



**CSS : LEGAL SERVICES**

**BID DESCRIPTION: APPOINTMENT OF A PANEL OF 10 (TEN) ATTORNEYS/FIRMS OF ATTORNEYS FOR PROVISION OF LEGAL SERVICES FOR MOGALAKWENA LOCAL MUNICIPALITY FOR A PERIOD OF THREE (03) YEARS**

**BID NUMBER : 28-2023/2024**

**NAME OF THE BIDDER : .....**

**ADDRESS : .....**  
.....  
.....

**TELEPHONE NUMBER : .....**

**CELLPHONE NUMBER : .....**

**FAX NUMBER : .....**

**E-MAIL ADDRESS : .....**

**BID AMOUNT : QUALITY BASED SELECTION**

**CLOSING DATE : 25 MARCH 2024**

**CLOSING TIME : 12:00P.M**



**BID NO: 28-2023/2024:** APPOINTMENT OF A PANEL OF TEN (10) ATTORNEYS/FIRMS OF ATTORNEYS FOR PROVISION OF LEGAL SERVICES FOR MOGALAKWENA LOCAL MUNICIPALITY FOR A PERIOD OF THREE (3) YEARS.

**DIRECTORATE: CORPORATE SUPPORT SERVICES: LEGAL**

**BUSINESS UNIT: LEGAL SERVICES**

Bids are hereby invited for Appointment of a Panel of Ten (10) Attorneys/ Firms of Attorneys for Provision of Legal Services for Mogalakwena Local Municipality for a Period of Three (3) Years.

**Bids documents containing the Conditions of Bid and other requirements in terms of the Supply Chain Management Policy will be downloaded from e-tender Publication Portal at [www.etenders.gov.za](http://www.etenders.gov.za) and also [www.mogalakwena.gov.za](http://www.mogalakwena.gov.za) at no fee.**

Complete Bid document and Tariff and/or Fee Structure signed must be sealed in an envelope marked Bid number 28-2023/2024 **Bid description: Appointment of a Panel of Ten (10) (Attorneys/ Firms of Attorneys for Provision of Legal Services for Mogalakwena Local Municipality for a Period of Three (3) Years.**

Tender Closing date, **25 MARCH 2024** at 12: 00p.m and should be deposited in the tender box at the Mogalakwena Local Municipality, 54 Retief Street, Mokopane, not later than 12:00p.m. The Bid box is generally open 24 hours, 7 days a week

The Council also reserves the right to negotiate further conditions and requirements with the successful bidder.

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

THIS BID IS SUBJECT TO THE, PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATION, 2022,  
The Municipality shall appoint prospective service providers to be on the Municipality panel of Attorneys based on their qualifications, capacity and work experience. Prospective bidders must accept that the bid will be adjudicated, according to the said legislation. Bids will remain valid for 90 (ninety) days.

Only bidders who are registered with **Legal Practice Council (formerly known as Law Society)** will be considered.

This requirement will remain in force as long as it is a requirement of the Professional body.

**N.B: 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).**

Enquiries related to this bid should be addressed to Mr. T Ntsoane or Ms. NC Mabusela at Telephone number (015) 491 9664 & (015)491 9794

54 Retief Street

Mokopane

0601

Notice : 46/2024

## RESPONSIVENESS AND EVALUATION CRITERIA

### MOGALAKWENA LOCAL MUNICIPALITY WILL CONSIDER NO BID UNLESS IT MEETS THE FOLLOWING RESPONSIVENESS CRITERIA

- The bid must be properly received in a sealed envelope clearly indicating the description of the service and the bid number for which the bid is submitted.
- The bid must be deposited in the relevant bid box as indicated on the notice of the bid on or before the closing date and time of the bid.
- Bid forms must be completed in full and each page of the bid initialed.
- Submission of a Joint Venture Agreement, where applicable, which has been properly signed by all parties.
- Proof of payment of municipal rates and taxes accounts not older than three months for both the company and the directors. In the case of a lease agreement being presented as proof of address, the lessee must submit proof of payment of municipal rates either in the name of the landlord or the lessee OR a dated stamped letter or PTO from tribal authority. (Proof not more than three months old)
- Complies with the requirements of the bid and technical specifications.
- Registered with the Legal Practice Council (formerly known as Law Society)
- Adheres to Pricing Instructions (complete **ANNEXURE B**”).
- Valid Original Tax Certificate
  - a) Policy, the Preferential Procurement Policy Framework Act, and other applicable legislations.
  - b) The Council reserves the right to accept all, some, or none of the bids submitted – either wholly or in part – and it is not obliged to accept the lowest bid.

**By submitting this bid, bidder authorizes the Council or its delegate(s) to carry out any investigation deemed necessary to verify the correctness of the statements and documents submitted and that such documents reasonably reflect the ability of the Bidder to provide the goods and services required by the Council.**

## PLEASE NOTE

**The Municipal Manager may reject the bid or quote of any person if that person or any of its directors has:**

- a) The person committed a corrupt or fraudulent act during the procurement process or in the execution of the contract, or
- b) 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 that person.
- c) Failed to pay municipal rates and taxes or municipal service charges and such rates, taxes and charges are in arrears for more than three months;
- d) Failed, during the last five years, to perform satisfactorily on a previous contract with the Mogalakwena Local Municipality or any other organ of State after written notice was given to that bidder that performance was unsatisfactory;
- e) Abused the supply chain management system of the Municipality or have committed any improper conduct in relation to this system;
- f) Been convicted of fraud or corruption during the past five years;
- g) Willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
- h) 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) or has been listed on National Treasury's database as a person prohibited from doing business with public sector.

**BID NO:28-2023/2024**

I/We, the undersigned:

- a) Bid to supply and deliver to Mogalakwena Local Municipality all or any of the supplies and to render all the articles, goods, materials, services or the like described both in this and the other Schedules to this Contract;
- b) Agree that we will be bound by the specifications, prices, terms and conditions stipulated in those Schedules attached to this bid document, regarding delivery and execution;
- c) Further agree to be bound by those conditions, set out in Forms, MBD's, and the Annexures attached hereto, should this bid be accepted in whole or in part;
- d) Confirm that this bid may only be accepted by the Mogalakwena Local Municipality by way of a duly authorized Letter of Acceptance; and,
- e) Declare that, the relevant authorized person thereto will initial each page of the bid document and amendments.
- f) Declare that all information provided in respect of the bidder as well as the bid documents submitted are true and correct.
- g) Declare that documentary proof regarding aspects of the bid process or accidental thereto will, when required, be submitted to the satisfaction of the Municipality.

