3.4 (*Tenderers' Conference and Site Visits - Application*).

(b) **Volume 1** - Tender Annexes

The Tender Annexes detailed under this Section (b), are intended – together with the provisions of this **Volume 1** (*Request for Proposals*) - to provide background, instruction and general information for the preparation and submission of the Proposal and the manner by which they shall be evaluated.

TENDER ANNEX	Title
A	Definitions for the RFP and Contract
B	The Site
C	TS (Technical Score) Evaluation Criteria
D	Tender Bond
E	Approved Tender Bond issuers
F	Request for Clarification
G	List of Technical Submittals for the TS
H	ICA's Instructions

2.2.2. **Volume 2 - Contract and Appendices.**

2.2.3. **Volume 3 shall constitute the Contractor's Proposal as accepted by the Municipality.**

2.2.4. **Volume 4 - Reference Information.**

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The items constituting the "**Contract Documents**" (which include in addition to **Volumes 2** and **4** also **Volume 3** - the Contractor's Proposal as accepted by the Municipality) are defined under Section 1.3 of **Volume 2 (Contract)**.

2.3. Order of Precedence

During the Tender until Signature Date, in the event of any conflict or discrepancy between the provisions of this **Volume 1 (Request for Proposals)** and **Volume 2 (Contract)**, including with respect to all questions of interpretation – as and to the extent such are determined by the Municipality to exist - **Volume 1 (Request for Proposals)** shall prevail over **Volume 2 (Contract)**.

As of Signature Date in any event of any conflict or discrepancy between the provisions of **Volume 2 (Contract)** and this **Volume 1 (Request for Proposals)**, including with respect to all questions of interpretation – as and to the extent such are determined by the Municipality to exist - the provisions of **Volume 2 (Contract)** shall prevail over this **Volume 1 (Request for Proposals)**.

In any event of discrepancies within the provisions of **Volume 1 (Request for Proposals)** or discrepancies within the provisions of **Volume 2 (Contract)** – as and to the extent such are determined by the Municipality to exist - the Municipality shall instruct as per the prevailing provision and the Contractor shall act in accordance thereto and shall have no claim or demand associated with the fulfilment of the Municipality's said instruction.

The provisions of Section 1.6 (*Interpretation*) of **Volume 2 (Contract)** shall apply, *mutatis mutandis*, upon this **Volume 1 (Request for Proposals)**.

2.4. Conformity with All Laws and Regulations

Each Tenderer (or Entity/Participant, as applicable) is assumed to have obtained advice in each and every field and aspect associated with the Tender and its participation therewith including legal advice of all Laws and Regulations which may be applicable to its participation in the Tender and fulfilment of any of its explicit or any other duties and undertakings including in the event declared as Preferred Tenderer and acting as the Contractor.

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Accordingly, the Tenderer (or Entity/Participant, as applicable) shall abide to all Laws and Regulations and ensure its participation and Proposal complies therewith. Tenderers (or Entities/Participants, as applicable) shall comply – at all times - with any changes in any of the Laws and Regulations or new legislation should and to the extent such occur. The provisions of this Section 2.4 shall apply upon the Contractor following Submission Date.

3. General Provisions

- 3.1. As provided hereinabove, this Tender is published as an international public tender.
- 3.2. In accordance with the discretion reserved to the Municipality under Article 10(C) of **Municipalities Regulations (Tenders), 5748-1987** ("Regulations"), the Tender Documents were uploaded to the Municipality's website address at: <https://bit.ly/2U2Q3Cw> ("Municipality's Website").

Any notification regarding the Tender shall be uploaded to the Municipality's Website. It shall be the full and sole responsibility of the Participants to ensure they are ongoingly acquainted with all notifications uploaded and timely act in accordance with the instructions made therein.

3.3. Participation Fee

The Participation Fee to be paid by the Tenderer, in accordance with Section 7.1.4 (*Participation Fee*) hereunder, shall not be refundable in any event whatsoever including in the event the Tender is annulled by the Municipality at any stage and for which any reason including if such annulment is determined following Submission Date and Declaration of the Preferred Tenderer.

Similarly, the Participation Fee shall not be refundable at circumstances under which a Participant chooses not to submit a Proposal; the Proposal (or any part thereof) is withdrawn by the Tenderer (without that derogating from any of the rights reserved to the Municipality in accordance with this RFP and Laws and Regulations); or in the event the Proposal is disqualified by the Municipality.

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Distribution of Tender Documents

Entities/Participants who are interested in receiving the Tender Documents (free of charge) are requested to contact the Municipality's POC.

3.4. Tenderers' Conference and Site Visits – Application

Entities who wish to participate in the Tenderers' Conference and Site Visit are requested to complete and submit the Letter of Acknowledgement and Application to the Mandatory Tenderers' Conference and Site Visit, in the form set out in **Tender Form A** (*Letter of Acknowledgement and Application to Attend Mandatory Tenderers' Conference and Site Visit*) to the Municipality's POC at least one week prior to the scheduled Tenderers' Conference and Site Visit (as provided under Section 2.1 (*Tender Time Schedule*)). The Submission of **Tender Form A** does not constitute a pre-condition for the participation in the **Mandatory** Tenderers' Conference and Site Visit but is intended to assist the Municipality's in the Tenderers' Conference and Site Visit preparation and issuance of notifications regarding thereto to the entities who have submitted the **Tender Form A** (in addition to such notifications being uploaded to the Municipality's Website).

Note:

Until the Mandatory Tenderers' Conference and Site Visit – the entities submitting the aforesaid **Tender Form A** – shall be referred to as “**Entity**” or “**Entities**”, as applicable.

All Entities whose participation shall be documented within the Mandatory Tenderers' Conference and Site Visit – shall be referred to as “**Participant**” or “**Participants**”, as applicable.

All Participants who shall submit their Proposals – shall be referred to as “**Tenderer**” or “**Tenderers**”, as applicable.

The provisions of this **Volume 1** (*Request for Proposals*) – which the Municipality deems to apply upon Entities and/or Participants shall apply, *mutatis mutandis*.

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3.5. Proposal Preparation and Submission

- 3.5.1. Tenderers are required to prepare and submit their Proposal in accordance with the provisions of this **Volume 1** (*Request for Proposals*) as may be amended from time to time by the Municipality.
- 3.5.2. The Proposal shall include, at the minimum, all items identified within this **Volume 1** (*Request for Proposals*) including Section **17** (*Parts of the Proposal*). Tenderers shall follow and comply with the format of this **Volume 1** (*Request for Proposals*) and complete, all the Tender Forms in their entirety according to the particular requirements thereof. For this purpose, the Tenderers shall make use, fill and complete, the Tender Forms attached to this **Volume 1** (*Request for Proposals*).
- 3.5.3. If a Participant is of the opinion it is unable to supply the required information in full or in part or in the form required, for any reason whatsoever, it shall elaborate on the matter – **prior to Submission Date** – within the framework of a detailed Request for Clarification (RFC) as provided under Section 2.1 (*Tender Time Schedule*) in accordance with the procedures set forth in Section 16.1 (*Clarification of Tender Documents*). This relates to any information required to be provided prior to Submission Date, within the Proposal, with respect to any of the Preconditions for Signature (as provided under Section 20.2 (*Selection of the Preferred Tenderer and Signature of Contract*) or any other information required to be submitted – prior to Submission Date - per the Tender Documents. The Participants shall act in accordance with the determination given by the Municipality to such request(s) for clarifications.
- 3.5.4. Missing information, use of different forms (compared to the ones attached to this **Volume 1** (*Request for Proposals*)) or altering the form specific parts of any of the Tender Documents, may lead – subject to the Municipality's sole discretion considering the respective circumstances - to disqualification of the Tenderer. The Municipality may also apply for clarifications or require supplementary or completion of information from any Tenderer, as it may deem fit.

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3.6. Supplementary Information

All supplementary information should be labeled according to the relevant Section to which it relates, as applicable. In the event of any discrepancy between supplementary information (should such be submitted) and information submitted within or in response to any RFP Tender Form or Annex – the later shall take precedence.

3.7. **In** the event this prohibition is not met then without derogating from any other right or discretion, the Municipality will reject all such Proposals and disqualify the participation of all involved Tenderers, Members, In-Situ Subcontractor, and Parent Company.

Related Entity" – shall mean any corporate that is either:

- 3.7.1. A corporation which exercises Control over the Tenderer, Member, In-Situ Subcontractor and Parent Company (as applicable); or
- 3.7.2. A corporation which is Controlled by the Tenderer, Member, In-Situ Subcontractor and Parent Company (as applicable); or
- 3.7.3. A corporation which is Controlled by the same corporation Controlling the Tenderer, Member, In-Situ Subcontractor and Parent Company (as applicable)."

3.8. Tenderers are under the obligation to conform to and comply with the **Antitrust Law, 5748-1988**. By participating in this Tender the Tenderers hereby declare that neither they nor any other person or entity acting on their behalf shall enter into an agreement whatsoever with any person or entity which will result in lowering the level of competition between the Tenderers.

4. Mandatory Sampling and Analyses

4.1 **General** - Participants (and in the event of a Joint Venture – one of its Members; and in the event of a single Company itself or its In-Situ Sub-Contractor, as applicable; provided that the Member or In-Situ Sub-Contractor, as applicable, participated in the Mandatory Tenderers' Conference and Site Visit) shall be required to independently perform sampling(s) of Monitoring Well(s)

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prior to the submission of their Proposals. The performance of the samplings and analyses, as elaborated below, will be verified in the framework of Section 10.2 (*Stage 1 – Examination of Tenderer's Composition, and Compliance with Threshold Requirements and Submission of RI Program Results and Analyses*).

4.1.1 Preparation and Submission of the Participants' proposed RI Program –

- (a) **Proposed RI Program Preparation** - the Participant shall prepare a proposed RI Program per the provisions of **Tender Form C (Remedial Investigation Program)**, **Tender Annex B (the Site)**, **Volume 4 (Reference Information)** and the provisions of this Section 4 (Mandatory Sampling and Analyses) (“**Proposed RI Program**”).
- (b) **Submission of the Proposed RI Program Preparation** the Participant shall submit its Proposed RI Program – by the date set forth therefore under Section 2.1 (*Tender Time Schedule*)

4.1.2 Review and Approval of the Proposed RI Program –

- (a) **Review of the Proposed RI Program** - the Proposed RI Program shall be submitted to the Municipality and the WA for their review and comments. In the event comments are provided to the Participant – it shall amend and supplement its Proposed RI Program per the comments made and resubmit its amended RI Program by the date determined by the Municipality for further review. In the event comments remain and additional comments arise – the Participant shall attend thereto per the aforesaid provisions.
- (b) **Approval of the Proposed RI Program** – once the Municipality and WA have no comments or remaining comments to the Proposed RI Program – the Participant shall be provided with an approval notice (“**Approved RI Program**”).

4.1.3 Execution of the Approved RI Program –

- (a) **Execution of Approved RI Program** – the Municipality - at its sole discretion - shall separately notify each participant the scheduled date on which it shall commence and complete the execution of its Approved RI Program (“**RI Sampling**”). The order of RI Sampling to be executed by each Participant, the duration allocated for each and requests – if such shall be made – for execution of additional samplings shall all be determined by the Municipality at its sole discretion considering, *inter alia*, the constraints attached. The Municipality's determination shall be final and bind all Participants and they shall have no claim with regard thereto.

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(b) **Permit Obtainments** - in the event the RI Sampling execution requires obtainment of any Permit – then the timely obtainment of such Permit shall also be at the Participant's sole responsibility.

4.1.4 Submission of RI Sampling Results and Analyses -

In addition to the Tenderer's completion **Tender Form J**, the Tenderer shall attach to the Tender Form's **Part B (EPS) Attachment A (Approved RI Program and Sampling Results)** - the Approved RI Program and RI Sampling's results and analyses ("RI Sampling Results and Analyses"). The Tenderer shall further elaborate within the aforesaid **Attachment A** on the compatibility existing between this data collected and its proposed treatment methodology as detailed in its EPS

Tenderers are referred to in this respect, *inter alia*, to the contents of **Annex C (TS (Technical Score) Evaluation Criteria)** and **Tender Form J** – Tenderer's Information for Technical Score (TS) of this **Volume 1 (Request for Proposals)**.

4.2. Participants are hereby informed that the Site contains 15 WA Wells. Information regarding the Wells which may be sampled and monitored by the Participants for the purpose of this Section 4 (Mandatory Sampling and Analyses) will be distributed to the Participants for the purpose of preparation of the Proposed RI Program. See in this regard Section 1 (Magen Compound and the Site) to Annex B (the Site) of this RFP

4.3 The Municipality's right to make any use of the information provided – as regulated under Section 24.5.6 (*Information contained in Tender Documents and Proposals*) - shall apply also upon the submitted RI Program.

