



**KOUGA MUNICIPALITY
(EC 108)**

TENDER NOTICE NO

127/2019

FOR

VACANT MUNICIPAL ERVEN

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1. NOTICE

KOUGA MUNICIPALITY

NOTICE NO.127 /2019

PUBLIC INVITATION – VACANT MUNICIPAL ERVEN

It is the intention of Council to dispose the following surplus erven. Interested parties are hereby invited to submit tenders to purchase the following erven:

ERF NUMBER	STREET ADDRESS	EXTENT ±	RESERVE PRICE	ZONING
<u>HUMANSDORP</u>				
2078	Felix Street	1.720Ha		Industrial 1
2079	Bloubok Street	9790m ²		Industrial 1
2081	Bokmakierie Street	1,4519Ha		Industrial 1
2082	Bokmakierie Street	1,2880Ha		Industrial 1
3296	Bosbok Street	3933sqm		Industrial 1
3297	Bosbok Street	4683sqm		Industrial 1

Adjudication will be done on the 80/20 or 90/10 basis and in terms of the Supply Chain Management Policy of the Council.

2. LOCATION:

Erf, being vacant land, measuring approximately square meters / hectares in extend, situated in Street for R..... A locality plan is available on request.

3. CURRENT ZONING STATUS:

The current zoning status of Erf, is
A zoning certificate is available on request.

4. CONDITIONS OF DISPOSAL:

(i) The following preference points system are applicable to all bids:

- the 80/20 system for the sale of assets with a Rand Value of up to R500 000, 00 and

- the 90/10 system for the sale of assets with a Rand Value above R500 000, 00.
- (ii) The purchaser will be responsible for all costs and processes to obtain further approvals required by the Kouga Municipality to permit development of Erf
- (iii) A deposit of 10% of the purchase price will be payable within 14 days after the successful tenderer has been informed that his/her tender was accepted in writing or upon signature of the Deed of Sale by the Municipality's representative and the purchaser.
- (iv) The balance of the purchase price will be payable against registration of the transfer of the property into the name of the successful tenderer. An acceptable BANK GUARANTEE must be submitted to the Municipal Manager's Office within 30 days upon signature of the Deed of Sale.
- (v) The 10% deposit will be forfeited by the tenderer in the event of contract breach by the tenderer that leads to the cancellation of the Contract.

5. TENDER REQUIREMENTS

- 5.1 The tenderer must complete the attached preference points claim forms, to enable the Land Evaluation and Adjudication Committee to score the tenderer.
- 5.2 The tenderer must provide information rearing the funding for the acquisition of the property. **The tenderer must submit a certificate with the offer, issued by the financial institution that the company / close corporation / individual has access to funds or will qualify for a loan for the tendered amount.**
- 5.3 **The tenderer should submit an ORIGINAL Tax Clearance certificate from the SA Revenue Services, confirming that the taxes of the tenderer are in order or that satisfactory arrangements with the Receiver of Revenue are in place to meet his / her obligations.**
- 5.4 If the tenderer is a closed corporation, a certified copy of the registration of such closed corporation or company must be provided.

- 5.5 A resolution signed by the company or closed corporation, authorizing the representative of the company must be provided.
- 5.6 **The tenderer must complete, initial and sign the attached Offer to Purchase, which Offer to Purchase will become binding on the parties on successful tender and acceptance by the Municipality. Failure to complete, initial and sign the attached Offer to Purchase will be deemed to be a failure to comply with the tender requirements. Each page of the Offer to Purchase must be initialled and full signatures to be provided on the last page.**

6. CONDITIONS PERTAINING TO THE CONSIDERATION / EVALUATION OF TENDERS

The following criteria in addition to information as requested in Section 5 above, will inter alia, be acceptable in the consideration and evaluation of tenders:

- The successful tender will be selected by the Bid Adjudication Committee of Council as its sole and absolute discretion on the basis of its assessment of the tenders that have been submitted;
- The Council reserves the right in respect of the preferred bidder, to further negotiate with the successful applicant on any aspect related to the tender.

7. CONDITIONS PERTAINING TO THE SUBMISSION OF TENDERS

- a) The submission of a tender shall presume complete acceptance of all conditions and requirements stipulated in this document;
- b) The applicant shall be deemed to have acquainted himself / herself of all conditions, requirements and circumstances affecting the property;
- c) Tenders shall remain open for acceptance by the Council for a period of 3 (three) months calculated from the date of closure of the tender;
- d) Tenders are to be submitted in a sealed envelope indicating the **full** particulars and tender number (as stated in the Notice) **for which it is submitted.**

- e) The applicant must ensure that tenders are deposited in the correct tender box;
- f) Any tender received after the closing date and time for receipt of this tender and or which do not include all the required information as indicated in this document above, will not be considered;
- g) The Council is not liable for any cost incurred in the preparation and submission of tenders.

