

# GOODS / SERVICES

## PROCUREMENT DOCUMENT: TEMPLATE

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Documents may be obtained, free of charge, in electronic format, from the eTenders website.

Reference is to be made to Clause 3(2) of the Conditions of Tender.

**CHIEF OPERATIONS**  
**Legal and Compliance Unit**  
**Legal and Compliance**

**PROCUREMENT DOCUMENT: GOODS / SERVICES**

**Tender No.:** 1A-4258

**Title:** APPOINTMENT OF THE PANELS OF ATTORNEYS & APPEAL AUTHORITY: 36 MONTHS

**CLARIFICATION MEETING AND QUERIES**

**Clarification Meeting:** There will be no clarification meeting. Bidders are requested to submit email queries related to the bid. All email queries are to be submitted by 2022/03/11. Email questions and answers will be consolidated and posted on e-tenders/municipal website for the 2022/03/17

Queries can be addressed to

**General / Contractual:** Siphesihle Makhanya; Tel: 031-322 7189; eMail: Siphesihle.Makhanya@durban.gov.za

**Technical:** Nokwazi Shibe; Tel: 031-311 3196; eMail: Legal.Compliance@durban.gov.za

**DELIVERY OF TENDERS**

Sealed Tenders, addressed to the City Manager and marked with the Tender Number, are to be placed in the Tender Box **located in the ground floor foyer of the Engineering Unit Building, 166 KE Masinga Road (Old Fort Rd), Durban** (and not any other municipal department), no later than:

**Closing Date :** Friday, 25 March 2022

**Time:** 11:00am

**FACSIMILE, eMAIL or POSTED TENDERS WILL NOT BE ACCEPTED**

**Issued by:**

ETHEKWINI MUNICIPALITY

Head: **Legal and Compliance Unit**

Issued: February 2022

Document Version : 27/08/2019

**NAME OF TENDERER:** .....

**Tender Price: R** ..... **VAT Registered: YES / NO**  
(circle applicable)

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**PROCUREMENT DOCUMENT (Goods / Services)**

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**SECTION 1 : GENERAL INFORMATION**

<b>YOU ARE HEREBY INVITED TO TENDER FOR REQUIREMENTS OF THE ETHEKWINI MUNICIPALITY</b>
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TENDER No.: **1A-4258**DESCRIPTION: **APPOINTMENT OF THE PANELS OF ATTORNEYS & APPEAL  
AUTHORITY: 36 MONTHS**CLOSING DATE / TIME: **Friday, 25 March 2022 at 11:00am**

All tenders must be submitted on official tender documentation issued (either in hard copy or in electronic format) by the eThekweni Municipality. Electronically downloaded documentation should be printed by tenderer.

Note: Any company requiring a courier service will bear the cost for the service as well as have deposited the relevant tender charge into the Municipality's account prior to the Courier collecting a document.

Tenderers are required to be registered on the National Treasury Central Supplier Database (CSD) as a service provider. Tenderers must register as such upon being requested in writing to do so by the Employer, within the period contained in such a request. In the case of a Joint Venture, this requirement will apply individually to each party in the Joint Venture.

Tenderers should ensure that tenders are delivered timeously to the correct address as stated in the Conditions of Tender. If the tender is late, it will not be accepted for consideration.

Please note that the Municipality will consider a tender submitted in response to this request for tender to be an offer from your company to perform the supply on the basis of that tenders. Accordingly, please review the attached General and Special Terms and Conditions which will form the basis for any supply arrangement entered into between the Municipality and your company.

Please note that the Municipality is seeking tenders from potential suppliers only and makes no representation or promise in relation to procuring work from a supplier or suppliers. The Municipality will not be responsible for any costs associated with preparing and submitting a tender.

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

Targeted Procurement Registration Documents available on website:

[www.durban.gov.za/City\\_Government/Administration/Administrative%20Clusters/treasury/supply\\_chain\\_management/Application\\_City\\_Database/Pages/default.aspx](http://www.durban.gov.za/City_Government/Administration/Administrative%20Clusters/treasury/supply_chain_management/Application_City_Database/Pages/default.aspx)

**NB: NO TENDER WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE (as defined in Regulation 44 of the Local Government: Municipal Supply Chain Management Regulations).**

**THE FOLLOWING PARTICULARS MUST BE FURNISHED  
(Failure to do so may result in your tender being disqualified)**

Name of Tenderer: .....

Postal Address: .....

Street Address: .....

E-Mail Address: .....

Telephone Number:


-


-


Cell phone Number:

Facsimile Number:

**Circle / Tick  
Applicable**

Is your entity registered on the eThekweni Municipality's supplier database? YES / NO

If YES insert your PR Number: ..... PR .....

Is your entity registered on the National Treasury Central Supplier Database (CSD)? YES / NO

If YES insert your MAAA Number: ..... MAAA .....

Is your entity VAT registered? YES / NO

• If YES insert Vat Registration Number: .....

Has an original and valid **Tax Clearance Certificate** (MBD 2) been attached? YES / NOHas a **Declaration of Interest** (MBD 4) been submitted? YES / NOHas a **Declaration for Procurement Above R10 Million** (MBD 5) been submitted? YES / NOHas a **B-BBEE Status Level Verification Certificate** (MBD 6.1) been submitted? YES / NO

If YES, who was the certificate issued by?

- An accounting officer as contemplated in the Close Corporation Act.
- A verification agency accredited by the South African National Accreditation System (SANAS).
- A registered auditor.
- Sworn Affidavit.


Has a **Declaration Certificate for Local Production and Content for Designated Sectors** (MBD 6.2) been submitted? YES / NOHas a **Declaration of Bidder's Past SCM Practices** (MBD 8) been submitted? YES / NOHas a **Certificate of Independent Bid Determination** (MBD 9) been submitted? YES / NO**Are you the accredited representative** in South Africa for the goods / services / works offered? If YES, enclose proof. YES / NO

Signature of Tenderer: ..... Date: .....

Name / Surname: .....(in block capitals)

Capacity under which this tender is signed: .....

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**SECTION 2 : CONDITIONS OF TENDER – (Goods / Services : June 2019)**

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**SPECIAL / ADDITIONAL CONDITIONS OF TENDER**

## STANDARD CONDITIONS OF TENDER (Goods / Services)

### 1. DEFINITIONS

#### General:

- (1) Defined words / phrases are printed in *Italic font*.
- (2) Definitions apply to the singular as well as the plural.
- (3) Any reference to the masculine gender shall be taken to include the feminine and any reference to the feminine gender shall be taken to include the masculine.
- (4) The words “bid” and “tender”, and “bidder” and “tenderer” can be used interchangeably.
- (5) All definitions as defined in the *General Conditions of Contract* are applicable to these *Standard Conditions of Tender*. These definitions include:
  - “Closing time”
  - “Contract”
  - “Contract Price”
  - “Corrupt practice”
  - “Countervailing duties”
  - “Country of origin”
  - “Day”
  - “Delivery”
  - “Delivery ex stock”
  - “Delivery into consignees store or to his site”
  - “Dumping”
  - “Force majeure”
  - “Fraudulent practice”
  - “GCC”
  - “Goods”
  - “Imported content”
  - “Local content”
  - “Manufacture”
  - “Order”
  - “Project site”
  - “Purchaser”
  - “Republic”
  - “SCC”
  - “Services”
  - “Supplier”
  - “Tort”
  - “Turnkey”
  - “Written” or “in writing”
- (6) **Bid or Tender:** The offer submitted in respect of an invitation to submit such an offer.
- (7) **Bidder or Tenderer:** An entity (company, close corporation, partnership, joint venture, sole proprietor) which submits a *bid/tender*.
- (8) **Municipality:** The eThekweni Municipality, as represented by the duly authorised delegate, official or committee.
- (9) **SCT:** Special Conditions of Tender (found in Section 3).
- (10) **Week:** A period of seven (7) consecutive *days*.
- (11) **Material Deviation:** A material deviation or qualification is one which, in the *Municipality’s* opinion, would:
  - (a) Detrimentially affect the scope, quality, or performance of the services or supply identified in the Scope;
  - (b) Significantly change the *Municipality’s* or the *Tenderer’s* risks and responsibilities under the contract; or
  - (c) Affect the competitive position of other *Tenderers* presenting responsive *tenders*, if it were to be rectified.