4.4 Samplings - Costs Participation

The Second and Third Ranked Tenderers (as applicable) shall be entitled for a reimbursement sum of **the lower of:**

4.4.1 50% of the direct costs of the sampling as demonstrated by submission of invoices and other supporting documentation to the Municipality's satisfaction; **or**

4.4.2 50,000 NIS.

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The aforesaid shall be deemed to include VAT – and as such VAT shall not be added.

4.5 Notwithstanding anything to the contrary, where any legal proceedings have been initiated against the Tender's results, the Samplings Cost Participation shall be delivered by the Municipality only after a conclusive and final resolution of the said proceeding is made (upon peremptory rule, without any further rights of appeal to any of the involved parties), and any sums awarded to in the framework of such proceedings, to which the Tenderer is liable, as applicable, shall be set off from the payment to such a Tenderer.

Payment of the cost participation shall testify of the paid Tenderer's irrevocable and complete acceptance of the Tender's results and it shall be prevented from initiating any proceeding or placing and claim with regard thereto.

4.6 In the event the Municipality deems its beneficial to the Project and Tender – it may allow the submission of the Proposed RI Programs and execution of the RI Sampling at any time prior to the Proposal submission timeframe by a written notification uploaded to the Municipality's Website. In any event the discretion to exercise its aforesaid authority (and extent thereof) or refraining of such, shall all be at the Municipality's full and sole discretion.

5. Mandatory Tenderer's Conference and Site Visit(s) in the Magen Compound (“Tenderers' Conference and Site Visit(s)”) ---

5.1. Tenderers' Conference and Site Visit will be held on the two alternative dates and time as set forth in Section 2.1 (*Tender Time Schedule*). The meeting point is in the Municipality offices (8th floor), 69 Even Gvirol Street, Tel Aviv, Israel, at 10:00 AM (local time) where a Tenderer's Conference will be held after-which as Site Visit will be held. Participation in both events is mandatory for the Submission of the Proposal. The participation in the Conference and Site Visit shall be documented during both events and shall serve for determining compliance with the respective Threshold Requirement (Section 7.1.2). It is the full and sole responsibility of the Tenderer to ensure its participation in the Conference and following Site Visit is documented. The Municipality reserves its right to commence the aforesaid Visit after the designated hour (but is not required to do so). The Municipality reserves the sole discretion to conduct an additional Tenderers' Conference and Site Visit(s), one or more, as it deems fit but is not obliged to do so. In the event an additional Tenderers'

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Conference and Site Visit(s) are held, due notice shall be given to the Participant's Authorized Representatives and shall be uploaded to the Municipality's Website.

- 5.2. The participation in one of the two alternative dates or in an additional Tenderers' Conference and Site Visit(s) (in the event additional visits are determined by the Municipality without it being obliged to set additional visit(s)) shall satisfy the Threshold Requirement set forth in Section 7.1.2 (*Participation in the Mandatory Tenderers' Conference and Site Visit*) below. Participants may (but not obliged to) participate in more than one Tenderers' Conference and Site Visit(s) but in any event are required to participate in one.
- 5.3. A representative on behalf of each Tenderer shall be required to participate one of the two alternative Tenderers' Conference and Site Visits scheduled in Section 2.1 (*Tender Time Schedule*) above. In the event of a Tenderer which is a Joint Venture – the participation of a representative on behalf of one of the JV Members shall be sufficient for the purpose of the JV's compliance with the Threshold Requirement set forth in Section 7.1.2 (*Participation in Mandatory Tenderers' Conference and Site Visit*) below. A representative may not participate on behalf of more than one Tenderer or on behalf of Members of different Joint Ventures. **It is the representative's responsibility to ensure its participation was documented by the Municipality's delegate both in the Tenderers' Conference and in the Site Visit.**
- 5.4. Towards the set Tenderers' Conference and Site Visits, the Municipality shall issue a notice regarding the agenda and exact timetable of the Tenderers' Conference and Site Visit(s). This notice shall be issued to entities who have submitted **Tender Form A** (*Letter of Acknowledgement and Application to Attend Mandatory Tenderers' Conference and Site Visit*) and shall be upload it to the Municipality's Website for the benefit of other entities interested in participating in the Tenderers' Conference and Site Visit but who haven't submitted **Tender Form A** (*Letter of Acknowledgement and Application to Attend Mandatory Tenderers' Conference and Site Visit*).
- 5.5. Minutes of the Tenderers' Conference and Site Visits documented by the Municipality shall also be uploaded to the Municipality's Website and distributed to the Participant's who participated in one of the Mandatory Tenderers' Conference and Site Visits

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5.6. Only information issued **in writing by the Municipality's POC** following the Tenderers' Conference and Site Visit shall be deemed an integral part of the Tender Documents. No verbal statements including those made delegates of the Municipality at the Tenderers' Conference and Site Visit shall be deemed binding upon the Municipality.

5.7. Questions including with respect to any issue relating to the Tenderers' Conference and Site Visit (venue, time etc.) shall be raised in the form of a request for clarification as provided under Section 16.1 (*Clarification of Tender Documents*) hereunder.

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6. Composition of Tenderers

The Tenderer shall either be –

6.1. A Local Company -

A “**Local Company**” shall mean either **(i)** a single company (not a partnership, joint-venture or consortium) duly incorporated and registered in the State of Israel; or **(ii)** a foreign company duly registered in Israel (denoted in Hebrew, under the **Israel Corporation Law 5759-1999**, as: **חברת חוץ הרשותה בישראל**) which is a single company (not a partnership, joint-venture or consortium).

Or alternatively

6.2. A Joint Venture comprised of (2) members (“**Joint Venture**” or “**JV**”, “**Member**” or “**Members**”, respectively). At least one of the Members shall be a Local Company holding, at least, 30% of any of the Joint Venture’s means of control. Each Member shall be a single company (not a partnership, joint-venture or consortium). The JV does not have to be incorporated and registered as such.

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7. Threshold Requirements - General

Upon the Submission Date, each Tenderer shall demonstrate its compliance with the following Threshold Requirements:

7.1. Administrative Threshold Requirements

7.1.1. Tender Bond

The Tenderer shall prepare, issue and submit a Tender Bond, in accordance with the provisions of Section 11 (*Tender Bond*).

7.1.2. Participation in at least one of the three scheduled Mandatory Tenderers' Conferences and Site Visits scheduled under Section 2.1 (*Tender Time Schedule*).

7.1.3. Approvals and Affidavits as per the Public Entities Transactions Law, 5736-1976

Each Tenderer or in the event of a JV – the JV's Member **who is a Local Company**:

(a) **Valid approvals** testifying to proper bookkeeping practices (or exemption thereof) in accordance with the provisions of the **Public Entities Transactions Law, 5736-1976**, and the regulations there-under, in accordance with the **Income Tax ordinance and the Value Added Tax Law, 5736-1975** and the absence of debts, if applicable.

(b) **Affidavit** pursuant to **Article 2B** of the **Public Entities Transactions Law, 5736-1976** authorized by an attorney in the form attached as **Tender Form D** (*Affidavit pursuant to Article 2B of the Public Entities Transactions Law, 5736-1976*).

7.1.4. Participation Fee

Payment of Participation Fee in the sum of 5,000 NIS (VAT included). See, in this context, the provisions of Section 3.3 (*Participation Fee*).

7.1.5. Submission of Foreign Supplier's Industrial Cooperation Undertaking and Implementation Plan

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The Tenderer shall submit a Foreign Supplier's Industrial Cooperation Undertaking and Implementation Plan in the form attached hereto as **Tender Form K** (*Industrial Cooperation Undertaking and Implementation Plan*), in accordance, *inter alia*, with the provisions of Section 12 (*Industrial Cooperation Authority's approval of Tenderer's Undertaking of Business Cooperation and Implementation Plan*).

The undertaking shall be subject to the ICA's review and comments and the Tenderer's compliance with any supplement, amendment or addition ICA may require after its review of the submitted Undertaking.

7.1.6. ~~Registered Contractor per the Registration of Contractors for Construction Engineering Works Law, 5729-1969:~~

~~The Tenderer or in the event of a JV—the Local Member[†] thereof is a registered contractor, at least, of the following registrations:~~

~~(a) **Main field 400** Sewerage, Drainage and Water (denoted in Hebrew as: **400 ענף ראיי ומייט ביב, ניקוז ומייט**); **classification B** (denoted in Hebrew as: **סוג, לכל הפחות, 1** (denoted in Hebrew as: **1 סוג, לכל הפחות, 1**); **type** at least **1** (denoted in Hebrew as: **1 סוג, לכל הפחות, 1**); **(1)(ב)400; and**~~

~~(b) **Main field 500** Pumps, Turbines and Pumping Stations (denoted in Hebrew as: **500 מושבות, טורבינות ותחנות שאיבה ענף ראיי 500**); **classification B** (denoted in Hebrew as: **סוג, ב, 1** (denoted in Hebrew as: **1 סוג, ב, 1**); **type** at least **1** (denoted in Hebrew as: **1 סוג, לכל הפחות, 1**); **(1)(ב)500.**~~

[†] In the event both Members of the JV are Local Companies—at least one of the Members shall be registered with both classifications.

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7.2. Financial Threshold Requirements

General

Each Tenderer is required to comply with the financial threshold requirements set forth in Sections 7.2.1 (*Turnover*), 7.2.2 (*Operating Cash Flow*), 7.2.3(*Equity*) and 7.2.4 (*Going Concern*) (all four financial threshold requirements shall constitute the “**Financial Threshold Requirements**”).

(a) **Applicable Financial Statements** – The Financial Statements to be submitted for the purpose of complying with the Financial Threshold Requirements - shall be the Financial Statements for the years 2016, 2017 and 2018. Only in the event the Financial Statement for the year of 2018 are not available (hence audited Financial Statement for the year 2018 do not exist) – will the Financial Statements for the years 2015, 2016 and 2017 be accepted.

Accordingly, in the event a Financial Threshold Requirement refers to the year of the most recent available Financial Statement – this shall be the Financial Statement for 2018 unless such does not exist whereby the requirement shall apply to the Financial Statement for 2017.

Note: the unavailability of a Financial Statement for 2018 – will be confirmed within the framework of **Tender Form G** (Financial Robustness).

(b) **Reliance upon Parent Company** –

(1) For the purpose of compliance with the Financial Threshold Requirements, a Tenderer or Member² (as applicable) may seek to rely on its Parent Company. In such event the Parent Company shall duly signs the Letter of Guarantee in the form of **Tender Form E** (*Parent Company Undertaking*).

“Parent Company” – a corporate which exercises Control over the Tenderer or Member (as applicable).

“Control” – as defined under **Article 1 of the Securities Law, 5728 – 1968**.

(2) Reliance upon a Parent Company requires it to demonstrate compliance with **all** Financial Threshold Requirements. However in any such event the Parent Company and the Tenderer or Member relying thereon (as applicable) shall

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both, separately, comply with the Financial Threshold Requirement set forth under Section and 7.2.4 (*Going Concern*).

(3) In the event that the Parent Company is also a Member of the Tenderer then such Parent Company shall be deemed – for the purpose of evaluation of all Financial Threshold Requirements save for Section 7.2.4 (*Going Concern*) upon which the provisions of Section 7.20(3) shall apply – to hold 100% of the Tenderer's holdings regardless of the actual holdings of the Parent Company in the Member.

7.2.1. Turnover

A Tenderer is required to have an average annual turnover during the last 3 years, based on its most recent Financial Statements (subject to the provisions of section 7.2(a)) of at least 15,000,000 NIS ("Turnover") (or the equivalent thereof).

The Turnover of a Tenderer who is a joint venture will be calculated according to the Turnover of its Members, based on their respective Financial Statements for the relevant years, *pro-rata* to their holdings in the Tenderer, as follows:

$$\text{Turnover} = \text{AT1} * \text{H1} + \text{AT2} * \text{H2} + \dots + \text{ATn} * \text{Hn}$$

Where:

AT – Average Turnover of each Member of the Tenderer

H - Holdings of each Member in the Tenderer

n – Total number of Members of the Tenderer

For a Tenderer who is a single company the following shall apply:

AT – shall be "**Average Turnover of the Tenderer**".

H – shall equal "**100%**".

n – shall equal "**1**".

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7.2.2. **Operating Cash Flow**

In the event of a Tenderer which is a joint venture - **each** Member is required to demonstrate one of the following:

7.2.2.1. The average annual cash flow from operating activities during the last 3 years, based on its most recent Financial Statements (subject to the provisions of section 7.2(a)) of the Member is not negative (“**Average Operating Cash Flow**”).

For the purpose of this Financial Threshold Requirement, the Average Operating Cash Flow of each Member shall be calculated in the following manner:

$$\text{Average Operating Cash Flow} = (\mathbf{CF}_t + \mathbf{CF}_{(t-1)} + \mathbf{CF}_{(t-2)})/3$$

Where:

CF - annual Operating Cash Flow

t - the year of the most recent available Financial Statement.

