

# **Mekorot Israel National Water Company Ltd.**

**Tender for the Design, Manufacture, Shipping, Supply & Delivery to Site,  
Supervision of Installation & Commissioning of Equipment and Associated  
Auxiliaries and Services**

**Geulat Hayarkon – Ya'ar Be'reshit**

# **Volume 1**

# **Request for Proposals**

# **RFP**

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**DEFINITIONS (\*)**

<b>Term</b>	<b>Definition</b>
<b>Amendment/s</b>	extensions of time constraints or revisions, deletions, additions or substitutions of terms in any of the Tender Documents that are issued to the Tenderers in writing by MWC.
<b>Change of Composition</b>	as defined under Section 5.4 of <b>Volume 1</b> (RFP).
<b>Clarification/s</b>	notifications issued by MWC per this <b>Volume 1</b> .
<b>Construction Completion Certificate</b>	as defined under Section 10.4 of <b>Volume 2</b> (Contract)
<b>Contract Documents</b>	as defined under Section 1.3 of <b>Volume 2</b> (Contract) as may be amended and supplemented by MWC, from time to time, per its sole discretion.
<b>"Control" and "Means of Control"</b>	the meaning ascribed to such term under the <b>Securities Law, 1968-5728</b> .
<b>Day/s</b>	any calendar day.
<b>Euro – Nis Exchange rate</b> <sup>1</sup>	The exchange rate of both currencies published by the Bank of Israel known on submission day.
<b>Foreign Company</b>	Any entity which is <b>not</b> a Local Company.
<b>Laws and Regulations</b>	all laws, statutes, ordinances, regulations, orders, including municipal by-laws, procedures and permits, and all rules, standards, administrative orders, and administrative instructions or directives issued by an Relevant

<sup>1</sup> Clarification notice no.7 item (b)(1)

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	Authority, applicable in the State of Israel, as amended and/or modified and/or updated from time to time.
<b>Local Company</b>	Shall mean a duly incorporated and registered entity in the State of Israel, or a foreign company registered in Israel (denoted in Hebrew, under the <b>Israel Corporation Law 5759-1999</b> , as: חברה חוץ הרשומה בישראל).
<b>Member</b>	As referred to under in Section 5.11(b) <sup>2</sup> of <b>Volume 1</b> (RFP).
<b>MWC POC</b>	The person identified under Section 11.1.1 of <b>Volume 1</b> (RFP).
<b>Participant</b>	An entity who participated in the Mandatory Tenderers Conference and Site Visit.
<b>"Permit/s" or "Approval/s"</b>	As defined under Section 2 of <b>Volume 2</b> (Contract).
<b>Preconditions for Contract Signature</b>	As defined under Section 18.2 of <b>Volume 1</b> (RFP).
<b>Preferred Tenderer</b>	As defined under Section 18.1 of <b>Volume 1</b> (RFP).
<b>Price Estimate</b>	As referred to under Section 17.3(a) of <b>Volume 1</b> (RFP).
<b>Price Proposal</b>	As referred to under Section 9.3(b) of <b>Volume 1</b> (RFP).
<b>Project</b>	As defined under Section 2 of <b>Volume 2</b> (Contract).
<b>Proposal</b>	the information identified under <b>Tender Annex G</b> (Contents of Proposal – Checklist) including all deliverables, documentation, Tender Forms and all supporting documentation included pursuant to Sections 7 ( <i>Threshold Requirements</i> ) and 8 ( <i>Threshold Compliance Demonstration</i> ) all in accordance with the requirements of this <b>Volume 1</b> ( <i>Request for</i>

<sup>2</sup> Clarification Notice no.10 item 1

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	<i>Proposals</i> ).
<b>Relevant Authority/ies</b>	As defined under Section 2 of <b>Volume 2</b> (Contract).
<b>Scope of Work or SOW</b>	As identified in or deriving of the Tender Documents.
<b>Second Ranked Tenderer</b>	As defined under Section 18.1 of <b>Volume 1</b> (RFP).
<b>Submission Date</b>	The date indicated under Section 14.2 of <b>Volume 1</b> (RFP).
<b>Supplier</b>	the Tenderer which MWC (a) has accepted its Proposal, (b) has declared it as the Preferred Tenderer, (c) has confirmed it fulfilled all Pre-Conditions for Signature; and (d) with whom has signed the Contract Documents.
<b>Tender</b>	This Tender process no. <b>R-42/2019</b> as referred to under Section 1.1 of <b>Volume 1</b> (RFP).
<b>Tender Documents</b>	As referred to under Section 2.6 of <b>Volume 1</b> (RFP) as may be amended and supplemented by MWC, from time to time, per its sole discretion.
<b>Tenderer</b>	a Tenderer formed of a <b>single legal entity</b> or a <b>Joint Venture</b> , as defined under Section 5 ( <i>Composition of Tenderers</i> ) below, who has participated in the Tenderers Conference & Site Visit and submitted its Proposal.
<b>Tenderer's Authorized Representative</b>	the person whose name and contact details were provided in <b>Tender Form A</b> (Letter of Acknowledgement and Application to Attend Site Visit & Tenderers Conference) or any substitute notified by the Tenderer.

<b>US Dollar – NIS Exchange Rate<sup>3</sup></b>	The exchange rate of both currencies published by the Bank of Israel known on Submission date.
<b>Validity Period</b>	The period referred to under Section 16.1(a) of <b>Volume 1</b> (RFP).
<b>Working Day/s</b>	Means any Day other than Friday, Saturday or a Statutory Holiday in Israel where local banks are open. Each Working Day will end at 4:00 P.M. Israel local time on that Day.

(\* Additional terms are defined throughout the Tender Documents.

## 1. GENERAL

### 1.1 Introduction

Mekorot Water Company Ltd. ("MWC") a governmental owned company hereby invites Local Companies and Foreign Companies, with the required experience and abilities, to participate in this public Tender Process for the design, manufacture, shipment, supply & delivery to site, supervision of installation & commissioning of Equipment and services (the "WTP" or "Project") which - along with other facilities, infrastructures, buildings, elements and systems to be built by MWC or anyone on its behalf (as instructed by MWC per its own discretion) - shall form part of the Yarkon River Water Treatment Facility (the "YTF"), all in accordance with the provisions of this **Volume 1** (*Request for Proposals*) and other Tender Documents.

1.2 MWC intends to award the Contract at the end of the Tender process to the Preferred Tenderer, subject to the provisions of the Tender Documents including the Preferred Tenderer's timely and complete fulfillment of all Preconditions set forth under Section 18.2 (*Selection of the Preferred Tenderer and Signature of Contract*). Upon Signature Date the Preferred Tenderer shall thereafter be referred to as the **Supplier** who shall bear full and sole responsibility for the execution of the Project and all activities associated therewith, in accordance with the Contract Documents, the requirements of all Relevant Authorities and requirements set forth under all Laws and Regulations.

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<sup>3</sup> Clarification notice no.7 item (b)(1)

- 1.3 The Tender Documents, which, *inter alia*, include this Request for Proposals, direct the Tenderers with respect to the preparation of their Proposals, including but not limited the technical, legal and financial information required to be submitted by them as part of the Proposals.
- 1.4 While the Tender process is being held, MWC may (but is under no obligation to) take steps and measures aimed at advancing different aspects associated with the Project and YTF. The aforesaid shall not derogate from the Supplier's obligations as set forth in the Contract Documents.
- 1.5 Words and expressions used in this Request for Proposals shall have the meaning ascribed to them within this **Volume 2** and in the Definitions preface above.

## **2. PROJECT AND SITE DESCRIPTION**

### **2.1 Background**

The Yarkon is the largest coastal river in Israel, approximately 27.5 km in length. The source of the Yarkon River is at Tel Afek (Antipatris nature reserve). The river flows through the Dan Region into the Mediterranean Sea. Over the years, the river became increasingly polluted mainly due to accelerated urbanization along its banks.

When the river's headwaters were diverted to the Negev, Israel's southern region, via the National Water Carrier for irrigation purposes, the state of the Yarkon declined even further as sewage replaced the flow of fresh water, habitats were destroyed, and flora and fauna disappeared. This was exacerbated by continuous discharges of industrial and municipal effluents into the river. During the last decade, a gradual effort of effluents quality improvement was implemented. Consequentially, only tertiary effluents are currently being discharged to the river.

As part of an extensive rehabilitation scheme of the Yarkon, which was initiated by the State of Israel, it was decided to advance the construction of the YTF at the Yehoshua Parks located in the city of Tel Aviv-Jaffa. The WTP forming part of the YTF is intended to supply high quality treated river water for the irrigation of the park as detailed in Section B.1.2 – Table 1 – Required Treated Water Quality of the WTP of **Volume 3** (SOW).

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The aforesaid provides a brief unexhaustive description of the Project. Additional information is provided under the remaining Tender Documents including **Volume 3 (SOW)**.



## 2.2 Scope of Work General Unexhaustive Description

The Works are the works addressed to those which derive from all Tender Documents including **Volume 3** (SOW) also if not explicitly identified. Notwithstanding the aforesaid, the Project's Scope of Work applies to all works associated with the WTP save explicitly to the actual construction of the building which will be executed by Electrical Mechanical Services Ltd. ("EMS") (denoted in Hebrew as: "שמחמ") on MWC's behalf (or any additional or other entity MWC shall instruct of at any time).

## 2.3 MWC – Supplier's Interfaces & Division of Responsibilities and Interface

2.3.1 **Volume 3** (SOW) relates to interfaces and division of responsibilities between the Supplier's Works and the works planned on being executed by EMS. In this aspect **Volume 3** addresses the following:

- (a) EMS' scope of works (see, *inter alia*, Section 22 (EMS SOW) of **Volume 2** (Contract) and **Appendix 6** (EMS SOW) of **Volume 3** (SOW));
- (b) Interface Tie Points (see Section B.1.3 (Scheme of the YTF) & B.1.4 (General Process Description of the WTF); and
- (c) Supplier's scope of design (see Section B.1.6 (Design) of **Volume 3** (SOW). Note some of the elements are to be designed per mandatory requirements while the Supplier shall be required to propose the optimal design for the respective elements per the requirements and stipulation set forth (for such elements) in **Volume 3** (SOW).

### 2.3.2 Health & Safety –

- (a) As of the time access to the Site is granted to the Supplier for the purpose of execution of the Project and up to issuance of the "**Construction Completion Certificate**" by MWC, as provided in Section 17 (Health and Safety) to **Volume 2** (Contract), with regard to all health and safety aspects the Supplier shall act as a **subcontractor** (denoted in Hebrew as: "קבלן משנה") of the Prime Contractor (denoted in Hebrew as: "קבלן ראשי") nominated by MWC.

Accordingly, in this context the Supplier shall cooperate and adhere to the Prime Contractor's instructions regarding all health and safety aspects relating to the Project and the Supplier's conduct in these respects. This framework shall not entitle the Supplier for any schedule adaptations or additional payment.

- (b) MWC reserves its right to nominate the Supplier as the Prime Contractor in the event it is the only contractor on Site. In such event all roles and responsibilities applied by Laws and Regulations upon a Prime Contractor shall be exercised by the Supplier for the duration required by MWC.
- (c) Whether acting as a subcontractor or as a Prime Contractor, the Supplier shall assume all respective duties, responsibilities, authorities and rights identified, *inter alia*, under the **Work Safety Regulations (Construction Works) 5748-1988**, all as, *inter alia*, regulated in the aforesaid Section 17 to **Volume 2 (Contract)**.

## 2.4 Pilot Tests

### 2.4.1 Past Pilot Tests –

- (a) Pilot-scale treatment plant studies have been conducted, in the past, adjacent to the vicinity of future WTP.
- (b) Information relating to thereto which is at MWC's possession and relevant to the Tender is provided - as *reference information* - within **Volume 4 (Reference Information)**.
- (c) It is noted that entities identified in **Volume 4 (Reference Information)** (and any of their affiliates) are not prohibited from participating in this Tender provided they meet the respective requirements provided under this **Volume 1 (Request for Proposals)**.

### 2.4.2 Voluntary River Sampling -

- (a) MWC will provide interested entities with the opportunity to have access to the Yarkon River for the purpose of obtaining river water for the purpose of conducting samplings.
- (b) **Obtainment of Approval** - for this purpose, MWC will obtain the approval of the Yarkon River Authority ("YRA") for the obtainment of river water. The quantity to be drawn and the time(s) upon which access will be provided for this purpose shall be subject to the authority's discretion.

MWC does not confirm the entire quantity which may be requested by the entity shall be approved nor does it confirm the times upon which access to the river shall be requested will be approved however it shall be involved and assist (to the extent possible) the entity's request.

Entities will comply with all requirements of the YRA, sign and submit the documentation required and take all obligations mandated by the YRA.

- (c) **Samplings at the entities full and sole responsibility** – save for providing access for the purpose of drawing river water for the purpose of sampling, all activities which are or may be associated with the execution of sampling including but not limited to, appropriate equipment for drawing water, transportation of the water, the performance of the sampling, its analyses and any conclusion which the entity which may derive to based thereon –

It is noted that the possibility of voluntary river sampling shall be afforded to all interested entities including the entities identified under the aforesaid **Volume 4** (Reference Information).

- (d) **Voluntary River Sampling Timetable and Procedures** - further instructions regarding the voluntary river sampling shall be issued by MWC during the Tender process.
- (e) **Participants Request to execute Voluntary Sampling** – shall be issued to MWC's POC within the timeframe set forth in Section 2.5.