**Signed at ..... this ..... Day of ..... 20....**

**Signature of the Bidder:** \_\_\_\_\_

(Where the bidder is a partnership or Company, a resolution authoring the signatory to sign the document on behalf of the Company/partnership must be attached)

**Name of Bidder:** \_\_\_\_\_

**Professional Registration No, if any, attach proof)**

\_\_\_\_\_

**Address:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**As Witness:**        1.        \_\_\_\_\_

                             2.        \_\_\_\_\_

**Particular of Sole Proprietors and partners in partnerships**

<b>Name</b>	<b>Identity Number</b>	<b>Personal Income Tax Number</b>

**(Attach of identity Document, if bidder is a Sole Proprietor and/or partners in partnership)**

**State in cases where the bidder is a Company, Corporation of Firm by what authority the person signing does so, whether by Articles of Association, Resolution, Power of Attorney or otherwise.**

I/We the undersigned am/are authorized to enter into this contract of behalf of:

---

by virtue of \_\_\_\_\_

dated \_\_\_\_\_ a certified copy if which is attached to this bid.

**Signature of authorized person/people:** \_\_\_\_\_

**Name of Firm:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**As witness:** 1. \_\_\_\_\_

2. \_\_\_\_\_

**Please Note:**

*The prices at which bids are prepared to perform the services must be placed on the column on the Form provided for that purpose.*

**Failure on the part of the bidder to sign the Form of Bid and initial each page of this bid document will result in a bid being disqualified.**

**Bank account details of bidder:**

**Bank:** \_\_\_\_\_

**Branch:** \_\_\_\_\_

**Branch Code:** \_\_\_\_\_

**Accounting Number:** \_\_\_\_\_

**Type of Account:** \_\_\_\_\_

**Please note:**

- **PROOF THAT MUNICIPAL ACCOUNT IS PAID IN FULL TO BE ATTACHED (ARRANGEMENTS MADE WITH COUNCIL WILL BE TAKEN INTO CONSIDERATION).**
- **THE AUTHORIZED SIGNATORY MUST SIGN ANY ALTERATIONS TO THE BID DOCUMENT IN FULL**
- **ANY COMPLETION OF THE BID DOCUMENT IN ERASABLE INK WILL NOT BE ACCEPTED**



## BIDDING INFORMATION

Details of person responsible for bidding process

Name \_\_\_\_\_

Contact number \_\_\_\_\_

Address of office submitting bid \_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_

Fax no \_\_\_\_\_

E-mail address \_\_\_\_\_

VAT Registration Number \_\_\_\_\_

Has an original and valid tax clearance certificate been attached? Yes/No

Has a B-BBEE status level verification certificate been submitted? Yes/No

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

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

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

A REGISTERED:

(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:

Yes/No

IN SOUTH AFRICA FOR THE GOODS/SERVICES/WORKS OFFERED? (IF YES ENCLOSE PROOF)

**AUTHORITY FOR SIGNATORY**

Signatories for close corporation and companies shall conform their authority by attaching to this form a duly signed and dated copy of the relevant resolution of their members or their board of directors, as the case may be.

An example for a company is shown below:

“By resolution of the board of directors passed on \_\_\_\_\_ 20\_\_\_\_\_

Mr/Ms. \_\_\_\_\_

Has been duly authorized to sign all documents in connection with the bid for

Contract \_\_\_\_\_ No \_\_\_\_\_

And any Contract, which may arise there from on behalf of

---

Signed on behalf of the company: \_\_\_\_\_

In his/her capacity as:

---

Signature of signatory \_\_\_\_\_

Date: \_\_\_\_\_

As witness: 1. \_\_\_\_\_

2. \_\_\_\_\_

**GENERAL UNDERTAKINGS BY THE BIDDER****DEFINITION**

1. **"Acceptable bid"** means any bid, which in all respects, complies with conditions of bid and specifications as set out in the bid document, including conditions as specified in the Preferential Procurement Regulation (of 2022).
2. **"Chairperson"** means the chairperson of the Mogalakwena Local Municipality Bid Adjudication Committee.
3. **"Municipal Manager"** means the Municipal Manager of the Municipality.
4. **Committee"** refers to the Bid Adjudication Committee.
  
5. **"Council"** refers to Mogalakwena Local Municipality.
6. **"Member"** means a member of the Bid Adjudication Committee.
7. **Service providers"** refers to the bidders who have been successful in being awarded Council contracts.
8. **SMMs"**(Small, medium and Micro Enterprises) refers to separate and distinct business entities, including co- operative enterprises and NGOs, managed by one owner or more, as defined in the National Small Business (Act 102 of 1996.
9. **Contract"** refers to legally binding agreement between Mogalakwena Local Municipality and the service provider.
10. **Bid** "means a written offer in a prescribed or stipulated form in response to an invitation by the Municipality for the provision of services or goods.
11. **Contractor"** means any natural or legal person whose bid has been accepted by the Council.
12. **"Closing time"** means the date and hour specified in the bid documents for the receipt of bids.
13. **"Order"** means an official written order issued for the supply of goods or the rendering of a service in accordance of the accepted bid or price quotation.
14. **"Written" or "in writing,"** means hand written in ink or any form of mechanical writing in printed form.

## **INTERPRETATION:**

1. In this agreement clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention:
2. An expression which denotes: -
3. Any reference to any statute, regulation or other legislation or official policy shall be a reference to that statute, regulation or other legislation or national policy as at the signature date, and as amended or re-enacted from time to time;
4. When any number of days is prescribed, such shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding day which is a business day;
5. Where any term is defined within a particular clause, other than the interpretation clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in this agreement.

I/we hereby tender:

To supply all or any of the supplies and/or to render all or any of the services described in the attached documents {Forms, Schedule(s) and/or Annexure(s) to the Mogalakwena Local Municipality.

On the terms and conditions and accordance with the specifications stipulated in the bid documents (and which shall be taken as part of and incorporated into, this bid);

At the prices and on the terms regarding time for delivery and/or execution inserted therein.

I/we agree further that:

The offer herein shall remain binding upon me/us and open for acceptance by the Mogalakwena Local Municipality during the validity period indicated and calculated from the closing time of the bid.

This bid and its acceptance shall be subject to the terms and conditions contained in the Forms, scheduled(s) and/or Annexure(s) attached hereto with which I am /we are fully acquitted.

Notwithstanding anything to the contrary in the Form(s), Schedule(s) and /or Annexure(s) attached hereto:

If I/we withdraw my/our bid within the period for which I/we have agreed that the bid shall remain open for acceptance, or fail to fulfill the contract within 12 months when called upon to do so, the Mogalakwena Local Municipality may, without prejudice to its other rights, agree to the withdrawal of my/our tender or cancel the contract that may have been entered into between me/us and the Municipality;

In such event, I/we will then pay to the Municipality any additional expenses incurred by the Municipality for having either to accept any less favourable bid or, if new bids have to be invited, the additional expenditure incurred by the invitation of new bids and by the subsequent acceptance of any less favourable bid;

The Municipality shall also have the right in these circumstances, to recover such additional expenditure by set-off against monies which may be due or become due to me/us under this or any other bid or contract or against any guarantee or deposit

that may have been furnished by me/us or on my/our behalf for the due fulfillment of this or any other bid or contract;

Pending the ascertainment of the amount of such additional expenditure the Municipality may retain such monies, guarantee or deposit as security for any loss the Municipality may sustain, as determined hereunder, by reason of my/our default.

