

**MOGALAKWENA LOCAL MUNICIPALITY**



**PROJECT NAME:**

**APPOINTMENT OF A SERVICE PROVIDER FOR VAT REVIEW AND RECOVERY SERVICES FOR A PERIOD OF 36 MONTHS.**

**TENDER NO: 05-2021/2022**

**TENDER ADVERT DATE: 04 OCTOBER 2021**

**TENDER CLOSING DATE AND TIME: 18 NOVEMBER 2021**

**NAME OF TENDERER:** \_\_\_\_\_

**PERCENTAGE OFFERED:** \_\_\_\_\_

**CONTACT PERSON:** \_\_\_\_\_

**CELL NUMBER:** \_\_\_\_\_

**OFFICE NUMBER:** \_\_\_\_\_

**EMAIL ADDRESS:** \_\_\_\_\_

**POSTAL ADDRESS:** \_\_\_\_\_

## TENDER NO.05-2021/2022

### TENDER NOTICE AND INVITATION TO TENDER

**CLOSING TIME & DATE: 18 NOVEMBER 2021 @10:00**

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Mogalakwena Local Municipality hereby invites suitably qualified service providers to tender for the below mentioned project.

The details of the project are as follows:

No:	Project Name	Compulsory briefing meeting	Tender Number	Enquiries
1.	<b>APPOINTMENT OF A SERVICE PROVIDER FOR VAT REVIEW AND RECOVERY SERVICES FOR A PERIOD OF THREE (3) YEARS</b>	None	05-2021/2022	015 491 9671/9731/9649 Supplychain@mogalakwena.gov.za

Mogalakwena Municipality will evaluate, adjudicate and award the bids in accordance with the PPPFA of 2017

**BID DOCUMENTS CONTAINING THE CONDITIONS OF BIDS AND REQUIREMENTS CAN BE DOWNLOADED ON E-TENDERS PUBLICATION PORTAL AT [www.etenders.gov.za](http://www.etenders.gov.za) for free and on [www.mogalakwena.gov.za](http://www.mogalakwena.gov.za).**

The respective project name with the project number must be clearly marked on the envelope before submission. Complete tender documents, fully priced, signed and sealed in an envelope must be deposited in the Tender Box at Mogalakwena Municipality, 54 Retief Street, Mokopane, by no later than **10H00 on 18 November 2021** for the above projects when all tenders received will be opened in public in the Old Council Chamber, on the Ground Floor.

*No late, faxed, telegraphic, emailed and telephonic tenders will be accepted. The council also reserves the right to negotiate further conditions and requirements with the successful tenderer.*

**NB\*** Service providers should take note that no bid/service will be awarded to a service provider who is not registered and valid on Web Based Central Supplier Database (CSD).

Enquiries related to this tender must be addressed to Supply Chain Management at 015 491 9671/9731/9649/9647.

The Municipality does not bind itself to accept the lowest or any tender and reserves the right to accept any tender or any part thereof, which may result in the acceptance of more than one tender, whichever the case may be.

**HSM NGOEPE  
ACTING MUNICIPAL MANAGER  
54 RETIEF STREET  
MOKOPANE  
0601  
NOTICE NUMBER: 192/21**

## **BIDDERS PLEASE NOTE THE FOLLOWING**

1. No late, faxed, telegraphic, emailed and telephonic tenders will be accepted. The council also reserves the right to negotiate further conditions and requirements with successful tenderer. Tenders received will be the basis for the contract negotiations and ultimately appointment of the suitable service provider. It is therefore important that service providers familiarise themselves with the municipality's processes and MLM supply chain management policy and to take them into account in preparing their tender.
2. Service Providers must note that the costs of preparing the tender and of negotiating the contract are not reimbursable and Mogalakwena Local Municipality is not bound to accept any of the tender submitted.
3. At any time before submission of the bid, Mogalakwena Local Municipality may, for any reason, whether at its own initiative or in response to a clarification requested by an invited firm, modify these Specifications by amendments. The amendment will be sent in writing by facsimile or electronic mail to all Service providers and will be binding on them. Mogalakwena Local Municipality may at its discretion extend the deadline for the submission of bids.

### **A. TENDER VALIDITY PERIOD**

The tender offer shall remain valid for **90 days** after the closing date of the tender submissions.