**2.5 Time Schedule**

Without derogating from MWC's discretion to alter any of the dates set forth in this **Volume 1** (Request for Proposals) as provided the provisions of Section 19.1 (*Postponement of Dates*) - it is in MWC's intention to conduct the Tender process as follows:

Mandatory Tenderers' Conference and Site Visit <i>[additional information provided under Section 4.2]</i>	<b>October 31, 2019 - 12:00</b> (noon)
Participant's Request to execute Voluntary Sampling	By November 28, 2019 (inclusive) <sup>4</sup>

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<sup>4</sup> Clarification notice no.2 item.4

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Execution of Voluntary River Sampling by Interested Participants <i>[additional information provided under Section 2.4.2]</i>	Shall be notified by MWC within the framework of a Clarification notice
Last date for submission of queries and requests for clarifications regarding the Contract Documents including Voluntary Pre-Ruling of Tender Bond <i>[additional information provided under Sections 11.1 13.13]</i>	<del>December 19<sup>5</sup>, 2019</del> <del>February 20, 2020<sup>6</sup></del> <b>April 20, 2020<sup>7</sup></b>
Submission Date	<del>January 30, 2020</del> <del>March 31, 2020<sup>5</sup></del> <b>May 27, 2020<sup>6</sup></b> as of <b>09:00 AM until 16:00 PM (local time)<sup>5</sup></b>

All dates and hours referred to under this **Volume 1** (*Request for Proposals*) and indicated in any clarification issued by MWC are local dates and hours (State of Israel).

**2.6 List of Tender Documents**

The Tender Documents issued for the purpose of guiding the Tenderers in preparing their Proposals, consist of the following Volumes and their respective Annexes, together with any amendments issued in accordance with Section 11.2 (*Amendment of Tender Documents*) and Section 19.3 (*Alterations and Revised Proposals*) hereof:

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<sup>5</sup> Clarification notice no.3 item.1

<sup>6</sup> Clarification notice no.4 annex B item.1

<sup>7</sup> Clarification notice no.6 item.1(c)

(a) **Volume 1 - Request for Proposals (RFP)**

**Tender Forms:**

<b><u>Tender Form</u></b>	<b><u>Title</u></b>	
<b>A</b>	Letter of Acknowledgement and Application to Attend Site Visit & Tenderers' Conference	
<b>B</b>	Tenderer's – General Information & Confirmation of Terms.	
<b>C</b>	Threshold Requirement - Public Entities Law <b>Approvals &amp; Affidavit</b>	
	<b>C(1)</b>	Public Entities Law – <b>Approvals</b>
	<b>C(2)</b>	Public Entities Law – <b>Affidavit</b>
<b>D</b>	Financial Threshold Requirements.	
<b>E</b>	Professional Threshold Requirements – Demonstration Tender Forms	
	<b>E(1)</b>	<b>Single Company</b> - Past Experience
	<b>E(2)</b>	<b>Joint Venture</b> - Past Experience
	<b>E(3)</b>	<b>Membrane Manufacturer</b> – Past Experience.
<b>F</b>	Undertaking for Industrial Cooperation [Attachment A of RFP Annex A]	
<b>G</b>	Commercial Proposal Tender Forms	
	<b>G(1)</b>	Commercial Proposal <b>Tender Form 1 – CAPEX.</b>
	<b>G(2)</b>	Commercial Proposal <b>Tender Form 2 – Guaranteed Membranes Replacement Rate.</b>
	<b>G(3)</b>	Commercial Proposal <b>Tender Form 3 – Guaranteed Energy Consumption.</b>
	<b>G(4)</b>	Commercial Proposal <b>Tender Form 4 – Guaranteed Chemical Consumption.</b>
	<b>G(5)</b>	Commercial Proposal <b>Tender Form 5 – Guaranteed Feed Water Flow.</b>
<b>H</b>	Mandatory Tender Bond	
<b>I</b>	Confirmation of Merging Company	

**Tender Annexes:**

<b><u>Tender Annex</u></b>	<b><u>Title</u></b>
<b>A</b>	ICA’s Requirements for Mandatory Industrial Cooperation
<b>B</b>	Commercial Proposal - Evaluation Methodology
<b>C</b>	Proposal’s Engineering Package - List of Submittals
<b>D</b>	Request for Clarifications (RFC)
<b>E</b>	Letter of Confirmation and Acceptance of All Addenda and Clarifications
<b>F</b>	MWC's Advisors
<b>G</b>	Contents of Proposal – Checklist <i>[will be distributed within the framework of a Clarification notice]</i>

- (b) **Volume 2 - Contract.**
- (c) **Volume 3 - Scope of Works (SOW).**
- (d) **Volume 4 - Reference Information**

Items (a) – (c) constitute the "**Tender Documents**".

The items constituting the "**Contract Documents**" are defined under Section 1.3 (*Contract Documents*) of **Volume 2 (Contract)**.

**2.7 Order of Precedence**

- (a) During the Tender process and until Signature Date, in the event of any event MWC determines a discrepancy exists between the provisions of **Volume 1 (Request for Proposals)** and **Volumes 2 (Contract)** or **3 (SOW)** including with respect to all questions and interpretation, **Volume 1 (Request for Proposals)** shall prevail over **Volumes 2 & 3**.

- (b) As of Signature Date in any event of any conflict or discrepancy between the provisions of **Volumes 2 (Contract) & 3 (SOW)** and this **Volume 1 (Request for Proposals)**, including with respect to all questions of interpretation, the provisions of **Volume 2 (Contract)** shall prevail over this **Volume 1 (Request for Proposals)**. The order of precedence of the Contract Documents, as of Signature Date, is provided in **Volume 2 (Contract)**.
- (c) At any time prior to or following Signature Date in any event of discrepancies within the provisions of **Volume 1 (Request for Proposals)**, within the provisions of **Volume 2 (Contract)** or within the provisions of **Volume 3 (SOW)** – should such be determined by MWC to exist - MWC shall instruct as per the prevailing provision and the Supplier shall act in accordance thereto and shall have no financial or other right, claim or demand associated with the fulfilment of MWC's said instruction.
- (d) By participating in this Tender process, Tenderers acknowledge and agree that **Volume 4 (Reference Information)** is intended for descriptive purposes and is provided as reference only, and hence shall have no binding effect and shall not impose any responsibility or liability on MWC, the Tender Committee, their consultants and anyone acting on their behalf, or on the Tenderer.

### **3. ELIGIBILITY AND PARTICIPATION REQUIREMENTS**

3.1 Entities who wish to participate in the Tender process are requested to execute and deliver the Letter of Acknowledgement, in the form set out in **Tender Form A (Letter of Acknowledgement and Application to Attend Site Visit & Tenderers' Conference)** by no later than 7 days before the date scheduled for the Site Visit and Tenderers' Conference as indicated in Section 2.5 above. **Tender Form A** shall be submitted to MWC via MWC's POC indicated in Section 11.1.1 (*Clarification of Tender Documents*) hence is not required to be resubmitted as part of the Proposal.

Notwithstanding any contrary provision, entities represented in the Mandatory Tenderer's Conference and subsequent Mandatory Site Visit, shall thereafter be referred to as "**Participants**". Participants who submit a Proposal shall thereafter be referred to as "**Tenderers**".

- 3.2 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 MWC.
- 3.3 The Proposal shall include, at the minimum, all items identified within this **Volume 1** (*Request for Proposals*) including Section 12 (*Preparation of Proposals*). Tenderers shall follow and comply with the format of this **Volume 1** (*Request for Proposals*) and complete, by typing, all the Forms in their entirety according to the particular requirements thereof (and additional documentation as required). The Forms, where applicable, are numbered according to the relevant Sections in this **Volume 1** (*Request for Proposals*) to which they each relate. For this purpose, the Forms attached to this **Volume 1** (*Request for Proposals*) are provided to the Tenderers electronically.
- 3.4 **Supplementary information from Tenderers** - beyond the information identified within this **Volume 1** (*Request for Proposals*) - in the form of brochures, financial reports, fact sheets etc., may be provided in typed format only. However, such supplementary information may not substitute the information required in accordance with the provisions of **Volume 1** (*Request for Proposals*). In any event such supplementary information contradicts information required under **Volume 1** (*Request for Proposals*) – as determined by MWC - the later shall supersede (without that derogating from MWC’s discretion to require clarifications with respect to the existence and resolution of such contradiction).
- Supplementary information should be labeled according to the relevant Section, to which it relates.
- 3.5 If a Participant is of the opinion it is unable to supply the required information in full or in part or comply with any requirement, for any reason whatsoever, it shall address MWC in writing in accordance with the procedures set forth in Section 11.1 (*Clarification of Tender Documents*). Absence of information may lead to disqualification of the Tenderer, at MWC’s sole discretion, after considering the nature of the missing information and the justification provided for any such omission. MWC may also apply for clarifications or require supplementary information from any of the Tenderer, as it may deem fit.



3.6 **A Tenderer, Member and Membrane Manufacturer and any Related Entity of the foregoing may not submit or participate (as applicable), by itself or with any other party, in the preparation or submission of more than one Proposal.** In the event this prohibition is not met then without derogating from any other right or discretion, MWC will reject all such Proposals and disqualify the participation of all involved Tenderers, Members and Membrane Manufacturers.

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

- (i) A corporation which exercises Control over the Tenderer, the Member or Membrane Manufacturer (as applicable); or
- (ii) A corporation which is Controlled by the Tenderer, the Member or Membrane Manufacturer (as applicable); or
- (iii) A corporation which is Controlled by the same corporation Controlling the Tenderer, the Member or Membrane Manufacturer (as applicable).<sup>8</sup>

3.7 Tenderers are under the obligation to conform, *inter alia*, with the Israeli **Antitrust Law, 5748-1988**. By signing and submitting **Tender Form A** (*Letter of Acknowledgement and Application to Attend Site Visit & Tenderers' Conference*) referred to in Section 3.1 above, 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.

### 3.8 **Nomination of an Authorized Representative**

Each Tenderer, whether a single legal entity per Section 5.11(a) or Joint Venture per 5.11(b), shall nominate a representative authorized to perform and sign on behalf of the Tenderer, throughout the Tender process, all or any of the actions, matters, agreements and documents and to receive all communications, documents and other material for and on behalf of the Tenderer (the "**Authorized Representative**").

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<sup>8</sup> Clarification notice no.2 item.1

Such authorization shall be in the form of a power of attorney, duly executed by each of the Tenderer or individually the Members thereof (as applicable) and duly authorized by the Tenderer's /Member's a legal consultant(s). The identity of the nominated Authorized Representative shall be made via **Tender Form A** (Letter of Acknowledgement and Application to Attend Site Visit & Tenderers Conference).

**4. INSPECTIONS OF THE SITE, MANDATORY TENDERERS' CONFERENCE AND SITE VISIT**

- 4.1 Without derogating from Sections 21.3 (*Information Supplied in the Tender Documents*) and 21.4 (*Independent Research and Inquiries*) hereof and from the Tender Documents, Participants may independently examine the area designated for the Project and its surroundings, and to interpret, verify and obtain directly and for themselves, at their sole responsibility and liability, all information that may be necessary or useful for preparing and submitting the Proposals including with regard to the provisions of Section 2.4 (*Pilot Tests*) and entering into the Contract including by way of interacting with any Relevant Authority.
- 4.2 A **MANDATORY** Tenderers Conference **and** subsequent Site Visit shall be held on the time set forth in Section 2.5 (Time Schedule). conducted held in the designated YTF site and adjacent surroundings. Interested entities shall enter the Ganei Yehushua parking lot (Ahuzat Hof) located on 94 Rokach St. and then proceed to the meeting point which shall be located in the western part of the parking lot. MWC reserves its right to commence the aforesaid Tenderers Conference and Site Visit after the designated hour (but is not required to do so). Interested entities are requested, for the sake of good order, to complete **Tender Form A** (*Letter of Acknowledgement and Application to Attend Site Visit & Tenderers' Conference*) and submit it to MWC's POC via the contact details indicated in the above Section 3.1, at least one week prior to the Tenderers' Conference and Site Visit. The submission of the aforesaid **Tender Form A does not constitute** a precondition of any sort including for the purpose of participation but is requested, *inter alia*, for MWC to prepare towards the Tenderers' Conference and Site Visit and identification of the Authorized Representative of the Tenderer. Accordingly, in any event **Tender Form A** was not submitted prior to the Tenderers Conference & Site Visit, MWC may request its completion afterwards.

- 4.3 Only information issued **in writing by MWC POC** during or following the Tenderers' Conference and the Site Visit shall be deemed an integral part of the Tender Documents. No verbal statements including those made at the Tenderers' Conference and the Site Visit shall be deemed binding upon MWC. MWC may distribute minutes of the Site Visit to all participants.
- 4.4 Questions relating specifically to directions to the Tenderers' Conference and Site Visit location may be raised directly with Eng. Galit Sasson via cell no. 050-8773256. All other question including with respect to any issue relating to the Tenderers' Conference and Site Visit excluding its location shall be raised in the form of a request for clarification as provided under Section 11.1 (*Clarification of Tender Documents*) hereunder and by the time set forth under Section 2.5 (*Time Schedule*) hereinabove.
- 4.5 A representative on behalf of each Tenderer shall be required to participate in the scheduled Tenderers Conference and Site Visit. In the event of a Tenderer which is a Joint Venture – the participation of a representative on behalf of one of the Members shall be sufficient. It is not required for the representative to be an employee of the Tenderer or Member (as applicable). 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 MWC both during the Conference and following during the Site Visit.
- 4.6 MWC reserves the right to organize and conduct, at its sole discretion, one or more additional Tenderers' Conference and/or Site Visits (one or more), after giving due notice to the Tenderers' Authorized Representatives, should it find such additional Tenderers' Conference/s and/or Site Visit/s to be beneficial to the Tender process. In any such event, participation in such *additional* Tenderer's Conference and Site Visit shall satisfy the Threshold requirements set forth under Section 7.2 (*Participation in the Tenderers' Conference and Site Visit*).