Any legal proceedings arising from this bid may in all respects be launched or instituted against me/us and if/we hereby

undertake to satisfy fully any sentence or judgment which may be obtained against me/us as a result of such legal proceedings and I/we undertake to pay the Mogalakwena Local Municipality legal costs on an attorney and own client;

If my/our bid is accepted that acceptance may be communicate to me/us by letter or facsimiles and that proof of delivery of such acceptance to SA Post Office Ltd or the production of a document confirming that a fax has been sent, shall be treated as delivery to me/us.

The law of the Republic of South Africa shall govern the contract created by the acceptance to this tender.

I/we have satisfied myself/ourselves as to the correctness and validity of this tender, that the price(s) and rate(s) quoted cover all the work/items(s) specified in the tender documents and that the price(s) and rate(s) cover all my/our obligations under a resulting contract and that I/we accept that any mistakes regarding price(s) and calculations will be at my/our risk.

I/we accept full responsibility for the proper execution and conditions defaulting on me/us under this agreement as the principal(s) liable for the fulfillment of this contract.

**I/we declare that I/we have participated /no participated in the submission of any other bid for the supplies/services described in the attached documents. If your answer here is yes, please state the names(s) of the other Bid(s) involved: \_\_\_\_\_**

## **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 nonrefundable fee for documents may be charged.
- 3.2 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 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.

## **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 vest 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 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 acceptable to the purchaser; or
  - (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. Delivery and documents**

- 8.1 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.

## **9. Insurance**

9.1 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.

## **10. Transportation**

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

## **11. Incidental Services**

11.1 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.

11.2 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.



## **12. Warranty**

- 12.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that 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 use of the supplied goods in the conditions prevailing in the country of final destination.
- 12.2 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.
- 12.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 12.4 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.
- 12.5 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.

## **13. Payment**

- 13.1 The method and conditions of payment to be made to the supplier under this contract shall be specified.
- 13.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the Delivery notes 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.
- 13.3 Payment will be made in Rand unless otherwise stipulated.

#### **14. Variation orders**

14.1 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.

#### **15. Assignment**

15.1 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.

#### **16. Subcontracts**

16.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts 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.

#### **17. Penalties**

17.1 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, sum calculated on the delivered price of the delayed goods or unperformed interest rate calculated for each day of the delay until actual delivery or performance.

#### **18. Termination for default**

18.1 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,

- (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.

18.2 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 service 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.

18.3 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 associate 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.

18.5. 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.

18.6 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.

18.7. 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 has been 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

## **19. Antidumping and countervailing duties and rights**

19.1 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 favourable 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.

## **20. Force Majeure**

- 20.1 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.
- 20.2 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, 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 events.

## **21. Termination for insolvency**

21.1 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.

## **22. Settlement of Disputes**

22.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the 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.

22.2 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.

22.4 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.

## **23. Limitation of Liability**

23.1 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.

## **24. Governing language**

24.1 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.

## **25. Applicable law**

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

## **26. Notices**

26.1 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 notified later by him in writing and such posting shall be deemed to be proper service of such notice.

26.2 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.

## **27. Taxes and duties**

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

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

27.3 No contract 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.

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

## **28. Transfer of contracts**

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

## **29. Amendment of contracts**

29.1 No agreement to amend or vary a contract or order or the conditions, stipulations 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.

## **30. Prohibition of restrictive practices**

30.1 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.

30.2 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.

30.3 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 terminate 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.

**GENERAL PROCEDURES**

**1 General Directives**

- 1.1 The following general procedures contained in this document have been laid down by the Council and are applicable to all bids, orders and contracts, unless otherwise approved by the Council prior to the invitation of the bids.
- 1.2 Where applicable, special conditions or procedures are also laid down by the Council to cover specific supplies or services.
- 1.3 Where such special conditions or procedures are in conflict with the general conditions and procedures, the special conditions or procedures shall apply.
- 1.4 The bidder shall satisfy himself/herself with the conditions and circumstances of the bid. By bidding, the bidder shall deem to have satisfied himself/herself as to all the conditions and circumstances of the bid.
- 1.5 Formal contract are concluded with the contractors only where this requirement is stated in the bid invitation.
- 1.6 All bids with regard to the bidding of a service e.g., materials, cleaning services; professional services, etc. shall be subject to the negotiation of a Service Level agreement between the successful contractor and the Municipality. The acceptance of this Service Level Agreement is subject to the approval by the Council of the Municipality.
- 1.7 The written acceptance of bid shall be posted to the bidder or contractor concerned by registered or certified mail.

**2 Issuing of bid documents**

- On the date that the advertisement appears in the Municipality's Tender Bulletin, and or media, prospective bidders may request copies of the tender documentation.
- The Supply Chain Management Unit will keep a register and potential bidders should sign for receipt of the bid documentation. If a fee is payable, an official receipt must be issued before



the bid document is handed to the bidder.

-No bid responses from any bidder should be accepted if sent via the Internet, e-mail or fax.

-Only the Supply Chain Management Unit will have direct communication between the potential bidders and will facilitate all communication between potential bidders and the Municipality with regard to any advertised bid. No line function staff should be allowed to communicate with potential bidders without the approval by the Manager: Supply Chain Management Unit.

-The Supply Chain Management Unit will only consider request for the extension of the closing dates of advertised bid if the postponed date can be advertised in the media used to advertise before the original closing date. The closing time may be postponed only if all potential bidders can be advised of the postponed time, in writing, before the original closing time.

-The decision to extend the closing date or time rests with the Manager: Supply Chain Management Unit, who must ensure compliance with all relevant rules and regulations and must confirm prior to the action being taken.

### **3 Payment of bid documents**

**Bids documents containing the Conditions of Bid and other requirements in terms of the Supply Chain Management Policy will be downloaded from e-tender Publication Portal on [www.etenders.gov.za](http://www.etenders.gov.za) at no fee.**

### **4 Public Invitation for competitive bids**

The following are procedures for the invitation of competitive bids:

4.1 Invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin) and

### **5 Public advertisement must contain the following:**

The closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (Vat included), or which are of a long-term nature, or 14 days in any

other case, from the date on which the advertisement is placed in a newspaper; subject to (iii) below; and

6 Accounting officer may determine a closure date for the submission of bids which is less than the 30- or 14-days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.