### **B. NEGOTIATIONS**

Negotiations to reach agreement on all points and sign a contract will be held at a time and place to be determined by Mogalakwena Local Municipality. Negotiations will include a discussion of the technical proposal, the proposed work plan, financial proposal/pricing and any suggestions made by the appointed service provider to improve the Terms of Reference. The agreed work plan, service level agreement and final Terms of Reference will then be incorporated into the "Description of Services" and form part of the contract.

### **C. SUBMISSION AND OPENING OF TENDER PROPOSAL**

The proposal tender document shall be placed in a sealed envelope clearly marked "project name, project number and the closing date". The envelope shall be deposited in the tender box at the Civic Centre situated at:

***54 Retief Street, MOKOPANE***

Note that any tender received after the closing date and time for submission, will not be considered.

***Administrative Enquiries to Supply Chain Unit: -***

***supplychain@mogalakwena.gov.za***

***Telephone number: -015 491 9649/9647***

***Technical Enquiries to Office of the Chief Financial Officer: -***

***sekwakwae@mogalakwena.gov.za***

***Telephone number: -015 491 9606***

The tenders will be opened immediately after the closing time for submission.

Mogalakwena Local Municipality will take ownership of the outcomes and deliverables, thereby reserving the right to reproduce information from, copy and / or distribute such outcomes and deliverables without the prior consent of and / or reference to the service provider.

#### **DETAILS**

<b>Province</b>	<b>Limpopo</b>
<b>District</b>	<b>Waterberg</b>
<b>Municipality</b>	<b>Mogalakwena Local Municipality</b>
<b>Project Name</b>	<b>APPOINTMENT OF A SERVICE PROVIDER FOR VAT REVIEW AND RECOVERY SERVICES FOR A PERIOD OF THREE (3) YEARS</b>

## **SPECIFICATION**

### **1. SCOPE OF CONTRACT**

The scope of contract calls for the appointment of a suitably qualified and experienced Service Provider for Vat review, recovery, calculation of Value Added Tax (VAT), apportionment percentage and application thereof for a contract duration of three (3) years.

### **2. SCOPE OF WORKS**

The scope of works entails a VAT review of the apportionment percentages calculations and general ledger **and** VAT recovery for the current and previous five (5) years.

### **3. DETAILED SPECIFICATION**

#### **3.1 VAT Review**

- (a) VAT is the only tax that has a direct impact on the financial affairs of a Municipality.
- (b) The application of the Value Added Tax Act, Act No. 89 of 1991, is a complex issue and not easy to interpret and contains numerous exceptions and provision. Given the fact that the financial implications of such actions can be detrimental to the Municipality and the prescription period of this claim proviso (i) of section 17 of the VAT Act that limits the period in which a vendor may claim an input deduction to five (5) years.
- (c) Facilitate a VAT review, which includes a review of the current status of the treatment of VAT by the Municipality's accounting system to ensure appropriate application of the relevant provisions of the VAT Act to ensure optimal claiming of the input tax and appropriate declaration of the output tax timeously.
- (d) Detail examination into the general ledger where VAT was potential not claimed.

- (e) Calculate the apportionment percentage based for the current and previous five (5) years.
- (f) Apply the recalculated apportionment percentage to the mixed supply expenses and the amount of under or over payment of input tax, if any.

### **3.2 VAT Recovery**

- (a) Review the VAT treatment of equitable shares and all other grants, conditional and unconditional, to ensure that the treatment is correct from a VAT, as well as a grant condition point of view.
- (b) A comprehensive written report must be submitted on the findings of the review/recovery identifying risk areas, internal control weaknesses and recommendations for improvement;
- (c) Working papers of all relevant calculations should be handed over to the Municipality.

**The VAT review/recovery process should include for the following:**

#### **3.2.1 VAT Reconciliations**

- (a) Obtain input and output figures from the general ledger per tax period.
- (b) Obtain copies of the VAT 201's submitted to SARS.
- (c) Reconcile the input figures from the general ledger with the input figures reflected on the VAT 201's (Submit an electronic reconciliation of the input VAT as per the financial system of the Municipality and compare the reconciliation with the figures as per the SARS system (VAT201)).
- (d) Reconcile the output figures from the general ledger with the output figures reflected on the VAT 201's (Submit an electronic reconciliation of the output VAT as per the financial

system of the Municipality and compare the reconciliation with the figures as per the SARS system (VAT 201)).

(e) Reconcile the figures on the VAT 201 returns to the VAT report from the financial system.

(f) Investigate differences.

### **3.2.2 VAT Input Reconciliation**

(a) Obtain detailed line-by-line general ledger transactions electronically from the system.