## 5. COMPOSITION OF TENDERERS

- 5.1 The Tenderer shall be either:
- (a) A **single Entity** (which is not a joint venture, not a consortium and not another unincorporated group of entities) that complies with the Threshold Requirements as stipulated hereunder. A single Entity Tenderer may be a **Local Company** or a **Foreign Company** and;

or alternatively

- (b) A **joint venture** comprised of **two** members. Each member shall be a single Entity (which is not a joint venture, not a consortium and not another unincorporated group of entities) while, at least, one of the members is required to be a Local Company (a “**Joint Venture**” or “**JV**”, “**Member**” or “**Members**”, respectively).

A Tenderer or Member, as applicable, may not be an individual.

- 5.2 A Tenderer comprised as per the above Section 5.1(a) shall be exempted from the Threshold Requirement set forth under Section 7.5.2 (*Joint Venture – Experience Threshold Requirement*) but will be required to meet all remaining Threshold Requirements as stipulated below including the requirement set forth under Section 7.5.1 (*Single Company Tenderer's – Experience Threshold Requirement*) and 7.5.3 (*Membrane Manufacturer*).

The Threshold Requirement set forth under Section 7.5.3 (*Membrane Manufacturer*) may be demonstrated by either the Tenderer or a Membrane Manufacturer on its behalf.

- 5.3 In the event the Tenderer is a Joint Venture, then the following provisions shall apply: Without derogating from its duty to comply with all remaining Threshold Requirements as stipulated below, it is hereby noted that with regard to the Threshold Requirements set forth under Section 7.5 (*Past Experience Threshold Requirement*), the Joint Venture shall be required to comply with **all three** Threshold Requirements set forth under Section 7.5 (*Past Experience Threshold Requirement*) (i.e. Section 7.5.1 (*Single Company Tenderer's – Experience Threshold Requirement*), Section 7.5.2 (*Joint Venture – Experience Threshold Requirement*) and Section 7.5.3 (*Membrane Manufacturer*)).

- (a) The Member of which experience is demonstrated for the purpose of complying with the Threshold requirements set forth under Section 7.5.1 (*Single Company Tenderer's – Experience Threshold Requirement*) shall hold, **at least, fifty one percent (51%)** of the Tenderer's holdings.

- (b) The experience of the aforesaid Member **may not** be demonstrated for the purpose of complying with the Threshold Requirement set forth under Section 7.5.2 (*Joint Venture – Experience Threshold Requirement*) which shall be demonstrated by the second Member.
- (c) The Threshold Requirement set forth under Section 7.5.3 (Membrane Manufacturer) may be demonstrated by one of the JV's Members or a Membrane Manufacturer on the JV's behalf.
- (d) The Joint Venture is not obligated to be incorporated as such in the Company's Registrar, but is obligated to an MOU containing, in minimum, the major principles of cooperation including explicitly stating the Members joint and several unlimited and irrevocable liabilities towards MWC per the Tender Documents.

A legal attorney's or legal consultant's confirmation of the existence of such MOU and compliance thereof with the aforesaid provisions shall be attached to **Tender Form B** (*Tenderer's – General Information & Confirmation of Terms*) of the Proposal. The Joint Venture is not obliged to attach the MOU itself to its Proposal unless requested by MWC to do so within the framework of Proposal clarifications.

- 5.4 **Change of Composition** - following Submission of the Proposals Tenderers will not change their composition, as indicated in the Proposal, unless the prior written approval of MWC was requested and provided and subject to the terms stipulated by MWC within its approval (should such be given at its sole discretion).

6. **INDUSTRIAL COOPERATION AUTHORITY’S APPROVAL OF TENDERER’S UNDERTAKING OF INDUSTRIEL COOPERATION AND IMPLEMENTATION PLAN**

- 6.1 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.
- 6.2 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.
- 6.3 Each Tenderer shall furnish along with the submission of its Proposal - per Article 5(c) of the Mandatory Tenders Regulations - a Foreign Supplier's Industrial Cooperation Undertaking and Implementation Plan (**Tender Form F**), all in accordance with the details provided and within **Tender Annex A** (ICA’s Requirements for Mandatory Industrial Cooperation) to this **Volume 1** (Request for Proposals).
- 6.4 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.
- 6.5 The ICA shall examine the Implementation Plan of the Preferred Tenderer. In the event that during the course of the ICA's examination of the industrial cooperation implementation plan (Tender Form F of the Proposal) it shall determine that the industrial cooperation implementation plan is not in compliance with the ICA's requirements and/or with applicable regulations, the Preferred 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 18.2 (*Selection of the Preferred Tenderer and Signature of Contract*)).

- 6.6 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, MWC may, at its sole discretion, disqualify the Proposal and exercise its rights with respect to the Second Ranked Tenderer.
- 6.7 For additional information concerning the fulfilment of the Industrial Cooperation Undertaking and additional undertakings and obligations to be fulfilled by the Supplier, Tenderers may address the ICA at:

**Industrial Cooperation Authority, Ministry of Economy**

86 Menachem Begin Rd.

P.O. Box 36049

Tel Aviv 67138, Israel.

Tel.972-3-734 7515

Fax.972-3-734 7639

**7. THRESHOLD REQUIREMENTS**

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

**7.1 Tender Bond Submission**

The Tenderer shall submit a Tender Bond, in accordance to the provisions of Section 13 (*Tender Bond*) and in the form set forth under **Tender Form H** (mandatory Tender Bond).

**7.2 Participation in the Tenderers' Conference and Site Visit**

A representative on behalf of each Tenderer shall be required to participate in the **mandatory** Tenderers' Conference and Site Visit referred to in Section 4.2 above.

In the event of a Joint Venture – the participation of a representative on behalf of one of the JV's Members shall be sufficient for the purpose of meeting this Threshold Requirement.

**A representative may not participate on behalf of more than one Tenderer or on behalf of Members of different Joint Ventures.**

**7.3 Approvals as per the Public Entities Transactions Law, 5736-1976**

- (a) Approvals testifying to proper bookkeeping practices or exemption thereof –

Each Tenderer or Member (as applicable) must provide all relevant approvals, in accordance with the provisions of the **Public Entities Transactions Law, 5736-1976**, and the regulations there-under, testifying to proper bookkeeping practices, in accordance with the **Income Tax ordinance and the Value Added Tax Law, 5736 – 1975** and the absence of debts, if applicable.

The approvals shall be attached to **Tender Form C(1)** (Public Entities Transactions Law – Approvals).

- (b) Affidavit pursuant to Article 2B of the **Public Entities Transactions Law, 5736-1976**

Each Tenderer or Member (as applicable) shall sign the affidavit provided in **Tender Form C(2)** (Public Entities Transactions Law – Affidavit) which shall be authorized by an attorney.

The aforesaid requirements set forth under Section 7.3(a) and 0(b) shall apply on a Tenderer or Member (as applicable) who is a Local Company but not upon a Tenderer or Member who is a Foreign Company. MWC reserves its right – as it may deem fit per its sole and full discretion - to require a Tenderer or Member (as applicable) who is a Foreign Company to supplement its submitted Proposal (after its submission) with the respective approvals which apply to it in its domicile.



#### 7.4 Financial Threshold Requirements

The following Financial Threshold Requirements shall be met by Tenderers formed of a single company or in the event of a Joint Venture – separately by each of the Members:

- 7.4.1 **Cashflow** – the Weighted Average cash flow from operating activities deriving of the three latest Financial Statements is **positive** (i.e. above zero).
- 7.4.2 **Profit** – – the Weighted Average profit deriving of the three latest Financial Statements is **positive** (i.e. above zero).
- 7.4.3 **Absence of Going Concern notice** – the latest Financial Statemen does not include a going concern notice (denoted in Hebrew as: "אזהרת עסק חיי" or "הערת" "עסק חיי").

##### Notes with respect to this Section 7.4:

- (a) "**Financial Statement/s**" - an annual audited consolidated financial statement which includes a report signed by the external auditor of the applicable entity, confirming its compliance with one of the accounting standards specified under Sub-Section 8.4(d) below.
- (b) The Financial Statements referred to in Sections 7.4.1 and 7.4.2 shall be the three Financial Statements for the years **2016, 2017** and **2018**.  
In the event a Financial Statement for 2018 does not exist (as shall be confirmed by the external auditor of Tenderer or Member (as applicable) - then the Financial Statements referred to in Sections 7.4.1 and 7.4.2 shall be the three Financial Statements for the years **2015, 2016** and **2017**.  
Accordingly the Financial Threshold Requirement set forth under Section 7.4.3 shall apply to the Financial Statement for 2018 unless such does not exist (as shall be confirmed by the external auditor of Tenderer or Member (as applicable) whereby the applicable Financial Statement shall be for the year 2017.
- (c) For the purpose of Sections 7.4.1 and 7.4.2 "**Weighted Average**" shall be apply as follows:
- (i) The weight of the most recent Financial Statement (2018 or 2017, as provided above) – shall be **50%**;
- (ii) The weight of the previous Financial Statement (2017 or 2016, as provided above) – shall be **34%**; and

- (iii) The weight of the earliest Financial Statement (2016 or 2015, as provided above) – shall be **16%**;

## 7.5 Technical Threshold Requirements

### 7.5.1 Single company Tenderer's

The Tenderer has:

- (a) Itself (alone or jointly with others) designed and commissioned; or
- (b) Itself (alone or jointly with others) designed and supervised the commissioning of; or
- (c) Itself (alone or jointly with others) was responsible towards the respective client for the design and commissioning of -

at least, 1 water treatment plant ("**WTP**") which complies with all requirements below–

- (a) construction began, at the earliest, on 1.1.2010<sup>9</sup>.
- (b) Operated<sup>10</sup>, prior to Submission Date, for, at least, 7,000 hours within a period of 2 years as of operation commencement.
- (c) Operation was or still is materially based upon the Tenderer's design<sup>11</sup> in submerged reinforced hollow fibers UF technology also in the event the Tenderer has executed or was responsible for the execution of design adaptations prior to or during operation.

For the purpose of this Section 7.5.1 a "**WTP**" shall mean a water treatment plant with a capacity of, at least, 1000 cubic meters per hour treating surface water to meet, at the minimum - prior to and without disinfection - the Guaranteed Value for each of the Parameters set forth in the table below:

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<sup>9</sup> The design of the WTP may have commenced earlier.

<sup>10</sup> With regard to this item (b) and following item (c) - also if operation was not executed by the Tenderer or Member (as applicable).

<sup>11</sup> Whether executed by it alone or with others per Sections 7.5.1(a) or (b) or responsible towards the respective client therefore per Section 7.5.1 (c).

**Table 1: Required Water Quality of the WTP.**

Parameter	Units	Guaranteed Value	Analysis Frequency
<b>Turbidity</b>	NTU	< 1	On-Line
<b>In a NDWTP(*):</b> Removal of Fecal Coli <b>In a DWTP(**):</b> Removal of total Coli (***)	log removal	≥ 4	2/week
<b>pH</b>		6.5 – 8.5	1/week

(\*) NDWTP = Non-Drinking Water Treatment Plant.

(\*\*) DWTP = Drinking Water Treatment Plant.

(\*\*\*) In cases the feed water fecal coli (in a NDWTP<sup>12</sup>) or Total Coli (in a DWTP) is lower than 10<sup>4</sup> CFU, then the product quality shall average at CFU≤1.<sup>13</sup>

The Tenderer shall indicate the parameters for each of the demonstrated WTPs within the table included in Section 7 of **Tender Form E(1)** and supplement it as required within the aforesaid **Tender Form E(1)**.

### 7.5.2 Joint Venture

The Member has:

- (a) itself (alone or jointly with others) designed and commissioned; or
- (b) Itself (alone or jointly with others) designed and supervised the commissioning of; or
- (c) Itself (alone or jointly with others) was responsible towards the respective client for the design and commissioning of -

at least, two (2) Treatments Plants ("**TP**")<sup>14</sup> **each** separately complying with all requirements below –

- (a) TP construction began, at the earliest, on 1.1.2010<sup>15</sup>.
- (b) TP operated<sup>16</sup>, prior to Submission Date, for, at least, 7,000 hours within a maximum period of 2 years as of operation commencement.

<sup>12</sup> Clarification notice no.9 item.2

<sup>13</sup> Clarification notice no.4 annex B item.3

<sup>14</sup> At least 2 TPs must be demonstrated. The 2 TPs may have been included in the same Project or each TP in a different Project.

<sup>15</sup> The design of both TPs may have commenced earlier.

<sup>16</sup> Regarding this item (b) and following item (c) - also if operation was not executed by the Member.

- (c) TP operation was or still is materially based upon the Tenderer's design<sup>17</sup> also in the event the Tenderer has executed or was responsible for the execution of design adaptations prior to or during operation.