Or:

7.2.2.2. The ratio between the absolute value of:

a. the lower of:

i. the Member's Average Operating Cash Flow during the last 3 years, based on its most recent Financial Statements (subject to the provisions of section 7.2(a)) ;

ii. the Member's annual Operating Cash Flow during the year of its most recent available Financial Statement (subject to the provisions of section 7.2(a)) ;

and

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b. The Member's equity at the last day of the year (of the most recent available Financial Statement- subject to the provisions of section 7.2(a)) is lower than twenty percent (20%) when compared to the lower of: (i) Section 7.2.2.2ai or (ii) 7.2.2.2aii so that:

ABS [CF_t + CF_(t-1) + CF_(t-2)]/3 / E < 20%

Or with respect to the most recent Financial Statement:

ABS [CF_t] / E < 20%

Where (applicable for the previous two formula under this Section 7.2.2.2):

ABS [x] - x in absolute values

CF - annual Operating Cash Flow

E - the equity at the last day of the year of the most recent available Financial Statement

t - the year of the most recent available Financial Statement (subject to the provisions of section 7.2(a)).

For the purpose of this Financial Threshold Requirement (Section 7.2.2 (Operating Cash Flow)) – a Tenderer who is a single company shall be deemed a Member with 100% holdings of the Tenderer.

7.2.3. Equity

The Tenderer shall demonstrate that each of its Members has, for every 1% of its holdings in the Tenderer, an equity of at least 100,000 NIS, for the last day of the year of its most recent available Financial Statements (subject to the provisions of section 7.2(a)).

For the purpose of this Financial Threshold Requirement (Section 7.2.3 (Equity)) – a Tenderer who is a single company shall be deemed a Member with 100% holdings of the Tenderer.

7.2.4. Going Concern

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The Tenderer and each Member thereof (as applicable), is not under a voluntary or involuntary bankruptcy process (liquidation or reorganization), or receivership or commencement of a similar insolvency proceeding, and the Tenderer and each Member's most recent available Financial Statement Statements (subject to the provisions of section 7.2(a) does not include any Going Concern notice (denoted in Hebrew as: "הערת עסק חי" or "הערת אזהרה").

In the event the Tenderer or Member, as applicable, has relied upon a Parent Company, in accordance with the provisions of Section 7.2(a)(1), both the Tenderer and Parent Company or Member and Parent Company, as applicable, must comply with this Going Concern Financial Requirement.

7.3. Professional Threshold Requirements

7.3.1. In-Situ Design and Remediation Experience

7.3.1.1. Execution of In-Situ design and remediation of, at least, 3 separate projects.

- a. The remediation in, at least, one of the aforesaid three projects has commenced, at the earliest, as of 1.1.2010 and completed by Submission Date.
- b. The remediation of the remaining project(s) (at most two of the aforesaid three projects) commenced, at the earliest, as of 1.1.2005 and completed by Submission Date.

For the avoidance of doubt, the corresponding **design** of the aforesaid projects may have commenced and completed before the aforesaid dates.

7.3.1.2. The remediation in **each** of the three aforesaid projects:

- (a) Included, at least, 7 Injection Wells for treatment of Chlorinated Solvents; **and**
- (b) Was executed, completely or materially, in accordance and on the basis of the design.

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7.3.1.3. In-Situ Design and Remediation Experience - Demonstration

(a) In the event of a Tenderer who is comprised of a single company, as provided under Section 6.1 above, the experience required under this Sections 7.3.1.1 and 7.3.1.2 of each of the demonstrated projects shall be:

- i. The experience of the Tenderer who has executed the In-Situ design and remediation on its own or jointly with others; or
- ii. The experience of a subcontractor who has executed the In-Situ design and remediation on its own or jointly with others (the "**In-Situ Subcontractor**").

In such event the In-Situ Subcontractor shall sign the respective undertaking provided under **Tender Form F (In-Situ Subcontractor's Undertaking)** which shall form part of the Proposal.

A Tenderer is prohibited from relying upon the accumulative experience obtained by itself and the In-Situ Subcontractor.

In the event that for the purpose of demonstrating compliance with this Professional Threshold Requirement the experience of both, the Tenderer and In-Situ Subcontractor, is provided then the experience of each of them shall evaluated – separately – in order to determine if such complies with the experience required.

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(b) In the event of a JV, as provided under Section 6.2 above, the experience required under Sections 7.3.1.1 and 7.3.1.2 of each of the demonstrated projects shall be demonstrated by one of its Members only who has executed the In-Situ design and remediation on its own or jointly with others. Accordingly, a JV is prohibited from relying upon the accumulative experience obtained by both Members or the experience of a subcontractor (the later possibility is exclusively reserved to a Tenderer who is a single company).

In the event that for the purpose of demonstrating the Joint Venture's compliance with this Professional Threshold Requirement it shall provide experience of both Members then the experience of each of the Members shall evaluated – separately – in order to determine the Joint Venture's compliance with the Professional Threshold Requirement.

(c) The experience required under this Professional Threshold Requirement may have been obtained by the Tenderer, In-Situ Subcontractor or Member (as applicable) whether the In-Situ design and remediation were executed by the aforesaid entities alone or executed by them jointly with others, whether the entities' role in the referenced project was a main contractor or a subcontractor.

7.3.2. Local Company – Professional Experience

A Tenderer comprised of single company, as provided under Section **Error! Reference source not found.** above, or in the event of a JV's – its Member who is a Local Company shall be required to demonstrate that it, alone or jointly with others, has:

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7.3.2.1. Completed treatment **or** is treating for a period of, at least, 1 year, NO3 **and/or** VOC's in groundwater via In-Situ **and/or** Ex-Situ methods provided the aforesaid treatment (whether completed or still executed) has commenced, at the earliest, on 1.1.2005.

Or

7.3.2.2. Designed **and** executed investigation of groundwater contaminated from industrial sources, in at least, 3 different projects, each project including, at least, 5 Wells. Within each of the projects, the investigation has commenced, at the earliest, as of 1.1.2005 while the corresponding **design** may have commenced and been completed earlier). It is hereby clarified that the actual execution may have varied from the initial design performed by the Tenderer or Member (as applicable).

In the event of a JV, as provided under Section 6.2 above, which is compromised by two Local Companies, the experience required under this Sections 7.3.2.1 and 7.3.2.2 shall be demonstrated by one of its Members only. Accordingly, a JV is prohibited from relying upon the accumulative experience obtained by both Members.

In the event both JV Members are Local Companies and experience obtained by each was presented for the purpose of demonstrating the JV's compliance with this Professional Threshold Requirement –then the experience of each of the Members shall be evaluated – separately – in order to determine if such complies with the experience required.

7.3.3. **Demonstration of Compliance by Merged Companies**

7.3.3.1. For the purpose of compliance with one or both Professional Threshold Requirements, the professional experience of an Absorbed Company shall be attributed to the applicable Surviving Company, both as defined below.

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7.3.3.2. In case of such reliance on an Absorbed Company's professional experience, the Tenderer shall attach, as **Tender Form M** (*Confirmation of Merging Company*) either a registered lawyer's confirmation or formal certificate of the applicable statutory authority under the applicable laws of its jurisdiction, testifying to the results of the merger between the Absorbed Company and the Surviving Company, and confirming that the Absorbed Company has been fully and completely merged into the Surviving Company, and has ceased to exist after the merger, and the date of such merger.

7.3.3.3. "**Absorbed Company**" shall mean a company which has merged prior to Submission Date with the Tenderer or Member, as demonstrating the Professional Threshold Requirement(s) ("the **Surviving Company**"), in such a manner as to bring about the transfer of all its assets and liabilities to the Surviving Company and the extinction of the absorbed company.

8. Threshold Requirements - Demonstration

8.1. General

8.1.1. Without derogating from the Municipality's right to require clarifications to the Proposal, as set forth hereinabove and hereunder and or in accordance with all Laws and Regulations, the Municipality may consider any information included in the Proposal for the purpose of determining the Tenderers' compliance with any requirement set forth under this **Volume 1** (*Request for Proposals*) including for the purpose of scoring the Proposal, also in the event such information has not been indicated in the cite corresponding with the respective requirement. Notwithstanding and with respect to Municipality's review, evaluation and scoring of the EXPS – please note the stipulations of Section 10.3 (Stage 2 – Quality Evaluation); 10.3.4 (Notes) Sub-Sections (d) - (f).

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- 8.1.2. The Municipality distinguishes between the Tenderers' compliance upon Submission Date with the respective Threshold Requirements set forth under Section 7 (*Threshold Requirements - General*) and the documentation intended to demonstrate such compliance. Accordingly, the Municipality may determine a Tenderer has in fact met the Threshold Requirements also in the event supporting documentation was furnished by the Tenderer after Submission Date provided however such documentation proves the Tenderer had met the respective Threshold Requirement by the Submission Date.
- 8.1.3. The Municipality therefore reserves its right to request, at its sole discretion, additional documentation to be submitted for the purpose of determining compliance with any of the requirements set forth under this **Volume 1 (Request for Proposals)** including any of the Threshold Requirements also in the event such documentation - which demonstrated the Tenderer's compliance upon Submission Date - was prepared pursuant thereto.

8.2. Threshold Requirements – Manner of Demonstration

8.2.1. Tender Bond

For the purpose of demonstrating compliance with Section 7.1.1 - the Tenderer shall submit a Tender Bond as per the provisions of Section 11 (*Tender Bond*).

8.2.2. Mandatory Tenderers' Conference and Site Visit

The Tenderer must ensure that its participation in at least 1 Mandatory Tenderers' Conference and Site Visit(s), as provided under Section 7.1.2 above, was documented by the Municipality's POC. It will be the Tenderer and its representative's sole responsibility to ensure such participation was documented both in the **Tenderers' Conference and in the Site visit**.

8.2.3. Approvals and Affidavit as per the Public Entities Transactions Law, 5736-1976

In order to demonstrate compliance with the requirements specified in Section 7.1.3 (*Approvals as per the Public Entities Transactions Law, 5736-1976*), each Tenderer or Member, as applicable, who is a Local Company must submit:

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- 8.2.3.1. Per Section 7.1.3(a) – **Approvals** testifying to proper bookkeeping practices (or exemption thereof) in accordance with the provisions of the **Public Entities Transactions Law, 5736-1976**, and the regulations thereunder, in accordance with the **Income Tax ordinance and the Value Added Tax Law, 5736 – 1975** and the absence of debts, if applicable.
- 8.2.3.2. Per Section 7.1.3(b) - **Affidavit** pursuant to Article 2B of the **Public Entities Transactions Law, 5736-1976** authorized by an attorney in the form attached as **Tender Form D** (*Affidavit pursuant to Article 2B of the Public Entities Transactions Law, 5736-1976*).

8.2.4. **Participation Fee**

For the purpose of demonstrating compliance with Section 7.1.4 – the Tenderer shall attach an invoice testifying for payment of the Participation Fee.

Payment is made through the Municipality's website address at:
<https://bit.ly/2U2Q3Cw>. In order to avoid any technical difficulties, it is recommended to make the payment in advance and, in any case, prior to the Submission Date.

8.2.5. **Industrial Cooperation Undertaking**

For the purpose of demonstrating compliance with Section 7.1.5 (*Foreign Supplier's Industrial Cooperation Undertaking and Implementation Plan*) Section 12 (*Industrial Cooperation Authority's approval of Tenderer's Undertaking of Business Cooperation and Implementation Plan*) the Tenderer shall submit its proposed Industrial Cooperation Undertaking and Implementation Plan (**Tender Form K**) which shall be subject to the ICA's review and approval and any amendment or supplement the ICA may instruct of. Note, within the framework of stage 1 of the Municipality's review and evaluation of the Proposal, as provided under Section 10.2 (*Stage 1 - Examination of Tenderer's Composition and Threshold Requirements*) the Municipality shall only verify the actual submission of its undertaking (per Section 17.7). The Municipality will not check the contents thereof. The approval of the undertaking shall be done by the ICA only with respect to the

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Preferred Tenderer and constitutes one of the preconditions for Signature Date provided under Section 20.2.4).

8.2.6. ~~Registration per the Construction Engineering Works Law, 5729-1969~~

~~In order to demonstrate compliance with the requirements specified in Section 7.1.6 a certificate(s) for Contractor's Registration per the Construction Engineering Works Law, 5729-1969 reflecting the classifications identified under the aforesaid Section 7.1.6 shall be submitted.~~

8.2.7. ~~Financial Threshold Requirements Demonstration~~

For the purpose of demonstrating compliance with the Financial Threshold Requirements provided under Section 7.2 (*Financial Threshold Requirements*):

- 8.2.7.1. The chief executive officer or chief financial officer of each Tenderer, Member or Parent Company/ies (as applicable) shall duly complete and sign **Tender Form G (Financial Robustness)**.
- 8.2.7.2. In addition, the Tenderer, Member and Parent Company (as applicable) shall submit a complete copy of the 3 most recent Financial Statements (subject to the provisions of section 7.2(a)) duly prepared and presented in accordance with one of the following:
 - a. Israeli GAAP (including, with respect to the cash flow statements, Standard No. 51 of the Institute of Certified Public Accountants in Israel); or
 - b. US GAAP (including, with respect to the cash flow statements, FAS (Financial Accounting Standards) No. 95); or
 - c. International GAAP (including, with respect to the cash flow statements, IAS (International Accounting Standards) IAS No. 7 and IFRS updates).