(b) Link the line-by-line detailed transactions of the general ledger VAT input account(s) to the different lines of the different account transactions.

(c) Reconcile the above linked line-by-line transactions per the expense account to identify instances where VAT registered was not accounted for in the VAT 201 - code these exceptions as; supplier not VAT registered / require valid tax invoice from supplier / no VAT to be claimed / valid VAT saving / VAT charged but supplier not registered for VAT.

(d) Investigate expenses (general ledger entries) where no VAT as claimed by obtaining invoices/supporting documentation.

(e) The Service Provider to have its own team of staff members to retrieve incorrect, lost, misfiled or misplaced invoices from Municipal suppliers.

(f) Where VAT as charged by non-VAT vendors, the Service Provider is to recover the VAT charged.

(g) Investigate journals.

### **3.2.3 VAT Output Reconciliation**

(a) Obtain detailed line-by-line general ledger transactions electronically from the system.



- (b) Link the line-by-line detailed transactions of the general ledger VAT output account(s) to the different lines of the different income account transactions.
- (c) Perform a detailed breakdown of the debtor's sub-ledgers transactions to review the allocation of VAT.
  
- (d) Reconcile the VAT linked with the VAT per income stream to identify instances where VAT was incorrectly accounted for in the VAT 201
  
- (e) Investigate exceptions; Investigate journals.
  
- (f) Verify income with bank statements/bank reconciliation.

### **3.3 The Detailed VAT Review Process**

- (a) The successful tenderer will be required to conduct a thorough and meticulous VAT review of the Municipality's general ledger control accounts in relation to VAT transactions to ensure that the Municipality has correctly accounted for VAT on all the expenditure and revenue.
  
- (b) Review of the VAT report from the financial system to ensure that output tax was declared on all receipts for taxable receipts from customers and input tax claimed for all payments made to VAT vendors.
  
- (c) An investigation of the accounting system including correct flagging/coding of all expenditure and revenue votes to ensure all votes have been correctly set up for VAT.
  
- (d) Establish the impact for the years under review if there is any over/under/claimed input and output due to the general ledger being incorrectly set up for VAT.
  
- (e) Address unresolved pertinent issues that have a direct influence on VAT; such as equitable share and conditional grants.

- (f) Calculate the required VAT adjustments resulting from the review, if any, inclusion on the relevant VAT return.
- (g) Transfer of skills to Municipal staff regarding all VAT facets should take place within the contract period.

**3.4 A Detailed Examination into the Municipality's General Ledger, Journal Vouchers, Tax Invoices to ascertain if VAT was claimed due to:**

- (a) The supplier being recorded as a non-VAT vendor on the system but there is proof otherwise.
- (b) Incorrect classification of votes for VAT purposes e.g. classified exempt and VAT originally claimed.
- (c) The supplier does attract VAT, but this was omitted.

**3.5 VAT Apportionment Percentage Review**

- (a) Analysis of computation of current apportionment ratio applied.
- (b) Review and recalculate the apportionment ratio for the current and previous five (5) years as per approved formula.
- (c) Apply the recalculated apportionment percentage to determine:
  - (i) whether the VAT apportionment percentage has been correctly calculated;
  - (ii) whether the VAT apportionment percentage has been correctly applied; and
  - (iii) the amount of under or over paid input tax, if any.
- (d) Create Excel models that will be used as a basis to calculate apportionment percentage for this period.

(e) Calculate the required VAT adjustments resulting from the review, if any, inclusion on the relevant VAT return.

(f) Provide detail workings for the calculation of the apportionment percentages/ adjustments in excel for the Auditor General and SARS.

(g) Assist the Municipality in completing the VAT return(s), making declaration of liabilities/ receivables if any and completion of any necessary documentation that may be required to claim from SARS.

(h) Liaise directly with SARS on all re-calculation workings and response to queries to obtain any refunds due the Municipality.

**3.6** The methodology and procedures applied during the verification process ensure that the savings and exposures identified are 100% verifiable to any 3rd party, i.e. SARS or the Auditor General. The procedures applied must comply with the VAT Act.

**EVALUATION CRITERIA**

The tender shall be evaluated on Functionality only.