7 Bids submitted must be sealed.

**8 The following information must appear in any advertisement:**

- Bid number;
- Description of the requirements;
- The place where the bid documents can be obtained;
- The date, time and venue where site inspection/briefing session will be (if applicable);
- Closing date and time;
- The fee applicable that must be paid before the bid documents will be issued; and
- The name and telephone numbers of the contact person for any enquiries

**9 Handling of bids submitted in response to public invitation**

**9.1 Closing of bids**

All bids will close at **12H00p.m** on a date as stipulated on the advertisement, which must be reflected in the bid document.

Bids are late if they are received at the address indicated in the tender documents after the closing date and time.

A late bid should not be admitted for consideration and where practical should be returned unopened to the bidder accompanied by explanation.

**9.2 Opening of bids**

Bids are opened in public as soon as possible after the closure in the presence of the Manager: Supply Chain Management or his/her delegate.

The official opening the bids should in each case read out the name of the bidder and the amount of the bid.

The bid should be stamped with the official stamp of the Municipality and endorsed with the signatures of the person opening it and of the person in whose presence it was opened.

Bids should be recorded in a register kept for that purpose.

### **9.3 Validity Period of the bids**

The validity periods should not exceed 90 (ninety) days and is calculated from the date of bid closure endorsed on the front cover of the bid document.

Should the validity period expire on a Saturday, Sunday or Public holiday, the bid must remain valid and open for acceptance until the closure on the following working date.

### **9.4 Consideration of bids**

- The Council takes all bids duly admitted into consideration.
- The Council reserves the right to accept the lowest or any bid received.
- The decision by the Municipality regarding the awarding of a contract must be final and binding

### **9.5 Evaluation of bids**

The following are criteria against which all bids' responses will be evaluated:

#### **10 Compliance with bid conditions;**

- Bid submitted on time,
- Bid forms signed and each page initialled
- All essential information provided
- Submission of a Joint Venture Agreement, which has been properly signed by all parties
- Payment of Municipal fees

#### **11 Meeting technical specifications and comply with bid conditions;**

#### **12 Financial ability to execute the contract; and**

- (i) The number of points scored for achieving Government's Broad-Based Black Economic Empowerment objectives and points scored for price.
- (ii) Only bidders who are registered in the relevant professional body will be considered. This requirement will remain in force as long as it is a requirement of that specific professional body.
- (iii) The Joint Ventures, all companies, which are part of the joint venture, must be registered with the professional body. The company that meets the requirement of professional body will be considered.

#### **13 Evaluation of bids on functionality and price**

13.1 All bids received will be evaluated on functionality only.

14 The conditions of bid may stipulate that a bidder must score a specified minimum number of points for functionality to qualify for further evaluation.

- I. The number of points scored for achieving Government's Broad-Based Black Economic Empowerment objectives must be calculated separately and must be added to the points scored for price.
- II. Only bid with the highest number of points will be selected.

## **15 Acceptance of bids**

Successful bidders must be notified at least by registered post of the acceptance of their bids, but that acceptance however, will only take effect after completion of the prescribed contract form.

The successful service provider will be required to sign the service level agreement.

Unsuccessful bids should not be returned to bidders, but should be placed on record for audit purposes.

A register or records should be kept of all bids accepted

## **16 Publication of bids results**

The particulars of the successful bidders should be published in the Municipality's Tender Bulletin, website as well as the newspaper on which the bid was advertised.

## **17 Cancellation and re-invitation of bids**

- I. In the event that in the application of the 80/20 preference point system as stipulated in the bid documents, all bids received exceed the estimated Rand Value of R 50 000 000-00 (50 million), the bid invitation must be cancelled. If one or more of the acceptable bid(s) received are within the R50 000 0000-00 (50 million) threshold, all bids received must be evaluated on the 80/20 preference point system
- II. In the event that, in the application of the 90/10 preference point system as stipulated in the bid documents, all bids received are equal to or below, the bid must be cancelled. If one or more of the acceptable bid(s) received are above the R50 000 000-00 (50 million) threshold, all bids received must be evaluated on the 90/10 preference point system

-If a bid was cancelled as indicated above, the correct preference point system must be stipulated in the bid documents of the re-invited bid.

-Municipal Manager may, prior to the award of a bid, cancel the bid if:

-Due to changed circumstances, there is no longer a need for the services, works or goods

requested.

-Municipal Manager must ensure that only goods, services or works that are required to fulfil the needs of the institution are procured. Or

Funds are no longer available to cover the total envisaged expenditure.

-Municipal Manager must ensure that the budgetary provisions exist prior to inviting bids: or

-No acceptable bids are received (If all bids received are rejected, the institution must review the reasons justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids)

### **18 Sale and Letting of Asset**

The Preferential Procurement Regulations, 2011 is not applicable to the sale and letting of assets

In instances where assets are sold or leased by means of a bidding process, the bid must be awarded to the bid with the highest price.

**BID NUMBER: 28/2023-2024**

**SPECIAL CONDITIONS OF CONTRACT**

1. The appointed Service Provider will be used on as-and-when-required basis on a rotational basis
2. The appointment of service provider will be subject to performance review.

**BID NUMBER: 28/2023-2024**

**BID DESCRIPTION:**

**APPOINTMENT OF A PANEL OF TEN (10) ATTORNEYS/FIRMS OF ATTORNEYS FOR PROVISION OF LEGAL SERVICES FOR MOGALAKWENA LOCAL MUNICIPALITY FOR A PERIOD OF THREE (3) YEARS**

**BID SPECIFICATIONS:**

**Mark with X on your specialized area**

1	<b>Corporate and Commercial Law</b>	
2	<b>Land Transactions</b>	
3	<b>General Litigation</b>	
4	<b>Conveyancing</b>	
5	<b>Legislation / policies</b>	
6.	<b>Labour and employment law</b>	

1. The capacity of a firm, in terms of technical expertise, skills, experience and other resources will play a role in the allocation of work. The municipality may award a firm an appointment in a specialized area

TERMS OF REFERENCE FOR THE APPLICATION OF ADMISSION FOR APPOINTMENT FOR PANEL OF TEN (10) ATTORNEYS FOR PROFESSIONAL SERVICE FOR MOGALAKWENA LOCAL MUNICIPALITY: PERIOD: THREE YEARS.

Mogalakwena Local Municipality ("the Municipality") invites proposals from experienced Firms in response to this Request for Proposals ("RFP") to provide various legal services to the Municipality. Mogalakwena Local Municipality will not provide reimbursement for any expenses incurred in connection with this RFP, including the costs of preparing the response, providing any additional information and attending an interview.

All materials submitted in response to this RFP will become the sole property of the municipality. The Municipality expressly reserves the right to utilize any and all ideas submitted in the proposals received unless covered by legal or proprietary rights.

Physical inspection and interviews of the qualifying firms may be conducted at the Municipality's discretion on a specific day or days to be disclosed later in the RFP process. All qualifying firms will be notified of the proposed interview / inspection date(s) in advance.