For the purpose of this Section 7.5.2:

- (a) "**TP**" a filtration plant **or** a desalination plant **or** a wastewater treatment plant. Each TP, whether a filtration plant, a desalination plant or a wastewater treatment plant shall be of a capacity of, at least, 500 cubic meters per hour.
- (b) "**Design**" – shall mean the design, at least, of all following elements: (i) piping; (ii) civil engineering; (iii) electric - mechanical; and (iv) hydraulics.<sup>18</sup>

### 7.5.3 Membrane Manufacturer

The Membranes proposed by the Tenderer were installed, at least, in one UF Treatment Plant which complies with all requirements below –

- (a) The UF Treatment Plant has a minimum capacity of 1,500 m<sup>3</sup>/hr.
- (b) The UF Treatment Plant's construction began, at the earliest, on 1.1.2010<sup>19</sup>.
- (c) The UF Treatment Plant operated<sup>20</sup>, prior to Submission Date, for, at least, 7,000 hours within a maximum period of 2 years as of operation commencement.

For the purpose of this Section 7.5.3:

- (a) "**Membranes**" – submerged PVDF hollow fiber reinforced membranes with a maximum pore size of 0.1 µm and with a minimum tensile strength of 300N<sup>21</sup>.
- (b) "**UF Treatment Plant**" – treating wastewater or surface water<sup>22</sup>.

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<sup>17</sup> Whether executed by it alone or with others per 7.5.2(a) or 7.5.2(b) or responsible towards the respective client therefore per Section 7.5.2(c).

<sup>18</sup> Clarifications notice no.2 item.3

<sup>19</sup> The design of the UF may have commenced earlier.

<sup>20</sup> Also if operation was not executed by the Tenderer, Member or Membrane Manufacturer (as applicable).

<sup>21</sup> Clarifications notice no.4 item.2

<sup>22</sup> The UF Treatment Plant does not have to be operational upon Submission Date.

## 8. THRESHOLD COMPLIANCE DEMONSTRATION

### 8.1 Tender Bond –

Tenderers shall include within their Proposal an **ORIGINAL** Tender Bond to be prepared and submitted in accordance with the provisions of Section 13 (*Tender Bond*) in the form required under **Tender Form H** (Mandatory Tender Bond).

### 8.2 Tenderer's Conference and Site Visit–

In order to demonstrate compliance with the requirements specified in Section 7.2 (*Participation in the Tenderer's Conference and Site Visit*) – a representative on behalf of the Tenderer or JV's Members must participate. Such representative is to ensure its participation (in the conference **and** following site visit) was documented by MWC's POC. It will be the representative's exclusive responsibility to ensure that its participation, as provided above, was documented.

### 8.3 Approvals as per the Public Entities Transactions Law, 5736-1976 –

In order to demonstrate compliance with the requirements specified in Section 7.3(a) (*Approvals as per the Public Entities Transactions Law, 5736-1976*) -

8.3.1 For the purpose of Section 7.3(a) – the Tenderer shall attach to **Tender Form C(1)** the approvals identified under **Article 2** of the **Public Entities Transactions Law**.

8.3.2 For the purpose of Section 7.3(b) – the Tenderer shall complete and submit the affidavit provided under **Tender Form C(2)** and have the affidavit authorized by an attorney.

### 8.4 Financial Threshold Requirements –

For the purpose of demonstrating compliance with the aforesaid Sections 7.4.1 - 7.4.3 then:

(a) Tenderer's or Members (as applicable) whose Financial Statement are publicly published shall attach to **Tender Form D** their three latest Financial Statements.

In the event a Financial Statement for the year of 2018 does not exist – a confirmation to such by the external auditor shall also be attached to **Tender Form D** and the Financial Statements for the years 2015, 2016 and 2017 shall be attached.

- (b) Tenderer's and Members (as applicable) whose financial statement **are not** publicly published shall either: **(i)** act as provided under Section 8.4(a); or **(ii)** attach to **Tender Form D** a confirmation signed by the external auditor (who has audited the Financial Statements) confirming compliance with each of the Financial Threshold Requirements set forth under Section 7.4 (Financial Thresholds).

In the event a Financial Statement for the year of 2018 does not exist – a confirmation by the external auditor shall also be attached to **Tender Form D**.

- (d) The Financial Statements of the Tenderer or in the event of a JV – each of its Members are to be duly prepared and presented in accordance with one of the following:

- (i) Israeli GAAP (including Standard No. 51 of the Institute of Certified Public Accountants in Israel);
- (ii) US GAAP (published by the FASB);
- (iii) International Financial Reporting Standards (including, with respect to the cash flow statements, IAS (International Accounting Standards) IAS No. 7 and IFRS updates);

Any of the above shall be duly executed by the relevant entity and duly audited and signed by their external auditors.

A Tenderer or Member (as applicable) whose financial statements are presented based on different accounting principles than those listed under items (i) – (iii) above, is required to submit a specific RFC to approve submission of such financial statements. MWC shall consider each request on a case by case basis and may issue an Addendum as a result thereof or reject such request.

- (e) Without derogating from the above, all the Financial Statements must include a balance sheet, a profit and loss account, a cash flow statement, and the auditor's report and notes.
- (f) A legal entity whose Financial Statements do not include cash flow statements, should provide such statements in accordance with one of the GAAP versions set out above (as applicable), duly executed by its external auditors.
- (g) The Financial Statements will be provided either in English or in Hebrew, but in no other language.

- (h) Without derogating from the foregoing, in the event the recent available Financial Statement contain comparative figures for the two previous fiscal years submission of the Financial Statements for the two previous fiscal years shall not be required and in such event comparative figures in the most recent available financial statement shall be presented for the purpose of demonstrating compliance with the Financial Threshold Requirements.

**8.5 Past Experience – Professional Threshold Requirements –**

8.5.1 For the purpose of demonstrating compliance with the requirements specified in Section 7.5 (*Past Experience – Threshold Requirement*) - the Tenderer shall submit –

- (a) For the purpose of Section 7.5.1 (*Single Company's Tenderer's – Past Experience*) - the Tenderer shall complete and submit **Tender Form E(1)**.
- (b) For the purpose of Section 7.5.2 (*Joint Venture – Past Experience Requirement*) – the Member<sup>23</sup> shall complete and submit **Tender Form E(2)**.
- (c) For the purpose of Section 7.5.3 (*Membrane Manufacturer*) – the Tenderer (and Membrane Manufacturer) shall complete and submit **Tender Form E(3)**.

8.5.2 In order to allow MWC to execute its own verifications, in the event deemed necessary by it, for the purpose of demonstrating compliance with Sections 7.5.1, 7.5.2 and 7.5.3 Tenderers may only reference projects executed in countries with which the State of Israel holds diplomatic relations.

**8.5.3 Demonstration of Compliance by Merged Companies**

- (a) For the purpose of compliance with any of the 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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<sup>23</sup> Clarification Notice no. 10 item 2.

- (b) In case of such reliance on an Absorbed Company’s professional experience, the Tenderer shall attach, as **Tender Form I** (*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.
- (c) “**Absorbed Company**” shall mean a company which has merged prior to Submission Date with the Tenderer, Member or Membrane Manufacturer (as applicable), 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.

In the event a Tenderer or Member wishes to be attributed with the experience of an entity with whom such Tenderer or Member has merged with in a framework or manner which is not compatible, fully or partially, with the stipulations provided under the above Section 8.5.3(b) – such Tenderer or Member shall approach MWC with a detailed RFC addressing the matter and MWC shall consider each request on a case by case basis and may issue an Addendum as a result thereof or reject such request.

#### 8.6 **Supporting Reference and Documentation –**

MWC distinguishes between the Tenderers' compliance upon Submission Date with the respective Thresholds Requirements set forth under Section 7 (*Threshold Requirements*) and between the documentation intended to demonstrate such compliance.

Accordingly, MWC may determine a Tenderer has in fact met the Threshold Requirements (or any other requirement set forth under this **Volume 1**) also in the event supporting documentation were furnished by the Tenderer after Submission Date provided however such documentation proves the Tenderer had met the respective Threshold Requirement by Submission Date.



MWC 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 compliance the Tenderer's compliance upon Submission Date - was prepared pursuant thereto. As such MWC may seek documentation relating to past experience which was not included initially in the Proposal.

In addition and without derogating from MWC's right to require clarifications to the Proposal, as set forth hereinabove and hereunder, MWC 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 Proposal's part or cite corresponding with the respective requirement.

## 9. **COMMERCIAL PROPOSAL**

9.1 Within the framework of **Stage 3 – Commercial Proposal Evaluation** per Section 15.3 of **Volume 1** (Request for Proposals), MWC shall review and evaluate the Commercial Proposals of the Proposals which MWC determined, within the framework of Stage 2 (Section 15.2), the Engineering Package to be a compatible one.

9.2 The Commercial Proposal consists of the following Forms:

- (i) **Tender Form G(1)** - Capex;
- (ii) **Tender Form G(2)** - Guaranteed Membrane Replacement Rates;
- (iii) **Tender Form G(3)** - Guaranteed Energy Consumption;
- (iv) **Tender Form G(4)** - Guaranteed Chemicals Consumption;
- (v) **Tender Form G(5)** - Guaranteed Feedwater Flow.

(“**Commercial Proposal**”, “**Commercial Proposal Forms**” or “**Commercial Proposal Tender Forms**”)

9.3 In addition, **Volume 1** (Request for Proposals) includes, with respect to the Commercial Proposal (but not forming part thereof), the following documents:

- (i) **Tender Annex B** (Commercial Proposal – Evaluation Methodology) providing a description of the different components of the Commercial Proposal and the manner by which the Tenderer is to prepare its Commercial Proposal.

(ii) **Commercial Proposal – Excel Sheet –**

The Tenderer may use this document as an assisting tool simulating the manner by which its Commercial Proposal will be reviewed and evaluated by MWC. It is the full and sole responsibility of the Tenderer to ensure all data inserted by in within the Commercial Proposal Forms is compatible with the requirements of the Tender Documents.

(iii) MWC shall gather all data proposed by the Tenderer **within Commercial Proposal Tender Forms 1 – 5** above and insert them into the respective fields of the Excel Sheet thereby determining, *inter alia*, the Total Water Cost and Price Proposal:

- (a) **Total Water Cost** - Without derogating and subject to MWC's rights, authorities and discretion per the Tender Documents and Laws and Regulations - the Preferred Tenderer shall be the Tenderer whose Total Water Cost (**TWC**) shall be found by MWC to be the **lowest**.

Note the Preferred Tenderer's Price Proposal (PP) may not have been the lowest PP of all Tenderers as opposed to its TWC which is required to be the lowest.

The TWC shall be calculated by MWC in accordance with the formula provided in Section 4 of **Tender Annex B** (Commercial Proposal – Evaluation Methodology).

- (b) **Price Proposal** - the PP of the Preferred Tenderer (the Tenderer whose TWC was found by MWC to be the lowest) shall constitute the Contract's Final Fixed Lump Sum as referred to under Section 15 (Contract Price) of **Volume 2** (Contract).

The PP is to be proposed by the Tenderer in **Tender Form G(1)** (Capex) – item 3 **in one of the following currencies:**

- a) new Israeli shekels (NIS); or
- b) Us dollars; or
- c) Euro.

The proposed PP shall be proposed entirely (100%) in one of the currencies identified above (the PP shall not be divided) and shall exclude VAT. Contract **Appendix (I)** (Linkage of NIS Payments) - provides the manner by which linkage shall be calculated by MWC for NIS currency only.

For all purposes regarding Tender stage (save for the Tender Bond sum which shall indicated in NIS as per Section 13.1 and **Tender Annex H** and sections 12.3.10 and 21A) including for the purpose of evaluating, scoring and comparing the Proposals, scoring the TWP and considering the proposed PP with MWC's Price Estimate, as provided under section 17.3 (a), Price proposals which were proposed in Euro shall be converted by MWC to NIS per the Euro – NIS Exchange rate and price proposals which were proposed in US dollars shall be converted by MWC to NIS per the US Dollar – NIS Exchange rate. The Contract Price of the Supplier shall be in the currency and sum proposed by it in its submitted **Tender Form G(1)** (Capex).<sup>24</sup>

- 9.4 **Applicability of the proposed values upon Mode 1 and Mode 2 Operation** - the values proposed by the Tenderer within the Commercial Proposal Forms shall apply both to Mode 1 operation and Mode 2 operation (in the event the option referred to in Section 8 (MWC's - Mode 2 Option) in **Volume 2** (Contract) is exercised by MWC.

Accordingly, in the event MWC exercises "**Mode 2 Option**" (an option reserved exclusively to it) the requirements and the undertakings taken by the Tenderer vis-à-vis the data proposed by it within the Commercial Proposal Forms will be applied thereon, **by MWC**, 'as is' and shall bind the Supplier.

With respect to the additional payment the Supplier will be entitled for in the event MWC exercises Mode 2 option – refer to the provisions of Section 8.4.3 (Options Costs) of **Volume 2** (Contract)<sup>25</sup> defining the **Option's Lump Sum** (being the sole payment the Supplier will be entitled for in the event the Option is exercised).

- 9.5 **Liquidated Damages for Non-compliance with Guaranteed Performance Criteria** (Section 16.2 of **Volume 2** (Contract)) – will be calculated and applied in accordance with the provisions of **Appendices F** (Guaranteed Performance Criteria & LD Calculation) and in view of the respective commitments the Tenderer has proposed in **Tender Forms G(3), G(4) and G(5)** which shall continue to apply as is.

