



REPORT TO BID ADJUDICATION COMMITTEE

(Deviations from and ratification of minor breaches of procurement processes: Regulation 36 of the Municipal Supply Chain Management Regulations)

To:	Bid Adjudication Committee
Contract Description:	Acquisition of support services for eThekweni Electricity's SCADA system
Date:	01 August 2024

Contract no:	30190 (5E)	Unit:	Electricity
Project Manager:	Thembinkosi Mabika	Department:	HV Operations
E-mail:	themba.mabika@durban.gov.za	Mobile no:	27 72 028 0379
Telephone number:	031 311 9211	Fax no:	

Project Objective/s:	To acquire support services for eThekweni Electricity's Supervisory Control and Data Acquisition System.
Scope of Works:	a) To provide 24x7 support to eThekweni's Electricity's SCADA operation b) To perform a SCADA system upgrade over 2 years
IDP Linkage:	N/A

1. CATEGORY:

Goods	☐	Professional Services (Built Environment)	☐
Services	☒	Professional Services (Other)	☐
Engineering & Construction Works	☐	Movable Asset Disposal	☐
Leases	☐	Immovable Asset Disposal	☐

2. ELEMENT OF REGULATION 36 APPLICABLE:

1(a) (i) An emergency	☐
(ii) The goods or services are produced or available from a single provider only	☒
(iii) The acquisition of special works of art or historical objects where specifications are difficult to compile	☐
(iv) The acquisition of animals for zoos; or	☐
(v) Exceptional case where it is impractical or impossible to follow the official procurement processes; and	☐
1(b) To ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature	☐

Motivation overleaf

Motivation for applicability of Regulation 36:

- 2.1 EtheKwini Electricity currently uses a SCADA system from Minsait ACS, based in Atlanta, USA, to remotely monitor and control substations within its area of supply. The system was initially purchased in 1992 and has undergone continuous hardware and software upgrades over the years to meet modern SCADA system requirements. This system is essential for staff safety, ensuring the safe operation of the electrical plant, and enabling immediate response in the event of a network fault. It also plays a key role in implementing load shedding. SCADA provides vital information about the state of the network, including alarm conditions, remote control, and data acquisition, which can be used by other systems and departments. This SCADA functionality has been deployed at High Voltage (HV) substations and has been increasingly extended into the Medium Voltage (MV) environment. The SCADA system significantly reduces customer outage durations, ensuring high availability of the electrical network.
- 2.2 The contract includes support services for maintaining proprietary hardware and software for the SCADA system. Additionally, Minsait ACS provides a 24x7 helpdesk service to respond to and address software problems associated with the SCADA system. Minsait ACS also assists in resolving software malfunctions resulting from hardware failure, network issues, and operating system glitches.
- 2.3 Costs for engineering support hours are included in this contract for the following:
- a) Custom configuration requirements
 - b) Migration of the system onto a virtual platform
 - c) Engineering services for software enhancements
- 2.4 In order for any sophisticated software system to perform its function, there has to be continuous support by the vendor or any other service provider that has the expertise to provide development, support and maintenance on their system. As this is a proprietary system, only the original vendor (Minsait ACS) can provide these critical services.
- 2.5 We have received a fair and reasonable quotation from Minsait ACS, the sole supplier of the SCADA system, for support services. The services include a 24x7 emergency Help Desk. It is in the best interest of eThekweni to accept this quotation to ensure the high availability of the SCADA system. Failure to maintain this system would put the entire electrical grid at risk, which could have a serious impact on safety, revenue, and the economy of the eThekweni Municipal area.
- 2.6 The support contract from this sole supplier expired on 17 March 2023.
- 2.7 Minsait ACS was included on the Electricity Unit's sole supplier list for 2022, however, the company was omitted from the list published by SCM due to a clerical error. Various attempts were made to rectify the error; however, these were unsuccessful.
- 2.8 Because of the delays in renewing the support contract after expiry in March 2023, a support contract reinstatement fee has been charged by the vendor to cover the cost of the support contract gap from the date of expiry (17 March 2023) until the date of reinstatement dependent on the approval of this report.
- 2.9 Because the reinstatement fee is for the support services received without a valid contract, a separate report will be prepared for it. It does not form part of the approvals sought by this report.