### 2. CONDITIONS OF TENDER & CONTRACT

The specification will be governed by the *Standard Conditions of Tender* (Goods and Services), *Special Conditions of Tender (SCT)*, *General Conditions of Contract (GCC)* (Government Procurement General Conditions (July 2010), as amended by National Treasury Circular 52 dated 30 July 2010), the *Special Conditions of Contract (SCC)*, the *Occupational Health and Safety Act* (Act No. 85 of 1993), and the *eThekweni Code of Conduct*.

#### Complete Acceptance of Conditions

Unless otherwise expressly stipulated in a letter covering the *tender*, every *Tenderer* shall be deemed to have waived, renounced, and abandoned any conditions printed or written upon any stationery used for the purpose of, or in connection with, the submission of their *tender*, which are in conflict with the *General Conditions of Contract* and *Special Conditions of Contract*. *Tenderers* are advised that any *material divergences / qualifications* from the official Conditions or Specification will render their *tenders* liable to disqualification.

### 3. TENDER INFORMATION

- (1) **General**
  - (a) *Tenders* will be liable for rejection unless made out on the official tendering documentation.
  - (b) Any alterations effected upon any of the tendering documents must be clearly shown by means of a hand written (black, non-erasable ink), or typed, entry and must be signed in full by the *Tenderer*. **The use of correction fluid is not permitted.**
  - (c) *Tenderers* may submit alternative solutions that, in the *Tenderer’s* opinion, are to the *Municipality’s* advantage economically and technically. Full technical details of the alternative *tender(s)* shall be submitted with the tender documents. Alternative *tender(s)* shall be submitted separately.
- (2) **Obtaining Tender Documentation**

All tenders must be submitted on official tender documentation issued (either in hard copy or in electronic format) by the eThekweni Municipality. Electronically downloaded documentation (obtainable free of charge) should be printed and bound by tenderer. Hard copy versions are available as indicated on the tender notice, for the indicated non-refundable tender charge (Payment by Bank Cheques (where the Drawer of the Cheque is the Bank) OR cash). Tender documents must be collected no later than 3 days prior to close of tender.
- (3) **Queries Relating to this Tender**

Queries can be directed to the person / Department as stated in the *SCT*.

**(4) Briefing Session (Clarification Meeting)**

Details of the briefing session are stated in the [SCT](#).

Failure to attend a compulsory briefing session will invalidate the *tender*. *Tenderers* must sign the attendance list in the name of the tendering entity. *Tenders* will only be evaluated from those tendering entities appearing on the attendance list.

**(5) Closing Date and Delivery of Tender Submissions**

Sealed *tenders* made out on the enclosed Official Tender Form, which shall be signed by or on behalf of the *Tenderer*, and addressed to the Head: Supply Chain Management Unit, marked with the appropriate Tender number, must be placed in the **Tender Box** as stated in the [SCT](#) not later than the **date and time** as stated in the [SCT](#), where after they will be opened publicly.

All tender documents must be placed directly into the Tender Box and should not be delivered to any other Municipal Department. *Bidders* are advised that *tenders* submitted by post, fax or email will not be considered. All couriered documents must be placed directly into the Tender Box and should not be delivered to any other Municipal Department.

Any *tender* received after the closing date and time stated for the receipt thereof shall not be accepted for consideration and shall be returned to the *Tenderer*.

**(6) Tender Validity and Withdrawal of Tenders**

*Tenders* must hold good until 16:00 of the 5th week following the date on which *tenders* are opened, or during such other period as may be specified in the [SCT](#). The *Municipality* may, during the period for which *tenders* are to remain open for acceptance, authorize a *Tenderer* to withdraw their *tender* in whole or in part on condition that the *Tenderer* pays to the *Municipality* on demand, a sum of one thousand Rand (R1,000.00). The *Municipality* may, if it thinks fit, waive payment of such sum in whole or in part.

**4. RETURNABLE SCHEDULES, FORMS, CERTIFICATES**

Each *Tenderer* shall complete fully and accurately the following documents and submit these documents with the *tender*:

(1) **Authority of Signatory:** In terms of Clause 4(10)(c) of the Conditions of Tender.

(2) **Declaration of Municipal Fees:** Only those *Bidders* whose municipal fees are fully paid, or those that have concluded acknowledgement of debt agreements with the *Municipality*, are eligible to *tender*.

All *Bidders* must sign the Declaration of Municipal Fees returnable form, declaring that their municipal fees are in order or that acknowledgement of debt agreements have been concluded, and include the relevant account numbers in the declaration. Failure to include account numbers or sign will invalidate the *tender*. The completion of the declaration is also applicable to *Bidders* outside of the eThekweni Municipal Area.

(3) **Declaration with respect to the Occupational Health and Safety Act:** Acceptance of undertaking in terms of the Occupational Health and Safety Act (Act 85 of 1993) and the relevant Regulations.

**(4) Consolidated Municipal Bidding Documents (which includes):**

(a) **MBD 2:** Tax Clearance Certificate Requirements: *Bidders* are to include with their tender submission a valid (at time of tender closing), original, tax clearance certificate, which has sufficient validity to ensure that the tender process is adequately covered. Non-submission, or submission of a copy of a certificate / an expired certificate, will preclude *Bidders* from the tender process.

(b) **MBD 4:** Declaration of Interest: All *Bidders* are to sign the Declaration of Interest wherein they declare any relationship that may exist with an official of the Municipality involved in the evaluation process.

Regulation 44 of the Supply Chain Management Regulations states that a Municipality or Municipal Entity may not make any award to a person:

(i) Who is in the service of the state;

(ii) If that person is not a natural person, of which any Director, Manager, Principal, Shareholder or Stakeholder is a person in the service of the state; or

(iii) Who is an advisor or consultant contracted with the Municipality or municipal entity.

Should a contract be awarded and it is subsequently established that Regulation 44 has been breached, the Municipality shall have the right to terminate the contract with immediate effect.

(c) **MBD 5:** Declaration For Procurement Above R10 Million (if applicable): For all procurement expected to exceed R10 million (all applicable taxes included), tenderers must complete this questionnaire.

(d) **MBD 6.1:** Preference Points Claim Form: For the awarding of Preference Points, *Bidders* are required to complete the attached MBD 6.1 form and return it with their tender submission. A valid (original or certified copy) B-BBEE Level of Contribution Certificate must accompany the tender submission. No preference evaluation points will be allocated should the certificate be invalid or not submitted. Any enterprise with an annual Total Revenue of R10 Million or less qualifies as an Exempted Micro-Enterprise. An EME is only required to obtain a sworn affidavit on an annual basis, confirming 1) Annual Total Revenue of R10 million or less; and 2) the Level of Black ownership.

(e) **MBD 6.2:** Declaration Certificate for Local Production and Content for Designated Sector: This form must form part of all tenders invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

(f) **MBD 8:** Declaration of *Bidders* Past Supply Chain Management Practices Form: This form 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.