8. ENQUIRIES

Enquiries related to the purchase of the properties can be directed to **Mr. S. Baartman** of the Directorate: Finance on contact **telephone number (042) 200 2200, fax number (042) 293 1114 or 086 523 1747 or sbaartman@kouga.gov.za**

9. ANNEXURES

Annexure A: Preference Points Claim Form in terms of the Preferential Procurement Regulations 2001

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL
PROCUREMENT REGULATIONS 2001**

SALES

This preference form must form part of all bids invited for the sale of assets. It contains general information and serves as a claim form for Historically Disadvantaged Individual (HDI) preference points claimed for attainment of other specified goals.

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF EQUITY OWNERSHIP BY HISTORICALLY DISADVANTAGED INDIVIDUALS (HDI's), AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2001.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for the sale of assets with a Rand value of up to R500 000, 00; and
- the 90/10 system for the sale of assets with the Rand Value above R500 000, 00.

1.2 Preference points for this bid shall be awarded for:

- a) Price;
- b) Specific contract participation goals, as specified in the attached forms.

1.2.1 The points for this bid are allocated as follows:

	Maximum		Maximum	
	Percentage	Points	Percentage	Points
<u>PRICE</u>		90		80
Price				

PREFERENCE POINTS		10	20
HDI		3	6
Women		2	4
Youth		1	2
Disability		2	4
Locality		2	4
TOTAL		100	100
	Approved		Not Approved

- 1.3 Failure on the part of a bidder to fill in and/or sign this form may be interpreted to mean that preference points are not claimed.
- 1.4 The seller reserves the right to require of a bidder, either before a bid adjudication or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the seller.

2. DEFINITIONS

- 2.1 **“Acceptable Bid”** means any bid which, in all respect, complies with the conditions of bid as set out in the bid document.
- 2.2 **“Bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the sale and letting of assets.
- 2.3 **“Consortium of joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.
- 2.4 **“Contract”** means the agreement that results from the acceptance of a bid by an organ of state.

- 2.5 **“Specific contract participation goals”** means the goals as stipulated in the Preferential Procurement Regulations 2001.
- 2.6 **“Control”** means the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial authority and power in determining the policies and directing the operations of the business.
- 2.7 **“Disability”** means in respect of a person, an impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.
- 2.8 **“Equity Ownership”** means the percentage ownership and control, exercised by individuals within an enterprise.
- 2.9 **“Historically Disadvantaged Individual”** means a South African citizen
- 1) Who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) (“the interim Constitution); and / or
 - 2) Who is female; and / or
 - 3) Who has a disability:
- Provided that a person, who obtained South African citizenship on or after the coming to effect of the interim Constitution, is deemed not to be a HDI.
- 2.10 **“Management”** means an activity inclusive of control and performed on a daily basis, by any person who is a principle executive officer of the company, by whatever name that a person may be designated, and whether or not that person is a director.
- 2.11 **“Owned”** means having all the customary elements of ownership, including the right of decision-making and sharing all the risks and profits commensurate with the degree of ownership

interests as demonstrated by an examination of the substance, rather than the form of ownership arrangements.

- 2.12 **“Person”** includes reference to a juristic person.
- 2.13 **“Rand value”** means the total estimated value of a contract in Rand denomination that is calculated at the time of bid invitations and includes all applicable taxes and excise duties.
- 2.14 **“Small, Medium and Micro Enterprises (SMME’s)”** bears the same meaning assigned to this expression in the National Small Business Act, 1996 (Act No 102 of 1996).
- 2.15 **“Trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person.
- 2.16 **“Trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ESTABLISHMENT OF HDI EQUITY OWNERSHIP IN AN ENTERPRISE

- 3.1 Equity ownership shall be equated to the percentage of an enterprise which is owned by individuals classified as HDI’s, of in the case of a company, the percentage shares that are owned by individuals classified as HDI’s, who are actively in the management and daily business operations of the enterprise and exercise control over the enterprise, commensurate with their degree of ownership.
- 3.2 Where individuals are not actively involved in the management and daily business operations and do not exercise control over the enterprise commensurate with their degree of ownership, equity ownership may not be claimed.