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Tenderers, Members and Parent Companies (as applicable) of which Financial Statements are based on different accounting principles than those provided above are required – prior to Submission Date - to submit a detailed RFC on the matter detailing the respective accounting principles and asking the Municipality's permission for the submission of the Financial Statements based on the respective accounting principles (see in this regard Section 3.5.3).

The Municipality will consider each request on a case by case basis, should clarifications on the matter be raised, and may issue an Addendum as a result thereof, all subject to its sole discretion.

8.2.7.3. Without derogating from the Municipality's rights, authorities and discretion under the Tender Documents and Law and Regulations, in the event of a contradiction between any of the Financial Statements, Tender Forms or any other document submitted within the Proposal in the context of the Financial Threshold Requirements - the Financial Statements will supersede.

8.2.7.4. Annual reports which do not end on December 31st

In the event of Financial Statement(s) provided for years which are not compatible with the above required calendar years – the Tenderer, Member or Parent Company (as applicable) shall – prior to Submission Date - submit a detailed RFC on the matter (see in this regard Section 3.5.3).

For applicable conversion rates to NIS in case of such reports the RFC shall include all the relevant information, including exchange rate tables as listed in section 8.2.7.5 (*Currencies Conversion*) hereunder and a reference to the source thereof.

The Municipality will consider each request on a case by case basis, should clarifications on the matter be raised, and may issue an Addendum as a result thereof, all subject to its sole discretion.

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8.2.7.5. Currencies Conversion

All financial data shall be submitted in NIS terms. In the event that the Financial Statements are presented in any currency other than NIS, the Tenderer shall be required to complete the Forms in NIS, in accordance with the following provisions:

8.2.7.6. Turnover and Operating Cash Flow. The Turnover and the Operating Cash Flow will be converted to NIS according to the following average exchange rates of the relevant year:

2015 Average*	2016 Average*	2017 Average*	2018 Average*
NIS			
1 US\$	3.884	3.841	3.600
1 €	4.312	4.250	4.062

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8.2.7.7. **Equity.** The Equity will be converted to NIS according to the exchange rates on the last day of the last year of the applicable Financial Statement:

	31/12/2017	31/12/2018
NIS		
1 US\$	3.467	3.748
1 €	4.153	4.292

*Exchange Rates Sources. The source for the exchange rates is the Bank of Israel.

8.2.7.8. **Conversion of other Currencies.** Tenderers, Members or Parent Companies which Financial Statement(s) are presented in currencies other than NIS/US\$/€ (the exchange rates specified above) - are required – prior to Submission Date - to submit a detailed RFC on the matter requesting additional currency conversions rates to NIS including exchange rate tables and a reference to the source thereof (see in this regard Section 3.5.3).

The Municipality will consider each request on a case by case basis, should clarifications on the matter be raised, and may issue an Addendum as a result thereof, all subject to its sole discretion.

8.2.8. Professional Threshold Requirements Demonstration

For the purpose of demonstrating compliance with the Professional Threshold Requirements provided under Section 7.3 (*Professional Threshold Requirements*) the Tenderer, Member (as applicable) and In-Situ Subcontractor (as applicable) shall complete and submit **Tender Form I** and supporting references and information required therein.

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9. Price Proposal

- 9.1. The Tenderer shall complete and submit **Tender Form H (Price Proposal)**, in accordance with the following provisions.
- 9.2. The Price Proposal shall be submitted as a single Fixed Lump Sum in **New Israeli Shekels (NIS)** currency **only** and shall **not include VAT**. The Price Proposal shall be deemed to include all taxes (except for VAT), levies, duties and all other sums payable by the Contractor under the Contract Documents and in accordance with all Laws and Regulations as well as foreign laws and regulations which may apply to thereto.
- 9.3. VAT shall be added by the Municipality to the payments made to the Contractor as per the provisions of **Volume 2 (Contract)**.
- 9.4. All, terms, stipulations and conditions relating to payments are set forth in **Volume 2 (Contract)**.
- 9.5. Tenderer's attention is drawn, with regard to their Price Proposals, to the provisions of Section 14 (*Price Estimate*).

10. Proposal Examination and Evaluation Procedure

10.1. General

Pursuant to the provisions of **Article 15** to the Regulations any person may be present while the Tender Box is opened and the identity of Tenderer's whose Proposals were submitted is documented. However, due to the complexity of the procedure and prolonged time required for the examination and evaluation of the Proposals – it shall be conducted by the Municipality separately following the Tender Box' opening. As such the Proposal's examination and evaluation – as opposed to its opening - shall not be made public.

10.2 Stage 1 – Examination of Tenderer's Composition, Compliance with Threshold Requirements and Submission of RI Sampling Results and Analyses

At this stage the Municipality will determine compatibility of the Tenderer with the following requirements:

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- 10.2.1 The requirements set forth under Section 6 (*Composition of Tenderers*);
- 10.2.2 The Threshold Requirements set forth under Section 7 (*Threshold Requirements – General*):
 - 10.2.2.1 **Administrative** Threshold Requirements – as detailed under Section 7.1;
 - 10.2.2.2 **Financial** Threshold Requirements – as detailed under Section 7.2; and
 - 10.2.2.3 **Professional** Threshold Requirement – as detailed under Section 7.3.
- 10.2.3 Submission of the **RI Sampling Results and Analyses per Section 4.1.4**. For this purpose the Municipality will verify Attachment A of Tender Form J was submitted.

10.3 **Stage 2 – Quality Evaluation**

- 10.3.1 Determination of Quality Score - Proposals which were determined as compliant by the Municipality in the aforesaid Stage 1 - shall be reviewed, evaluated and scored in accordance with Annex C (*TS Evaluation Criteria*) per the information provided by the Tenderer in Tender Form J (Tenderer's Information for Technical Score (TS)). In this stage the (1) Experience Proposal Score ("EXPS"); and Engineering Proposal Score ("EPS") both constituting the Quality Score ("QS") shall be evaluated and determined by the Municipality.
- 10.3.2 Minimum Requirements for EPS – the proposed EPS shall be compatible with the requirements set forth under Section 7.2 (Minimal Specific Engineering Requirements) of Appendix A (Technical Specifications) of Volume 2 (Contract) / Tender Form J (Tenderer's Information for Technical Score (TS)). In the event the Municipality identifies a incompatibility – then such may, subject to the Municipality's discretion, lead to the disqualification of the Proposal.
- 10.3.3 Minimum Quality Score - Tenderers are hereby informed of an overall minimum quality score of 20 points out of the maximum 70 points allocated for the In-Situ sub-criteria of the EXPS - hereinafter: "MQS" (Minimum Quality Score). In the event the Tenderer's Proposal didn't achieve the MQS, the Proposal will not further evaluated, including with respect the EPS Score.
- 10.3.4 Notes -

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- (a) In the event a Tenderer who is a single company has submitted, for the purpose of the Municipality's determination of its EXPS, its prior experience and its In-Situ Subcontractor's prior experience – then, subject to the provisions of Section 10.3.4(c), the experience of both shall be reviewed and evaluated for EXPS determination.
- (b) In the event of a Tenderer who is a JV has submitted, for the purpose of the Municipality's determination of its EXPS, prior experience of both Members – then, subject to the provisions of Section 10.3.4(c), the experience of both Members shall be reviewed and evaluated for EXPS determination.
- (c) In any event the prior experience of the Tenderer and In-Situ Subcontractor or both Members, as provided above, originates from the same demonstrated project – the Municipality shall score such demonstrated project only once.
- (d) For EXPS the Tenderer shall submit up to 5 projects for each criteria. In any event the number of projects submitted exceeds 5 projects per criteria – the Municipality may randomly select the 5 projects it shall evaluate and score per each criteria (while ignoring all others) or may require the Tenderer to indicate the projects to be reviewed and evaluated out of the projects submitted. All other projects shall be ignored by the Municipality (hence not be reviewed and evaluated).
- (e) Without that derogating from any of its rights, the Municipality shall review for each EXPS criteria the projects submitted explicitly in response to the specific criteria. Hence, the Municipality will consider the specific project(s) submitted for each criteria and may not – on its own initiative – consider with respect to such criteria a project that was included within the Proposal but wasn't submitted in response to the specific criteria.

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- (f) The Tenderer shall have no claim or argument (and hereby explicitly waives any such claim or argument) in any event the Municipality exercises the aforesaid procedures also in the event the outcome of such was that the Tenderer failed to achieve the MQS or was awarded with poor EXPS while it believes if other projects were evaluated the MQS would be achieved or higher EXPS would have been awarded.
- (g) Provided all requirements are met – there is no prevention from demonstrating the same experience for the purpose of the Professional Threshold Requirements (one or both, as applicable) and for the purpose of determining the Tenderer's EXPS.

10.4 Stage 3 – Price Proposal Evaluation

- 10.4.1 Proposals which were determined as compliant by the Municipality within the framework of aforesaid Stage 1 and have achieved the MQS within the framework of the aforesaid Stage 2 – shall be evaluated and scored for their proposed Price Proposal.
- 10.4.2 The Price Proposal, Tender Form H, shall be submitted in accordance with the provisions of Section 9 (*Price Proposal*).
- 10.4.3 The Price Proposal Score will be calculated on a scale of 1 to 100 points, as follows:

$$\text{PPS Price Proposal Score} = (X_{\min} / X_i) * 100$$

Whereas:

X_{\min} = The Lowest Weighted Sum of Payments

X_i = Weighted Sum of Payments of Tenderer i

10.5 Stage 4 - Final Proposal Score (FPS)

Proposals which were determined as compliant by the Municipality within the framework of aforesaid Stage 1 and have achieved the MQS within the framework of the aforesaid Stage 2 shall be awarded with a final score in accordance with the following formula:

$$\text{FPS} = \text{EPS} \times 0.3 + \text{EXPS} \times 0.2 + \text{PP} \times 0.50$$

11 Tender Bond

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- 11.1 In accordance with **Article 10(a)(8)** of the Regulations - each Tenderer shall furnish, as part of its Proposal, a Tender Bond in the sum of 1,000,000 NIS ("Tender Bond Sum"). The Tender Bond shall be autonomous, irrevocable, and unconditional on demand Tender Bond in favor of the Municipality in the form set forth under **Annex D (Tender Bond)**. The Tender Bond shall be issued by one of the entities listed under **Annex E (Approved Tender Bond Issuers)**. The Tender Bond shall be issued directly by an insurance company included in the list specified in the attached **Annex E (Approved Tender Bond Issuers)** and not through an insurance agent.
- 11.2 In the event of a Tenderer who is a single company (as referred to in Section 6.1) – such Tenderer shall submit **one** Tender Bond in accordance with the provisions of this **Volume 1 (Request for Proposals)** including the set form provided under **Annex D (Tender Bond)**.
- 11.3 In the event of a Tenderer who is a Joint Venture (as referred to under Section 6.2) the JV may submit its Tender Bond in accordance to one of the following options:
 - 11.3.1 Submission of one Tender Bond at the request of both Members; or
 - 11.3.2 Submission of one Tender Bond at the request of one of the Members; or
 - 11.3.3 Submission of two Tender Bonds – the first at the request of one Member and the second at the request of the second Member provided the sum of both Tender Bonds accumulate both to the Tender Bond Sum.

The JV's Tender Bond(s) shall be executed and submitted in accordance with the provisions of this **Volume 1 (Request for Proposals)** including the set form provided under **Annex D (Tender Bond)**.

The optional submission of two Tender Bonds in the event of a JV as provided above, shall not derogate from the Members joint and several undertakings and full and sole responsibility towards the Municipality.

- 11.4 Tenderers are referred to provisions of Section 17.7.1(b) with respect to the Tender Bond's submission within the Proposal. The **ORIGINAL** Tender Bond(s), as applicable, shall be attached to the original Proposal.