(g) **MBD 9:** Certificate of Independent Bid Determination: Section 4(1)(b)(iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms if it involves collusive tendering or tender rigging. In order to give effect to this, the Certificate of Bid Determination must be completed and submitted with the tender.

**(5) Official Tender Form** (see Section 9)**a) Legal Status of Tenderer**

It is essential for the purpose of entering into a legal contract that *Bidders* state on the Official Tender Form, under "Name and Address of Tenderer", their full legal status:

- (i) the full registered name of the company making a *tender*; or
- (ii) if the *Tenderer* is a person conducting business under a recognised trading name then:
  - State the name of the person(s);
  - State recognised trading name; and
  - State whether an owner, co-owner, proprietor, etc.

**(b) Signing of Official Tender Form**

Failure of a *Tenderer* to complete, in its entirety, and sign the Official Tender Form will invalidate the *tender*.

**(c) Authority of Signatory**

*Bidders* are to complete and sign the Authority of Signatory returnable document, and attach the required additional documents.

**(d) Differences or Discrepancies**

Should there be any difference or discrepancy between the prices or price contained in the Official Tender Form and those contained in any covering letter from the *Tenderer*, the prices or price contained in the Official Tender Form shall prevail.

**(6) Any additional Schedules, Forms, or Certificates as stated in the SCT.****5. INFORMATION TO BE SUPPLIED REGARDING SUB-CONTRACTORS**

*Bidders* are to state in their *tenders*, or covering letters, whether, if the contract were to be awarded to them, the whole of the work would be executed by them in their own workshop / factory. If the answer is in the negative, they are required to state which part(s) would be handed to sub-contractors and the name and address of such sub-contractors.

**6. SAMPLES**

*Bidders* may be required to state where samples of the full range of products can be inspected or be required to submit samples for inspection prior to the closing date of the *tender*.

**7. MANUFACTURERS**

The names of the manufacturers of the goods or equipment offered must be stated in the *tender*.

*Bidders* who are not manufacturers, accredited distributors, or agents must provide a valid agreement / Joint Venture Agreement, entered into with the manufacturer, accredited distributors, or agents, with their submission. This agreement must meet all the requirements as laid down in the *tender* document, and must cover the contract period.

**8. CLARIFICATION**

The Head: Supply Chain Management Unit, or an authorized representative, may request clarification or further information on any aspect of the *tender*. The *Tenderer* **must** supply the requested information within the time specified. Failure to comply will render the *tender* non-responsive.

**9. PRICING**

*Bidders* would be precluded from this *tender* if their pricing structure deviates from the Official Tender Form.

**(1) Nett Prices**

All prices shall be quoted in South African currency (Rand) after deduction of any brokerage or discount allowed to the Municipality.

**(2) Unit Prices**

*Bidders* shall quote only one price in respect of each item. Such price is to hold good for the full duration of the contract period, being subject to variation only in accordance with specified criteria, as stated in the **Conditions of Contract**.

**(3) Firm Tenders**

*Bidders* may submit firm prices for each 12 month period. These prices shall be free from all fluctuations, including any statutory increases.

**(4) Value Added Tax (V.A.T)**

Prices exclusive and inclusive of VAT must be stated separately on the Official Tender Form.

**10. ESTIMATED QUANTITIES**

The estimated quantities are set out in Section 8 : Bill of Quantities / Schedule of Rates/Activities which forms part of the official tender documents. The quantities are stated purely for the information of the *Bidders* and are in order to ascertain an estimated total contract price. The *Supplier* will, however, be bound to supply whatever quantity or quantities the *Municipality* may actually require, and may be in excess or less than the estimated quantities stated.

**11. DELIVERY, RISK, PACKAGES, ETC**

(1) Unless otherwise provided, all goods are to be supplied only against the form of order issued by the *Municipality*.

(2) *Bidders* shall quote a unit price which shall include delivery to the specified delivery point, as stated in the **SCT**.

(3) The risk in all goods purchased by the *Municipality* under the contract shall remain with the *Supplier* until such goods shall have been duly delivered.

(4) *Bidders* shall clearly state the period within which delivery will be made after receipt of the official order, as this may be material in the adjudication of the *tender*.

**12. RATES OF EXCHANGE**

- (1) Where the goods are imported the *Supplier* shall, within seven days of date of official Purchase Order, arrange through their bankers for the foreign commitment to be covered forward down to the Rand in order to fix the rate of exchange. The *Supplier* shall notify the *Municipality* as soon as possible thereafter regarding the rate which has been fixed on such forward exchange.

Any increase or decrease between the basic rate of exchange as at a date seven days prior to the date of closing of *tenders* and that existing at the date of establishment of the forward exchange cover within the period stipulated above shall be paid or deducted by the *Municipality*. Upon the failure of the *Supplier* to arrange forward exchange cover, the *Supplier* shall be liable should there be any increase in the basic rate of exchange occurring after the last mentioned date.

The bank charges incurred in obtaining the forward exchange cover shall be for the *Municipality's* account.

- (2) The *Supplier* shall on request:
- Submit documentary proof of the rate of exchange; and
  - When an adjustment is claimed in terms of this sub-clause, whether by the *Supplier* or the *Municipality*, submit documentary proof to the satisfaction of the Deputy City Manager: Treasury in respect of such claim.

**13. IMPORT PERMITS**

- In order to minimise special importation, *Bidders* should, where possible, have recourse to local suppliers and / or manufacturers.
  - Bidders* must state whether their *tender* is dependent upon the issue of a special import permit or whether they are able to supply the goods by making use of the import facilities available to them.
- (3) In the event of a *tender* being dependent upon the issue of a special import permit, application for such special import permit shall be made by the *Tenderer*, unless otherwise provided for in the *SCT*.

**14. EVALUATION PROCESS**

The procedure for evaluation of responsive Tender Offers will be in accordance with the eThekweni Municipality's SCM Policy (adopted by full council on 6 December 2018) and the Preferential Procurement Policy Framework Act (5 of 2000), and the Preferential Procurement Policy Framework Act Regulations (January 2017).

**Details of additional evaluation criteria, if applicable, are stated in the *SCT*.**

Evaluation points for price and preference will only be calculated for *Bidders* who comply with the contractual and technical specification, and if applicable, have attained the minimum Functionality Score as stated in the *SCT*.

The evaluation process of responsive *tenders* will be as follows:

- Score each *tender* in respect of the financial offer made and preferences claimed (if any);
- Calculate the total number of evaluation points ( $T_{EV}$ ) in accordance with the following formula:  
 $T_{EV} = N_{FO} + N_P$  where:  $N_{FO}$  : is the number of evaluation points awarded for the financial offer; and  $N_P$  : is the number of evaluation points awarded for preferences claimed.
- Rank *tenders* from the highest number of evaluation points to the lowest.
- Recommend the *Tenderer* with the highest number of evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.
- Rescore and re-rank all *Bidders* should there be compelling and justifiable reasons not to recommend the *Tenderer* with the highest number of evaluation points, and recommend the *Tenderer* with the highest number of evaluation points, unless there are compelling and justifiable reasons not to do so, and the process set out in this sub-clause is repeated.

**(1) Evaluation points awarded for the financial offer:**

The financial offer will be scored using the formula:

$$N_{FO} = W \left( 1 - \frac{P - P_m}{P_m} \right)$$

Where the value of W is:

- 90** where the financial value inclusive of VAT of all responsive *tenders* received have a value in excess of R 50,000,000; OR  
**80** where the financial value inclusive of VAT of one or more responsive *tenders* offers have a value that equals or is less than R 50,000,000;
- Pm** is the comparative offer of the most favourable comparative offer; and
- P** is the comparative offer of the *tender* offer under consideration.