4. BID DECLARATION

- 4.1 Bidders who claim points in respect of equity ownership must complete the Bid Declaration at the end of this form.

5. EQUITY OWNERSHIP CLAIMED IN TERMS OF PARAGRAPH 2.9 ABOVE. POINTS BE CALCULATED FROM INFORMATION FURNISHED IN PARAGRAPH 8.6

	Ownership	% owned	Points claimed
5.1	Equity ownership by persons who had no franchise in the national elections
5.2	Equity ownership by women
5.3	Equity ownership by disabled person *

If points are claimed for disabled persons, indicate the nature of impairment (see paragraph 2.7 above)

.....

6. DECLARATION WITH REGARD TO EQUITY

- 6.1 Name of firm
- 6.2 VAT registration number
- 6.3 Company registration number

6.4 TYPE OF FIRM (Tick applicable box)

Partnership

One person business/sole trader

Close corporation

Company

(Pty) Limited

6.5 **TOTAL NUMBER OF YEARS THE FIRM HAS BEEN IN BUSINESS:**

6.6 List all Shareholders by Name, Identity Number, Citizenship, HDI status and Ownership, as relevant. Information to be used to calculate the points claimed in Paragraph 8.

Name	Date / Position Occupied in Enterprise	ID Number	Date RSA Citizenship obtained	*HDI Status			% of business / enterprise owned
				No Franchise prior to elections	Women	Disabled	

***Indicate YES or NO**

6.7 CONSORTIUM / JOINT VENTURE

6.7.1 In the event that preference points are claimed for HDI members by consortia / joint ventures, the following information must be furnished in order to be entitled to the points claimed in respect of the HDI member:

Name of HDI member (to be consistent with paragraph 8.6)	Percentage (%) of the contract value managed or executed by the HDI member

6.8 I / we, the undersigned, who warrants that he / she is duly authorized to do so on behalf of the firm certify that points claimed, based on the equity ownership, indicated in paragraph 8 of the foregoing certificate, qualifies the firm for the preference(s) shown and I / we acknowledge that:

- (i) The information furnished is true and correct;
- (ii) The Equity ownership claimed is in accordance with the General Conditions as indicated in paragraph 1 of this form;

- (iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 8, the tenderer may be required to furnish documentary proof to the satisfaction of the seller that the claims are correct;
- (iv) If the claims are found to be incorrect, the seller may, in addition to any other remedy it may have –
 - (a) Recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (b) Cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (c) Impose a financial penalty more severe than the theoretical financial preference associated with the claim which was made in the bid

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorized representative declare his/her position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest, where:

- the bidder is employed by the state, and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. In order to give effect to the above, the following questionnaire must be completed and submitted.

2.1 Are you or any person connected with the bidder, employed by the state?

YES/NO

If so, state particulars:

2.1 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? **YES/NO**

2.2.1 If so, state particulars:

2.3 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between the bidder and any person employed by the state

Who may be involved with the evaluation and or adjudication of this bid?

YES/NO

2.3.1 If so, state particulars:

WITNESSES:

1.

2.

DATE:

ADDRESS:

.....

.....

.....

CONTACT NUMBER/S:

..... SIGNATURE(S) OF BIDDER (S)

OFFER TO PURCHASE

(WHICH OFFER SHALL BECOME A BINDING DEED OF SALE UPON ACCEPTANCE HEREOF)

TO: THE KOUGA MUNICIPALITY

Duly Represented herein by _____

OF _____

(Hereinafter referred to as "The Council", "The Municipality" and "The Seller")

FROM: _____

IDENTITY NO. / REGISTRATION NO.: _____

Duly Represented herein by _____

OF _____

(Hereinafter referred to as "The Purchaser")

1. Purchase of Land

WHEREAS the Purchaser hereby offers and tenders to purchase the following property: Erf _____ (hereinafter referred to as "the Property") and as is more fully described in the title deed relating thereto. Subject to the terms and conditions herein appearing.

NOW THEREFORE the parties agree as follows:

2. Purchase Price

2.1 The purchase price of the property is the sum of **R** _____, which amount is inclusive of VAT, payable as follows:

- a) The Purchaser shall pay a non-refundable deposit of 10% of the purchase price within 14 days of written acceptance of this Offer to be paid to the transferring attorneys.
- b) The balance of the purchase price shall be payable in full, free of exchange against transfer of the property into the name of the Purchaser. The purchaser shall furnish a

Banker's or other guarantee/s approved by the seller, within 30 days of acceptance of this offer or on the fulfillment of the suspensive conditions (if applicable) whichever is the later.