Legal Implications.

- 2.10 Failure to provide systems to support the safe operation of the electrical grid may have legal implications.

Financial Implications

- 2.11 The sole supplier of the SCADA system has offered a fair and reasonable quote for 24x7 support services over a 36-month period, amounting to USD 493,712. Additionally, a reinstatement fee of USD 82,642 has been charged by the supplier for the period from the contract expiry date until the renewal contract is in place, as per **Appendix D**. It's important to note that the payment of this reinstatement fee is not included in this report and will be covered by a separate report. The Financial Certificate is provided in **Appendix E**.



3. PROJECT ESTIMATES, FINANCIAL AUTHORITY & RECOMMENDED COMPANY:

	Excl. VAT	VAT	Incl. VAT
Estimated Contract Value	USD 493 712	0	USD 493 712
Contingencies (10%)	USD 49 371. 20	0	USD 49 371. 20
Establishment Charge			
Departmental Works			
Consultants Fees			
Escalation			
Other			
Total Cost to Council	USD 543 083. 20	0	USD 543 083. 20

Financial Provision has been made for the project as follows:

Vote No.	Financial Year	Provision	Commitment	FC No: Attached
				Available Amt.
79/3065	2024/2025	Provided	FC attached	R1,293,159.00
79/3065	2025/2026	Provided	FC attached	R5,093,007.00
79/3065	2026/2027	Provided	FC attached	R2,994,362.00

Estimated ROE: R19 per USD

4. FORM OF CONTRACT & SURETY:

- ☒ **Government Procurement** General Conditions of Contract (From National Treasury for Goods & Services) (July 2010)
- ☐ **GCC (2004)** (General Conditions of Contract for Construction Works)
- ☐ **JBCC series Minor Works Agreement** - Edition 4.0 of August 2007
- ☐ **JBCC series 2000 Principal Building Agreement** - Edition 5.0 of July 2007
- ☐ **NEC Engineering and Construction Contract 2nd Edition 1995 (ECC2)**
- ☐ **FIDIC** (Conditions of Contract for Construction, Conditions of Contract for Plant and Design-Build, Conditions of Contract for FIDIC EPC/Turkey Projects or Short Form of Contract.)
- ☐ **Other form of contract: Specify**
- ☐ Surety required: N or ☐ Performance Guarantee required: Y

5. RESPONSIVENESS REQUIREMENTS:

NB: Copies of each of the following must be attached to the report for the recommended company

	CIDB: Printout of CIDB Registration from www.cidb.org.za
	Tender offer must be properly received fully completed and signed in black ink (erasable pens not permitted)
	Submission of applicable Resolution by the Legal Entity, or consortium / joint venture, authorising a dedicated person(s) to sign documents on behalf of the firm / consortium / joint venture
	Registration on the Municipality's centralised supplier database – FP Lite
	ITC status checked
	Submission of Declaration of Interest

	Submission of Declaration of Municipal Fees
	Valid Original Tax Clearance Certificate i.e. SARS has certified that the bidder's tax matters are in order or that arrangements have been made to the satisfaction of SARS that the outstanding tax obligations will be met
	Company/CC/Trust/Partnership registration certificates
	Joint Venture Agreement and Power of Attorney in case of Joint Ventures
	Workmen's Compensation Registration Certificate (or proof of payment of contributions in terms of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993)
	Insurance Instructions
	Other restrictive conditions peculiar to this contract e.g. Vehicle, plant, etc. – be specific and provide detail of requirements together with motivation for such.