## **II APPOINTMENT PERIOD**

The term of your appointment to the panel of external legal representatives will be a period of THREE (3) years.

## **III SCOPE OF SERVICES**

- The Municipality expects from time-to-time to require legal advice, assistance and representation in a number of areas, as specified below. While the Municipality has competent in-house Legal Unit with experience in many of these areas, we seek to augment our existing capabilities by being able to draw upon the resources of outside Legal expertise when needed and as issues arise. It is expected that the appointed Firm shall, at all times, provide the services diligently and in a professional manner.
- The firms selected should have demonstrable qualifications and experience to handle legal work in the following practice areas:

### **1. Corporate and commercial law:**

Services would be expected to include:

- a) Advising the Municipality with respect to its rights and obligations under its various operating and other agreements;
- b) Advising the Municipality in connection with potential disputes arising out of its various operating and other agreements;
- c) Advising the Municipality with regards to possible acquisitions, sales joint ventures and antitrust matters;
- d) Advising the Municipality with respect to compliance and corporate governance issues.



## **2. Land Transactions:**

Advise on and handling of land transactions, including but not limited to:

- a) Acquisitions and depositions involving, e.g., rights-of-way, leases, licenses, and transfers with respect to land, buildings; and
- b) Resolutions of issues or disputes over property rights and related responsibilities.
- c) Land Restitution; and
- d) Applications for Eviction;
- e) Illegal land use matters

## **3. General Litigation:**

Advise on handling of various issues, including but not limited to:

- a) General Litigation – such as motor vehicle accidents, damage to property, professional liability, etc.
- b) Town Planning related Litigation; and
- c) Labour and employment related matters

## **4. Conveyancing:**

- a) Preparation and completion of security documentation e.g. mortgages, charges, debentures, guarantee, etc.
- b) Perfecting securities including registration of documents and other interests.
- c) Advising on and effecting realization of securities including foreclosures, sales, receivership, etc.
- d) Preparing transfer documents on behalf of the municipality;
- e) Disputes relating to implementation and/or interpretation of service level agreements, breach of contracts, contractual damages, etc

## **5. Legislation / policies:**

- a) Legislative drafting and Review;
  - b) Policy formulation;
- 
- The Firm exercise all reasonable skill, care and diligence in discharging his obligations in terms of the agreement and shall comply with all Prevailing Legislation relating to the rendering of the Services.
  - The Services will be rendered in a timely manner as each request for services requires, and the Firm will use reasonable endeavors to adhere to the time limits agreed upon when instructions are furnished.
  - The firm will be expected to respond to any issue raised by telephone, fax or e-mail within 24 hours and to any issue raised in any letter or similar manner within 48 hours;
  - Where no time limits are agreed to, the services will be rendered within a reasonable period and where necessary, in accordance with Prevailing legislation.
  - The firm will be expected to respond to any issue raised by telephone, fax or e-mail within 24 hours and to any issue raised in any letter or similar manner within 48 hours;
  - Failure to render Services within a reasonable time shall be regarded as non-performance and may lead to termination of the mandate.
  - Labour Relations and related acts, initiating and chairing disciplinary hearing, labour court referrals
  - The Firm shall not settle any claim or litigation by or against the Municipality without the necessary consultation with the Municipality.

## **6. Strategic projects legal advice**

To assist and advise Mogalakwena Local Municipality in the negotiation of contracts, contract drafting, review of existing contract and providing legal advisory services to the municipality. Such projects include amongst others, IRPTS, PPP projects and any other projects that are strategic in nature.

#### **IV. PROPOSAL REQUIREMENTS**

Following is a list of the information to be provided by the Proposer for the legal services sought, A proposal that does not include the information required below may be deemed non-responsive and subject to rejection.

In setting forth its qualifications, each Firm shall provide, concise but adequate detail, the information sought below.

##### **A. Management and Qualifications**

1. The firm should be in the capacity to handle the volume of work that the Municipality may instruct them on at any relevant point in time.
2. Only law firms which are registered with the Legal Practice Council (formerly known as Legal Practice Council (formerly known as Law Society) will be considered and / or appointed. Firms should attach proof of registration.
3. Description of the management and personnel structure of the firm detailing the number and identity of partners, associates, assistants and law clerks.
4. Describe the legal services which your firm could provide to the Municipality.
5. Firms must have a suitable affirmative action and employment equity plans. The provisions of Local Government Municipal Systems Act and other Prevailing legislations on gender representation should also be adhered to in his process.
6. State the names of the partners and associates who would be assigned to the Municipality's account in each practice area, describe the expected services to be provided by each, provide their resumes including a brief summary of any notable cases, transactions, issues and / or matters handled by them which you feel demonstrate the nature and extent of their expertise. Describe their anticipated commitments to other clients during the next 12months.
7. Describe your firm's experience related to the services to be provided in response to this RFP.
8. Identify the nature of any potential conflict of interest that your firm may have in providing services to Mogalakwena Local Municipality.
  - Discuss fully any conflict of interests, actual or potential, which might arise in connection with your firm's involvement with Mogalakwena Local Municipality. If

your firm believes that a conflict of interest might arise, please describe how such conflict would be resolved.

- Each firm must certify in writing that its representation of Mogalakwena Local Municipality will not create any conflict of interest involving that firm including taking instructions but nor limited against the municipality.
9. Identify any past, pending or threatened litigation or proceedings to which you or any of your partners are or were a party and which may affect your reputation and/or could either materially impair your ability to perform the services envisaged herein and for which this RFP was issued, or will and/or might materially adversely affect the financial CONDITION OF YOUR FIRM.

## **B. TARRIF STRUCTURE / FEE STRUCTURE**

Proposals shall include the following:

1. Once the Municipality has appointed experts to its panel negotiations with the appointed firms should be entered into to agree on tariffs.
2. Notwithstanding the rates of the Firm reflected in its proposal issued:
  - Billing rates and disbursement rates that will be negotiated and agreed upon by the parties prior to conclusion of the specific Service from time to time;
  - In unique circumstances dependent on the nature of a particular Service, billing rates and disbursements rates shall be negotiated and agreed upon at the outset of a specific Service Request;
  - The Firm acknowledges that amount of work, if any that will be instructed to attend will be depended *inter alia* on his rates;
  - The Municipality will only pay disbursements, in addition to agreed rates that have been incurred. Proof of all disbursements must be attached to the statement of account;
  - The Firm shall not charge the Municipality for local traveling and waiting time;(50 km radius)

- The fee notes submitted shall be in itemized form and clearly indicating the actual work done and the few charges for each item;
- The firm may submit interim bills to the Municipality at appropriate intervals during the course of each matter as appropriate and generally at the time when a particular phase of the matter has been completed;
- In the event that the Municipality is successful in any litigation and costs are rewarded to it, those costs shall be for the account of the Municipality's outlay in covering the firm's costs;
- Whether or not your firm will receive any portion of the costs awarded to the Municipality in any matter will be at the sole discretion of the Municipality;
- The firm shall promptly advise the Municipality of any award of costs against it or in its favour in any matter;
- The Municipality shall exercise its best endeavors to settle any invoices sent to it by the firm within 30 days of receipt of same.
- The firm shall advise the Municipality of the most convenient mode of payment of the fees provided that if the preferred mode of payment entails any bank charges, those charges will be for the firm's account and the Municipality will have no liability to meet those charges;
- In the event that Municipality asks your firm to cease work in relation to any matter, the firm will be entitled to payment of the reasonable fees up to the cessation of work on the matter; and
- The fees agreed thereto shall be fixed until the term of the contracts.