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- 11.5 The Tender Bond shall come in effect, at the latest, as of Submission Date and remain in effect until the date set in the Tender Bond form. The Municipality may, at its sole discretion, require the extension of the Tender Bond for an additional periods accumulating to 6 additional months.
- 11.6 The Municipality may forfeit the aforesaid Tender Bond, in whole or in part, pursuant to any Laws and Regulation, in any event of breach of the provisions of this Request for Proposals, including the submission of any false or incomplete information to the Municipality, or in the event that a Tenderer has withdrawn its Proposal between the Submission Date and the expiration of the Validity Period, or in any event the Preferred Tenderer fails, for any reason whatsoever, to timely fulfill the Preconditions set forth in Section 20.2 below or to sign the Contract, or in any other event or circumstances which the Municipality shall consider, at its sole discretion, as justifying forfeiture of the Tender Bond.
- 11.7 Without derogating from the foregoing, it is hereby explicitly clarified that the Tender Bond shall serve as a guarantee for the compliance of Tenderers with the requirements of this **Volume 1** (*Request for Proposals*) and, if declared as the Preferred Tenderer, to ensure the signature of the Contract Documents, in the form attached hereto or as amended by the Municipality during the Tender and the execution of the Project on the basis of its Proposal, all in accordance with the provisions of this Request for Proposals.
- 11.8 For the avoidance of any doubt, all costs and expenses associated with the issuance of the Tender Bond and ensuring it remains valid at all times and its extensions are at the Tenderer's full and sole responsibility.

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11.9 Upon prior coordination, the Tender Bond shall be returned to all Tenderers (excluding (a) the Preferred Tenderer; and (b) the Second Ranked Tenderer) by no later than 30 Working Days after Declaration of the Preferred Tenderer or upon expiry of the Tender Bond, whichever occurs earlier. Within 14 Working Days of its Declaration, the Preferred Tenderer shall submit its Performance Guarantee after which the Municipality shall return the Preferred Tenderer's its Tender Bond provided the Municipality confirms the Performance Guarantee was prepared and submitted as per the requirements of the Contract Documents and the Municipality has no reservations with respect thereto. The Preferred Tenderer's Tender Bond shall be returned to it upon the earlier of: (a) receipt of the Performance Guarantee as required under Section 20.2.1; or (b) the expiry of its Tender Bond.

11.10 Second Ranked Tenderer - Tender Bond

11.10.1 Within 14 Working Days following receipt of the Municipality's notice of its selection of the Preferred Tenderer, the Second Ranked Tenderer shall extend the validity of its Tender Bond for an additional period of 6 months if so instructed to by the Municipality. The Municipality shall return the Tender Bond to the Second Ranked Tenderer following the earlier of: (a) Signature Date, or (b) the expiry of the Tender Bond, as extended, *inter alia*, in accordance with this Section 011.10.

11.10.2 Subject to the extension of its Tender Bond, *inter alia*, in accordance with the provisions of this Section 11.10 (*Second Ranked Tenderer - Tender Bond*), the Municipality shall pay the Second Ranked Tenderer a sum equal to 80% of the actual direct costs it demonstrates related to the extension of the Tender Bond, to the Municipality's satisfaction, that it had incurred. The Municipality may require, for this purpose, supportive documentation testifying and demonstrating the direct costs incurred.

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This payment shall be made 2 months following the last day of the month in which the extended Tender Bond was returned to the Second Ranked Tenderer, the Second Ranked Tenderer furnishes the respective tax invoice and provides details of the bank account it wishes the Municipality to transfer the sum it may be entitled for as stipulated above.

11.10.3 Notwithstanding the aforesaid, where any legal proceedings (including such initiated by any Tenderer or any third party) have been initiated in connection with the Tender against the Municipality, such payment shall be made by the Municipality only after the conclusive and final resolution of the said proceeding (peremptory rule, without any further rights of appeal to any of the involved parties), and any sums awarded to the Municipality in the framework of such proceedings, to which the Second Ranked Tenderer is liable, shall be set off from the payment to the Second Ranked Tenderer.

11.10.4 The extension of the Tender Bond by the Second Ranked Tenderer shall not provide it with any right or claim towards the Municipality including with regard to the results of the Tender as determined by the Municipality.

11.11 Compatibility of the Tender Bond with the RFP's Mandatory Form and Terms

Given past events where, pursuant to Israeli case law, Tender Bonds were disqualified due to incompatibilities with the respective tender's requirements, Tenderer's should ensure that they timely receive the Tender Bonds to enable them to carefully review the Tender Bond they intend on submitting as part of their Proposal as to ascertain its compatibility with the provisions of this **Volume 1 (Request for Proposals) and Annex D (Tender Bond)**.

11.12 Validity of the Tender Bond

It is hereby explicitly clarified that albeit the Municipality's rights including with regard to requiring the extension of the Tender Bond, the Tenderer holds the sole and responsibility to ensure its Tender Bond is and remains valid at all times and, in the event needed, to timely cause and notify, on its own initiative, the extension of the Tender Bond by furnishing the Municipality with all required supporting certifications including the Tender Bond's issuers confirmation testifying to such extension.

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11.13 Voluntary Pre-Ruling of Tender Bond

- (a) Following the provisions of Section 11.11 above and due to increasing occurrences of Proposals' disqualification due to non-conformities or deficiencies in their tender bonds, notwithstanding such non-conformities or deficiencies may be of a technical nature, The Municipality encourages all Participants to submit their Tender Bond which strictly and precisely mirrors the form set forth in **Annex D (Tender Bond)**.
- (b) Tenderers acknowledge that any non-conformity or deficiency in the Tender Bond, as in any other part of their Proposal, may result in the disqualification of such Proposal, notwithstanding the prerogatives, authorities and rights of the Municipality as set forth in the Tender Documents.
- (c) In order to minimize the possibility of non-conformities or deficiencies in the Tender Bond, the Municipality will enable the Participants to submit a draft of the intended form of Tender Bond for the Municipality's review ("**Voluntary Pre-Ruling of Tender Bond**").
- (d) The Municipality is entitled to provide comments regarding the Tender Bond, where applicable, enabling the Tenderer to amend the wording of the Tender Bond and submit an updated version within its Proposal.
- (e) The Municipality's comments pursuant to the Voluntary Pre-Ruling of Tender Bond process shall be provided on an equal basis to all Participants. The Municipality may provide to all Participants any approved form of a bond, submitted to it, including by approving any deviation from the **Annex D (Tender Bond)**, without disclosing the submitting Participants' identity.
- (f) The Municipality's comments shall not derogate in any way from the Tenderer's exclusive liability as to the conformity of the Tender Bond submitted within its Proposal with **Annex D (Tender Bond)**.
- (g) Notwithstanding whether the Participant submitted a draft form of tender bond, whether the Municipality reviewed and commented on the draft or not, all Proposals (including Bid Bonds) must be submitted in compliance with all the stipulations set forth in the Tender Documents including, but not limited to, the time limits set for submitting the Proposals.

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- (h) Submitting the Tender Bond draft to the Municipality will not impose any obligation on the Municipality towards the submitting Participant or any other Participant and The Municipality may at its sole discretion provide comments in writing to the Participant, provide partial comments or no comments at all.
- (i) For the removal of doubt, the Voluntary Pre-Ruling of Tender Bond process is not a negotiation process between the Municipality and the Participants. It is only an instrument of The Municipality, providing the Participants with an opportunity to reduce the risk of disqualification due to non-compliant Tender Bonds.
- (j) All Tender Bonds submitted to The Municipality as part of the Voluntary Pre-Ruling of Tender Bond process, must be submitted no later than 30 days prior to Submission Date, as may be amended by the Municipality, in order for The Municipality to perform the Voluntary Pre-Ruling of Tender Bond process. The Municipality will provide its comments, subject to the aforesaid qualifications regarding the Municipality's comments as noted above, to the Participant no later than 14 days prior to the Submission Date, as may be amended by the Municipality.
- (k) Submittal of a Tender Bond draft by a Participant for the Municipality's Voluntary Pre-Ruling of Tender Bond will not impose any obligation on such Participant to submit a Proposal and The Municipality will not view such Participant as submitting a Proposal until the submission of a Proposal in accordance with all the stipulations set forth in the Tender Documents on Submission Date.
- (l) Non-submittal of a Tender Bond draft in accordance with the Voluntary Pre-Ruling of Tender Bond mechanism set out above, shall not derogate from any of the Participants' and Tenderer's rights and obligations.

12 Industrial Cooperation Authority's approval of Tenderer's Undertaking of Business Cooperation and Implementation Plan

12.1 Each Tenderer confirms and undertakes that it will comply with and fulfil the requirements of the Israeli Ministry of Economy, in accordance with the **Mandatory Tenders Regulations (Mandatory Industrial Cooperation) 5767-2007**, represented by the Industrial Cooperation Authority's ("ICA") with regards to industrial cooperation procurement which is to be carried out in connection with the scope of the Contract.

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- 12.2 The ICA is in charge on behalf of the Government of Israel with the assessment of the industrial cooperation implementation plan. Such assessment will be conducted following the submission of Proposals.
- 12.3 Each Tenderer shall furnish along with the submission of its Proposal, a Foreign Supplier's Industrial Cooperation Undertaking and Implementation Plan, all in accordance with the details provided and within **Annex H** to this RFP.
- 12.4 The Industrial Cooperation Undertaking must be signed by an authorized signatory on behalf of the Tenderer and any other person or entity involved in the submittal of the Proposal or fulfilment of the Contract as the ICA may require.
- 12.5 The ICA shall examine the Implementation Plan of Tenderer's which the Municipality has confirmed that their Proposal has met all Threshold Requirements. In the event that during the course of the ICA's examination of a Tenderer's industrial cooperation implementation plan, it shall be found that the industrial cooperation implementation plan is not in compliance with the ICA's requirements and/or with applicable regulations, the Tenderer will be obliged to make amendments to its industrial cooperation implementation plan in accordance with the instructions of the ICA. The ICA's approval of the Implementation Plan shall constitute one of the preconditions for the signature of the Contract with the Preferred Tenderer (see Section 20.2 (*Selection of the Preferred Tenderer and Signature of Contract*)).
- 12.6 In the event a Tenderer does not amend its industrial cooperation implementation plan in accordance with the ICA's requirements or satisfy any other requirement raised by the ICA, the Municipality may, at its sole discretion, disqualify the Proposal.
- 12.7 For additional information concerning the fulfilment of the Industrial Cooperation Undertaking and additional undertakings and obligations to be fulfilled by the Contractor, Tenderers may address the ICA at:

Industrial Cooperation Authority, Ministry of Economy

86 Menachem Begin Rd.

P.O. Box 36049

Tel Aviv 67138, Israel.

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Tel.972-3-734 7515

Fax.972-3-734 7639

13 Nomination of an Authorized Representative

The Tenderer shall nominate an authorized representative on its behalf which shall serve as its point of contact with relation to any matter regarding the Tender ("Authorized Representative"). Such authorization shall be in the form attached hereto as Attachment 1 (*Authorized Representative – Power of Attorney*) of **Tender Form A** (*Letter of Acknowledgement and Application to Attend Mandatory Tenderers' Conference and Site Visit*), and shall be accompanied by a power of attorney duly executed by the nominating entity. In accordance with the attached notice of nomination, the Authorized Representative shall be authorized to perform any actions, including sign, send or receive all documents, questions and clarifications, communications, and other material for and on the Tenderer's behalf. An entity may replace its Authorized Representative by prior written notice to the Municipality's POC.

14 Price Estimate

The Municipality draws the Tenderers attention to the provisions of Articles 11 and 22 of the Regulations vis-à-vis the use of a Price Estimate and associated implications including with respect to the Price Proposal and respective authorities of the Municipality's as provided under the aforementioned Articles and all Laws and Regulations.

15 Language

15.1 During the Tender, all Tender Documents and all documents related thereto, shall be issued and construed in the English language only, except for those documents in the Hebrew language, which were included by the Municipality in the Tender Documents.

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15.2 All Proposals (including all annexes, maps, drawings, tables and diagrams) and any supplementary information, query, or requests for clarification, and any other communication or submission, shall be submitted in the English language or in the Hebrew language.

15.3 Any documents, certificates and printed literature, provided in any other language, shall be accompanied by a certified English or Hebrew translation, authenticated by a public notary, which shall prevail in the event of any discrepancy between the notarized translation and the original form. In the event of any discrepancy between information provided in English to information provided in Hebrew, within the same Proposal, the Hebrew version of such information shall prevail.

15.4 All translation expenses including the ones required by the Municipality shall be borne solely by the Tenderers.

15.5 Notwithstanding the above, all documents and certificates, issued by the Municipality or any Relevant Authority in Hebrew, and any of the Tenderers' constitutional and other documents, submitted to any Relevant Authority, that were originally written in Hebrew, may be submitted in Hebrew. the Municipality reserves the right to require, at the Tenderer's expense, a notarized translation of any such written material.

16 Tender Documents

16.1 Clarification of Tender Documents

16.1.1 Participants requiring any clarifications regarding the Tender Documents may address such requests (by e-mail or fax) to the following point of contact:

c/o Mr. Moshe Kidron

69 Even Gvirol Street. 8th floor, Tel Aviv-Yafo 6416201

Tel: 972-(0)3-7241456

Fax: 972-(0)3- 5216419 (addressed to Mr. Moshe Kidron)

E-mail: Kidron_m@mail.tel-aviv.gov.il

(the "Municipality's POC")

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16.1.2 Participants queries and requests for clarifications must be delivered in the form attached as Annex F (*Request for Clarification (RFC)*) hereto. All queries and requests for clarifications must be received by the Municipality via the Municipality's POC no later than the date set forth for this purpose under Section 2.1 (*Tender Time Schedule*). Notwithstanding, in order to improve the efficiency of the Tender, Participants are hereby encouraged to submit any query or request for clarifications, which may arise during the preparation of their Proposals, as soon as is practicable possible.