6. PROJECTED DATES:

Steps	Projected Date
Submission to Tenders & Contracts Co-ordination for Bid Adjudication Committee	September 2024
Bid Adjudication Committee	September 2024
Contract Start Date	November 2024
Contract Completion Date	November 2027
Contract Duration	36 months

7. RECOMMENDATIONS:

- 7.1 That for the reasons set out in Section 2 above, particularly for the continuity, stability and security of supply to the City, the City Manager approves in terms of Section (36) (1) (a) (ii) of the eThekweni Municipality's SCM Policy, the quotation from Minsait ACS to provide Support and Engineering services to eThekweni Electricity's SCADA system for a total amount of USD 543 083. 20 over 36 months.
- 7.2 That the City Manager records the reasons for any deviations, reports it to the next meeting of the Council, and also includes it as a note to the annual financial statements.

T Mabika	Signed by: Thembu Mabika Signed at: 2024-09-04 15:47:48 +02:00 Reason: Witnessing Thembu Mabika <i>Thembu Mabika</i>	04/09/2024
Name of Project Initiator/Manager	Signature	Date
031 311 9211	Declaration by Project Initiator: <i>I have prepared this report in a fair and proper manner in accordance with the conditions of contract, and relevant Codes of Conduct</i>	
Contact Telephone Number		

L. Gumede		04/09/24
Name of Senior Manager	Signature	Date
031 322 1324		
Contact Telephone Number		

V Ramnarain		05/09/24
Name of Deputy Head	Signature	Date
031 311 9008		
Contact Telephone Number		



T Mpetsane	Signed by: Tumo Mpetsane Signed at: 2024-09-18 10:52:45 +02:00 Reason: Witnessing Tumo Mpetsane <i>Tumo Mpetsane</i>	18/09/24
Name of SCM Delegate	Signature	Date
031 311 9420		
Contact Telephone Number		

L Moodliar	Signed by: Leshan Moodliar Signed at: 2024-09-19 10:55:38 +02:00 Reason: Witnessing Leshan Moodliar <i>Leshan Moodliar</i>	19/09/24
Name of Unit Head	Signature	Date
031 311 9005		
Contact Telephone Number		

R Dlamini	Signed by: Sibonginkosi Meylwa Dlamini Signed at: 2024-09-19 20:34:09 +02:00 Reason: Witnessing Sibonginkosi Meylwa Dlamini <i>Sibonginkosi Meylwa Dlamini</i>	19/09/24
Name of Head: Information Technology	Signature	Date
031 322 8000		
Contact Telephone Number		

S Makhanya	Signed by: Edrick Silile Manda Signed at: 2024-09-25 23:10:30 +02:00 Reason: Witnessing Edrick Silile Manda <i>Edrick Silile Manda</i>	25/09/24
Name of DCM: Trading Services	Signature	Date
031 322 3811		
Contact Telephone Number		

S Mnguni	<i>Nelisiwe Mnguni</i>	26/09/24
Name of DCM: Finance	Signature	Date
031 311 1105	confirming budget availability subject to SCM compliance	
Contact Telephone Number		

M Ndaba	<i>[Signature]</i>	<i>18/10/2024</i>
Name of Manager: Compliance	Signature	Date
031 322 7014		
Contact Telephone Number		

S Ncube	<i>S Ncube</i> Digitally signed by Sinegugu Date: 2024.11.22 16:43:56 +02'00'	22/11/24
Name of Head: SCM	Signature	Date
031 311 1111		
Contact Telephone Number		