**All bidders scoring a zero in any of the aspects below will be disqualified.**

FUNCTIONAL ASSESSMENT - POINT SCORING FUNCTIONAL CATEGORY AND DESCRIPTION	ALLOCATION OF POINTS / WEIGHTING
<b>EXPERIENCE OF THE COMPANY</b>	<b>75</b>
<b>a) Proof of all Notice of Objections / Disputes submitted for a single municipality. Points will be allocated on the value (financial benefit) of the outcome</b>	30
i) R15million - R30million (5 points)	

ii) R31million – R100million (10 points)	
iii) >R100million (30 points)	
<b>b) Previous experience in projects of a similar nature: Conducting a VAT Review and Recovery. Statement reflecting amounts should be submitted.</b>	20
Bidders must attach proof of experience where specific VAT Review services were provided. Bidders are required to submit an appointment letter or VAT returnst to be allocated the points. The points will be allocated as follows:	
i) 10 (1 to 10 Local Municipalities) <i>Appointment letters/Contracts (10 points)</i>	
ii) 15 (11 to 25 Local Municipalities) <i>Appointment letters/Contracts (15 points)</i>	
iii) 20 (More than 25 Local Municipalities) <i>Appointment letters/Contracts (20 points)</i>	
<b>c) ISO 9001:2015 is defined as the international standard that specifies requirements for a quality management system (QMS). Organizations use the standard to demonstrate the ability to consistently provide products and services that meet customer and regulatory requirements</b>	25
<b>Bidders must attach their VALID ISO 9001:2015 certificate recognised by the International Accreditation Forum (IAF) as evidence of the QMS requirement</b>	
i) Valid ISO certificate (25 points)	
ii) Expired or no ISO certificate (0 points)	
<b>CAPACITY</b>	<b>25</b>
<b>d) Project Team must consist of full time employed Professional Accountants</b>	10
i) Below 2 Professional Accountants - Original signed Affidavits confirming employment, Certified ID Copies, Membership Certificates (0 points)	
ii) From 2 - 5 Professional Accountants - Original signed Affidavits confirming employment, Certified ID Copies, Membership Certificates (5 points)	

iii) Above 5 Professional Accountants - Original signed Affidavits confirming employment, Certified ID Copies, Membership Certificates (10 points)	
<b><i>(Proof of membership from controlling body and certified ID copies to be attached for point allocation)</i></b>	
<b>e) The bidding company must meet the requirements of employing permanent Tax Practitioners</b>	15
i) Below 5 Tax Practitioners - Original signed Affidavits confirming employment, Certified ID Copies, Membership Certificates (0 points)	
ii) From 5 - 10 Tax Practitioners- Original signed Affidavits confirming employment, Certified ID Copies, Membership Certificates (10 points)	
iii) Above 10 Tax Practitioners - Original signed Affidavits confirming employment, Certified ID Copies, Membership Certificates (15 points)	
<b><i>(Proof of membership from controlling body and certified ID copies to be attached for point allocation)</i></b>	
<b>TOTAL POINTS (MINIMUM REQUIRED TO PASS EVALUATION IS 80 POINTS)</b>	<b>100</b>

**PRICING SCHEDULE**

The Tenderer shall supply the percentage to be charged to the municipality for services rendered and all information required. Failure to comply with the requirements shall invalidate the Tender submission. The percentage will be charged on the VAT amount recovered and paid over to the municipality by SARS.

**Percentage to be charged:** \_\_\_\_\_ %

The municipality will not pay any amount outside the percentage charged for services rendered. The municipality reserves the right to negotiate on the percentage charged.

The successful service provider will be remunerated in accordance with Service Level Agreement.

**TENDER OFFERS WILL ONLY BE ACCEPTED IF:**

- A valid authority for signatory is provided and signed
- The tenderer has not:
  - Abused the employers Supply Chain Management System; or
  - Failed to perform on any previous contract and has been given a written notice to that effect.
- Valid Tax Clearance Certificate (For both Parties in case of a Joint Venture). Tax compliance status pin issued should also be attached for new tax clearance certificate issued.
- Submitted a valid certified copy of company registration certificate.
- Form must be signed in black ink (no pencil is allowed or other colour)
- All MBD Forms must be completed and signed
- In case of a Joint Venture, Association or Consortium a formal contract agreement must be signed by both parties and be attached
- Any alterations on the proposals or the tender document must be initialled.
- Valid Proof of Residential e.g. lease agreement, municipal rates & taxes account etc
- Valid BBBEE certificate should be submitted.
- The tenderer or any of its directors/shareholders is not listed on the Register of Tender Defaulters in terms of the Prevention of Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector.
- The Mogalakwena local Municipality may cancel a contract awarded of any company if:
  - The company or any of its directors has committed a corrupt or fraudulent act during the procurement process or in the execution of the contract, or

- An official or other role player committed any corrupt or fraudulent act during the procurement process or in the execution of the contract that benefited the tenderer.