## **V PROPOSAL INSTRUCTIONS AND CONDITIONS**

### **A. Limitations**

1. This RFP does not commit Mogalakwena Local Municipality to award a contract, pay any costs incurred in the preparation of a response, or procure or contract for services of any kind whatsoever. The Municipality reserves the right, in its sole discretion, to accept or reject any or all responses as a result of the RFP, to negotiate with any or all firms considered, or to cancel this RFP in whole or in part. The Municipality reserves the right to request additional information from all proposers.

2. Proposers may be requested to clarify the contents of their proposal.  
Other than provided such information as may be required by the Municipality, no Proposer will be allowed to alter its proposal or to add new information after the RFP due date.
3. A proposing firm may be required to participate in negotiations and to submit any price, technical or other revisions to its proposal which may result from such negotiations.
4. All material submitted to this RFP will become the sole property of Mogalakwena Local Municipality.

**B. Proposal Submission**

- a. Proposals must include a cover letter indicating the mailing address of the office from which the proposal is submitted, the name of the individual who will represent the firm as the primary contact person for the proposal, and the e-mail, telephone and facsimile numbers of the primary contact person.
- b. Non-responsive proposal includes, but are not limited to, those that:
  - (a). are irregular or not in conformance with RFP instructions;
  - (b). are conditional, incomplete, indefinite or ambiguous;
  - (c) are not submitted on time or are submitted at any via facsimile or e-mail

Mogalakwena Local Municipality may waive minor informalities or irregular in a proposal that are merely a matter of form and not substance and the correction of which would not be prejudice to other proposal.

**C. Administrative Specifications**

1. All proposal must be irrevocable for 90 days and signed by an authorized officer of the firm
2. The successful Proposer must agree to provide Mogalakwena Local Municipality with audit access on request during the term of the contract.
3. Mogalakwena Local Municipality at any time, in its sole discretion may terminate its contract with the selected firm(s), or postpone or delay all or any part of the contract, upon written notice to the selected firm(s).

**D. Addenda: Errors and Omissions**

If a proposer discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, immediate notification to the Municipal Manager in writing must be made, of such error with a request for clarification or modification to the document. Such clarification or modification must not materially alter the tender of the original proposal.

Should the Mogalakwena Local Municipality find it necessary, modification to the RFP will be made by addenda. Such modifications may be given by written notice to all parties who have been furnished an RFP.

If a Proposer fails to notify the Mogalakwena Local Municipality of a known error or an error that reasonably should have been known prior to the final filling date for submission, the proposer shall assume the risk. If awarded the contract, the Proposer(s) shall not be entitled to additional compensation or time by reason of the error or its late correction.

**VIII. APPOINTMENT AND APPROVAL**

Mogalakwena Local Municipality's selection of successful Proposers shall not bind until a Service Level Agreement has been signed by the Municipality and the successful bidder.

Attorneys shall be appointed for a period of three (3) years which will be reviewable on the basis of performance.

Firms will be appointed to do work in a field of their specialty. These firms will be appointed to provide legal and other expert advices to the Municipality at an ad hoc basis.

No correspondence will be communicated to unsuccessful bidders. Successful bidders will be notified in writing and via Mogalakwena Local Municipality's website.

\_\_\_\_\_  
AUTHORISED SIGNATORY

Name: .....

Date: .....

**PRICING SCHEDULE**

<b>Name of Bidder.....</b>	<b>Bid Number: 28-2023/2024</b>
<b>Closing Time: 12H00</b>	<b>Closing Date: 25 MARCH 2024</b>

**The service provider will not be expected to put an offer to the Municipality at this stage**



## MBD 6.1

### PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

**NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

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#### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

- 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 **To be completed by the organ of state**

*(delete whichever is not applicable for this tender).*

- a) The applicable preference point system for this tender is the 90/10 preference point system.
- b) The applicable preference point system for this tender is the 80/20 preference point system.
- c) Either the 90/10 or 80/20 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

1.4 **To be completed by the organ of state:**

The maximum points for this tender are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	
<b>SPECIFIC GOALS</b>	
<b>Total points for Price and SPECIFIC GOALS</b>	<b>100</b>

- 1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

**2. DEFINITIONS**

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

### 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

#### 3.1. POINTS AWARDED FOR PRICE

##### 3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \\ P_s = 80 \left( 1 - \frac{P_t - P}{P} \right) & \mathbf{or} & P_s = 90 \left( 1 - \frac{P_t - P}{P} \right) \end{array}$$

Where

P<sub>s</sub> = Points scored for price of tender under consideration

P<sub>t</sub> = Price of tender under consideration

P<sub>min</sub> = Price of lowest acceptable tender

#### 3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

##### 3.2.1. POINTS AWARDED FOR PRICE

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

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \\ P_s = 80 \left( 1 + \frac{P_t - P}{P} \right) & \mathbf{or} & P_s = 90 \left( 1 + \frac{P_t - P}{P_{max}} \right) \end{array}$$

Where

P<sub>s</sub> = Points scored for price of tender under consideration

P<sub>t</sub> = Price of tender under consideration P<sub>max</sub>

= Price of highest acceptable tender

#### **4. POINTS AWARDED FOR SPECIFIC GOALS**

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
  - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system, then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

**Table 1: Specific goals for the tender and points claimed are indicated per the table below.**

Historically Disadvantaged Individuals - HDI	80/20 Preferential Point System	90/10 Preferential Point System	Means of Verification
	20	10	
Race – people who are Black, Coloured or Indian	6	3	CSD report and Certified Copy of Identification Documentation
Local Economic Development	4	2	Company head office residence within Municipal Jurisdiction as per CSD and proof of residence
Gender - Women	3	1	CSD report and Certified Copy of Identification Documentation
Youth	4	2	CSD report and Certified Copy of Identification Documentation
Disability	3	2	Certified copy of Doctor's Certificate with medical practice number

***(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.)***

***Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)***

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by	Number of points allocated (80/20 system) (To be completed	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
	the organ of state)	by the organ of state)		

**DECLARATION WITH REGARD TO COMPANY/FIRM**

4.3. Name of company/firm.....

4.4. Company registration number: .....

4.5. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One-person business/sole propriety
- Close corporation
- Public Company
- Personal Liability Company
- (Pty) Limited
- Non-Profit Company
- State Owned Company

[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I 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 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –

- (a) disqualify the person from the tendering 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 tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted 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, if deemed necessary.