**(2) Evaluation points awarded for preference:**

Up to 100 minus W (see (1) above) tender evaluation points will be awarded for preference to *Bidders* who attain the BBEE status level of contributor in accordance with the table below:

B-BBEE Status Level of Contributor	Number of Points where W = 90	Number of Points where W = 80
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-Compliant Contributor	0	0

**15. BRIBERY AND COMMUNICATION WITH COUNCILLORS / OFFICIALS****(1) Bribery**

No *Tenderer* shall offer, promise or give to any person or person connected with a *tender* or the awarding of a contract, any gratuity, bonus or discount etc, in connection with the obtaining of a contract.

**(2) Communication, Councillors and Officials**

A *Tenderer* shall not in any way communicate with a member of the *Municipality* or with any official of the *Municipality* on a question affecting any contract for the supply of goods or for any work, undertaking or services which is the subject of a *tender* during the period between the closing date for receipt of *tenders* and the dispatch of the written notification of the *Municipality's* decision on the award of the contract; provided that a *Tenderer* shall not hereby be precluded:

- (a) At the request of the Head: SCM Unit, or an authorized representative, from furnishing him with additional information or with a sample or specimen for testing purposes or otherwise from giving a demonstration so as to enable the recommendation to the Bid Committee on the award of the contract to be formulated;
- (b) From obtaining from the Head : SCM Unit, or an authorised representative, information as to the date upon which the award of the contract is likely to be made, or, after the decision upon the award has been made by the *Municipality* or any Committee to which the *Municipality* has delegated its powers, information as to the nature of the decision or such information as was publicly disclosed at the opening of *tenders* or from submitting to the Accounting Officer in writing any communication relating to their *tender* or the award of the contract or a request for leave to withdraw their *tender*; and
- (c) Provided further that nothing contained herein shall be construed so as to prevent information being sought and obtained from an Official in regard to any decision taken at an open Municipal meeting, or any Committee to which the *Municipality* has delegated its powers.

A contravention of subsection (1) and / or (2), or an attempt to contravene such subsection, shall be reported to the Accounting Officer, who may on receipt of such report disqualify the *tender* of the *Tenderer* concerned.

**16. NEGOTIATIONS WITH PREFERRED BIDDERS**

The *Municipality* reserves the right to invoke Regulation 24 of Municipal Finance Management Act if required.

- (1) The Accounting Officer may negotiate the final terms of a contract with *Bidders* identified through a competitive tendering process as preferred *Bidders*, provided that such negotiation:
  - Does not allow any preferred *Tenderer* a second or unfair opportunity;
  - Is not to the detriment of any other *Tenderer* ; and
  - Does not lead to a higher price than the *tender* as submitted.
- (2) Minutes of such negotiations must be kept for record purposes.
- (3) Such negotiation may be delegated by the Accounting Officer.

**17. CANCELLATION OF TENDER PROCESS**

The municipality is entitled to cancel the tender at any time before the award of a tender and the decision to cancel the tender shall be published in the same manner in which the original tender invitation was advertised. The Municipality shall, in no way, be liable for any damages whatsoever, including, without limitation, damages for loss of profit, in any way connected with the cancellation of this bid.

**18. ACCEPTANCE OF BID**

- (1) The *Municipality* does not bind itself to accept the lowest or any *tender*, and reserves the right to accept the whole or any part of a *tender* to place orders.
- (2) The *Municipality* reserves the right to accept more than one technically and contractually compliant *tender* for part or the whole of the contract and to place orders on the price and availability.
- (3) *Bidders* shall not bind the *Municipality* to any minimum quantity per order.
- (4) The successful *Tenderer (s)* shall be bound to provide any quantities stipulated in the specification.
- (5) Tenders will only be accepted on condition that:
  - (a) The *tender* is signed by a person authorised to sign on behalf of the *Tenderer* .
  - (b) A valid (at time of close of tenders), original, Tax Clearance Certificate is included with the *tender* submission, which has sufficient validity to ensure the process is adequately covered;
  - (c) A *Tenderer* who submitted their *tender* as a Joint Venture has included an acceptable Joint Venture Agreement and a B-BBEE Certificate pertaining to the Joint Venture with their *tender*.
- (6) Financial Standing: The Head: Supply Chain Management reserves the right to require *Bidders* to submit evidence that their financial standing is adequate to meet their obligations under the contract should they be successful.
- (7) Change of Ownership or Major Policy: Where it is known to a *Tenderer* that a change in ownership or major policy (of the tendering entity) will occur, or is likely to occur, during a specified contract period, the scope and effect thereof must be fully defined in a covering letter to be submitted with the *tender*.
- (8) Purchase of Goods From Other Sources: Nothing contained in this contract shall be held to restrain the *Municipality* from purchasing from persons other than the *Supplier*, any of the goods described or referred to in this contract, if it shall in its discretion think fit to do so.
- (9) Capability and Breach of Contract: Tenderers that do not have the capability of undertaking this enquiry in terms of the requirements of the contract or have been in breach of contract previously will not be considered.

**19. PAYMENT and FACTORING**

Payment will be as per the **Conditions of Contract**.

Payment will be made only to the *Supplier(s)*. Factoring arrangements will not be accepted.

**20. APPEALS**

In terms of Regulation 49 of the Municipal Supply Chain Management Regulations persons aggrieved by decisions or actions taken by the *Municipality*, may lodge an appeal within 14 days of the decision or action, in writing to the *Municipality*. The appeal (clearly setting out the reasons for the appeal) and queries with regard to decision of award are to be directed to the office of the City Manager, attention:

Ms. S. Pillay, P.O. Box 1394, Durban, 4000;  
eMail: Simone.Pillay@durban.gov.za.

## **SECTION 3 : SPECIAL / ADDITIONAL CONDITIONS OF TENDER**

### **3.1 SPECIAL CONDITIONS OF TENDER (SCT)**

The **Standard Conditions of Tender** (Goods / Services) make several references to the **Special Conditions of Tender** (SCT) for details that apply specifically to this tender. The **Special Conditions of Tender** shall have precedence in the interpretation of any ambiguity or inconsistency between it and the **Standard Conditions of Tender**.

Each item below is cross-referenced to the clause in the **Standard Conditions of Tender** to which it mainly applies.

#### **SCT 3(3) TENDER INFORMATION: Queries Relating to this Tender**

General and Contractual Queries are to be directed to:

**Siphesihle Makhanya; Tel: 031-322 7189; eMail: Siphesihle.Makhanya@durban.gov.za**

Technical Queries are to be directed to:

**Nokwazi Shibe; Tel: 031-311 3196; eMail: Legal.Compliance@durban.gov.za**

#### **SCT 3(4) TENDER INFORMATION: Briefing Session**

**There will be no clarification meeting. Bidders are requested to submit email queries related to the bid. All email queries are to be submitted by 2022/03/11. Email questions and answers will be consolidated and posted on e-tenders/municipal website for the 2022/03/17**

#### **SCT 3(5) TENDER INFORMATION: Closing Date and Delivery of Tender Submissions**

Sealed Tenders, addressed to the City Manager and marked with the Tender Number, are to be placed in the Tender Box **located in the ground floor foyer of the Engineering Unit Building, 166 KE Masinga Road (Old Fort Rd), Durban** (and not any other municipal department), no later than: **Friday, 25 March 2022 at 11:00am**.

Tender documents together with one soft copy (either a disk or memory stick) to be submitted at the close of tender.

#### **SCT 3(6) TENDER INFORMATION: Tender Validity and Withdrawal of Tenders**

Tenders must hold good until 16:00 of the **12th week** following the date on which tenders are opened.