## MBD FORMS

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MBD 1

### INVITATION TO BID

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YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF MUNICIPALITY/ENTITY)

BID NUMBER: ..... CLOSING DATE: ..... CLOSING  
TIME: .....

DESCRIPTION.....  
.....

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**The successful bidder will be required to fill in and sign a written Contract Form (MBD 7).**

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BID DOCUMENTS MAY BE POSTED TO:

.....  
.....

**OR**

DEPOSITED IN THE BID BOX SITUATED AT (*STREET ADDRESS*)

.....  
.....  
.....  
.....

Bidders should ensure that bids are delivered timeously to the correct address. If the bid is late, it will not be accepted for consideration.

The bid box is generally open 24 hours a day, 7 days a week.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT
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**NB: NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE (as defined in Regulation 1 of the Local Government: Municipal Supply Chain Management Regulations)**

*THE FOLLOWING PARTICULARS MUST BE FURNISHED  
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)*

NAME OF BIDDER

.....  
.....

POSTAL ADDRESS

.....  
.....

STREET ADDRESS

.....  
.....

TELEPHONE NUMBER

CODE.....NUMBER.....  
.....

CELLPHONE NUMBER

.....  
.....

FACSIMILE NUMBER CODE .....  
.NUMBER.....

E-MAIL ADDRESS  
.....  
.....

VAT REGISTRATION NUMBER  
.....  
.....

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN ATTACHED?  
(MBD 2) YES/NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED?  
(MBD 6.1) YES/NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT  
(CCA)

A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN NATIONAL  
ACCREDITATION SYSTEM (SANAS)

A REGISTERED AUDITOR

(Tick applicable box)

**(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE MUST BE SUBMITTED IN  
ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE)**

ARE YOU THE ACCREDITED REPRESENTATIVE  
IN SOUTH AFRICA FOR THE GOODS/SERVICES/WORKS OFFERED

YES/NO  
(IF YES ENCLOSE PROOF)

SIGNATURE OF BIDDER

.....  
.....

DATE

.....  
.....

CAPACITY UNDER WHICH THIS BID IS SIGNED

.....  
.....

TOTAL BID PRICE..... TOTAL NUMBER OF  
ITEMS OFFERED .....

.....  
.....

**ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:**

**Municipality / Municipal Entity:**

.....

**Department:**

.....

**Contact**

**Person:**

.....

**Tel:**

.....

**Fax:**

.....

**ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:**

**Contact**

**Person:**

.....

**Tel:**

.....

**Fax:**

.....

**MBD 2**

**TAX CLEARANCE CERTIFICATE REQUIREMENTS**

**It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.**

- 1. In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate**

Requirements are also applicable to foreign bidders / individuals who wish to submit bids.

2. SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
3. The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
4. In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
5. Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website [www.sars.gov.za](http://www.sars.gov.za).
6. Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website [www.sars.gov.za](http://www.sars.gov.za).

#### **MBD 4**

#### **DECLARATION OF INTEREST**

1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
2. Any person, having a kinship with persons in the service of 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 connected with or related to persons in service of the state, it is required

that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.

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

3.1 Full Name of bidder or his or her representative:.....

3.2 Identity Number:  
.....

3.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>):.....

3.4 Company Registration Number:  
.....

3.5 Tax Reference Number:.....

3.6 VAT Registration Number:  
.....

3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

3.8 Are you presently in the service of the state? **YES**  
**/ NO**

3.8.1 If yes, furnish particulars.  
.....

.....  
.....

<sup>1</sup>MSCM Regulations: “in the service of the state” means to be –

- (a) a member of –
  - (i) any municipal council;
  - (ii) any provincial legislature; or
  - (iii) the national Assembly or the national Council of provinces;
  
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

<sup>2</sup> Shareholder” means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 Have you been in the service of the state for the past twelve months? ..... **YES**  
**/ NO**

3.9.1 If yes, furnish particulars.....

.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? ..... **YES**  
**/ NO**

3.10.1 If yes, furnish particulars.  
.....  
.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? ..... **YES**  
**/ NO**

3.11.1 If yes, furnish particulars  
.....  
.....

3.12 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? ..... **YES**  
**/ NO**

3.12.1 If yes, furnish particulars.  
.....  
.....

3.13 Are any spouse, child or parent of the company's directors trustees, managers, principle shareholders or stakeholders



in service of the state?