16.1.3 Any queries and requests for clarifications, which shall not be delivered in the form attached as Annex F (*Request for Clarification (RFC)*) hereto or which shall be received by the Municipality after the designated deadline, will be accepted or rejected at the sole discretion of the Municipality.

16.1.4 Participants that discover any discrepancies, ambiguities, errors, omissions or contradictions in the Tender Documents, are required to notify the Municipality in the manner set forth in Sections 16.1.1 and 16.1.2 above. Where a clarification is not sought, the Municipality's interpretation of the Tender Documents shall prevail.

16.1.5 The decision whether to respond to queries and requests for clarifications will be at the sole discretion of the Municipality.

16.1.6 Details of the queries and requests for clarifications and the responses thereto shall be issued in writing to all Participants, unless decided otherwise by the Municipality. The identity of the Participants requesting the clarification shall not be disclosed.

16.1.7 The Municipality may word the request for clarification in a different manner than the one it was provided with should it deem, at its sole discretion, that such would better serve the Tender. In addition, the Municipality may issue clarifications at its initiative.

16.1.8 Only such information, which shall be provided in writing by the Municipality's POC to all the Participants and marked as an addendum according to the instructions of Section 16.2 (*Amendment of Tender Documents*) hereunder, or correspondence which shall be communicated to any Participants in writing by the POC, shall be considered as part of this Request for Proposals and hence shall be binding upon the Municipality and the Participants.

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16.1.9 The Municipality shall not be bound by, and the Tenderers shall not rely on, any verbal statement, interpretation or clarification to the Tender Documents.

16.2 Amendment of Tender Documents

16.2.1 At any time prior to the Submission Date, the Municipality may refine, change, amend, add to, eliminate from or modify any of the Tender Documents, for any reason, whether on its own initiative, or in response to a query or a request for clarification, received pursuant to Section 16.1 (*Clarification of Tender Documents*) above.

16.2.2 The refinement, change, amendment, addition, elimination or modification, if any, shall be marked as an addendum and shall be provided in writing by mail, e-mail or fax to all the Participants.

16.2.3 The Municipality intends to distribute addenda as early as possible in order to afford the Participants reasonable time in which to take an addendum into consideration in the preparation of their Proposals. The Municipality may, at its sole discretion, postpone, to the extent necessary, the Submission Date, in accordance with the general discretion provided to it under Section 22.1 (*Postponement of Dates*) herein below.

16.2.4 Participants will be requested, for the sake of good order, to accept any addendum and clarification and shall acknowledge receipt thereof in writing, by e-mail or fax, to the Municipality's POC referred to in the aforesaid Section 16.1.1, within 3 Working Days following issuance thereof by the Municipality (unless the Municipality sets a different timeframe). The written acceptance notice will be made in the form attached by the Municipality to each addendum or clarification notice.

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16.2.5 Should the Municipality issue an addendum or a clarification, Participants shall confirm acceptance thereof by submitting an executed copy thereof within their Proposal. Should the Municipality issue an addendum after Submission Date the instructions for confirming the acceptance thereof shall be detailed therein, including instructions regarding the Tenderers option to amend their Proposal as a result of such an addendum or clarification and the scope thereof. After acceptance thereof, any such addendum or clarification shall be attached by the Municipality to the Tenderers' Proposals, and shall constitute an integral part thereof. Any Tenderer which declines an addendum or a clarification issued after Submission Date, shall remain bound to its Proposal as submitted.

17 Preparation of Proposals

General

- 17.1 The Tender Documents set out the Municipality's general requirements in respect of the Project. These requirements are the minimum requirements with which the Proposals must comply with.
- 17.2 Tenderers are required to prepare their Proposals in conformity with the requirements contained in the Tender Documents, including the financial, commercial, legal and technical-engineering requirements thereof. Each Tenderer must submit all the parts specified in Section 17.7 (*Parts of the Proposal*) hereof. Tenderers shall complete their Proposals in an accurate and detailed manner, disclosing all the information requested, as well as any additional information or data required to clarify, substantiate and support the Proposal.
- 17.3 Without derogating from the Municipality's discretion and authorities, Tenderers may not deviate in their Proposals from the instructions of this Request for Proposals or from the relevant requirements set forth under any other of the Tender Documents, unless prior permission has been specifically granted in writing by the Municipality.

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17.4 The Municipality may, at its sole discretion, reject any Proposal containing any such deviations or omissions, or demand the Tenderer to amend its Proposal in Accordance with the provisions of this **Volume 1 (Request for Proposals)**. The Municipality may, at its sole discretion, reject any Proposal which lacks information which, pursuant to this Request for Proposals, should be included within the Proposal or a Proposal which contains errors or is based upon erroneous assumptions or upon a basic and fundamental misunderstanding of the Project's purpose and object.

17.5 The Municipality acknowledges that the Tender requirements set out in the Tender Documents can be met in different ways - all of which may be accepted by it at its sole discretion provided they conform to **Volumes 1 – 2**.

17.6 Format and Signing of Proposals

17.6.1 Proposals shall be prepared and submitted in PDF version that allows the documents to be tracked. Tenderers shall not submit their Proposals in any other electronic format without the Municipality's prior written approval.

17.6.2 Tender Forms shall be completed, all the forms in their entirety (within the designated fields) according to the requirements thereof.

17.6.3 Supplementary information submitted by the Tenderers shall not substitute the information required to be included within the Proposal pursuant to the provisions of this Request for Proposals and in any event of discrepancy between the two, the contents of the Tender Forms shall take precedence.

17.6.4 All Proposal documents must be legibly and indelibly and duly signed by the Tenderers and by the authorized signatories of any other required signee and by the authorized signatories of each Member of the JV (as applicable). Each volume / binder comprising the Proposal documents shall be consecutively numerated. At the first page of each volume / binder the Tenderer shall mark clearly the number of pages included in the said volume / binder and shall duly sign the first and last page thereof.

17.6.5 Tenders are required to sign in initials on each and every page submitted as part of the Proposal.

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17.6.6 The complete Proposal shall be without alterations, reservations, interlineations, additions or erasures, except for those that have been made pursuant to instructions issued in writing by the Municipality, or as necessary to correct errors made by the Tenderer. The Tenderer shall initial the right-hand side of each section of the Proposal where such entries, corrections or amendments have been made. The Municipality may disregard any alterations, reservations, interlineations, additions or erasures included in the Proposal which were not approved by it in advance. In the event the Municipality decides to exercise its said right without it being obligated to do so, such Tenderer shall be bound to its Proposal while disregarding any such alterations, reservations, interlineations, additions or erasures.

17.7 Parts of the Proposal

The Proposals shall be clearly divided into **5** separate parts which shall include and be marked as follows:

17.7.1 Part 1 – shall include:

- a. **The Proposal, including Tender Forms B-G, I and Tender Forms L-M (inclusive).**
- b. Tender Annex D (**Tender Bond**) - shall be inserted into a **separate sealed envelope** which will read "**Tender no. 8/2019 Part 1 - Tender - Bond**".
The original Tender Bond shall be attached as provided herein to the original copy of the Proposal.

Part 1 shall include a table of contents listing all documents included therein by order of appearance and reference to the corresponding Sections of this **Volume 1 (Request for Proposals)**. All documents included within Part 1 shall be set together in one or more binders which shall all be marked as "**Tender no. 8/2019 - Proposal Part 1**".

17.7.2 Part 2 – The Technical-Engineering Parts of the Proposal:

Tender Forms J inserted into a binder which shall be marked as "**Tender no. 8/2019 - Proposal Part 2 - The Technical-Engineering Parts**".

17.7.3 Part 3 – Price Proposal

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The Price Proposal, referred to in Section 9 (*Price Proposal*) above – **Tender Form H** shall be inserted into a separate **sealed envelope** which shall be marked as "**Tender no. 8/2019 - Proposal Part 3 - Price Proposal**".

17.7.4 Part 4 - Foreign Supplier's Industrial Cooperation Undertaking

The **Foreign Supplier's Industrial Cooperation Undertaking** and Attachments – **Tender Form K** shall be inserted into a sealed envelope which shall be marked as "**Tender no. 8/2019 - Proposal Part 4 - the Foreign Supplier's Industrial Cooperation Undertaking and Attachments**".

17.7.5 Part 5 – shall include:

Volume 1 (Request for Proposals) and **Volume 2 (Contract)** (inclusive) and respective appendices and annexes in additions to the Municipality's **Clarifications and Addendums** (to the extent issued).

Note: In any case, none of the parts listed above are allowed to be filed with another part in the same binder/envelope.

17.8 **Proposal – Original and Copies**

17.8.1 Tenderers shall submit 1 original and 5 identical copies of the documents comprising each Proposal which shall be submitted by courier together with 2 electronic copies 1 in Microsoft Word on USB and the second in PDF format.

The **original** Tender Bond shall be attached, as provided in Section 17.7.1(b), to the original copy of the Proposal.

17.8.2 The original set of the Proposal documents shall include the original signatures on all documents, in accordance with Section 17.6.4 and 17.8 hereof.

17.8.3 The original set of the Proposal documents and each of the copies thereof shall be packed, sealed and submitted in separate boxes, labeled in accordance with the provisions of Section 17.7 (*Parts of the Proposal*). All sets of Proposal documents shall be clearly marked as "Original", "Copy no. 1" to "Copy no. 5", as appropriate. In the event of any discrepancy, the Municipality, at its sole discretion, shall determine the prevailing Proposal documents.

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17.9 Confidentiality of Parts of the Proposal

- 17.9.1 In the event the Tenderer is of the opinion that parts of the Proposal contain information of a commercially sensitive or secret nature - it shall clearly mark such parts within copy no. 2 of the Proposal which shall read: "Copy no. 2 - Containing Tenderer's Confidentiality Statement".
- 17.9.2 The Tenderer shall reason and detail the reason it why the respective parts should be kept confidential. General confidentiality statements shall be disregarded. Notwithstanding, it is hereby emphasized that all prices quoted in the Proposal (including the Price Proposal in its entirety) shall not be deemed to constitute information of a commercially sensitive or secret nature. For the avoidance of any doubt, the Municipality shall not be bound to accept the Tenderers' confidentiality statements as marked or any restriction therein, and these are provided to the Municipality's convenience without derogating from the Municipality's right and discretion under this Volume 1 (*Request for Proposals*) and all Law or Regulation.
- 17.9.3 In the event a Tenderer requests to review any of the Proposals, subject to the provisions of this Volume 1 (*Request for Proposals*) and all Laws and Regulations, it acknowledges that it shall be prevented from reviewing those parts and details it had indicated as confidential in its Proposal also in the event its request for confidentiality was not approved by the Municipality, in full or in part.

18 Submission of Proposals

18.1 Instructions for Submission

- 18.1.1 Proposals must be deposited in the tender box indicated ("Tender no. 8/2019 ") at the Municipality's offices:

69 Even Gvirol Street, Tel Aviv-Yafo 6416201

Floor number (-1) , room 17.

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18.1.2 Tenderers are required to maintain one complete copy of their submitted Proposals and copies of all their correspondences with the Municipality and all addenda issued thereby after the Submission Date.

18.2 Submission Date

18.2.1 Proposals must be submitted within the time frame set forth therefore in Section 2.1 (*Tender Time Schedule*) between 09:00 – 14:00 (local time).

It shall be the Tenderer's sole responsibility to ensure its representative approaches the Municipality's POC for the purpose of being provided with an approval confirming the Proposal was submitted.

18.2.2 The Municipality may, at its sole discretion, reject any Proposal, which shall be received by the Municipality after 14:00 on the Submission Date.

19 Validity, Clarifications, Presentations and Amendments of Proposals

19.1 Validity Period

19.1.1 Proposals shall remain valid and open for review by the Municipality for a period of 6 months after the Submission Date as such period may be extended from time to time upon the Municipality's demand ("Validity Period"). The Municipality may require the extension of the Validity Period by an additional accumulative period of up to 6 months – and the Tenderer will comply with such request. In the event the Municipality requests the extension of the Validity Period beyond the 6-month Validity Period and its extension of up to 6 additional months and the Tenderer objects to such additional extension request - the Municipality will enable such Tenderer to withdraw its Proposal, and the provisions of Section 19.1.4 below shall not apply.

19.1.2 The validity of the Proposal of the Preferred Tenderer shall be extended for such period as will be required to ensure the continuing effect of the Proposal until Signature Date.

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19.1.3 Notwithstanding the provision of Section 19.1.1 above, the Validity Period of the Proposal of the Second Ranked Tenderer in the Tender shall be extended and shall remain valid for a period of 6 months from the date of receipt of the Municipality's Declaration of the Preferred Tenderer. The Proposal of the Second Ranked Tenderer shall expire following the earlier of: (a) the Signature Date, or (b) the end of its Validity Period, as extended in accordance with this Section 19.1.3.