.....  
**SIGNATURE(S) OF TENDERER(S)**

**SURNAME AND NAME:** .....

**DATE:** .....

**ADDRESS:** .....

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

## EVALUATION PROCESS AND CRITERIA

BID NO: **28-2023/2024**

The following evaluation process and criteria will be used to evaluate all bids submitted:

### **1. Administrative Compliance**

1.1 All bids duly lodged will be examined to determine compliance with bidding requirements and conditions. Bids with obvious deviations from the requirements/conditions, will be eliminated from further evaluation.

#### **1.2 Critical Criteria:**

The following critical criteria have been identified for this bid and any non-compliance thereto will lead to the bid being regarded as non-responsive and disqualified from further evaluation:

- Must be registered with Central supplier database (CSD)
- Submitted a valid certified copy of company registration certificate.
- SARS Tax Pin
- 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.
- Copy of municipal rates and taxes statement of account which is not older than three (3) months or proof of leasing agreement for service providers who are renting or leasing offices or letter from Tribal Authority
- A certified copy of a valid letter or certificate of good standing from Legal Practice Council (formerly known as Legal Practice Council (formerly known as Legal Practice Council(formerly known as Law Society).
- Submission of Tariff and/or Fee Structure is a prerequisite for further evaluation.



**2. EVALUATION ON QUALITY/FUNCTIONALITY = 100**

No	Bidder evaluation criteria for Functionality	Weight	Description:	Points allocations
1	<p><b>Profile of key staff (attach all documents mention under description)</b> All copies requested must be validly certified failure the bidder will be disqualified.</p>	40	<p>a) Certified Copy of validly Certificate of admission as attorney</p> <p>(certified copy of certificate as Conveyancer/Notary)</p> <p>b) Valid Original Letter of Good standing from Legal Practice Council (formerly known as Law Society) for the law firm and for all Directors and Attorneys within the firm not older than three (3) months.</p>	<p>10</p> <p>10</p> <p>20</p>
2	<p><b>Previous experience in Local Government sector and Private sector.</b></p>	30	<p>The bidder has necessary experience in similar project to successfully execute the project <b>(over 6years)</b></p> <p>The bidder has necessary experience in similar project to successfully execute the project <b>(4-5 yrs.)</b></p> <p>The bidder has necessary experience in similar project to successfully execute the project <b>(3 yrs.)</b></p> <p>The bidder has necessary experience in similar project to successfully execute the project <b>(1-2 yrs.)</b></p> <p>No attachment of business profile</p>	<p>30</p> <p>25</p> <p>20</p> <p>15</p> <p>0</p>

<b>3</b>	<b>Implementation of Measures</b>  Measures that the Legal Professional will implement to assist Mogalakwena Municipality in achieving its mandate as an organ of state including but not limited to:  <ul style="list-style-type: none"> <li>• Providing a legal risk analysis;</li> <li>• Skills transfer to in house legal team;</li> <li>• Regulating drafting process;</li> <li>• attending to litigation and mitigation controls.</li> </ul> <b>NB – A document of not more than 8 pages with the following headings:</b> <ul style="list-style-type: none"> <li>• Introduction;</li> <li>• Measures;</li> <li>• Detailed plan, potential risks and analysis to mitigate with controls and;</li> <li>• Conclusion.</li> </ul>	<b>30</b>	Measures provided with a detailed plan and a thorough analysis of potential risks with mitigation controls	30
			Measures provided with a detailed plan and identified potential risks but without an analysis to mitigate the risks	25
			Measures provided with a detailed plan but without identifying the potential risks	15
			Measures provided without a detailed plan	10
			No Measures provided	0
		<b>100</b>		<b>TOTAL</b>

**The bidder must obtain a minimum score of 80% of points allocated for quality (functionality) to qualify for further evaluation.**

**N.B: There will be no further evaluation on pricing/ financial offer:**

**The bidders who score the highest points on functionality will be recommended for an award on their selected specialized area. The Bidders will be ranked according to the points scored.**

Size of enterprise and current workload

What was your turnover in the previous financial year? \_\_\_\_\_

What is the estimated turnover for your current financial year?

\_\_\_\_\_

**List your current contracts and obligations**

<b>Description</b>	<b>Value (R)</b>	<b>Start date</b>	<b>Duration</b>	<b>Expected completed date</b>

Do you have capacity to supply the goods and services described in this bid, should the contract be awarded to you? \_\_\_\_\_

**“ANNEXURE B”**

**TARIFF STRUCTURE (EXCLUDING VAT):**

<b>NAME OF ATTORNEY</b>	<b>HOURLY FEE</b>	<b>DAY FEE</b>

<b>OTHERS</b>	<b>UNIT</b>	<b>TARIFF</b>
<b>Taking of Instructions and opening of file</b>	<b>Once off</b>	
<b>Drafting of formal documents(pleadings)</b>	<b>Per page</b>	
<b>Drafting of Other documents</b>	<b>Per page</b>	
<b>Drafting of letters</b>	<b>Per page</b>	
<b>Perusal of documents</b>	<b>Per page</b>	
<b>Telephone Calls</b>	<b>Per minute</b>	
<b>Cellular Calls</b>	<b>Per minute</b>	
<b>Copies</b>	<b>Per page</b>	
<b>Fax sent</b>	<b>Per page</b>	
<b>Fax received</b>	<b>Per page</b>	
<b>Emails received</b>	<b>Per page</b>	
<b>Emails sent</b>	<b>Per page</b>	
<b>Travelling time</b>	<b>Per hour</b>	
<b>Travelling cost</b>	<b>Per kilometer</b>	

**1. Staffing Profile**

Permanently employed staff: gender and race	Number of staff
Temporary staff to be employed for the project: gender and race	Number of staff

Provided information on key staff you intend utilizing on this contact, should it be awarded to you. (In case of engineering construction projects key staff is defined as staff of foreman level and above.

Name	Position in your organization	Qualifications	Experience

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, hareholder<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**

**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

- 1 Are you by law required to prepare annual financial statements for auditing?
- 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.

.....

.....

- 2 Do you have any outstanding undisputed commitments for municipal services towards any municipality for more than three months or any other service provider in respect of which payment is overdue for more than 30 days?
- 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.

- 2.2 If yes, provide particulars.

.....

.....

.....

.....

\* Delete if not applicable

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

3.1 If yes, furnish particulars

.....

4. Will any portion of goods or services be sourced from outside  
\***YES / NO**  
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?

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**

.....

**Capacity**

.....