APPENDIX A: 2024 Sole Supplier List

#	Contract Description	Service provider
54	Supply and delivery of spares. Not on contract purchased stock/non-stock for use at Electricity Department	D and B Equipment Sales
55	Supply and delivery of spares. Not on contract purchased stock/non-stock for use at Electricity Department	Doculam (Pty) Ltd
56	Supply and delivery of spares. Not on contract purchased stock/non-stock for use at Electricity Department	H V Test
57	Supply and delivery of spares. Not on contract purchased stock/non-stock for use at Electricity Department	Kimberly-Clark
58	Supply and delivery of spares. Not on contract purchased stock/non-stock for use at Electricity Department	Morris Material Handling S. A
59	Supply and delivery of spares. Not on contract purchased stock/non-stock for use at Electricity Department	Siemens Energy
60	Supply and delivery of spares. Not on contract purchased stock/non-stock for use at Electricity Department	Nosa Pty Ltd
61	Supply and delivery of spares. Not on contract purchased stock/non-stock for use at Electricity Department	Actom Mv Switchgear
62	Supply and delivery of spares. Not on contract purchased stock/non-stock for use at Electricity Department	Abb South Africa
63	Supply and delivery of spares. Not on contract purchased stock/non-stock for use at Electricity Department	Natal Armourers Cc
64	Service Level Agreement	Jasco Enterprise (PTY) LTD
65	Service Level Agreement and UPS System Refurbishment	Eaton Electric (South Africa) (Pty) Ltd
66	Provision Of Maintenance, Upgrade and Support for Ethekewini Electricity's Scada System	Advanced Control Systems (Minsat Acs)
67	Supply and delivery of GE Grid Automation spares	Integrators of Systems Technology (Pty) Ltd (IST)
68	Supply, delivery and installation of spares on Actom/Schneider 11 kV Switchboards.	ACTOM (Pty) Ltd
69	Supply, Engineer, Delivery and installation of spares on HV Substation ICAP systems.	Integrators of Systems Technology (Pty) Ltd (IST)

APPENDIX B: Sole Supplier Letter

minsait ACS

An Indra company

June 14, 2024

SOLE SUPPLIER LETTER

eThekweni Municipality

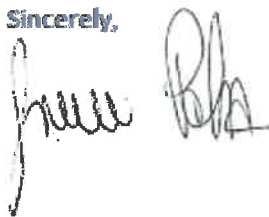
To Whom it may concern:

We appreciate eThekweni Municipality's interest in the procurement of Minsait ACS solutions to meet the current and future needs of eThekweni. Minsait ACS provides a full portfolio of products and solutions that will allow eThekweni to operate at optimal performance levels. Minsait ACS Prism product includes RTUs, SCADA Systems, Outage Management Systems and Energy Management Systems. Additionally, Minsait ACS provides software product training and engineering services on their PRISM products. Minsait ACS is the sole source of Minsait ACS products and associated services.

Minsait ACS maintains all copyright privileges for its products and solutions.

We are grateful for your patronage to Minsait ACS and your interest in continued procurement of the sole source Minsait ACS PRISM products, solutions, support, engineering and training.

Sincerely,



Giovanni Polizzi

Vice President of Sales and Marketing

Minsait ACS, an Indra Company

APPENDIX C: Quotation

minisoit ACS

An India company

Customer	Ethekwini-Durban Electricity
Customer No.	P009715
Estimate No.	PR-2405-8200
PRISM/RHELv	PRISM 11 RHELv6
Support Services Term	March 17, 2024 - March 16, 2027

Support Plan Coverage	Included Year 1	Included Year 2	Included Year 3
Software Maintenance Coverage	●	●	●
Technical HelpDesk Support	●	●	●
Minsait ACS-Managed Hardware Coverage	●	●	●
Training - Access to online self-paced courses	●	●	●
Minsait ACS Customer Community Portal	●	●	●
24x7 Emergency HelpDesk Support	●	●	●
SUBTOTAL	\$ 68,061	\$ 70,443	\$ 72,908

Additional Items	Included Year 1	Included Year 2	Included Year 3
PRISM SW Upgrade Services as per PR-2403-8127 R1	\$ 84,690	\$ 197,610	
TOTAL	\$ 152,751	\$ 268,053	\$ 72,908

Note: Security Patching Services will be offered after the System is upgraded to RHEL8 and the amount corresponding to the remaining period of the three years will be added as a annex to the support contract.