19.1.4 No Proposal may be withdrawn between the Submission Date and the expiration of the Validity Period, as extended pursuant to the provisions of this Request for Proposals.

19.1.5 It is hereby explicitly clarified that albeit the Municipality's rights, including with regard to requiring the extension of the Validity Period, the Tenderer holds the sole responsibility to ensure its Proposal is at all times valid and, in the event needed, to timely confirm, on its own initiative, the extension of the Proposal's Validity Period.

19.2 Clarifications and Presentations

19.2.1 At any point up to the Declaration of the Preferred Tenderer pursuant to Section 20 (*Selection of Preferred Tenderer and Signature of Contract*) hereof, the Municipality may, at its sole discretion, ask any of the Tenderers, individually or simultaneously, for clarifications of their Proposals. The Municipality may require any Tenderer to supplement its Proposal with whatever details, drawings, specifications and descriptions deemed necessary by the Municipality, at its sole discretion, to allow complete evaluation of the Proposal. Any such additional information, provided by the Tenderer to the Municipality, shall be deemed part of such Tenderer's Proposal.

19.2.2 At any point up to the notification of the Preferred Tenderer pursuant to Section 20 (*Selection of Preferred Tenderer and signature of Contract*) hereof, the Municipality may, at its sole discretion, ask any of the Tenderers individually or simultaneously, to give frontal presentations of their Proposals or any part thereof, in a form and manner to be notified to them by the Municipality and on the date the Municipality requires, providing at least two week prior notice. At the Municipality's discretion, other consultants on its behalf may participate in such presentation meetings.

19.3 Notification of Changes and Amendments to Proposals

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19.3.1 Throughout the Tender, Tenderers (or Entities/Participants, as applicable) are required to notify the Municipality of any change in the Tenderer or Member or in circumstances or any event, including such changes or events which may require an amendment of a submitted Proposal (in the event such changes occurred after Submission Date).

19.3.2 Without derogating from the above, no Proposal may be amended or modified subsequent to the Submission Date, except as a result of any amendment, modification or adjustment of any Proposal or parts thereof, requested by the Municipality in accordance with the provisions of this Request for Proposals.

20 Selection of the Preferred Tenderer and Signature of Contract

20.1 The Tenderer obtaining the highest FPS shall be declared as the Preferred Tenderer ("Declaration" and "Preferred Tenderer" respectively). The Declaration will be issued to all Tenderers. The Tenderer obtaining the second highest FPS shall be declared as the "Second Ranked Tenderer".

20.2 Prior to the signature of the Contract by the Municipality (in the form of **Volume 2 (Contract)** (as may be amended by the Municipality pursuant to the provisions of this **Volume 1**)), the Preferred Tenderer shall promptly (and in any event by no longer than 45 days as of Declaration) furnish the Municipality with:

20.2.1 The Performance Guarantee;

20.2.2 Certificate of Insurance referred to under Section 28 of Volume 2 (*Contract*) and attached as Appendix G (Certificate of Insurance) thereto.

Note: Any requests for clarification regarding **Appendix G** (Certificate of Insurance) or requests to introduce any modifications thereto - shall be made in the form of a request for clarification – in the form of **Annex F** (Request for Clarification (RFC)) prior to the Submission Date (see in this regard Section 3.5.3).

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It is hereby clarified that the Municipality shall not approve modification requests made by the Preferred Tenderer or its insurer in any event such are deemed by the Municipality – per its full and sole discretion – to materially deviate from the terms and conditions set forth under **Appendix G** (Certificate of Insurance).

- 20.2.3 Three copies of the Contract Documents signed by the Preferred Tenderer,
- 20.2.4 The ICA's approval for the Preferred Tenderer's Preliminary Implementation Plan for Industrial Cooperation;

Each of the items 20.2.1 - 20.2.4 constitutes a conditions precedent and all together constitute the "**Conditions Precedent**". The Preferred Tenderer's fulfillment of the conditions precedent provided under Sections 20.2.1 - 20.2.3 shall be determined by the Municipality. The Preferred Tenderer's fulfilment of the condition precedent provided under Section 20.2.4 – shall be determined by the ICA.

- 20.3 Within 14 Working Days after the Municipality approves that all the above pre-conditions were entirely fulfilled it shall sign the Contract. After the Municipality signs the Contract. As of that point onwards the Preferred Tenderer shall thereafter be referred to as the "**Contractor**".
- 20.4 In any event the Municipality determines that the Preferred Tenderer failed, for any reason whatsoever, to fulfill its undertakings in accordance with this **Volume 1 (Request for Proposals)** including with respect to getting the Municipality's approval for the fulfilment of all Conditions Precedent, the Municipality reserves the right - but is not obliged - to allow a time extension (including for the purpose of enabling the Preferred Tenderer to address the Municipality's or ICA's comments and reservations, as applicable), to substitute such Tenderer by nominating, instead, the Second Ranked Tenderer as a the Contractor or call upon the annulment of the Tender.

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20.5 In the event the Municipality chooses (on its sole discretion without it being required to do so under any circumstance) to award the Contract to the Second Ranked Tenderer - the payment referred to under Section **Error! Reference source not found.** (*Sampling – Cost Participation*) shall be deducted from the payments the Second Ranked Tenderer – being the Contractor – shall be entitled for per the stipulation provided under **Volume 2 (Contract)**. In such event all provisions relating to the Preferred Tenderer shall apply on such Second Ranked Tenderer.

20.6 The nomination of the Second Ranked Tenderer as the Contractor – all at the Municipality's full and exclusive discretion - shall be conditioned upon its compliance with all respective conditions including the Conditions Precedent.

20.7 It is hereby explicitly provided that in any event the Municipality decides, for which any reason whatsoever, not to exercise its right in accordance with Section 20.4 such decision shall not be construed as constituting the Second Ranked Tenderer or anyone on its behalf with any right or give rise to any claim or entitlement. Similarly, the Second Ranked Tenderer and anyone on its behalf shall not have any right, claim or entitlement in circumstances under which the Municipality does exercise its right under Section 20.4 but chooses, for any reason whatsoever at any time thereafter, not to nominate the Second Ranked Tenderer as the Contractor.

20.8 Without derogating from any of its rights as provided under **Volume 1 (Request for Proposals)**, the Municipality may not declare a Preferred Tenderer, in any of the following circumstances:

20.8.1 Only 1 Proposal was submitted;

20.8.2 Only 1 Proposal was found to comply with all Threshold Requirements and MQS;

20.8.3 Only one Proposal was found to comply with all Threshold Requirements and MQS but Proposed Price was higher than the Municipality's Price Estimate as set forth under Section 14 (*Price Estimate*) above.

21 Review Process

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The review process shall be conducted per the stipulations set forth under **Article 22(i)** of the Regulations. In the event a Tenderer wishes to receive a copy of documents it is entitled to review as per the aforesaid Article 22(i) and the stipulation of this **Volume 1 (Request for Proposals)** including Section 17.9 (*Confidentiality of Parts of the Proposal*) it shall pay the sum of 0.5 NIS per each page.

22 General Prerogatives of the Municipality

22.1 Postponement of Dates

The Municipality may, at its sole discretion, postpone any of the dates determined by it in relation to the RFP or specified in this Request for Proposals, including the Submission Date, by issuing an addendum in accordance with Section 16.2 (*Amendment of Tender Documents*).

22.2 Tender Committee's Sub-Committees, Working Teams and other Consultants

22.2.1 The Municipality has nominated sub-committees, working teams and other consultants (internal and external) to provide assistance in its work, and reserves the right to nominate any additional sub-committees, working teams and other consultants, as it shall deem beneficial during the Tender.

22.2.2 Without derogating from the generality of the foregoing, the WA will continue to assist the Municipality in all technical aspects relating the Tender including review, evaluation and scoring of the Proposals, Declaration and implementation of the Contract. The Municipality may approach additional Relevant Authorities with any issue pertaining to this Tender and execution of the Project.

22.2.3 Subject to the provisions of all Laws and Regulations, the Municipality may exercise any of its rights under the Tender Documents through any of the sub-committees, working teams and other consultants nominated by the Municipality for this matter and delegate any of its rights and duties.

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22.3 Annulment of Tender

Without derogating from the provisions provided under Section 20.8, the Municipality reserves the right to annul the Tender and to reject all Proposals at any time (including after selection of the Preferred Tenderer) for any reason, at its sole discretion, without thereby incurring any liability to the affected Tenderers or anyone on their behalf including third parties. In the event that the Municipality has annulled the Tender the Tenderers shall be entitled for reimbursement of the Participation Fee constituting their sole remedy.

22.4 The Municipality's Right not to Accept any Proposal

The Municipality will not be bound to accept any Proposal at all including after Submission Date.

22.5 No Compensation

Unless provided explicitly under this **Volume 1 (Request for Proposals)** Tenderers (or Entities\Participants\Members, as applicable) and anyone on their behalf shall not have any claim, demand or requirement for any damages, expenses or other relief in connection with the Municipality's fulfilment of any of its rights, authorities, discretion or prerogatives as provided in this **Volume 1 (Request for Proposals)** or under all Laws and Regulations.

22.6 Deviations

The Municipality reserves the right to allow, at its sole discretion, deviations from any of the requirements of the Tender Documents including any of the Threshold Requirements, if the Municipality believes that such deviations do not materially affect the capability of a Tenderer to carry out the Project. The Municipality's right, in accordance with this Section 22.6, shall be applied subject to its independent discretion and will not be construed or interpreted to constitute an obligation the Municipality must exercise.

22.7 The Municipality 's Rights, Discretion, Authorities and Prerogatives under the Tender Documents and Laws and Regulations

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The Municipality shall be entitled to exercise, in full or in part, one or all of the rights or discretion provided under all applicable Laws and Regulations also in the event such were not identified under this **Volume 1** (*request for Proposals*) or other Tender Documents. The Municipality's use or misuse of any of the rights reserved to it under the Tender Documents and/or under all Laws and Regulations shall not entitle the Tenderers or their Members (as applicable) for any claim against the Municipality. Similarly the Municipality's use, misuse or partial use of any of its rights in a specific matter or instance shall not reflect upon its sole discretion to use, misuse or make partial use of any of its rights in any other matter or instance including of similar or identical nature. Submission of a Proposal by a Tenderer testifies to its complete and irrevocable acceptance and agreement, *inter alia*, to the provisions of this Section 22.7 and its prevention from claiming or attesting thereto under any circumstance.

22.8 Optional Tender for the design and execution of Contaminated Groundwater Treatment

In parallel or following the execution of the Contract, the Municipality may issue a separate tender for the design of a treatment system of the contaminated groundwater in the vicinity of the Site which were treated as part of the engagement to be made pursuant to this Tender. The Contractor shall not be prevented from participating in such future tender (should such be issued) provided it shall meet its requirements and all terms and stipulations the Municipality may include therein. It is hereby clarified that no priority, privilege or other advantage, shall be granted to the Contractor by the Municipality if the Contractor will participate in such a future tender.

23 Disqualifying Conditions and Events

Without derogating from the Municipality's rights and authorities under the Tender Documents and all Laws and Regulations to determine, *inter alia*, the disqualification of a Tenderer from the Tender, the following conditions and events may lead to disqualification of Tenderers, at the Municipality's sole discretion, at any stage during the Tender. In the event of a Joint Venture, the disqualifying conditions and events apply separately to each of the JV's Members or In-Situ Subcontractor (hereinafter in this Section 23 jointly referred to as "**Tenderer**").

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Accordingly, a Joint venture may be disqualified from participating in this Tender under circumstances where a disqualifying condition or event had occurred with respect to one of its Members. Accordingly, a Tenderer may be disqualified from participating in this Tender under circumstances where a disqualifying condition or event had occurred with respect to its In-Situ Subcontractor.