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<sup>24</sup> Clarification notice no.7 item (b)(2)

<sup>25</sup> Clarification notice no.7 item (c)(2)

- 9.6 All prices shall be indicated in the currency proposed by the Tenderer, per the provisions of section 9.3(III)(b), for the proposed price proposal and shall **not include VAT** which, in accordance with the applicable Laws and Regulations and Tender Documents, shall be added by MWC to the payments the Supplier shall be entitled for as per the provisions of **Volume 2 (Contract)**.<sup>26</sup>
- 9.7 The prices shall take into account and reflect all aspects of associated and related with the execution of the works under such items also in the event they are not explicitly referred to therein. The prices shall be deemed to include all taxes, levies, duties and all other sums payable by the Supplier under the Contract Documents and all Laws and Regulations including foreign laws and regulations which may apply on this engagement or Supplier.
- 9.8 All, terms, stipulations and conditions relating to payments are set forth in **Volume 2 (Contract)**.

## 10. LANGUAGE OF TENDER PROCESS

- 10.1 During the Tender process, 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 MWC in the Tender Documents.
- 10.2 All Proposals (including all annexes, maps, drawings, tables and diagrams) and any supplementary information, query, or request for clarification, and any other communication or submission, shall be submitted in the English language. Any documents, certificates and printed literature, provided in any other language, shall be accompanied by a certified English translation, authenticated by a public notary, which shall prevail in the event of any discrepancy between the notarized translation and the original form.

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

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<sup>26</sup> Clarifications notice no.7 item (b)(3)

- 10.3 Notwithstanding the above, all official documents and certificates, issued by MWC or any Relevant Authority in Hebrew, and any of the Tenderers' constitutional and other documents, submitted to any Relevant Authority (such as audited financial reports and other accounting statements), that were originally written in Hebrew, may be submitted in Hebrew. MWC reserves the right to require, at the Tenderer's expense, a notarized translation of any such written material.
- 10.4 The language of the different documents to be prepared and issued following Signature Date shall be determined in accordance with the provisions set out in **Volume 2 (Contract)**.

## **11. TENDER DOCUMENTS**

### **11.1 Clarification of Tender Documents**

- 11.1.1 Participants requiring any clarifications regarding the Tender Documents may address such requests by mail to MWC's point of contact:

Mrs. **Lihl Cohen**, MWC's Procurement Department

Via Email: [Lcohen@Mekorot.co.il](mailto:Lcohen@Mekorot.co.il)

Tel – Landline – 03-6230650

(“MWC's POC”)

- 11.1.2 The Participants' queries and requests for clarifications must be delivered in the form attached as Tender **Annex D (Request for Clarification (RFC))** hereto. All queries and requests for clarifications must be received by MWC via MWC's POC by the time set for this purpose in Section 2.5 (Time Schedule). Notwithstanding, in order to improve the efficiency of the Tender process, 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 practicably possible.
- 11.1.3 Any queries and requests for clarifications, which shall not be delivered in the form attached as **Tender Annex D (Request for Clarification (RFC))** hereto or which shall be received by MWC after the aforesaid period, will be accepted or rejected at the sole discretion of MWC.

- 11.1.4 Participants' that discover any discrepancies, ambiguities, errors, omissions or contradictions in the Tender Documents, are obliged to notify MWC in writing. Where a clarification is not sought, MWC's interpretation of the Tender Documents shall prevail.
- 11.1.5 The decision whether to respond to queries and requests for clarifications will be – at any time - at the sole discretion of MWC.
- 11.1.6 Details of the queries and requests for clarifications and the responses thereto shall be issued in writing to all Participants, unless decided otherwise by MWC. The identity of the Participant requesting the clarification shall not be disclosed.
- 11.1.7 MWC 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 process. In addition, MWC may issue clarifications at its initiative.
- 11.1.8 Only such information, which shall be provided in writing by MWC's POC to all the Participants and marked as an addendum according to the instructions of Section 11.2 (*Amendment of Tender Documents*) hereunder, or correspondence which shall be communicated to any Participant in writing by MWC's POC, shall be considered as part of this Request for Proposals and hence shall be binding upon MWC and the Tenderers.
- MWC shall not be bound by, and the Participants shall not rely on, any verbal statement, interpretation or clarification to the Tender Documents.
- 11.1.9 MWC's responses to clarifications and any other information distributed by it shall be signed by the Participants' Authorized Representative and attached to the Proposal thereby constituting an integral part thereof.

11.1.10 MWC shall distribute its response to clarifications and clarifications it deems to initiate to all Participants<sup>27</sup> (via the email address each has indicated in **Tender Form A** (Letter of Acknowledgement and Application to Attend Site Visit & Tenderer's Conference). In addition clarification notices shall be upload to MWC's website at: <http://www.mekorot.co.il/Heb/newsite/Auction/Pages/AuctionHome.aspx> - under the Tender No. **R-42/2019** ("MWC's Website").

Notwithstanding it at all times shall remain the Participants sole and exclusive responsibility to ensure via MWC's Website that they are always updated with regard to any notice uploaded with respect to this Tender. Although MWC intends on distributing Participants with notices relating to the Tender – it will not bear any responsibility whatsoever for any failure for doing so – as it is the Participants' sole responsibility to follow, via MWC's Website, any notification MWC may issue.

## 11.2 Amendment of Tender Documents

11.2.1 At any time prior to the Submission Date, MWC 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 11.1 (*Clarification of Tender Documents*) above.

11.2.2 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 Tenderers.

11.2.3 MWC intends to distribute addenda as early as possible in order to afford the Tenderers reasonable time in which to take an addendum into consideration in the preparation of their Proposals. MWC may, at its sole discretion, postpone, to the extent necessary, the Submission Date, in accordance with Section 19.1 (*Postponement of Dates*) herein below.

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<sup>27</sup> Entities who have participated in the Participants' Conference and Site Visit.

- 11.2.4 Tenderers will be obligated to accept any addendum and clarification and shall acknowledge receipt thereof in writing, by mail, e-mail or fax, to MWC's POC referred to in the aforesaid Section 11.1.1, within 2 Working Days following issuance thereof by MWC (unless indicated otherwise by MWC).
- 11.2.5 Should MWC issue an addendum or a clarification Tenderers shall confirm acceptance thereof by submitting an executed copy thereof within their Proposal in addition to the attached **Tender Annex E** (*Letter of Confirmation of Acceptance of all Addenda and Clarifications*). Should MWC 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. After acceptance thereof, any such addendum or clarification shall be attached by MWC to the Tenderers' Proposals and shall constitute an integral part thereof. Any Tenderer which chooses not to amend its Proposal at such circumstances shall remain bound to its Proposal as submitted.

## 12. PREPARATION OF PROPOSALS

### 12.1 General

- 12.1.1 The Tender Documents set out MWC's general requirements in respect of the Project. These requirements are the minimum requirements with which the Proposals must comply with.
- 12.1.2 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 12.2 (*Documents Comprising 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.



- 12.1.3 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 MWC. MWC may, at its sole discretion, reject any Proposal containing any such deviations or omissions, or demand the Tenderer to amend its Proposal as per the provisions of this **Volume 1** (*Request for Proposals*). MWC 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.
- 12.1.4 MWC 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 – 3**.

## **12.2 Documents Comprising the Proposal**

- 12.2.1 **Threshold Documentation** – shall be prepared and submitted as per the provisions of Section 8 (*Threshold compliance Demonstration* ).
- 12.2.2 **Engineering Package** – as referred to under **Tender Annex C** Proposal's Engineering Package - List of Submittals.
- 12.2.3 **Commercial Proposal** – the Tenderer's Commercial Proposal as referred to in the above Section 9 (Commercial Proposal).
- 12.2.4 **Clarifications** issued by MWC until Submission Date.

The Proposal does not need to include **Volumes 1 - 4**) whereas the submission of a Proposal testifies to the Tenderer's complete and irrevocable acceptance to the contents thereof. With respect to **Volumes 1 – 3**, see the provisions of Section 18.2(c)(ii)(iv). Attached hereto as **Tender Annex G** is a list detailing the contents of the Proposal – **Annex G** (*Contents of Proposal - Checklist*).

## **12.3 Format and Signing of Proposals**

- 12.3.1 Proposals shall be prepared using the following software only:
- 12.3.1.1 Drawings shall be in AutoCAD version 2016 or newer version;

12.3.1.2 Word process documents are to be in MS Word 2016 or newer version;

12.3.1.3 Spreadsheets are to be MS Excel 2016 or newer version;

12.3.1.4 Schedules are to be in Microsoft Project 2016 or newer version.

Tenderers shall not submit their Proposals in any other electronic format without MWC's prior written approval.

12.3.2 In any event Tenderer's are required to include within their Proposals Forms attached to this Request for Proposals, the Tenderers shall comply with the format of such forms and shall complete, by typing, all the forms in their entirety according to the requirements thereof.

12.3.3 The Proposals shall be clearly divided into **4** separate parts which shall include and be marked as follows:

(a) **Part 1**. This Part 1 shall include all contents of the Proposal, as identified under Section 12.2 (*Documents Comprising the Proposal*), **except:**

1. The **Engineering Package**, referred to under Section 12.2.2 which shall be inserted separately within **Part 2** as provided in Section 12.3.3(b) hereunder;
2. The **Commercial Proposal**, referred to Section 12.2.3 above, which shall be inserted separately within **Part 3** as provided in Section 12.3.3(c) hereunder; and
3. The Tenderers' **Undertaking for Industrial Cooperation (Tender Form F (Undertaking for Industrial Cooperation))** which form **Part 4** as provided in Section 12.3.3(d) below.

The ORIGINAL Tender Bond to be included within Part 1 of the Proposal shall be inserted into a separate sealed envelope which will read "**Tender no. R-42/2019 Part 1 - Tender - Bond**". 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. R-42/2019 - Proposal Part 1**".

- (b) **Part 2.** The **Engineering Package**, referred to in Section 12.2.2 above – shall be inserted into a sealed envelope which shall be marked as "**Tender no. R-42/2019 - Proposal Part 2 – Engineering Package**".
- (c) **Part 3.** The **Commercial Proposal**, in Section 12.2.3 above – shall be inserted into a sealed envelope which shall be marked as "**Tender no. R-42/2019 - Proposal Part 3 – Commercial Proposal**".
- (d) **Part 4.** The Tenderer's Undertaking for Industrial Cooperation and associated Preliminary Program referred to in Section 6 (Industrial's Cooperation Authority's Approval of Preferred Tenderer's Undertaking for Industrial Cooperation). The undertaking of the Preferred Tenderer shall be provided for the ICA's review and approval or comments (for the Preferred Tenderer to address and comply with). The undertaking shall be inserted into a sealed envelope which shall be marked as "**Tender no. R-42/2019 - Proposal Part 4 – ICA Undertaking**". Note the ICA's approval constitutes one of the Preconditions for Contract's signature as indicated under Section 18.2. In any event required by the ICA – the Preferred Tenderer shall amend and supplement its undertaking per the ICA's instructions.
- 12.3.4 All Proposal documents must be typed legibly and indelibly and duly signed by the Tenderers and by the authorized signatories of any other required signee. 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.
- 12.3.5 Tenderers shall submit one (1) original and five (5) identical copies of the documents comprising each Proposal which shall be submitted by courier together with three (3) electronic copies, as follows:
- (a) (a) USB no. 1 – a copy of part 1, as provided in section 12.3.3(a);
  - (b) (b) USB no. 2 – a copy of part 2, as provided in section 12.3.3(b);
  - (c) (c) USB no. 3 – a copy of part 3, as provided in section 12.3.3(c).

Each part shall be submitted in both Microsoft Word and PDF format on the USB<sup>28</sup>.

Notwithstanding the foregoing The Tender Bond as set out in Section 13 (*Tender Bond*), shall be submitted within Part 1 in one (1) original only and shall be attached to the original copy of the Proposal.

- 12.3.6 The original set of the Proposal documents shall include the original signatures on all documents, in accordance with Section 12.3.4 and 12.3.5 hereof. The other copies of the Proposal documents submitted in accordance with the provisions of Sections 12.3.4 and 12.3.5 shall include the complete set of the Proposal documents (other than the Commercial Proposal and Tender Bond which shall be made, respectively, in accordance with the provisions of Section 12.3.5(c)0 above).
- 12.3.7 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 12.2 (*Documents Comprising 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, MWC, at its sole discretion, shall determine the prevailing Proposal documents.
- 12.3.8 In the event deemed applicable, Tenderers shall mark clearly on Copy no. 2 those parts that contain, to the Tenderers' opinion, information of a commercially sensitive or secret nature and shall mark such copy as "**Copy no. 2 - Containing Tenderer's Confidentiality Statement**". General confidentiality statements shall be disregarded. Notwithstanding, it is hereby emphasized that all data included by the Tenderer in its Commercial Proposal and Tables 1 – 4 and including all values and prices shall not be deemed to constitute information of a commercially sensitive or secret nature. For the avoidance of any doubt, MWC shall not be bound to accept the Tenderers' confidentiality statements as marked or any restriction therein, and these are provided to MWC's convenience without derogating from MWC's right and discretion as provided under **Article 21(5)** of the Mandatory Tender Regulations, 1993 - 5753.