**YES**

**/ NO**

3.13.1 If yes, furnish particulars.

.....  
.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract.

**YES**

**/ NO**

3.14.1 If yes, furnish particulars:

.....  
.....

4. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	State Employee Number


.....

**Signature**

.....

**Date**

.....

**Capacity**

.....

**Name of Bidder**

**MBD 5**

**DECLARATION FOR PROCUREMENT ABOVE R10 MILLION (ALL APPLICABLE TAXES INCLUDED)**

For all procurement expected to exceed R10 million (all applicable taxes included), bidders must complete the following questionnaire:

- |   |   |
|---|---|
| <p>1 Are you by law required to prepare annual financial statements for auditing?</p> <p>1.1 If yes, submit audited annual financial statements for the past three years or since the date of establishment if established during the past three years.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> | <p>other service provider in respect of which payment is overdue for more than 30 days?</p> <p>2.1 If no, this serves to certify that the bidder has no undisputed commitments for municipal services towards any municipality for more than three months or other service provider in respect of which payment is overdue for more than 30 days.</p> |
|---|---|

1. If yes, provide particulars.

.....  
.....  
  
.....  
.....  
  
.....  
.....  
  
.....  
.....

\* Delete if not applicable

**\*YES / NO**

3 Has any contract been awarded to you by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract?

**\*YES / NO**

1. If yes, furnish particulars .....  
.....

..... **\*YES / NO**  
.

4. Will any portion of goods or services be sourced from outside  
the Republic, and, if so, what portion and whether any portion  
of payment from the municipality / municipal entity is expected to be  
transferred out of the Republic? **\*YES / NO**

4.1. If yes, furnish particulars  
.....  
.....

**CERTIFICATION**

I,                    THE                    UNDERSIGNED                    (NAME)  
.....

**CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION  
FORM IS CORRECT.**

**I ACCEPT THAT THE STATE MAY ACT AGAINST ME SHOULD THIS DECLARATION PROVE TO BE**

**FALSE.**

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

**MBD 6.1**

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017**

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.**

**1. GENERAL CONDITIONS**

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

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2.

- a) The value of this bid is estimated to **exceed/not exceed** R50 000 000 (all applicable taxes included) and therefore the **.....** preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender *(delete whichever is not applicable for this tender)*.

1.3. Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

1.4. The maximum points for this bid are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	
<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>	
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

1.5.

1.6. Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.7. The purchaser reserves the right to require of a bidder, either before a bid is

adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

## 2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
  - 1) B-BBEE Status level certificate issued by an authorized body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the



Broad-Based Black Economic Empowerment Act;

- (j) “**rand value**” means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

### 3. POINTS AWARDED FOR PRICE

#### 3.1. THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

**80/20**

or

**90/10**

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

or

$$P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

$P_s$  = Points scored for price of bid under consideration

$P_t$  = Price of bid under consideration

$P_{\min}$  = Price of lowest acceptable bid

### 4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1. In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14

4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

4.2.

**5. BID DECLARATION**

5.1. Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

**6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1**

6.1. B-BBEE Status Level of Contributor: . = .....(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

**7. SUB-CONTRACTING**

7.1. Will any portion of the contract be sub-contracted?

*(Tick applicable box)*

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

7.1.1. If yes, indicate:

i) What percentage of the contract will be subcontracted.....%

ii) The name of the sub-contractor.....

iii) The B-BBEE status level of the sub-contractor.....

iv) Whether the sub-contractor is an EME or QSE

*(Tick applicable box)*

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

<b>Designated Group: An EME or QSE which is at last 51% owned by:</b>	<b>EME</b> √	<b>QSE</b> √
Black people	<input type="checkbox"/>	<input type="checkbox"/>
Black people who are youth	<input type="checkbox"/>	<input type="checkbox"/>
Black people who are women	<input type="checkbox"/>	<input type="checkbox"/>
Black people with disabilities	<input type="checkbox"/>	<input type="checkbox"/>
Black people living in rural or underdeveloped areas or townships	<input type="checkbox"/>	<input type="checkbox"/>
Cooperative owned by black people	<input type="checkbox"/>	<input type="checkbox"/>
Black people who are military veterans	<input type="checkbox"/>	<input type="checkbox"/>
<b>OR</b>		
Any EME	<input type="checkbox"/>	<input type="checkbox"/>
Any QSE	<input type="checkbox"/>	<input type="checkbox"/>

**8. DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1. Name of company/firm:.....

8.2. VAT registration number:.....

8.3. Company registration number:.....

8.4. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

8.5. DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

.....