#### **SCT 4(6) RETURNABLE SCHEDULES, FORMS, CERTIFICATES**

**4.6.1 The following requirements are mandatory for all Bidders. Failure to meet any one of the following requirements shall render the bidder not be eligible to participate in this tender:**

- a) Original valid Tax Clearance Certificate of the Bidder or, in the case of a JV, for each JV partner;
- b) Declaration of Interest Form completed and signed;
- c) Declaration of Municipal Fees;
- d) Certificate of Independent Bid Determination;
- e) Bidder's Constitutional Documents, e.g. certificate of incorporation or partnership agreement (applicable only to those who are not sole proprietors);
- f) Letter(s) of Good Standing from the Legal Practice Council of all the Bidder's Professional

- Staff;
- g) Fidelity Fund Certificate (where the Bidder is required to be in possession of a Fidelity Fund Certificate);
  - h) For Bidder's that are required to have a trust account, the certificate of an auditor in respect of an audit of the Bidder's trust accounts that had been performed for the year ended immediately prior to the application;
  - i) Letters of Reference from, at least, three existing and/or former clients;
  - j) A Contract Participation Goal Implementation Plan must be submitted together with this tender, demonstrating how the Contract Participation Goals (CPG's) set out in the Additional Conditions of Tender (ACT2) will be achieved.

**4.6.2 Conveyancing Category must comply following at the close of tender over and above requirements listed in section 4.6.1 above–**

- a) Bidders who want to be considered for the Conveyancing Legal Services must be registered to practice as Conveyancers and Notaries Public in terms of the relevant rules of the Legal Practice Act and Legal Practice Council Rules;
- b) A sworn declaration from the Bidder confirming the number of property transfers registered by the Bidder at the Deeds Office to date of submission of bids; and
- c) A sworn declaration by the Bidder confirming the number of servitudes registered by the Bidder at the Deeds Office to date of submission of bids.

**4.6.3 In respect of Attorneys and Conveyancing Categories compliance with the following is required at the close of tender over and above requirements listed in section 4.6.1 above– –**

- a) All professional staff of the Bidder must be in possession of a recognised legal degree and be admitted to practice as Attorneys by the High Court of South Africa;
- b) Bidders must demonstrate that they have appropriate financial and control systems in place by submitting an original letter from their respective auditors confirming that their latest audits of their trust accounts were clear of any audit queries; and
- c) All professional staff of the Bidder must be members with the Legal Practice Council and must detail membership of any further professional organisation that they belong to.

**4.6.4 In respect of Appeals Authority compliance with the following is required at the close of tender over and above requirements listed in section 4.6.1 above–**

- a) Bidders must be in possession of a recognised legal degree and be admitted to practice as Attorneys or Advocates by the High Court of South Africa;
- b) Bidders must be members of the Legal Practice Council and should detail membership of any further professional organisation, if any, that they belong to;
- c) Provide proof of providing a service(s) within the Local Government environment
- d) Provide proof of experience in the Supply Chain Management environment.

SCT 11(2) **DELIVERY, RISK, PACKAGES, ETC**

- Not Applicable

**SCT 13**    **IMPORT PERMITS**

- Not Applicable

**SCT 14**    **EVALUATION PROCESS**

- Bidders are allowed to tender for one or more of the following Panels (but can only be appointed for one), that is:
  - Legal Services
  - Conveyancing
  - Appeals Authority
 Failure to choose at least one Panel that the Bidder is bidding for shall result in disqualification.
- Where the Legal Services Panel is chosen, Bidders must respectively mark the **Area of Interest** with Y (Yes) or with N (No) if they want to be considered or not considered for that Area of Interest.
- Bidders must indicate with numeric 1 to 7 the **ORDER OF PREFERENCE** for their areas of interest. The order of preference is from one to seven (1-7), one (1) being the most preferred area of interest and seven (7) being the least preferred. Failure to indicate the preference shall result in disqualification.
- Bidders will firstly be considered for the most preferred legal services/category which they have chosen and if not successful the next preferred.
- Appeals authority is open to both Advocates and Attorney.

**LEGAL SERVICES**

Legal Services requires the experience of both the Law Firm and Professional team.

<b><u>No</u></b>	<b><u>Area of Interest</u></b>	<b><u>Mark Y or N</u></b>
1	Litigation	
2	Commercial Law Advisory and Contracts	
3	Labour Law	
4	Town Planning	
5	Environmental Law	

**CONVEYANCING**

Conveyancing requires the experience of both the Law Firm and Professional team.

<b><u>No</u></b>	<b><u>Area of Interest</u></b>	<b><u>Mark Y or N</u></b>
1	Conveyancing	

**APPEALS AUTHORITY**

Appeals authority requires the experience of individual Professional.

<b><u>No</u></b>	<b><u>Area of Interest</u></b>	<b><u>Mark Y or N</u></b>
1	Appeals Authority	

**ORDER OF PREFERENCE**

<b>No</b>	<b>Area of Interest</b>	<b>Order of Preference (1-7)</b>
1	Litigation	
2	Commercial Law Advisory and Contracts	
3	Labour Law	
4	Town Planning	
5	Environmental Law	
6	Conveyancing	
7	Appeals Authority	

- 1) All Bids will be evaluated using the 90/10 preference point system
- 2) Stage 1 shall be functionality. Bidders will be assessed in terms of the evaluation criteria, detailed below.
- 3) Any Bid which fails to meet the minimum threshold, of 70 out of 100, for functionality, will not proceed to being evaluated for stage 2.
- 4) Stage 2 shall be price and preference points..

<b>Functionality criteria</b>	<b>Sub criteria</b>	<b>Points</b>
Tenderer's experience 1. Attorneys (Legal Service Only) 2. Conveyancers	Experience of service provider as a registered practice in executing work of similar scope	50
Experience of Key Resources practising as Attorneys. (Legal Services ONLY)	Total years of post-admission experience of Bidders admitted Attorneys	20
Staff Compliment: Legal Services Category ONLY	Number of Bidder's admitted Attorneys	10
Experience of Key Resources practising as Conveyancers ONLY	Total years of post-admission experience of Bidder's Conveyancers	20
Staff Compliment: Conveyancers ONLY	Number of Professionally Conveyancers	10
Tenders Experience for Appeals Authority ONLY.	Years of experience in Local Government within the Supply Chain Management environment.	80

<p>Methodology for All Categories</p>	<p>The Bidder's approach to a particular instruction is critical and Bidders are required to explain how they propose to approach each instruction provided.</p> <p>In the event that a Bidder is successful, the ultimate methodology will need to be agreed to by the Municipality.</p> <p>Bidders should, in outlining their particular methodology, indicate which of the services they are bidding to provide with reference to sub-panels and the particular methodology for that service/sub-panel. In this regard, specific reference must be made in detail, regarding the following headings:</p> <ul style="list-style-type: none"> <li>➤ The general approach to an instruction received from the Municipality;</li> <li>➤ The approach to reporting and keeping the Municipality abreast of progress;</li> <li>➤ Timeframes for the finalisation of matters and instructions, where applicable;</li> <li>➤ The approach to billing the Municipality for services; and</li> <li>➤ Commitment to transformation, in respect of the use of Counsel who are Historically Disadvantaged, when such a need arises and where applicable.</li> </ul> <p>#NB: For Appeals Authority methodology must include how they will deal appeals, complaints, disputes and or objections.</p>	<p>20</p>
<p><b>Maximum possible score for Functionality (M<sub>s</sub>)</b></p>		<p>100</p>

<p><b>Summary of Total Scores: Legal Service Only</b></p>		
<p>Legal Services</p>	<p>Tenders Experience</p>	<p>50</p>
	<p>Experience of Key Resources practising as Attorneys</p>	<p>20</p>
	<p>Staff Compliment: Legal Services Panel ONLY</p>	<p>10</p>
	<p>Methodology</p>	<p>20</p>
	<p style="text-align: center;">TOTAL</p>	<p>100</p>