**Subject to the payment of the reinstatement fee PR-2408-8338

APPENDIX D: Reinstatement Fee Charge

minsait ACS

An Indra company

June 25, 2024

SUPPORT CONTRACT – REINSTATEMENT FEE

eThekweni Municipality

To Whom it may concern:

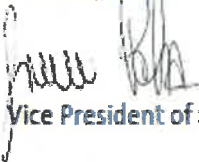
eThekweni's support contract with Minsait ACS for PRISM software, expired on March 16, 2023, and was not renewed for the period March 17, 2023, to March 16, 2024. The price of the support contract at the time of renewal would have been \$71,863. Nevertheless, the support has been provided by Minsait ACS as a proof of good faith and valuable relationship between the parties.

eThekweni is now renewing the support contract and we are applying the support contract value for the unpaid year and a reinstatement fee as explained in the Software License Maintenance Agreement of our software products. The reinstatement fee is calculated as 15% additional to the unpaid amount. The sum of the unpaid period and the reinstatement fee is all included as one item as "Reinstatement fee" in the proposal for the support contract.

Minsait ACS thanks eThekweni Municipality for **their interest** and continued procurement of Minsait ACS PRISM products, solutions, support, engineering and training.

Sincerely,

Giovanni Polizzi



Vice President of Sales and Marketing

Minsait ACS, an Indra Company



minsait ACS An Indra company	TEMPLATE	Document Nr.	TP 93CD 3
	GENERAL MANAGEMENT	Issue Date	4/20/2018
	Software Licence Maintenance Agreement	Revision Date	Rev5 3/11/2022

2.4 Copies. Licensee may make a reasonable number of backup copies of the Licensed Software as is consistent with Licensee's normal periodic backup procedures or as set forth on the applicable Order. Licensee shall maintain a log of the number and location of all originals and copies of the Licensed Software. Licensee may reproduce or copy any portion of the Documentation into machine-readable or printed form for its internal use and only as required to exercise its rights hereunder. Licensee shall include, and shall under no circumstances remove, Minsait ACS's and its licensors' copyright, trademark, service mark, and other proprietary notices on any complete or partial copies of the Licensed Software or Documentation in the same form and location as the notice appears on the original work. All proprietary and intellectual property rights, including copyright in and to the original and all copies of the Licensed Software and Documentation or any changes or Modifications thereto, shall be and remain that of Minsait ACS or its licensors as the case may be. Minsait ACS shall not be responsible for updating any changes to any of the Documentation made by Licensee.

2.5 Certification. On Minsait ACS's request, but not more than once per year, Licensee shall furnish Minsait ACS with a signed certification verifying that Licensee's use of the Licensed Software is consistent with the terms and conditions of this Agreement, which certification shall include information reasonably requested by Minsait ACS.

3. MAINTENANCE SERVICES.

3.1 Maintenance Services. Licensee may elect to receive support and services as set forth in Exhibit to this Agreement, ("Maintenance Services") and referenced in the Minsait ACS Customer Services Guide, a copy of which may be requested by the Licensee. Beginning on the Effective Date, Minsait ACS shall provide Maintenance Services for the period of time set forth in Exhibit ____ (the "Maintenance Period"). Any such Maintenance Services will be provided by Minsait ACS or its affiliates or subcontractors using commercially reasonable efforts and subject to the terms of this Agreement as further modified by Minsait ACS's applicable maintenance and support policies in effect at the beginning of the then-current Maintenance Period. Minsait ACS's obligation to provide Licensee with Improvements for Third Party Software is limited to providing Licensee with the Improvements that the applicable third-party licensor provides to Minsait ACS. If Licensee elects to receive Maintenance Services, Licensee may not exclude any of the Licensed Software from Maintenance Services. Unless Maintenance Services cancelled by either party by written notice no less than ninety (90) days prior to the end of the then-current Maintenance Period, Licensee agrees that the Maintenance Period shall automatically extend for one (1) year, except as otherwise set forth on an applicable

order document. In the event Licensee declines or terminates Maintenance Services (including following initial delivery of the Licensed Software), and Maintenance Services are subsequently ordered or reinstated, Licensee shall pay: (i) an additional Maintenance reinstatement fee in addition to Maintenance Services fees for the current Maintenance Services period.