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<sup>28</sup> Clarification Notice no. 10 item 3

- 12.3.9 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 MWC unless determined otherwise by MWC.
- 12.3.10 Review of the Proposal, of which Tenderer was declared as the Preferred Tenderer, shall be conducted as per the provisions of the aforesaid Article 21(5) while Tenderers shall be required to bear expenses in the sum of two hundred (200) NIS per each hour MWC or any entity on its behalf is involved in the preparation and performance of the requested review. In the event a Tenderer wishes to receive a copy of the Proposal (excluding information MWC accepts to constitute confidential information) – it shall bear expenses equal to 0.5 NIS per page (in addition to the aforesaid sum).
- 12.3.11 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 MWC, 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. MWC may disregard any alterations, reservations, interlineations, additions or erasures included in the Proposal which were not approved by it in advance. In the event MWC decides to exercise its said right without it being obligated to do so, such Tenderer will be to its Proposal while disregarding any such alterations, reservations, interlineations, additions or erasures.

### 13. TENDER BOND

13.1 **General** - each Tenderer shall furnish, as part of its Proposal, a Tender Bond in favor of MWC in the sum of **200,000** NIS in the form set forth under **Tender Form<sup>29</sup> H** (Mandatory Tender Bond). The Tender Bond shall be an autonomous, irrevocable and unconditional on demand bank guarantee, issued at the Tenderers' request (or any of its Members as stipulated below) by:

- (i) A banking corporate in Israel (denoted in Hebrew as: תאגיד בנקאי) which is licensed per the provisions of Article 4(A)(1) of the **Banking (Licensing) Law, 5741-1981**; or
- (ii) An Israeli insurance **company** (per the provisions of Article 15(A)(1) of **Control of Financial Services (Insurance) Law, 5741-1981**.

Please note that in such event the Tender Bond should be issued directly by an insurance company as stipulated above and not through an insurance agent.<sup>30</sup>

13.2 **Single Tender Bond for Single Entity Tenderer** - in the event of a Tenderer who is a single Entity (as referred to in Section 5.1(a)) – such Tenderer shall submit **one** Tender Bond at the request of the Tenderer.

13.3 **Number of Tender Bond for a Tenderer who is a Joint Venture** - In the event of a Tenderer who is a Joint Venture (as referred to under Section 5.1(b)) the JV may submit its Tender Bond in accordance to one of the following options:

- (i) Submission of one Tender Bond at the request of both Members; **or**
- (ii) Submission of one Tender Bond at the request of one of the Members; **or**
- (iii) Submission of two Tender Bonds – each of the Tender Bonds at the request of both Members provided the sum of both Tender Bonds accumulate to the Tender Bond Sum; **or**
- (iv) 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 to the Tender Bond Sum.

The optional submission of two Tender Bonds shall not derogate from the Members joint and several undertakings and full and sole responsibility.

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<sup>29</sup> Clarification notice no.2 item 2

<sup>30</sup> Clarification notice no.7 item (c)(46)

- 13.4 **Original Tender Bond** - Tenderers shall submit the **original** Tender Bond within the Proposal.
- 13.5 **Validity** - the Tender Bond shall be in effect as of the Proposal's Submission and until the date set forth in **Tender Form<sup>31</sup> H** (Mandatory Tender Bond). MWC may demand at its sole discretion the extension of the Tender Bond for an additional accumulative period of up to 6 Months.
- 13.6 **MWC's Forfeiture of the Tender Bond** - MWC may forfeit the aforesaid Tender Bond, in whole or in part, in accordance with the provisions of Article 16B(b) to the **Mandatory Tenders Regulations, 5753 – 1993**.
- 13.7 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 (and its compliance with all respective Preconditions for Signature) in the form attached hereto or as amended by MWC during the Tender process and the execution of the Project on the basis of its Proposal, all in accordance with the provisions of this Request for Proposals.
- 13.8 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 extension are at the Tenderer's full and sole responsibility.
- 13.9 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 ten (10) Working Days after Declaration or upon expiry of the Tender Bond, whichever occurs earlier. The Preferred Tenderer Tender Bond shall be returned to it upon prior coordination within the period of five (5) Days after Signature Date.
- 13.10 **Second Ranked Tenderer - Tender Bond**
- (a) Within 14 Working Days following receipt of the MWC's notice of its selection of the Preferred Tenderer, the Second Ranked Tenderer shall – if instructed to by MWC - extend the validity of its Tender Bond for an additional period of 6 months. MWC 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 13.10.

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<sup>31</sup> Clarification notice no.2 item.2

- (b) Subject to the extension of its Tender Bond, *inter alia*, in accordance with the provisions of this Section 13.10 (Second Ranked Tenderer - Tender Bond), MWC shall pay the Second Ranked Tenderer with the actual direct costs it demonstrates that it had incurred as a result of the Tender Bond's extension made per MWC's instruction (for the actual period of extension). MWC may require, for this purpose, supportive documentation testifying and demonstrating the direct costs incurred.

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 MWC to transfer the sum it may be entitled for as stipulated above.

- (c) 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 MWC, such payment shall be made 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 MWC 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.
- (d) The extension of the Tender Bond by the Second Ranked Tenderer shall not provide it with any right or claim towards MWC including with regard to the results of the Tender as determined by MWC nor shall MWC be required to nominate the Second Ranked Tenderer as the Preferred Tenderer regardless of whether or not MWC has instructed for the extension of its Tender Bond.

### 13.11 Compatibility of the Tender Bond with the RFP's mandatory 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 form set forth under **Tender Form<sup>32</sup> H** (Mandatory Tender Bond).

### **13.12 Validness of Tender Bond**

It is hereby explicitly clarified that albeit MWC'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 MWC with all required supporting certifications including the Tender Bond's issuers confirmation testifying to such extension.

### **13.13 Voluntary Pre-Ruling of Tender Bond**

- (a) Following the provisions of Section 13.11 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, MWC encourages all Participants to submit their Tender Bond in the form set forth in **Tender Form H** (Mandatory 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 MWC as set forth in the Tender Documents.
- (c) In order to minimize the possibility of non-conformities or deficiencies in the Tender Bond, MWC will enable the Participants to submit a draft of the intended form of Tender Bond, for MWC's review ("**Voluntary Pre-Ruling of Tender Bond**").
- (d) MWC 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.

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<sup>32</sup> Clarification notice no.2 item.2

- (e) MWC's comments pursuant to the Voluntary Pre-Ruling of Tender Bond process shall be provided on an equal basis to all Participants. MWC may provide to all Participants any approved form of a bond, submitted to it, including by approving any deviation from the **Tender Form H** (Mandatory Tender Bond), without disclosing the submitting Participants' identity.
- (f) MWC'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 **Tender Form H** (Mandatory Tender Bond).
- (g) Notwithstanding whether the Participant submitted a draft form of tender bond, whether MWC 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.
- (h) Submitting the Tender Bond draft to MWC will not impose any obligation on MWC towards the submitting Participant or any other Participant and MWC 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 MWC and the Participants. It is only an instrument of MWC, providing the Participants with an opportunity to reduce the risk of disqualification due to non-compliant Tender Bonds.
- (j) All Tender Bonds submitted to MWC as part of the Voluntary Pre-Ruling of Tender Bond process, must be submitted by the time set for this purpose in Section 2.5 (Time Schedule), as may be amended by MWC, in order for MWC to perform the Voluntary Pre-Ruling of Tender Bond process. MWC will provide its comments, subject to the aforesaid qualifications regarding MWC's comments as noted above, to the Participant no later than 7 Days prior to the Submission Date, as may be amended by MWC.
- (k) Submittal of a Tender Bond draft by a Participant for MWC's Voluntary Pre-Ruling of Tender Bond will not impose any obligation on such Participant to submit a Proposal and MWC 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. Though the process is voluntary, MWC does encourage Participants to exercise this process.

## 14. SUBMISSION OF PROPOSALS

### 14.1 Instructions for Submission

- (a) The Proposals shall be submitted in person to the designated tender box which shall be located at the Procurement Department located in corridor C` floor no. 2 at MWC's offices which address is 9 Lincoln St, Tel-Aviv)
- (b) Tenderers are required to maintain one complete copy of their submitted Proposals and copies of all their correspondences with MWC and all addenda issued thereby after the Submission Date.

### 14.2 Submission Date

- (a) Parts 1 – 4 of the Proposal, as referred to in Section 12.3.3 above, shall be inserted into one binder which shall be marked "**Tender Number R-42/2019**". Proposals must be deposited in the designated tender box on the date set forth under Section 2.5 (herein above and below: the "**Submission Date**"). It shall be the Tenderer's sole responsibility to ensure its representative approaches MWC's POC for the purpose of being provided with an approval confirming the Proposal was submitted.

**Note and consider new traffic arrangements in the vicinity of MWC's offices and roads leading thereto which are likely to impose access and parking difficulties.**

- (b) MWC will reject any Proposal, which shall be received by MWC later than the Submission Date.
- (c) Should MWC decide to exercise any of its rights and hold advanced stage/s, in accordance with Section 17 (*Negotiation and Advanced Stages*), it shall schedule additional Submission Dates, for such stage, and all provisions contained in this Request for Proposals regarding the Submission Date shall apply, *mutatis mutandis*.

## 15. EXAMINATION AND EVALUATION OF PROPOSALS

The Proposals shall be reviewed in three<sup>33</sup> stages:

### 15.1 Stage 1 – Threshold Requirements – Review and Determination and Submission of ICA Undertaking

At this stage MWC will determine whether the Proposal has complied with all Threshold Requirements set forth in the aforesaid Section 7 (*Threshold Requirements*) and been prepared in accordance with the instructions set forth herein and complies in full with all the terms, conditions and specifications of the Tender Documents.

If a Proposal is deemed by MWC not to comply with the Threshold Requirements, such Proposal shall not be further reviewed.

Within the framework of this Stage 1 – MWC shall also document whether **Part 4** of the Proposal which is intended to include **Tender Form F** (Undertaking for Industrial Cooperation) was submitted. Within this framework MWC shall only verify whether **Part 4**<sup>34</sup> Envelope was submitted the actual submission of its undertaking (per Section 12.3.3(d)). MWC will not check the contents thereof. The approval of the undertaking shall be done by the ICA only with respect to the Preferred Tenderer and constitutes one of the preconditions for Signature Date provided under Section 18.2).

### 15.2 Stage – 2 Engineering Package Review and Determination

Within the Framework of this Stage 2 – MWC shall review those Proposals which were found by it as complying with the Threshold Requirements to confirm the contents of Engineering Package is compatible and complete with all Submittal Items identified under **Tender Annex C** (Proposal’s Engineering Package<sup>35</sup>).

### 15.3 Stage 3 – Commercial Proposal Review and Evaluation

The Commercial Proposals of the Proposal found by MWC to comply with the Threshold Requirements and which Engineering Package was found by MWC to be complete and compatible<sup>36</sup> - shall be reviewed, evaluated and scored as provided under **Tender Annex B** (Commercial Proposal – Evaluation Methodology).

MWC may change the stages of the evaluation and examination process and/or execute them simultaneously, at its sole discretion.<sup>37</sup>

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<sup>33</sup> Clarification notice no.10 item 4(1)

<sup>34</sup> Clarification notice no.10 item 5

<sup>35</sup> Clarification notice no.7 item (c)(3)

<sup>36</sup> Clarification notice no.7 item (c)(3)

<sup>37</sup> Clarification notice no.10 item 4(2)



## 16. VALIDITY, CLARIFICATIONS, PRESENTATIONS AND AMENDMENTS OF PROPOSALS

### 16.1 Validity Period

- (a) Proposals shall remain valid and open for review by MWC for a period of six (6) months after the Submission Date as such period may be extended from time to time upon MWC's demand (hereinafter: "**Validity Period**"). Where a Tenderer objects to an extension exceeding 6 months, MWC will enable such Tenderer to withdraw its Proposal, and the provisions of Section 16.1(e) below shall not apply.
- (b) Should MWC decide to conduct any advanced stage/s to the Tender process pursuant to Section 17.2 (*Shortlisting of Tenderers*) or Section 17.3 (*Best and Final Stage*), the Proposals of those Tenderers, which shall not be invited to participate in the advanced stage/s, shall remain valid until the date of submission of Proposals in such advanced stage/s.
- (c) 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.
- (d) Notwithstanding the provision of Section 16.1(a) above, the Validity Period of the Proposal of the Second Ranked Tenderer in the Tender process shall be extended and shall remain valid for a period of six (6) months from the date of receipt of MWC's notice of the selection of the Preferred Tenderer. The Proposal of the Second Ranked Tenderer shall expire following the earlier of:
  - (i) the Signature Date; or
  - (ii) the end of its Validity Period, as extended in accordance with this Section 16.1(d).
- (e) 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.
- (f) It is hereby explicitly clarified that albeit MWC '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.

## 16.2 Clarifications and Presentations

- (a) At any point up to the notification of the Preferred Tenderer pursuant to Section 18 (*Selection of Preferred Tenderer and Signature of Contract*) hereof, MWC may, at its sole discretion, ask any of the Tenderers, individually or simultaneously, for clarifications of their Proposals. MWC may require any Tenderer to supplement its Proposal with whatever details, drawings, specifications and descriptions deemed necessary by MWC, at its sole discretion, to allow complete assessment of the Proposal. Any such additional information, provided by the Tenderer to MWC, shall be deemed part of such Tenderer's Proposal.
- (b) At any point up to the notification of the Preferred Tenderer pursuant to Section 18 (*Selection of Preferred Tenderer and signature of Contract*) hereof, MWC 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 MWC and on the date MWC requires providing at least two week prior notice. At MWC's discretion consultants on its behalf shall participate in such presentation meetings.