<p><b>Summary of Total Scores: Conveyancing Only</b></p>		
<p>Legal Services</p>	<p>Tenders Experience</p>	<p>50</p>
	<p>Experience of Key Resources practising as Conveyancers</p>	<p>20</p>
	<p>Staff Compliment: Conveyancing Panel ONLY</p>	<p>10</p>
	<p>Methodology</p>	<p>20</p>
	<p style="text-align: center;">TOTAL</p>	<p>100</p>

<p><b>Summary of Total Scores: Appeals Authority Only</b></p>		
<p>Legal Services</p>	<p>Years of experience in Local Government within the Supply Chain Management environment.</p>	<p>80</p>
	<p>Methodology</p>	<p>20</p>
	<p style="text-align: center;">TOTAL</p>	<p>100</p>

Level	pts	Criterion: Tenderer's Years of Experience in Legal Services excluding Conveyancing.
0	0	No Submission or Submission of no substance / irrelevant information provided
1	40	To have successfully registered and operated an office in legal services provision in up to 2 years.
2	70	To have successfully registered and operated an office in legal services provision for more than 2 years and up to 4 years.
3	90	To have successfully registered and operated an office in legal services provision for more than 4 years and up to 6 years.
4	100	To have successfully registered and operated an office in legal services provision for more than 6 years.

Level	pts	Criterion: Tenderer's Experience in Conveyancing
0	0	No Submission or Submission of no substance / irrelevant information provided
1	40	To have at least successfully registered 10 deeds and servitudes within the past 5 years.
2	70	To have at least successfully registered 20 deeds and servitudes within the past 5 years.
3	90	To have at least successfully registered 40 deeds and servitudes within the past 5 years.
4	100	To have at least successfully registered +50 deeds and servitudes within the past 5 years.

Experience of Key Resources in executing work in Legal Services								
Job Title	Minimum Qualification Required	Professional Registration Required	Number of Years' Relevant Experience on projects of a similar nature					Total Points
			Level 0 0 pts	Level 1 40 pts	Level 2 70 pts	Level 3 90 pts	Level 4 100 pts	
Total years of post-admission experience of Bidders admitted Attorneys	BUris / BProc /LLB	Legal Practice Council Reg. certificate	No Submission	≤ 3	> 3 ≤ 7	> 7 ≤ 10	> 10	
Experience of Key Resources in executing work as Appeals Authority								
Attorney / Advocate	BUris / BProc /LLB	Legal Practice Council Reg. certificate	No Submission	≤ 3	> 3 ≤ 7	> 7 ≤ 10	> 10	
Experience of Key Resources in executing work as Conveyancer								
Conveyancer	BUris / BProc /LLB	Legal Practice Council Reg. certificate	No Submission	≤ 3	> 3 ≤ 7	> 7 ≤ 10	> 10	

Staff Complement								
Number of Professionally Admitted Attorneys – (Legal Services Only)								
Job Title	Minimum Qualification Required	Professional Registration Required	Number of Professionally admitted Attorneys					Total Points
			Level 0 0 pts	Level 1 40 pts	Level 2 70 pts	Level 3 90 pts	Level 4 100 pts	
Professional Attorneys	BUris / BProc /LLB	Legal Practice Council Reg. certificate	No Submission	1	2	3	+4	
Number of Professionally Admitted Conveyancers – (Conveyancing Only)								
Professional Conveyancers	BUris / BProc /LLB	Legal Practice Council: Conveyancers	No Submission	1	2	3	+4	

Level	Pts	Criterion : Methodology
0	0	No response/ no documents submitted. The bidder has failed to cover any of the 5 headings under methodology.
1	40	The technical approach and / or methodology is poor / is unlikely to satisfy project objectives or requirements. The tenderer has misunderstood certain aspects of the scope of work and does not deal with the critical aspects of the project. The programme is poor and has missed critical aspects The bidder has covered 2 of the 5 headings under methodology.
2	70	The approach is tailored to address the specific project objectives and methodology. The approach does adequately deal with the critical characteristics of the project. The project plan and manner in which risk is to be managed etc is tailored to the key aspects of the programme. The bidder has covered 3 of the 5 headings under methodology.
3	90	The approach is tailored to address the specific project objectives and methodology and is sufficiently flexible to accommodate changes that may occur during execution. The project plan and approach to managing risk etc is tailored to the critical characteristics of the project. The bidder has covered 4 of the 5 headings under methodology.
4	100	Besides meeting the "good" rating, the important issues are approached in an innovative and efficient way, indicating that the tenderer has outstanding knowledge of state-of-the- art approaches. The programme is well thought out and makes allowance for all the key risk areas. The approach paper details ways to improve the project outcomes and the quality of the outputs The bidder has covered 5 or more of the headings under methodology.

The **90/10** preference points system will be used where the financial value (incl. VAT) of all responsive tenders received have a value in excess of R 50,000,000. The Formula used to calculate the **Price Points**, and the **Preference Points** that will be allocated, will be according to the 2017 PPPFA Regulations.

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### 3.2 ADDITIONAL CONDITIONS OF TENDER (ACT)

#### ACT 1 ELIGIBILITY

##### **A. CSD REGISTRATION**

Tenderers are required to be registered on the National Treasury Central Supplier Database (CSD) as a service provider. In the case of a Joint Venture, this requirement will apply individually to each party in the Joint Venture. Tenderers not so registered, at time of closing of tenders, will not be eligible to submit tenders.

The Tenderer's CSD Supplier Number (starting with "MAAA") is to be provided in the relevant portions of the tender submission (see Page 3 and 19).

Tenderers who wish to register on the CSD may do so via web address <https://secure.csd.gov.za>.

##### **B. BIDDERS ON CURRENT PANEL**

Bidders who are on the current Panel of Attorneys and Appeals Authority of the Municipality (Contract 1A-1094) shall not be eligible to submit a tender under this bid.

#### ACT2. **CONTRACT PARTICIPATION GOALS (CPG)**

At the time of tender the Service Provider is required to provide an empowerment plan showing how a minimum of three (3) Candidate Attorneys will be kept in the employ of the bidding firm for the duration of the contract.

Candidate Attorneys must be black people who are from the priority population group:

- a) Black people who are youth;
- b) Black people who are women;
- c) Black people with disabilities;
- d) Black people living in rural or underdeveloped areas or townships;
- e) Black people who are military veterans;

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## **SECTION 4 : RETURNABLE TENDER DOCUMENTS**

The required returnable documents are as detailed in [Section 2 \(Clause 4\)](#) : “Returnable Schedules, Forms, Certificates” of the Conditions of Tender / Special Conditions of Tender.

The Tender Form can be found in [Section 9](#) : “Official Tender Form”, and any additional schedules, forms, certificates can be found in [Section 10](#) : “Annexures”.

**a) AUTHORITY OF SIGNATORY**

Reference is made to the Conditions of Tender: [Clause 4\(5\)\(c\)](#).

Indicate the status of the tenderer by ticking the appropriate box hereunder.

<b>COMPANY</b>		<b>CLOSE CORPORATION</b>		<b>PARTNERSHIP</b>		<b>JOINT VENTURE</b>		<b>SOLE PROPRIETOR</b>	
Refer to Notes at the bottom of the page									

I / We, the undersigned, being the Chairperson (Company), Member(s) (Close Corporation), Partners (Partnership), Sole Owner (Sole Proprietor), Lead Partner (JV), in the company / business trading as:

.....

hereby authorise Mr/Mrs/Ms .....

acting in the capacity of .....

to sign all documents in connection with the tender for Contract No. [1A-4258](#) and any contract resulting from it on our behalf.