.....

8.6. COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional service provider
- Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

8.7. MUNICIPAL INFORMATION

**Municipality where business is situated:**

.....

**Registered Account Number:** .....

**Stand Number:**.....

8.8. Total number of years the company/firm has been in business:.....

8.9. I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;

- ii) The preference points claimed are 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 paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person’s conduct;
  - (c) 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;
  - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

WITNESSES

1. ....

2. ....

.....  
SIGNATURE(S) OF BIDDERS(S)

DATE: .....

ADDRESS .....

.....

--

MBD 8

**DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES**

1. This Municipal Bidding Document must form part of all bids invited.
2. It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
3. The bid of any bidder may be rejected if that bidder, or any of its directors have:

- a. abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
- b. been convicted for fraud or corruption during the past five years;
- c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
- d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

**4. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p><b>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</b></p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</p>	Yes	No
4.1.1	If so, furnish particulars:		

4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? <b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b>	Yes	No
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes	No
4.3.1	If so, furnish particulars:		
Item	Question	Yes	No
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes	No
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes	No



4.7.1	If so, furnish particulars:
-------	-----------------------------

**CERTIFICATION**

**I, THE UNDERSIGNED (FULL NAME) .....  
 CERTIFY THAT THE INFORMATION FURNISHED ON THIS  
 DECLARATION FORM TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION  
 MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE  
 FALSE.**

.....  
**Signature**

.....  
**Date**

.....  
**Position**

.....  
**Name of Bidder**

## CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Municipal Bidding Document (MBD) must form part of all bids<sup>1</sup> invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.

Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:

- a. take all reasonable steps to prevent such abuse;
  - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
  - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
4. This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
  5. In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

**<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.**

**<sup>2</sup> Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.**

**MBD 9**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

\_\_\_\_\_

(Bid Number and Description)

in response to the invitation for the bid made by:

\_\_\_\_\_

(Name of Municipality / Municipal Entity)

do hereby make the following statements that I certify to be true and complete in every respect:

I \_\_\_\_\_ certify, \_\_\_\_\_ on \_\_\_\_\_ behalf  
of: \_\_\_\_\_ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;

3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.

8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

**<sup>3</sup> Joint venture or Consortium 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.**

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....  
 .....  
 Signature

Date

.....  
 .....  
 Position

Name of Bidder

## **GENERAL CONDITIONS OF CONTRACT (National Treasury)**

GOVERNMENT PROCUREMENT: General Conditions of Contract

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## 1 DEFINITIONS

The following terms shall be interpreted as indicated:

- 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4 "Contract practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

1.5 “Countervailing duties” are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.

1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

1.7 “Day” means calendar day.

1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.

1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.

1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods are so delivered and a valid receipt is obtained.

1.11 “Dumping” occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

1.12 “Force majeure” means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

1.13 “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

1.14 “GCC” mean the General Conditions of Contract.

1.15 “Goods” means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.



1.16 “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the goods covered by the bid will be manufactured.

1.17 “Local content” means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.

1.18 “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

1.19 “Order” means an official written order issued for the supply of goods or works or the rendering of a service.

1.20 “Project site”, where applicable, means the place indicated in bidding documents.

1.21 “Purchaser” means the organization purchasing the goods.

1.22 “Republic” means the Republic of South Africa.

1.23 “SCC” means the Special Conditions of Contract.

1.24 “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

1.25 “Supplier” means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.

1.26 “Tort” means in breach of contract.

1.27 “Turnkey” means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.

1.28 “Written” or “in writing” means hand-written in ink or any form of electronic or mechanical writing.

## GOVERNMENT PROCUREMENT: General Conditions of Contract

### 2. **Application**

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services (excluding professional services related to the building and construction industry), sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific goods, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

### 3. **General**

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.1 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.

### 4. **Standards**

4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

### 5. Use of contract documents and information inspection

5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

5.4 The supplier permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

#### GOVERNMENT PROCUREMENT: General Conditions of Contract

##### 6. **Patent Rights**

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

6.2 When a supplier developed documentation / projects for the municipality / municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will best in the municipality / municipal entity.

##### 7. **Performance security**

7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

7.3 The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

a) A bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form

b) A cashier's or certified cheque.