## 16.3 Notification of Changes and Amendments to Proposals

- (a) Throughout the Tender process, Tenderers are required to notify MWC 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).
- (b) 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 MWC in accordance with the provisions of this Request for Proposals.



## 17. NEGOTIATIONS AND ADVANCED STAGES

### 17.1 Negotiation with Tenderers

- (a) MWC will be entitled, at its sole discretion, to conduct negotiations with any of the Tenderers in any way it deems suitable and in any of the stages of the Tender process, including the advanced stages set forth in Section 17.2 (Shortlisting of Tenderers) and Section 17.3 (Best and Final Stage) hereof, and to cease such negotiations at any time.
- (b) MWC will be entitled, at its sole discretion, to negotiate individually with one of the Tenderers or simultaneously with more than one of the Tenderers and to cease such negotiations at any time. MWC will be entitled to amend any part of the Tender Documents or to request Tenderers to modify, change or improve their Proposals in any aspect thereof, whether technical, financial or otherwise.

### 17.2 Shortlisting of Tenderers

- (a) MWC shall be entitled to request Proposals from a shortlist of two or more Tenderers, at MWC's sole discretion, in accordance with the provisions of this Request for Proposals.
- (b) In addition to and without derogating from its general prerogatives pursuant to this Request for Proposals, in such shortlist stage, MWC may publish an amended set of Tender Documents, or a document that amends parts of the previous Tender Documents and may request Tenderers to submit Proposals on the basis of the amended Tender Documents, including any changes in the Project's scope of work. In this framework MWC may amend any criteria or requirement or set any additional requirements with which Tenderers shall be required to comply with in their modified submission of Proposals.

### 17.3 Best and Final Stage

- (a) Tenderers are notified of MWC's intention to make use, in the framework of this Request for Proposals Selection Process, of a price estimate ("**Price Estimate**" denoted in Hebrew as: "אמזן שוי התקשרויות") of the Price Proposal "**PP**" (item no. 3 of **Tender Form G(1)** – Commercial Proposal – CAPEX). Should the Proposed Price/s exceed the Price Estimate or should it be deemed advantageous by MWC, it is hereby provided that MWC reserves its right to hold a best and final

stage between all Tenderers whose Proposals were found compliant and responsive, as stipulated in the aforesaid Section 15.1 (Stage 1 – Threshold Requirements) and Section 15.2 (Stage 2 – Engineering Package Review and Determination), by way of allowing them to submit an updated Commercial Proposal in accordance with the provisions of Article 17(b)(7) & 17E(2) of the Regulations. In the event MWC decides to make use of any additional stage, the provisions of this **Volume 1** shall apply upon the conduct of such additional change *mutatis mutandis*.

- (b) Subject to the applicable Laws and Regulations, MWC reserves its right to negotiate with one or all of the Tenderers.
- (c) Without derogating from any of its rights under all applicable Laws and Regulations and the provisions of the Tender Documents, In the event a single Proposal is submitted or found compliant, MWC reserves its right to act in accordance with the provisions of Articles 23(a) or 23(a1) the Regulations, as applicable.

#### **17.4 Additional Provisions**

- (d) MWC intends to conduct the Tender process and to select the Preferred Tenderer in the most efficient and advantageous manner. For this purpose MWC may, at its sole discretion, waive any of its rights under this Section 17 (Negotiation and Advanced Stages), or exercise such rights in any manner MWC shall deem fit.
- (e) The decision whether to proceed to any advanced stage under Sections 17.2 (Shortlisting of Tenderers) 17.3 (Best and Final Stage) shall be made by MWC, at its sole discretion, taking into account, *inter alia*, the benefit expected of such advanced stage to the Tender process, the success of the Project or MWC's benefit. In exercising its discretion, MWC may take into consideration any of the following:
  - (i) The difference between the scoring of the leading Proposal in comparison to the other Proposals;
  - (ii) The satisfaction of MWC from the Commercial Proposal of the leading Proposal as well as the TWC given to such Proposal and each criteria associated therewith.

- (f) The above considerations shall be taken into account by MWC in determining the number of participants, which shall be invited to participate in any such advanced stage of the Tender process.
- (g) For the removal of any doubt, it is hereby clarified that only Tenderers of which Proposals which have been found to comply with the Threshold Requirements may be invited by MWC to participate in any advanced stages under Sections 17.2 (Shortlisting of Tenderers) and 17.3 (Best and Final Stage) hereof.
- (h) MWC reserves the right to reinstate any Tenderer or any Proposal at any stage of the Tender process, subject to the consent of such Tenderer, and subject to such Tenderer's compliance with all the requirements and criteria set for such stage.
- (i) MWC may exercise its rights under this Section 17 (Negotiation and Advanced Stages) any number of times during the evaluation of the Proposals.

## 18. SELECTION OF PREFERRED TENDERER AND SIGNATURE OF CONTRACT

18.1 The Tenderer obtaining the lowest TWC shall be declared a Preferred Tenderer ("**Declaration**"). The Declaration will be issued to all Tenderers. The Tenderer obtaining the second **lowest** TWC shall be declared as the "Second Ranked Tenderer".

18.2 As conditions precedent for the signature of the Contract Documents by MWC (in the form as may be amended by MWC pursuant to the provisions of this **Volume 1**), the Preferred Tenderer shall promptly (and in any event by no longer than 45 Days from issuance of the Declaration) furnish the MWC with:

- (i) **Performance Guarantee** - the Performance Guarantee (see Section 14.1 (The Performance Guarantee) and **Appendix H(1)** (Performance Guarantee) of **Volume 2** (Contract) ;
- (ii) **Insurer's Certification** – per the provisions of Section 3.5 (Insurance) and **Appendix G** (Insurance Requirements and Certifications) of **Volume 2** (Contract)). In the events a Participant is of the opinion it is prevented from submitting the Insurance Policies per the Requirements of the contractual requirements including in the form set forth in the aforesaid Appendix - it is required to apply – prior to Submission Date - with a detailed RFC (per the provisions of Section 3.5 above) elaborating on the reasons thereof. MWC shall

reject requests for modifications raised by the Preferred Tenderer or its insurer which MWC determines, per its full and sole discretions, to constitute material modifications; and

- (iii) **ICA's Approval of the Preferred tenderer's Preliminary Undertaking** - the ICA's approval of the Preferred Tenderers program referred to in Section 6 (*ICA's Approval of Preferred Tenderer's Undertaking*) and **Tender Annex A** (ICA's Requirements for Mandatory Industrial Cooperation) of this **Volume 1** (Request for Proposals). At the ICA's instruction – the Preferred Tenderer shall execute any amend or supplement to its Undertaking as may be determined by the UCA.
- (iv) **Contract Documents signed by the authorized signatory of the Preferred Tenderer** – for this purpose MWC will provide the Preferred Tenderer with a version of the Tender Documents which it updated to reflect all Clarifications made during Tender stage.

Items (i) – (iv) shall collectively be referred to as "**Preconditions for Signature**" each being a "**Precondition for Signature**".

18.3 Within the aforesaid 45 Day period the Preferred Tenderer – in addition to completion of all Preconditions for Signature - shall also sign the Contract Documents (it was provided with by MWC per Section 18.2(iv)) and submit it for MWC's signature. MWC shall sign the Contract after it had determined all Preconditions for Signature were met and all other terms allowing the Contract to be signed by it were materialized.

After MWC signs the Contract the Preferred Tenderer shall be referred to as the "**Supplier**".

18.4 In any event the Preferred Tenderer fails, for any reason whatsoever, to fulfill its undertakings in accordance with this **Volume 1** (Request for Proposals) including with respect to getting MWC's approval all Preconditions for Signature were timely achieved or failure to timely sign and submit the Contract or to fulfill any of its contractual undertakings after the Contract is signed and pursuant thereto, MWC reserves the right to substitute such Tenderer by nominating, instead, the Tenderer who obtained the second **lowest** TWC the Second Ranked Tenderer as a Supplier. In the event MWC decides to exercise such right, at its full and sole discretion without it being required to do so, all provisions and stipulations relating to the Preferred Tenderer shall apply, *mutatis mutandis*, on the Second Ranked Tenderer. MWC may, but is not obliges to,

allow an extension of time to the Preferred Tenderer for the purpose of fulfilling the Preconditions for Signature in the event such were not fulfilled within the 45 Day period.

- 18.5 It is hereby explicitly provided that in any event MWC decides, for which any reason whatsoever, not to exercise its right in accordance with this Section 18.4 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. As such MWC's aforesaid discretion shall not be construed as constituting an obligation on its behalf to exercise such right also at circumstances under which it had requested the second Ranked Tenderer to extend its Tender Bond.
- 18.6 The nomination of the Second Ranked Tenderer as a Supplier shall be conditioned upon the extension of its Tender Bond, in accordance with the provisions of Section 13.10 (Second Ranked Tenderer – Tender Bond), the timely deposit of its Performance Guarantee and Insurance Policies as per MWC's instructions and the fulfillment of the remaining Preconditions for Signature as provided in Section 18.2.
- 18.7 Without derogating from any of its rights as provided under **Volume 1** (Request for Proposals), MWC may, at its sole discretion, not declare a Preferred Tenderer, in any of the following circumstances:
- (a) Only one (1) Proposal was submitted or only one (1) Proposal complied with all Threshold conditions.
  - (b) No PP indicated in **Tender Form G(1)** – Capex has been found to be equal or lower than the PP indicated in the Price Estimate referred to in Section 17.3 (*Best and Final Stage*).
- 18.8 The aforesaid right of MWC shall not be construed as binding upon it and similarly shall not prevent it from exercising any other of the right reserved for it under this Request for Proposals or under all Laws and Regulations including, but not limited, to its right to determine the annulment of the Tender process, *inter alia*, in the circumstance that the Price Proposal exceeds the PP indicated within MWC's Price Estimate.

## 19. GENERAL PREROGATIVES OF MWC

### 19.1 Postponement of Dates

MWC may, at its sole discretion, postpone any of the dates specified in **Volume 1** (Request for Proposals), including the Submission Date, by issuing an addendum in accordance with Section 11.2 (*Amendment of Tender Documents*).

### 19.2 Tender Committee's Sub-Committees, Working Teams and Consultants

- (a) MWC has nominated sub-committees, working teams and 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 process.
- (b) Subject to the provisions of all Laws and Regulations, MWC may exercise any of its rights under the Tender Documents through any of the sub-committees, working teams and other consultants nominated by MWC for this matter and delegate any of its rights and duties.

### 19.3 Alterations and Revised Proposals

- (a) Notwithstanding anything to the contrary in this Request for Proposals, where MWC deems it necessary for the benefit of the Project, for the benefit of the Tender process or for the benefit of MWC, it may, at its sole discretion, alter any of the requirements and instructions contained in the Tender Documents, including the Project's scope of work, or alter the Tender process, as it may find appropriate.
- (b) In addition and without derogating from the generality of the aforesaid, MWC reserves the right to amend the Tender Documents in order to include requirements or instructions regarding preference for Israeli products or mandatory Industrial cooperation, and to reflect such requirements in the evaluation criteria.
- (c) Where MWC has exercised its right under the provisions of this Section 19.3 (Alterations and Revised Proposals), it may request Tenderers to submit revised Proposals on the basis of the altered Tender Documents or Tender process. This shall not be construed to excuse the Tenderer's from their full and sole responsibility to ensure and confirm for themselves that their Proposals as submitted confirm with all Laws and Regulations.

**19.4 Annulment of Tender process**

Without derogating from the provisions provided under Section 18.7, MWC reserves the right to annul the Tender process at any time for which any reason at its full and sole discretion including after submission of the Proposal and after Declaration of the Preferred Tenderer without thereby incurring any liability to the affected Tenderer or anyone on its behalf including third parties except as expressly set forth in Section 21.8. A (Honorarium) and 21.8. B (Effect of Payment of Honorarium).<sup>38</sup>

**19.5 MWC's Right Not to Accept any Proposal**

MWC will not be bound to accept any Proposal.

**19.6 No Compensation**

Tenderers and any third party on their behalf shall not have the right to claim any damages, expenses or other relief in connection with the exercise by MWC of any of its rights including those set forth under this Section 19 (General Prerogatives of MWC).

**19.7 Deviations**

MWC 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 MWC believes that such deviations do not materially affect the capability of a Tenderer to carry out the Project. MWC 's right, in accordance with this Section 19.7, shall be applied subject to its independent discretion and will not be construed or interpreted to constitute an obligation MWC must exercise.

**19.8 MWC 's right and discretion under Laws and Regulations**

MWC shall be entitled to exercise, in full or in part, one or all the rights, authorities and discretion or discretion provided under all Tender Documents and Laws and Regulations.

MWC' use, misuse or partial use of any right, authority or discretion shall not entitle the Tenderers or anyone their behalf for any claim against MWC. Similarly, MWC' use, misuse or partial use of any of any right, authority or discretion 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 the Tenderer testifies to its complete and irrevocable acceptance and agreement, *inter alia*, to the provisions of this Section 19.8 and its prevention from claiming or attesting thereto under any circumstance.