NAME	ADDRESS	SIGNATURE	DATE

**Notes**

**The following documents must be attached to the back inside cover to this procurement document:**

If a Company : a "Resolution of the Board" in this regard.

If a Joint Venture : a "Power of Attorney" signed by the legally authorised signatories of all the partners to the Joint venture.

**b) DECLARATION OF MUNICIPAL FEES**

I, the undersigned, do hereby declare that the Municipal fees of

.....  
 (full name of Company / Close Corporation / partnership / sole proprietary/Joint Venture)

(hereinafter referred to as the TENDERER) are, as at the date hereunder, fully paid or an Acknowledgement of Debt has been concluded with the Municipality to pay the said charges in instalments.

The following account details relate to property of the said TENDERER:

<u>Account</u>	<u>Account Number:</u> to be completed by tenderer.
Consolidated Account No.	<input type="text"/>
Electricity	<input type="text"/>
Water	<input type="text"/>
Rates	<input type="text"/>
Other	<input type="text"/>
Other	<input type="text"/>
Other	<input type="text"/>

I acknowledge that should the aforesaid Municipal charges fall into arrears, the Municipality may take such remedial action as is required, including termination of any contract, and any payments due to the Contractor by the Municipality shall be first set off against such arrears. **ATTACHED, to the back inside cover of this document, please find copies of the above account's and or agreements signed with the Municipality.**

- Where the TENDERER'S place of business or business interests are outside the jurisdiction of eThekweni Municipality, a copy of the accounts/agreements from the relevant municipality must be attached (to the back inside cover of this document).
- **Where the tenderer's Municipal Accounts are part of their lease agreement, then a copy of the agreement, or official letter to that effect is to be attached (to the back inside cover of this document).**

NAME : ..... (Block Capitals)

SIGNATURE : ..... DATE: .....  
 (of person authorised to sign on behalf of the Tenderer)

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**c) DECLARATION WITH RESPECT TO THE OCCUPATIONAL HEALTH AND SAFETY ACT**
**Definitions**

The Act : the Occupational Health and Safety Act No 85 of 1993 (as amended by the Occupational Health and Safety Amendment Act No 181 of 1993), and any associated / applicable Regulations.

**Declaration by Tenderer**

1. I, the undersigned, hereby declare and confirm that I am fully conversant with the Act.
2. I hereby declare that my company has the competence and the necessary resources to safely carry out the work / supply / services under this contract in compliance with the Act, and the Employer's / Purchaser's / Client's Health and Safety Specifications.
3. I hereby undertake, if my tender is accepted, to provide on request a suitable and sufficiently documented Health and Safety Plan which plan shall be subject to approval by the Employer / Purchaser / Client.
4. I hereby confirm that adequate provision has been made in my tendered rates to cover the cost of all resources, actions, training and all health and safety measures envisaged in the Act, and that I will be liable for any penalties that may be applied by the Employer / Purchaser / Client for failure to comply with the provisions of the Act.
5. I agree that my failure to complete and execute this declaration to the satisfaction of the Employer / Purchaser / Client will mean that I am unable to comply with the requirements of the Act and accept that my tender will be prejudiced and may be rejected at the discretion of the Employer / Purchaser / Client.

NAME : ..... (Block Capitals)

SIGNATURE : ..... DATE: .....  
*(of person authorised to sign on behalf of the Tenderer)*

**d) CONSOLIDATED MUNICIPAL BIDDING DOCUMENTS**

<b>The following SECTIONS are required to be completed as part of this procurement document</b>
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<u>Section</u>	<u>Description</u>	<u>Required?</u>
<b>A</b>	General Enterprise Information .....	<b>Yes</b>
<b>B</b>	MBD2 : Tax Clearance Certificate Requirements .....	<b>Yes</b>
<b>C</b>	MBD4 : Declaration of Interest .....	<b>Yes</b>
<b>D</b>	MBD5 : Declaration For Procurement Above R10 Million .....	<b>Yes</b>
<b>E</b>	MBD6.1 : Preference Points Claim Form ITO the Preferential Regulations .....	<b>Yes</b>
<b>F</b>	MBD6.2 : Declaration Certificate for Local Production and Content for Designated Sectors.....	<b>No</b>
<b>G</b>	MBD8 : Declaration of Bidder's Past SCM Practices .....	<b>Yes</b>
<b>H</b>	MBD9 : Certificate of Independent Bid Determination .....	<b>Yes</b>
<b>I</b>	Confirmations, Authorities, Certifications, Acknowledgements and Signatures .....	<b>Yes</b>

**NOTES**

1. 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 enterprise;
  - (c) an official of any municipality or municipal enterprise;
  - (d) an employee of any national or provincial department, national or provincial public enterprise 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 enterprise; or
  - (f) an employee of Parliament or a provincial legislature.
2. "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. Includes price quotations, advertised competitive bids, limited bids and proposals.
4. 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.



Ref	Description	Complete or Circle Applicable
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### **SECTION B : MBD 2 : TAX CLEARANCE CERTIFICATE REQUIREMENTS**

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

- 1.0 In order to meet this requirement bidders are required to complete the TCC 001 : "Application for a Tax Clearance Certificate" form and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
- 2.0 SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
- 3.0 The original Tax Clearance Certificate must be submitted together with the bid (attached to the inside back cover of this procurement document). Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
- 4.0 In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
- 5.0 Copies of the TCC 001 : "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website [www.sars.gov.za](http://www.sars.gov.za) .
- 6.0 Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website [www.sars.gov.za](http://www.sars.gov.za) .
- 7.0 Notwithstanding Clauses 1.0 to 6.0 above: Since 18 April 2016, SARS has introduced a new Tax Compliance Status System (TCS). As part of this enhanced system, tenderers can now submit a Tax Compliance Status PIN instead of an original Tax Clearance Certificate (TCC). This TCS PIN can be used by third parties to certify the taxpayer's real-time compliance status. This number, if available, is to be entered in Item 2.7 of Section A of these consolidated Municipal Bidding Documents.  
For further particulars please contact your nearest SARS branch, or call the SARS Contact Centre on 0800 00 7277, or log onto SARS eFiling.

**Attach an original, valid, Tax Clearance Certificate to the inside back cover of this procurement document OR insert a Tax Compliance Status PIN in Section A (2.7)**

### **SECTION C : MBD 4 : DECLARATION OF INTEREST**

**No bid will be accepted from persons "in the service of the state"**. 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 and/or take an oath declaring his/her interest. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

1.0 Are you presently in the service of the state? If yes, furnish particulars : .....	YES	NO
2.0 Have you been in the service of the state for the past twelve months? If yes, furnish particulars : .....	YES	NO
3.0 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? If yes, furnish particulars : .....	YES	NO
4.0 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? If yes, furnish particulars : .....	YES	NO
5.0 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? If yes, furnish particulars: .....	YES	NO
6.0 Are any spouse, child or parent of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? If yes, furnish particulars: .....	YES	NO
7.0 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? If yes, furnish particulars: .....	YES	NO
8.0 The names of all directors / trustees / shareholders / members / sole proprietors / partners in partnerships, their individual identity numbers and state employee numbers are indicated in <b>SECTION A</b> .		