**Name of Bidder**

## MBD 6.2

### **DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS**

This Municipal Bidding Document (MBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2017, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

#### **1. General Conditions**

- 1.1. Preferential Procurement Regulations, 2017 (Regulation 8) make provision for the promotion of local production and content.
- 1.2. Regulation 8.(2) prescribes that in the case of designated sectors, organs of state must advertise such tenders with the specific bidding condition that only locally produced or manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3. Where necessary, for tenders referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) on the date of advertisement of the bid as indicated in paragraph 3.1 below.

**The SABS approved technical specification number SATS 1286:2011 is accessible on [http://www.thedti.gov.za/industrial development/ip.jsp](http://www.thedti.gov.za/industrial%20development/ip.jsp) at no cost.**

1.6. A bid may be disqualified if this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation;

**2. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:**

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
_____	_____ %
_____	_____ %
_____	_____ %

**3.** Does any portion of the goods or services offered have any imported content?  
(Tick applicable box)

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

3.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on [www.resbank.co.za](http://www.resbank.co.za)

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

<b>Currency</b>	<b>Rates of exchange</b>
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

4. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

**LOCAL CONTENT DECLARATION**  
**(REFER TO ANNEX B OF SATS 1286:2011)**



**LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)**

**IN RESPECT OF BID NO.** .....

**ISSUED BY:** (Procurement Authority / Name of Institution):  
.....

NB

- 1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.
- 2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on [http://www.thedti.gov.za/industrial\\_development/ip.jsp](http://www.thedti.gov.za/industrial_development/ip.jsp). Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, ..... (full names),  
do hereby declare, in my capacity as .....  
of .....(name of bidder  
entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that:
  - (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 3.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R	
Imported content (x), as calculated in terms of SATS 1286:2011	R	
Stipulated minimum threshold for local content (paragraph 3 above)		
Local content %, as calculated in terms of SATS 1286:2011		

(  
if the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above.  
(The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 3 above and the information contained in Declaration D and E.

- d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.
- e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 14 of the Preferential Procurement Regulations, 2000 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 1 of 2000).

**SIGNATURE:** \_\_\_\_\_

**WITNESS No. 1** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**WITNESS No. 2** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**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? (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).</p> <p><b>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.</b></p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>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)?</p> <p><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></p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	<p>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?</p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
Item	Question	Yes	No
4.4	<p>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?</p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	<p>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?</p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
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.
- 3 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
- 6 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.**

**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**



**This document must be signed and submitted together with your bid**

## **THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME**

### **INTRODUCTION**

The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

### **1 PILLARS OF THE PROGRAMME**

- 1.1 The NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million will have a NIP obligation. This threshold of US\$ 10 million can be reached as follows:
- (a) Any single contract with imported content exceeding US\$10 million.  
or
  - (b) Multiple contracts for the same goods, works or services each with imported content exceeding US\$3 million awarded to one seller over a 2 year period which in total exceeds US\$10 million. or
  - (c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content will exceed US\$10 million. or
  - (d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$10 million.
- 1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30 % of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIP obligation on a *pro-rata* basis.
- 1.3 To satisfy the NIP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers

A period of seven years has been identified as the time frame within which to discharge the obligation

## **2. REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY**

- 2.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract that is in excess of **R10 million** (ten million Rands), submit details of such a contract to the DTI for reporting purposes.
- 2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million Rands) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1. (d) above.

## **3 BID SUBMISSIONS AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)**

- 3.1 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with the bid on the closing date and time.
- 3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1 (d) above and to enable the DTI in determining the NIP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million Rands), to contact and furnish  
the **DTI with the following information:**

- Bid / contract number.
- Description of the goods, works or services.
- Date on which the contract was accepted.
- Name, address and contact details of the government institution.
- Value of the contract.
- Imported content of the contract, if possible.

- 3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr Elias Malapane within five (5) working days after award of the contract. Mr Malapane may be contacted on telephone (012) 394 1401, facsimile (012) 394 2401 or e-mail at [Elias@thedti.gov.za](mailto:Elias@thedti.gov.za) for further details about the programme.

## **4 PROCESSES TO SATISFY THE NIP OBLIGATION**

- 4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:
- a. the contractor and the DTI will determine the NIP obligation;
  - b. the contractor and the DTI will sign the NIP obligation agreement;
  - c. the contractor will submit a performance guarantee to the DTI;
  - d. the contractor will submit a business concept for consideration and approval by the DTI;  
upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
  - e. the contractor will implement the business plans; and

f. the contractor will submit bi-annual progress reports on approved plans to the DTI.

4.2 The NIP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

<b>Bid number</b> .....	<b>Closing date:</b> .....
<b>Name of bidder</b> .....	
<b>Postal address</b> .....	
.....	
<b>Signature</b> .....	<b>Name (in print)</b> .....
<b>Date</b> .....	

**ANNEXURE “C”**

**CERTIFICATE FOR MUNICIPAL SERVICES AND PAYMENTS**

TO: MUNICIPAL MANAGER, MOGALAKWENA LOCAL MUNICIPALITY

FROM: \_\_\_\_\_ (Name of Bidder)

FURTHER DETAILS OF BIDDER(S); DIRECTORS/SHAREHOLDERS/PARTNERS, ETC.

Directors/shareholders/ Partner	Physical address of the Business	Municipal Account No.	Physical residential address of the Director/Shareh older/Partner	Municipal Account No.

**NB: Please attach certified copy (ies) of ID document(s)**

_____	_____	_____
<b>Signatory</b>		<b>Date</b>
<b>Witnesses</b>		
1. _____	_____	_____
<b>Full Names</b>	<b>Signature</b>	<b>Date</b>
2. _____	_____	_____
<b>Full Names</b>	<b>Signature</b>	<b>Date</b>

**AUTHORISATION FOR DEDUCTION OF OUTSTANDING AMOUNTS OWED TO COUNCIL**

TO: MUNICIPAL MANAGER, MOGALAKWENA LACAL MUNICIPALITY

FROM: \_\_\_\_\_ (Name of the Bidder or Consortium)

I, \_\_\_\_\_ the undersigned, hereby authorise the Mogalakwena Local Municipality to deduct the full amount outstanding by the business organisation/Director/Shareholder/Partner, etc. from any payment due by us/me.

**Signed at** \_\_\_\_\_ **Date** \_\_\_\_\_ **Month** \_\_\_\_\_ **20** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

Thus done and signed for and on behalf of the bidder/Contractor

\_\_\_\_\_  
**Signatory** \_\_\_\_\_  
**Date**

**Witnesses**

1. \_\_\_\_\_  
**Full Names** \_\_\_\_\_ \_\_\_\_\_  
**Signature** \_\_\_\_\_ \_\_\_\_\_  
**Date**

2. \_\_\_\_\_  
**Full Names** \_\_\_\_\_ \_\_\_\_\_  
**Signature** \_\_\_\_\_ \_\_\_\_\_  
**Date**