- 23.1 The commencement of bankruptcy, receivership, liquidation or reorganization, reconstruction or composition of creditors proceedings against the Tenderer or a similar situation, unless such proceedings are discharged within a reasonable period of time, as determined by the Municipality, at its sole discretion, or if an interim or permanent receiver, liquidator, administrator or examiner or similar officer is appointed over the Tenderer the assets thereof, or if the Tenderer has become insolvent;
- 23.2 The commencement of any voluntary action for the liquidation of the Tenderer, except for the purposes of merger or reconstruction, on terms approved in writing by the Municipality;
- 23.3 Commencement of any legal proceedings, which allegedly relate to an offence, which in the Municipality's opinion affects the professional integrity of the Tenderer;
- 23.4 Commitment of a grave error by any Tenderer in the performance of its profession;
- 23.5 Tenderers shall not employ or engage with a consultant or an expert listed in **Tender Form L** (*Municipality's Advisor's and Tenderer's No Conflict of Interests Declaration*), with respect to the Tender, preparation of the Proposal or consultation in their regard or the Project, without the prior written approval of the Municipality and, as applicable, without complying with the Municipality's stipulations should such be determined by it;
- 23.6 Participation of a Tenderer that is suspected of being involved in criminal activity or of being hostile to the State of Israel or that is a resident of a country which does not have diplomatic relations with the state;
- 23.7 The existence of a material conflict of interest in a Tenderer in connection with the Project;

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- 23.8 Any change of the Tenderer's composition after Submission Date which was not approved in advance by the Municipality in writing and which result is the Tenderers' non-compliance with the provisions of this **Volume 1 (Request for Proposals)** including with respect to the provisions of Section(*Composition of Tenderers*) and the Threshold Requirements;
- 23.9 Any event or change in circumstances in the Tenderer, which would have adversely affected the Tenderer's capacity to be approved as a Tenderer, had it occurred prior to the commencement of the Tender;
- 23.10 Any material breach of the provisions of the Request for Proposals, including the submission of any false or incomplete information to the Municipality;
- 23.11 Noncompliance with the provisions of Section **Error! Reference source not found.** (*Involvement and Participation in the Preparation and Submittal of one Proposal*);
- 23.12 Any other event or circumstances which the Municipality shall consider, at its sole discretion, as justifying disqualification of any Tenderer.
- 23.13 The Tenderer shall promptly notify the Municipality in any event that any of the above conditions or events occurs.
- 23.14 Upon occurrence of any of the above conditions or events, the Municipality reserves the right to stipulate, at its sole discretion, a Tenderer's right to participate (or continue to participate) in the Tender, by imposing any condition or instruction it deems appropriate or to disqualify such Tenderer from participating (or continue from participating) in the Tender.

24 Miscellaneous

24.1 Submittals by Tenderers

Where a designated submittal date determined in this Request for Proposals or by the Municipality falls on a day which is not a Working Day, Tenderers shall submit the relevant submittal on the following Working Day.

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24.2 Tenderers Commitment to their Proposals

Tenderers shall be bound to their Proposals, as amended, modified, enhanced or adjusted in accordance with the provisions of this **Volume 1 (Request for Proposals)**.

24.3 Information Supplied in the Tender Documents

- 24.3.1 No representation, warranty or undertaking, express or implied, is or shall be made, and no responsibility or liability is or shall be accepted by the Municipality, the Tender Committee, their consultants and anyone acting on their behalf or any Relevant Authority including the WA as to, or in relation to, the accuracy or completeness of the Tender Documents, any statement made therein, or to any other written or oral information made available to the Tenderers or to anyone on its behalf, and any such responsibility or liability is hereby expressly disclaimed. The Municipality, the Tender Committee, their consultants and anyone acting on their behalf or involved in the Tender shall not be liable for any error, misstatement or omission.
- 24.3.2 Notwithstanding the aforesaid, it is hereby clarified that the aforesaid shall not apply in relation to inaccurate information provided in the Tender Documents, in the event that such information was known by the Municipality, the Tender Committee, their consultants and anyone acting on their behalf or any Relevant Authority including the WA to be inaccurate on the date of its provision to the Tenderers (or to a Member, as applicable).
- 24.3.3 The Municipality, the Tender Committee, their consultants and anyone acting on their behalf or any Relevant Authority including the WA shall bear no responsibility whatsoever for any loss, damage, or injury suffered by Tenderers, employees, officers, agents, consultants or any other persons or entities to whom Tenderers may be contractually or legally responsible by reason of any use of information contained in the Tender Documents, or for any action or forbearance in reliance thereon.

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24.3.4 Without derogating from the generality of the foregoing, it is hereby expressly emphasized, that any reliance by the Tenderers on data analysis or results from exists samplings, provided in the Tender Documents, shall be at the Tenderers' full and sole responsibility.

24.4 Independent Research and Inquiries

In addition to their undertakings under Section 4 (*Mandatory Sampling and Analyses*), Tenderers shall independently acquire, review, examine, interpret and evaluate, as experts, all aspects of the Project and all factors and data that may be deemed to affect the carrying out of the Tender or Contract and their undertakings and obligations with respect thereto, including legal risks, technical risks, engineering risks, financial risks, political risks, security risks, design and construction risks, commissioning risks, risks associated with the Project and its impact upon the Contractor and all other information which may be necessary or useful for the preparation of the Proposal. Tenderers shall conduct all investigations, analyses and reviews they deem required in order to verify or complete the said information, or ensure its entirety, correctness and accuracy, and any information which a Tenderer acquires or receives in connection with the Project shall be at the Tenderer's full and sole responsibility and liability.

24.5 Confidentiality

24.5.1 Tenderers shall keep strictly confidential the contents of the Tender Documents and any other documents and information, whether written or oral, received or obtained by them or on their behalf in connection with the Tender and the Project, or in discussions relating thereto, except for any such information which is in the public domain, and shall not disclose such information or document in any manner.

24.5.2 Subject to the provisions of this Volume 1 (*Request for Proposals*) and all Laws and Regulations including the provisions of Section 21 (*Review Process*), the Municipality undertakes to preserve as confidential the contents of all Proposals submitted to it, and will not disclose, divulge, or permit any unauthorized Person access to any part of such Proposals, until the earlier of:

24.5.2.1 The end of the Tender, or:

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24.5.2.2 The date on which such Proposal has been withdrawn or deemed unsuccessful.

Thereafter, the Municipality shall preserve as confidential only those parts of the Proposals, which to the Municipality's opinion contain information of a commercially sensitive or secret nature.

Without derogating from the generality of the foregoing, the referral of such information by the Municipality or by the WA, to any of its sub-committees, consultants, working teams or to any other Person acting on its behalf, and to any other Person assisting the Municipality's members and consultants within their organizations, shall not be deemed a breach of the Municipality's undertaking of confidentiality.

24.5.3 Notwithstanding Section 24.5 and Section 24.5.2, the undertaking of confidentiality will not apply to information that:

24.5.3.1 is or becomes generally known to the public otherwise than as a result of a breach of Section 24.5 (*Confidentiality*); **or**

24.5.3.2 the relevant party approves its unrestricted release by written authorization; **or**

24.5.3.3 is required to be disclosed by Laws and Regulations or by an order of an Relevant Authority.

24.5.4 The Price Proposal in its entirety shall not be confidential in any event.

24.5.5 The provisions of this Section 24.5 (*Confidentiality*) shall also apply upon the Tenderers, employees, officers, agents, consultants of a Tenderer, and any other person acting on the Tenderers behalf. It is the full and sole responsibility of the Tenderers to ensure that they and their, employees, officers, agents, consultants and any other Person or entity acting on their behalf abide by the terms of this Section 24.5 (*Confidentiality*).

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24.5.6 Information contained in Tender Documents and Proposals

24.5.6.1 All documentation issued by the Municipality in connection with the Request for Proposals and the Tender is and shall remain the property of the Municipality and may only be copied and used for the purpose of preparing the Proposals.

24.5.6.2 With respect to the Preferred Tenderer, all know-how and technical information and any other information, including all Intellectual Property, contained in any part of its Proposal shall be subject to the rights and obligations set forth in the Tender Documents, and the Municipality's use of such Preferred Tenderer's Intellectual Property shall be as set forth in the Tender Documents. For the removal of doubt, it is hereby clarified that mandatory disclosure by the Municipality of know-how and technical information and any other information, including all Intellectual Property pursuant to this **Volume 1 (Request for Proposals)**, any Laws and Regulations or under an order of a Relevant Authority shall not be regarded as the Municipality's use of such know-how and information under this Section 24.5.6.2.

24.5.6.3 Notwithstanding, by submitting a Proposal, the Tenderer confirms that the Municipality is entitled to make any use it deems fit with respect to any part of the Proposal, including the right of use with respect to the Project's further development or for the purpose of the development of any of the Municipality's future projects.

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24.6 Prohibition on Solicitation and Communications

24.6.1 Tenderers and all of its affiliates, subsidiaries or related parties, shall not:

- 24.6.1.1 Directly or indirectly lobby or solicit the Municipality, the Tender Committee or any other Relevant Authority or any employee, consultant or representative of any of the foregoing with respect to the Project or the Tender; or
- 24.6.1.2 Directly or indirectly communicate with other Tenderers and all of their affiliates, Subsidiaries or related parties regarding any aspect of the Tender, the Project, or their respective Proposals.

24.6.2 Solicitation and communication activities as described in Section 24.6.1 above may disqualify, at the Municipality's sole discretion, the Tenderers involved, without derogating from any other rights and remedies of the Municipality.

24.7 Cost of Tendering

24.7.1 Unless stipulated explicitly otherwise, all costs incurred in relation to the preparation and submission of the Proposals shall be borne solely by the Tenderers and shall not be reimbursable under any circumstances.

24.7.2 Without derogating from the provisions of Section 22.5 (*No Compensation*) in the event of alteration of the Tender Documents or the Tender or in the event of submittal of additional information by the Tenderer at the Municipality's request or in the event of Proposals being rejected for whatever reason or in the event the Tender is annulled by the Municipality at any stage for any reason whatsoever, Tenderers will not be entitled to any refund of expenses or to any compensation or to any payment of any sort, save for return of the Participation Fee, as set forth in Section 22.3 (*Annulment of Tender*).

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24.8 Tender Procedures

By participating in this Tender, Tenderers are giving their complete and irrevocable consent to the procedures and the Municipality's rights as incorporated in this **Volume 1** (*Request for Proposals*) and will not thereafter be entitled to contest the validity of such rights or procedures should the Municipality choose to implement any of them.

24.9 Governing Law and Jurisdiction

- 24.9.1 The Tender shall be governed by and construed in accordance with the Laws and Regulations of the state of Israel. Without derogating from the aforesaid, the applicable courts in Tel-Aviv-Jaffa shall have the exclusive jurisdiction with respect to all matters and all disputes arising in connection with the Tender.
- 24.9.2 Should a competent court find that any of the sections contained in the Tender Documents or parts of any such section or sections are invalid or void, or unenforceable, subject to the Municipality's discretion and decision, this will not derogate from the remaining parts of the Tender Documents that will remain in full force and binding effect, in all respects. Nothing herein contained shall derogate the Municipality's discretion to vary or cancel the Tender, in such a case.
- 24.9.3 By submitting a Proposal each Tenderer shall be deemed to acknowledge its acquaintance with all Laws and Regulations which may be applicable to the Project, and that it will comply with all such Laws and Regulations and obtain all permits or approvals required thereunder or by any Relevant Authority.
- 24.9.4 Each Tenderer is assumed to have consulted with legal, technical, engineering and financial advisors, and any other advisors - as necessary with respect to the Project, prior to the preparation of its Proposal.
- 24.9.5 The Tenderers and the Proposals submitted by them, shall abide by all applicable Laws and Regulations.
- 24.9.6 In any event amendments are made to any Laws and Regulations that may apply upon this Tender, Project or Tenderer, then such amendments shall bind the Tenderer who shall act in accordance therewith.

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24.10 No Conflict of Interests

24.10.1 Annex A (*Municipality's Advisors*) of Tender Form L (*Municipality's Advisor's and Tenderer's No Conflict of Interests Declaration*), lists entities which advise the Municipality on the Project's or are involved in the preparation thereof.

Within **Tender Form L** (*Municipality's Advisor's and Tenderer's No Conflict of Interests Declaration*) Tenderers shall confirm they have no contact or engagement with any of the entities listed under the aforesaid **Annex A with respect to the Tender or Project**. In the event such contact or engagement exists – detail - prior to Submission Date within the framework of a RFC - on the nature thereof.

The Municipality reserves the right to forbid the further participation in this Tender of Tenderers which have contact or engagements with any of the entities indicated in the aforesaid **Annex A**, allow their further participation or stipulate the terms and conditions under which the participation of such Tenderers in this Tender may be approved.

24.10.2 The Municipality reserves the right to update the list of entities in the aforesaid Annex A from time to time as it sees fit.

24.10.3 Without derogating from the provisions of Section 23 (*Disqualifying Conditions and Events*), the Municipality may disqualify Tenderers and Proposals which do not comply with the provisions of this Section 24.10 (*No Conflict of Interests*).

24.10.4 It is hereby clarified, that *Tahal Consulting Engineers Ltd.*, and *Louis Berger Group Inc.*, that have conducted a geological survey in the Site for the WA, are not prevented from participating, directly or indirectly, in this Tender on behalf or for a Tenderer, all subject to the applicable stipulations and requirements.

24.11 Severability

**Tender no. 8/2019 for In-Situ Ground Water Remediation and Construction of Ground Water
Pumping System in IMI "Magen" compound**

Any part, provision or section of the Tender Documents being found to be invalid or unenforceable shall not affect the validity or enforceability of any other part, provision or Section. Such invalid or unenforceable part, provision or Section shall be deemed severed from the Tender Documents, which shall be construed and enforced without reference to such part, provision or Section.

-End-