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the

supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

## 8. Inspections, tests and analyses

8.1 All pre-bidding testing will be for the account of the bidder.

8.2 If it is a bid condition that goods to be produced or services to be rendered should at any stage be subject to inspections, tests and analyses, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or organization acting on behalf of the purchaser.

8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

8.5 Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

8.6 Goods and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

8.7 Any contract goods may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them with goods, which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 and 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.

## 9. **Packing**

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size weights shall take into consideration, where appropriate, the remoteness of the goods 'final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, and in any subsequent instructions ordered by the purchaser.

## 10. **Delivery and documents**

10.1 Delivery of the goods and arrangements for shipping and clearance obligations shall be made by the supplier in accordance with the terms specified in the contract.

## 11. **Insurance**

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified.

## 12. **Transportation**

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified.

GOVERNMENT PROCUREMENT: General Conditions of Contract

## 13. **Incidental Services**

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any:

- a) Performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- b) Furnishing of tools required for assembly and/or maintenance of the supplied goods;
- c) Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

d) Performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and

e) Training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

#### 14. **Spare parts**

14.1 As specified, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

a) Such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and;

b) In the event of termination of production of the spare parts:

i. Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and

ii. Following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

#### 15. **Warranty**

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models and those they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal uses of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final

destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

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15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

### 16. **Payment**

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated.

### 17. **Prices**

17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized or in the purchaser's request for bid validity extension, as the case may be.

### 18. **Variation orders**

18.1 In cases where the estimated value of the envisaged changes in purchase does not vary more than 15% of the total value of the original contract, the contractor may be instructed to deliver the goods or render the services as such. In cases of measurable quantities, the contractor may be approached to reduce the unit price, and such offers may be accepted provided that there is no escalation in price.

## 19. **Assignment**

19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

## 20. **Subcontracts**

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

## 21. **Delays in the supplier's performance**

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser on writing of the fact of the delay, its likely duration and its cause(s). as soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 The right is reserved to procure outside of the contract shall quantities or to have minor essential services executed if any emergency arises, the supplier's point of supply is not situated at or near the place where the goods are required, or the supplier's services are not readily available.

21.4 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of penalties.

21.5 Upon any delay beyond the delivery period in the case of a goods contract, the purchaser shall, without cancelling the contract, be entitled to purchase goods of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to



complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## **22. Penalties**

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to the GCC Clause 23.

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## **23. Termination for default**

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- a) If the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- b) If the supplier fails to perform any other obligation(s) under the contract; or
- c) If the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner, as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than

fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction?

23.5 Any restriction imposed on any person by the purchaser will, at the discretion of the purchaser, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the purchaser actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- i. The name and address of the supplier and / or person restricted by the purchaser;
- ii. The date of commencement of the restriction
- iii. The period of restriction; and
- iv. The reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

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23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name be endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

#### **24. Anti-dumping and countervailing duties and rights**

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed or the amount of a provisional payment or anti-

dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favorable difference shall on demand be paid forthwith by the supplier to the purchaser or the purchaser may deduct such amounts from moneys (if any) which may otherwise be due to the supplier in regard to goods or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

## 25. **Force Majeure**

25.1 Notwithstanding the provisions of GCC Clause 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

## 26. **Termination for insolvency**

26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the purchaser.

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## 27. **Settlement of Disputes**

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and supplier in connection with or arising out of the contract, the parties

shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

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27.4 Notwithstanding any reference to mediation and/or court proceedings herein,

- a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- b) the purchaser shall pay the supplier any monies due the supplier for goods delivered and / or services rendered according to the prescripts of the contract.

#### 28. **Limitation of Liability**

28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;

- a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
- b) -the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

#### 29. **Governing language**

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

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**30. Applicable law**

30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified.

**31. Notices**

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to proper service of such notice.

31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

**32. Taxes and duties**

32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc. incurred until delivery of the contracted goods to the purchaser.

32.3 No contracts shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid SARS must have certified that the tax matters of the preferred bidder are in order.

32.4 No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.

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**33. Transfer of contracts**

33.1 The contractor shall not abandon, transfer, cede assign or sublet a contract or part thereof without the written permission of the purchaser.

**34. Amendment of contracts**

34.1 No agreement to amend or vary contract or order or the conditions, stipulation or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of

the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.

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##### **35. Prohibition of restrictive practices**

35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding.

35.2 If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 of 1998.

35.3 If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminated the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.