3. Possession

Possession of the Property will be given and taken on **DATE OF REGISTRATION OF TRANSFER** to the Purchaser from which date all risk shall pass to the said Purchaser.

Until registration of transfer the Purchaser may not make any alteration to the property without the written consent of the Seller and under no circumstances shall be entitled to any compensation from the Seller.

The Purchaser will have no claim whatsoever against the Seller arising out of any alterations or additions made to the Property by the Purchaser.

In the event that occupation does not coincide with date of registration of transfer, the Purchaser shall pay monthly in advance to the Seller's Conveyancer occupational interest of an amount equal to 1% of the Purchase Price from the date of occupation to date of transfer.

The Purchaser shall be obliged to vacate the Property upon cancellation of the sale for any reason whatsoever, it being agreed that no tenancy shall be created by any such prior occupation.

4. RATES AND TAXES; TRANSFER AND BOND COST; RISK:

With effect as and from date occupation all benefits from the property shall accrue to the Purchaser who from that date shall be responsible for all rates and taxes levied on the property.

In the event of the Seller having paid such rates and taxes in advance of the said date, the Purchaser shall be obliged to refund to the Seller a pro-rata share thereof.

The Purchaser shall on demand by the conveyancer / conveyancers pay transfer duty, all costs of transfer, bond registration costs (if applicable), all incidental charges and interim payments.

Risk in respect of accidental damage and destruction of the property passes to the Purchaser on date of transfer of the property into the Purchaser's name.

5. Voetstoots

5.1 The land is sold as it stands (**voetstoots**)

5.2 The Municipality shall not be held responsible for any difference or deficiency that may appear upon the survey or remeasurement of the land or for any error of description.

5.3 The Municipality gives no guarantee as to sustainability of the land for the Purchaser's purposes.

5.4 The Municipality shall not be responsible for the provision of any Municipal infrastructure included but not limited to sewage, electricity, water etc.

6. Conditions

6.1 The land is sold subject to all conditions contained in or referred to in the Title Deed thereto.

6.2 The land is sold subject to the following special conditions now newly imposed by the Municipality in its favour and enforceable by it, binding the Purchaser and its successors-in-title (all of whom are included in the herein aftermentioned expression "owner") provided that the Municipality shall always have the right (on such terms as it may in its sole discretion impose) to vary, suspend or relax any of the said conditions by agreement with the owner, namely:

6.2.1 The owner shall allow gas mains, electricity, telephone and television cables and/or wires, mains and/or other waterpipes and foulsewers and stormwaterpipes, ditches and channels of any other erf to be conveyed across the land unit concerned, and surface installations such as mini-substations, meter kiosks and service pillars to be installed thereon if considered necessary by the Municipality, in such manner and position as may from time to time be reasonably required; this shall include the right to access to the land unit at any reasonable time for purpose of constructing, altering, removing or inspecting any connected with the above.

6.2.2 The Municipality shall at any time be entitled to register a servitude over the land for all municipal services or works existing or to be constructed on or over the land.

6.3 In the event that the Purchaser is the registered owner of the adjacent erf of the land herein sold, the Purchaser undertakes to advise the Municipality of this fact in writing and accepts and agrees to any further conditions which the Municipality may impose on this sale including but not limited to any re-zoning, consolidation, survey, subdivision and the like, which costs are to be borne by the Purchaser.

6.4 The Purchaser acknowledges that the land may only be used for the purposes as approved by Council and as regularized by any applicable town planning schemes.

6.5 In the event of the Registrar of Deeds refusing to insert any of the foregoing conditions in the Purchaser's Title Deed, then the Municipality shall effect registration in such manner as may be permitted by the Registrar of Deeds. Notwithstanding the refusal by the Registrar of Deeds to insert the said conditions in the Purchaser's Title Deed, the Purchaser by his signature hereto shall remain bound to the Municipality in terms of the aforesaid conditions and shall be obliged prior to alienation of the land, to acquaint its successors with such conditions, who in turn shall be bound in terms thereof.

7. Breach

7.1 Should the Purchaser be in breach of any other term of this agreement and fail to remedy such breach within 7 (seven) days of written notice by the Municipality or its Conveyancers requiring the Purchaser to remedy such breach, then and in such event, the Municipality shall immediately be entitled, without prejudice to any other rights which it may have in law, to either cancel this agreement and claim such damages as it may have suffered, or to claim specific performance.