3.2 Licensee's Obligations. Licensee shall be responsible for installing any improvements provided by Minsait ACS. Licensee shall cooperate with Minsait ACS in providing access to the Equipment to the extent required to diagnose or resolve issues identified by Licensee concerning the Licensed Software. Minsait ACS, by virtue of this Agreement, is not responsible for the following actions: (i) determining whether the Licensed Software will achieve the results that Licensee desires (and Minsait ACS does not recommend or prescribe in any way the use of the Licensed Software in critical management, military use, nuclear power plants, nor for the management of emergency situations and Minsait ACS disclaims any liability arising out of or in connection with the use by the Licensee on those fields of activity); (ii) procuring, installing and operating computers and operating systems to run the Licensed Software in accordance with the Documentation; (iii) ensuring that the Licensee complies with all applicable laws pertaining to its use of the Licensed Software, including those related to the disclosure of data and exports of Licensed Software; (iv) establishing adequate operational back-up provisions to protect against data loss and/or a defect or malfunction that renders the Licensed Software, or the computer systems on which they run, non-operational; and/or (v) deployment and/or installation on the Licensee's systems of any upgrade that the Licensee may be entitled to use.

4. PAYMENT.

4.1 Fees. In consideration of the licenses granted under this Agreement, Licensee shall pay to Minsait ACS the license fees set forth in each Order. Licensee shall pay to Minsait ACS the Maintenance Services fees as set forth in each Order or any Maintenance Services agreement between the parties. Additional Maintenance Services fees may apply for any Maintenance Services provided for Licensed Software that has been installed, implemented, customized, modified, enhanced or altered by any third-party service provider that is not a Minsait ACS certified service provider. Additional fees may be required for Services not considered in the Initiating Order. Unless otherwise provided in the applicable Order documents, all fees are due upon the Effective Date of the applicable Order and are payable to Minsait ACS in U.S. dollars within fifteen (15) days of the date set forth on each invoice issued by Minsait ACS. All orders and license fees are non-cancelable and non-refundable, including, without limitation, upon termination of this Agreement. Any fees payable by Licensee hereunder that are not paid when due shall accrue interest at a rate equal to the lesser of (a) of 1.5% per month, or (b) the maximum amount allowed by applicable law.



APPENDIX E: Financial Certificate

ETHEKWINI MUNICIPALITY										
FINANCIAL CERTIFICATE										
CLUSTER : <u>TRADING SERVICES</u>		OUTPUT UNIT : <u>ELECTRICITY</u>								
DEPARTMENT SERIAL NO. : <u>00361</u>		CERTIFICATE NO. : <u>793065</u>								
FINANCIAL YEAR END : <u>2024/2025</u>		DATE : <u>03 September 2024</u>								
ACCOUNTANT										
DETAILS	ACCOUNT NUMBER						BUDGET FOR THE YEAR	SPENT COMMITMENT TO DATE	BALANCE UNSPENT	EXPENDITURE PROPOSED
	BUSINESS UNIT	ITEM. SUB	FUNDING	COSTING	PROJECT	REGION				
Acquisition of Support Services for EtheKwini Electricity's SCADA system for the period of 36 months 2024/2025	37444	10982.30	11100	0000	97783-2	0010	4,097,780.00	-	4,097,780.00	1,293,180.00
2025/2026	37444	10982.30	11100	0000	97783-2	0010	6,061,750.00	-	6,061,750.00	5,093,010.00
2026/2027	37444	10982.30	11100	0000	97783-2	0010	2,887,720.00	-	2,887,720.00	2,994,370.00
										9,380,540.00
SAVINGS IDENTIFIED (REFER TO BELOW)										
DETAILS	BUSINESS UNIT	ITEM. SUB	FUNDING	COSTING	PROJECT	REGION	BUDGET FOR THE YEAR	SPENT TO DATE	BALANCE UNSPENT	VARIANCE
I certify that the proposed expenditure indicated below:										
A	Covered by the budget met-yes / as approved by the Council									
B	Not included in budget but may be met by transfer as indicated									
C	An adjustment to the forward capital program is / is not required									
FINANCE MANAGER						DATE <u>03/09/2024</u>				