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<sup>38</sup> Clarification notice no.7 item(c)(7)

20. **DISQUALIFYING CONDITIONS AND EVENTS**

Without derogating from MWC’s rights and authorities under the Tender Documents and all Laws and Regulations to determine, *inter alia*, the disqualification of a Tenderer from the RFP Selection Process, the following conditions and events may lead to disqualification of Tenderers, at MWC’s sole discretion, at any stage during the Tender process. In the event of a Joint Venture, the disqualifying conditions and events apply separately to each of the JV's Members<sup>39</sup> and Membrane Manufacturer (hereinafter in this Section 20 jointly referred to as “**Tenderer**”).

- 20.1 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 MWC, 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.
- 20.2 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 MWC.
- 20.3 Commencement of any legal proceedings, which allegedly relate to an offence, which in the MWC’s opinion affects the professional integrity of the Tenderer.
- 20.4 Commitment of a grave error by any Tenderer in the performance of its profession.
- 20.5 Employment of or engagement with a consultant or an expert, who was/is employed by MWC or MWC's Tender Committee or any other Relevant Authority in relation to the Project without the prior written approval of MWC.
- 20.6 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.
- 20.7 The existence of a material conflict of interest in a Tenderer in connection with the Project.

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<sup>39</sup> Accordingly, a Joint venture may be disqualified from participating in this Tender process under circumstances where a disqualifying condition or event had occurred with respect to one of its Members or Membrane Manufacturer (as applicable).



- 20.8 Any change of the Tenderer's composition or Tenderer's holdings after Submission Date which was not approved in advance by MWC in writing and which result is the Tenderers' non-compliance with provisions of this **Volume 1** (Request for Proposals) including with respect to the provisions of Section 5 (Composition of Tenderers) and Section 7 (Threshold Requirements).
- 20.9 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 process.
- 20.10 Any material breach of the provisions of the Request for Proposals, including the submission of any false or incomplete information to MWC.
- 20.11 Noncompliance with the provisions of Section 3.5 (Submittal of one Proposal);
- 20.12 Any other event or circumstances which MWC shall consider, at its sole discretion, as justifying disqualification of any Tenderer.

The Tenderer shall promptly notify MWC in any event that any of the above conditions or events occurs.

Upon occurrence of any of the above conditions or events, MWC reserves the right to stipulate, at its sole discretion, a Tenderer's right to participate (or continue to participate) in the Tender process, by imposing any condition or instruction it deems appropriate or to disqualify such Tenderer from participating (or continue from participating) in the Tender process.

## **21. MISCELLANEOUS**

### **21.1 Submittals by Tenderers**

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

### **21.2 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*).

### **21.3 Information Supplied in the Tender Documents**

- (a) No representation, warranty or undertaking, express or implied, is or shall be made, and no responsibility or liability is or shall be accepted by MWC, the Tender Committee, their consultants and anyone acting on their behalf 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 their behalf, and any such responsibility or liability is hereby expressly disclaimed. MWC, the Tender Committee, their consultants and anyone acting on their behalf shall not be liable for any error, misstatement or omission. The aforesaid applies equally upon the information provided pursuant to the provisions of Section 2.4 (Pilot Tests).
- (b) 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 MWC, the Tender Committee, their consultants and anyone acting on their behalf to be inaccurate on the date of its provision to the Tenderers.
- (c) MWC, the Tender Committee, their consultants and anyone acting on their behalf 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.

#### **21.4 Independent Research and Inquiries**

- (a) 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 their obligations under the Tender Documents, including legal risks, technical risks, financial risks, political risks, security risks, design and construction risks, commissioning risks, risks associated with the quality and ingredients of the raw water and geotechnical conditions, and any other risk involved in the execution and completion of the Project in accordance with the Tender Documents 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.

- (b) Tenderers must give at least ten (10) Working Days prior written notice to MWC of any examinations, inspections or tests that it wishes to perform at the Site and take full and sole responsibility to coordinate the execution of such examinations with the Relevant Authorities (including the Ministry of Health, Ministry of Environmental Protection and Municipality), other relevant third parties (including private entities), take full and sole responsibility to obtain, in advance, all required Approvals and execute such examinations in accordance with all Laws and Regulations Standards and Codes.
- (c) Without derogating from the generality of the above, it is solely the responsibility of each Tenderer to verify all figures, calculations, quantities and any other information contained in the Tender Documents including with respect to information provided pursuant to the provisions of Section 2.4 (Pilot Tests) and all other matters relating to the Project. In addition, the making of deductions, interpretations or conclusions from information made available to the Tenderers is at the Tenderers' full and sole responsibility and liability.
- (d) Without derogating from the above, Tenderers must obtain documents prepared by a standard, regulatory or other organization referred to in the Tender Documents applicable to the Systems and other works included in the Project's Scope of Work. Tenderers must ensure that they obtain the most updated and valid version of all such documents. Each Tenderer will take these documents into account in the preparation of its Proposal.

### **21.5 Confidentiality**

- (a) 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 process 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.

- (b) Subject to the provisions of all Laws and Regulations, MWC 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:
- (i) the end of the Tender process, or:
  - (ii) the date on which such Proposal has been withdrawn or deemed unsuccessful.

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

- (c) Without derogating from the generality of the foregoing, the referral of such information by MWC to any of its sub-committees, consultants, working teams or to any other Person acting on its behalf, and to any other Person assisting MWC's members and consultants within their organizations, shall not be deemed a breach of the MWC's undertaking of confidentiality.
- (d) Notwithstanding Section 21.5(a) and Section 21.5(b), the undertaking of confidentiality will not apply to information that:
- (i) is or becomes generally known to the public otherwise than as a result of a breach of Section 21.5(b) (*Confidentiality*);
  - (ii) the relevant party approves its unrestricted release by written authorization; or
  - (iii) is required to be disclosed by Laws and Regulations or by an order of an Relevant Authority.
- (e) The provisions of this Section 21.5 (*Confidentiality*) shall also apply upon the Tenderers, employees, officers, agents, consultants of the Tenderers, 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 21.5 (*Confidentiality*).

#### **21.6 Information contained in Tender Documents and Proposals**

- (a) All documentation issued by MWC in connection with the Request for Proposals and the Tender process is and shall remain the property of MWC and may only be copied and used for the purpose of preparing the Proposals.
- (b) 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 MWC'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 MWC of know-how and technical information and any other information, including all Intellectual Property, contained in any Proposal, pursuant to any Laws and Regulations and under an order of a Relevant Authority shall not be regarded as MWC's use of such know-how and information under this Section 21.6(b).

#### **21.7 Prohibition on Solicitation and Communications**

- (a) Tenderers and all of its affiliates, subsidiaries or related parties, shall not:
  - (i) Directly or indirectly lobby or solicit MWC, 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 process; or
  - (ii) Directly or indirectly communicate with other Tenderers and all of their affiliates, Subsidiaries or related parties regarding any aspect of the Project or their respective Proposals.
- (b) Solicitation and communication activities as described in Section 21.7(a) above, may disqualify, at the MWC's sole discretion, the Tenderers involved, without derogating from any other rights and remedies of MWC.

#### **21.8 Cost of Tendering**

- (a) 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.

- (b) Without derogating from the provisions of Section 19.6 (No Compensation) and Sections 21.8 A (Honorarium) and 21.8 B (Effect of Payment of Honorarium)<sup>40</sup>, in the event of alteration of the Tender Documents or the Tender process or in the event of submittal of additional information by the Tenderer at MWC's request or in the event of Proposals being rejected for whatever reason or in the event the Tender process is annulled for which any reason whatsoever, Tenderers will not be entitled to any refund of expenses or to any compensation or to any payment of any sort.

#### 21.8A Honorarium

21.8A.1) MWC shall pay the sum of one hundred thousand shekels (100,000 NIS) (V.A.T shall be added) ("**Honorarium sum**") to Tenderer's whose proposals were ranked by MWC, second and onwards and subject to the following conditions:

- a) The Tenderer has submitted MWC within 45 days of Declaration with a written statement on behalf of the Tenderer, Members (as applicable) and Membrane Manufacturer (as applicable) testifying to its complete and irrevocable agreement to the Tender's results per the Declaration and its undertaking not to object or take any actions. Legal or other, with regard to the Tender, the Declaration, the project, MWC or anyone on its behalf. In addition, the statement shall provide the Tenderer's complete and irrevocable agreement to the contents of section 21.8B and MWC's rights, discretion and authorities as provided therein. The statement shall include no explicit or implied reservations. The statement shall be signed by the authorized signatories of the Tenderer, Members (as applicable) and Membrane Manufacturer (as applicable) and accompanied by a legal confirmation signed by an attorney confirming the signature of the aforesaid binds the foregoing entities.
- b) The Tenderer's submission of an appropriate tax invoice for the purpose of Honorarium Sum payment.
- c) Tenderer's submittal of the bank account (in Israel) it wishes the Honorarium Payment to be made to.

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<sup>40</sup> Clarification notice no.7 item(c)(6)

21.8A.2) The Honorarium Payment shall be made 60 days following the last day of the month MWC has confirmed all conditions were complete and subject to the provisions of Section 21.8 B (Effect of Payment of Honorarium).

21.8A.3) for the avoidance of doubt in the event the Tender is annulled for whatever reason after Declaration and without that derogating from the provisions, inter alia, of Section 21.8 (Cost of Tendering) then:

- a) such event shall not entitle the Tenderer for any payment whatsoever save for the Honorarium Sum provided MWC confirms all conditions relating for its payment were fulfilled.
- b) Participation in the Tender and the submission of a Proposal within its framework shall not entitle the Tenderer with any right relating to the Tender, the Project, MWC or any future process MWC may initiate.

This Section 21.8 A and Section 21.8 B (Effect of Payment of Honorarium) shall not be construed to derogate from MWC's rights, discretions, authorities or prerogatives reserved to it under the Tender Documents and Laws and Regulations.<sup>41</sup>

**21.8B Effect of Payment of Honorarium**

21.8B.1) It is clarified that under any given circumstance a Tenderer may only be entitled for the payment of one Honorarium Sum.

21.8B.2) notwithstanding anything to the contrary where any legal proceedings have been initiated in connection to the Tender by a Tenderer or any third party the Honorarium Sum shall be made only after a conclusive judgement is made (upon peremptory rule, without any further right of appeal) and any sums awarded to MWC in the framework of such proceedings to which the Tenderer is liable shall be set off from the Tenderer's Honorarium sum (in the event MWC confirms the Tenderer was entitled for Honorarium Sum payment). In the event MWC's entitlement exceeds the Honorarium Sum – the Tenderer shall be required to pay MWC the entire amount in excess.

21.8B.3) Any sums paid by MWC shall serve for all means and purposes as agreed compensation and shall be exhaustive and in full satisfaction of any claims, outstanding or in the future, in connection to the Tender. Except as expressly set forth herein the Tenderer, Member, Membrane Manufacturer and

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<sup>41</sup> Clarification notice no.7 item(c)(4)

employees, officers, agents, consultants of any of the aforesaid or any other third party related to them shall not be entitled to any relief, compensation or payment of any kind in connection to the Tender.

21.8B.4) Payment made by MWC shall entitle it to make any use it deems fit with respect to any of the Proposal's contents.

21.8B.5) Payment made by MWC shall prevent the Tenderer from making any claim against or raising any demand with MWC.<sup>42</sup>

## **21.9 Tender process Procedures**

The complexity and magnitude of the Project have dictated the incorporation of special procedures into the Tender process that may be exercised by MWC at its sole discretion, all as set forth in this Request for Proposals. By participating in this Tender process, Tenderers are giving their consent to such procedures and will not thereafter be entitled to contest the validity of such procedures should MWC choose to implement any of them.

## **21.10 Governing Law**

- (a) The Tender process 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 process.
- (b) 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 MWC'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 MWC's discretion to vary or cancel the Tender process, in such a case.

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<sup>42</sup> Clarification notice no.7 item(c)(5)



- (c) By submitting a Proposal each Tenderer (including a Tenderer or JV Member which is foreign) shall be deemed to acknowledge its acquaintance with all Laws and Regulations which may be applicable to the Tender and Project, and that it will comply with all such Laws and Regulations and obtain all Approvals required thereunder or by any Relevant Authority.
- (d) 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.
- (e) The Tenderers and the Proposals submitted by them, shall abide by all applicable Laws and Regulations Standards and Codes.
- (f) In any event amendments are made to any Laws and Regulations that may apply upon this Tender or Tenderers, then such amendments shall bind the Tenderers who shall act in accordance therewith.

#### 21.11 MWC's Consultants

- (a) **Tender Annex G** (MWC's Advisors), lists entities which are involved on behalf of or consultant MWC with regard to this Tender. Tenderers are prohibited from obtaining any consultation from any of the entities listed under the aforesaid **Tender Annex G** with respect to the Tender or Project.
- (b) Without derogating from the above prohibition Tenderer's shall elaborate with regard to any other contact they may have with any of the entities listed under the aforesaid **Tender Annex G**. MWC reserves the right to forbid the further participation in this Tender of entities which have any such contact or engagements with any of the entities indicated in the aforesaid **Tender Annex G**, allow the participation or stipulate the terms and conditions under which the participation of such entities in this Tender may continue and participate in the Tender.
- (c) Without derogating from the provisions of Section 20 (Disqualifying Conditions and Events), MWC may disqualify Tenderers and Proposals which do not comply with the provisions of this Section 21.11 (MWC's Consultants).

**21.12 Severability**

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.