In the event of the Municipality instituting the action against the Purchaser pursuant to this agreement, the Municipality shall be entitled to recover all legal costs incurred by it pursuant to such action on a scale as between attorney and client, together with collection commission at the rate of 10 % (ten per centum) per annum on any monetary award.

7.2 In addition to the aforesaid, the Purchaser shall pay interest on any monetary award pursuant to such action at the prevailing prime overdraft rate charged by the Municipality's Bankers in respect of bank overdrafts from the date of breach by the Purchaser to date of final payment, both days inclusive.

A letter signed by any Official of the said bankers shall be prima facie proof of such interest rate for all purposes, including but not limited to, the granting of provisional sentence and/or summary judgment.

7.3 In the event of breach of contract resulting in cancellation of the contract, the deposit equal to 10% of the purchase price will be forfeited by the Purchaser.

8. Commission

8.1 The Purchaser acknowledges that the Purchaser was not introduced to the land or to the Municipality in circumstances entitling any Agent to claim commission on the sale from Municipality.

9. Transfer

9.1 The Purchaser shall accept transfer of the land when required by the Municipality and transfer shall be effected by the Municipality's Conveyancers.

9.2 The Purchaser shall be liable for payment of all costs of and incidental to transfer of the land, including transfer duty (if applicable), the Conveyancer's fees, together with VAT thereon (if applicable), in respect of the registration of transfer of the land into the Purchaser's name, such fees being payable on request by the Conveyancer.

10. Consent to Jurisdiction

10.1 The Purchaser hereby consents to the jurisdiction of the Magistrate's Court in respect of any action or proceeding arising from this agreement, provided that the Municipality shall at all times be entitled to institute any such actions and proceedings in the High Court having jurisdiction.

11. Domicilium

11.1 The Parties choose their respective "domicilium citandi et executandi" ("domicilium") for the purposes of giving any notice, the payment of any sum, the serving of any process or for any other purpose arising from this agreement the address as stipulated in the Preamble of this Agreement.

11.2 Each of the parties shall be entitled from time to time on 14 (fourteen) days written notice to the other to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or "poste restante".

11.3 Any notice required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.

11.4 Any notice given and any payment made by one party to the other ("the addressee") which:

11.4.1 is delivered by hand during normal business hours of the addressee's domicilium for the time being shall be presumed, until the contrary is proved, to have been received by the addressee on the day of delivery;

11.4.2 is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proven, to have been received by the addressee on the fourth day after the date of posting;

11.4.3 is transmitted by telex or facsimile to the addressee receiving machine shall be presumed, until the contrary is proven, to have been received by the addressee within one hour of transmission where it is transmitted during normal business hours or, if transmitted outside normal business hours, within one hour of normal business hours on the next day.

12. General

12.1 This document constitutes the sole record of the agreement between parties.

12.2 No party shall be bound by any express or implied term representation, warranty, promise or the like not recorded herein.

12.3 No addition to, variation or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.

12.4 No extension of time or indulgence which either party ("the grantor") may grant to the other ("grantee") shall constitute a waiver of any of the rights of the grantor who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.

12.5 If any provision hereof is unlawful or is retrospectively rendered unlawful, then that unlawful provision shall be deemed to be modified only to the extent and in the manner necessary to render it lawful or, if such modification is impossible, the said unlawful provisions shall be deemed to be severable from the remaining provisions hereof.

12.6 Where any recommendation or decision giving rise to the awarding or conclusion of this contract has been unlawful or improperly made, the Municipality shall be entitled to rescind such decision and the power to rescind such decision shall extend to decisions that were made, taken or in any way influenced by Councillors in contravention of the Code of Conduct for Councillors as set out in Schedule 1 to the Municipal Systems Act or Municipal Officials in contravention of the Code of Conduct for Municipal Staff Members as set out in Schedule 2 to that Act.

12.7 This Agreement is subject to Section 14 of the Municipal Finance Management Act 56 of 2003.

12.8 In the event of the Purchaser being a company, close corporation, partnership, or trust the signatory hereof on behalf of the Purchaser guarantees that he is duly authorised to conclude this agreement and, in the event of his principal refusing to accept the agreement or to give effect thereto, that he shall be personally liable to the Seller and bound by this agreement as if he has concluded the agreement in his personal capacity.

SIGNED at _____ on this the ____ day of _____ **2019**.

AS WITNESSES:

1. _____

2. _____

For and on behalf of The Municipality

SIGNED at _____ on this the ____ day of _____ **2019**.

AS WITNESSES:

1. _____

2. _____

The Purchaser