Ref	Description	Complete or Circle Applicable
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**SECTION D : MBD 5 : DECLARATION FOR PROCUREMENT ABOVE R10 MILLION (ALL APPLICABLE TAXES INCLUDED)**

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

<p>1.0 Are you by law required to prepare annual financial statements for auditing?</p> <p>If YES, you will be required to submit audited annual financial statements (on request during the tender evaluation period) for the past three years or since the date of establishment if established during the past three years.</p>	<table border="1"> <tr> <td style="width: 50px; height: 40px;">YES</td> <td style="width: 50px; height: 40px;">NO</td> </tr> </table>	YES	NO
YES	NO		
<p>2.0 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?</p> <p>If NO, this serves to certify that the bidder has no undisputed commitments for municipal services towards any municipality for more than three months or other service provider in respect of which payment is overdue for more than 30 days.</p> <p>If YES, provide particulars on a letterhead. (Attach this letter to the back inside cover of this procurement document).</p>	<table border="1"> <tr> <td style="width: 50px; height: 40px;">YES</td> <td style="width: 50px; height: 40px;">NO</td> </tr> </table>	YES	NO
YES	NO		
<p>3.0 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?</p> <p>If YES, provide particulars on a letterhead. (Attach this letter to the back inside cover of this procurement document).</p>	<table border="1"> <tr> <td style="width: 50px; height: 40px;">YES</td> <td style="width: 50px; height: 40px;">NO</td> </tr> </table>	YES	NO
YES	NO		
<p>4.0 Will any portion of goods or services be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality / municipal entity is expected to be transferred out of the Republic?</p> <p>If YES, provide particulars on a letterhead. (Attach this letter to the back inside cover of this procurement document).</p>	<table border="1"> <tr> <td style="width: 50px; height: 40px;">YES</td> <td style="width: 50px; height: 40px;">NO</td> </tr> </table>	YES	NO
YES	NO		

**SECTION E : MBD 6.1 : PREFERENCE POINTS CLAIM ITO THE PREFERENTIAL REGULATIONS**

Preference points for this tender shall be awarded as per the Tender Data and the Preferential Procurement Regulations (January 2017). Failure on the part of a tenderer to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or, if an EME, a sworn affidavit confirming a) Annual Total Revenue of R10 million or less, and b) Level of Black ownership or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed. The Employer reserves the right to require of a tenderer, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the Employer.

**DECLARATION**

<p>1.0 B-BBEE Status Level of Contribution claimed:</p> <p>Will any portion of the contract be sub-contracted?</p> <p>If YES, indicate:</p> <p>(i) what percentage of the contract will be subcontracted?</p> <p>(ii) the name of the sub-contractor?</p> <p>Name : .....</p> <p>(iii) the B-BBEE status level of the sub-contractor?</p> <p>(iv) whether the sub-contractor is an EME?</p>	<table border="1" style="width: 100%; height: 40px;"> <tr> <td style="width: 50%;"></td> <td style="width: 50%;"></td> </tr> </table> <table border="1" style="width: 100%; height: 40px;"> <tr> <td style="width: 50px;">YES</td> <td style="width: 50px;">NO</td> </tr> </table> <table border="1" style="width: 100%; height: 40px;"> <tr> <td colspan="2"></td> </tr> </table> <table border="1" style="width: 100%; height: 40px;"> <tr> <td style="width: 50px;">YES</td> <td style="width: 50px;">NO</td> </tr> </table>			YES	NO			YES	NO
YES	NO								
YES	NO								

The undersigned, certify that the B-BBEE status level of contribution indicated in paragraph 1.0 above qualifies the company / firm for preference points and acknowledges that the remedies as per Clause 14 of the Preferential Procurement Regulations (2017) shall apply.

**Attach a B-BBEE Verification Certificate to the inside back cover of this procurement document**

Ref	Description	Complete or Circle Applicable
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**SECTION F : 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, 2011 and 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)].

1.0 General Conditions

- 1.1 Preferential Procurement Regulations, 2017 (Regulation 8) makes provision for the promotion of local production and content.
- 1.2 Regulation 8.(1) prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the specific bidding condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3 Where necessary, for bids 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 the South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as required in paragraph 4.1 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 –
  - (a) this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation; and
  - (b) the bidder fails to declare that the Local Content Declaration Templates (Annex C, D and E) have been audited and certified as correct.

2.0 Definitions

- 2.1 “bid” includes written price quotations, advertised competitive bids or proposals;
- 2.2 “bid price” price offered by the bidder, excluding value added tax (VAT);
- 2.3 “contract” means the agreement that results from the acceptance of a bid by an organ of state;
- 2.4 “designated sector” means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content;
- 2.5 “duly sign” means a Declaration Certificate for Local Content that has been signed by the 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).
- 2.6 “imported content” means that portion of the bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad (this includes labour and intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;
- 2.7 “local content” means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;
- 2.8 “stipulated minimum threshold” means that portion of local production and content as determined by the Department of Trade and Industry; and
- 2.9 “sub-contract” means the primary contractor’s assigning, leasing, making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.

3.0 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>
.....	..... %
.....	..... %
.....	..... %

Ref	Description	Complete or Circle Applicable
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4.0 Does any portion of the services, works or goods offered have any imported content? YES NO

4.1 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 the SARB for the specific currency at 12:00 on the date of advertisement of the bid.  
The relevant rates of exchange information is accessible on [www.reservebank.co.za](http://www.reservebank.co.za).

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

US Dollar :  Pound Sterling :  Euro :  Yen :  Other :

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

5.0 Were the Local Content Declaration Templates (Annex C, D and E) audited and certified as correct? YES NO

5.1 If yes, provide the following particulars:

(a) Full name of auditor: .....

(b) Practice number: ..... (c) Telephone number: .....  
Cell number: .....

(d) Email address: .....

(Documentary proof regarding the declaration will, when required, be submitted to the satisfaction of the Accounting Officer / Accounting Authority)

6.0 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 Accounting Officer / Accounting Authority 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 Municipality / Municipal Entity)

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.

NB 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%20development/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 in Section H of these Consolidated MBD returnable questionnaires ( comprising 8 pages), do hereby declare the following:

- (a) The facts contained herein fall 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
  - (ii) the declaration templates have been audited and certified to be correct.
- (c) The local content percentages (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C;

5) Bid price, excluding VAT (y) .....	R
6) Imported content (x), as calculated in terms of SATS 1286:2011 .....	R
7) Stipulated minimum threshold for local content (paragraph 3 above).....	%
8) 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 4.1 above and the information contained in Declaration D and E.

- (d) I accept that the Procurement Authority / Municipality /Municipal Entity 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 / Municipal / Municipal Entity imposing any or all of the remedies as provided for in Regulation 13 of the Preferential Procurement Regulations, 2017 promulgated under the Preferential Policy Framework Act (PPFA), 2000 (Act No. 5 of 2000).

Ref	Description	Complete or Circle Applicable
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**SECTION G : MBD8 : DECLARATION OF BIDDER’S PAST SUPPLY CHAIN MANAGEMENT PRACTICES**

This Municipal Bidding Document must form part of all bids invited. 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.

The bid of any bidder may be rejected if that bidder, or any of its directors have:

- a) abused the 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) wilfully 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).

In order to give effect to the above, the following questions must be answered.

<p>1.0 Is the bidder or any of its directors listed on the National Treasury’s Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>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 audi alteram partem rule was applied. The Database of Restricted Suppliers now resides on the National Treasury’s website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</p> <p>If yes, furnish particulars : .....</p>	YES	NO
<p>2.0 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>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.</p> <p>If yes, furnish particulars : .....</p>	YES	NO
<p>3.0 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>If yes, furnish particulars : .....</p>	YES	NO
<p>4.0 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>If yes, furnish particulars : .....</p>	YES	NO
<p>5.0 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>If yes, furnish particulars : .....</p>	YES	NO

**SECTION H : MBD9 : CERTIFICATE OF INDEPENDENT BID DETERMINATION**

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

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

- (a) take all reasonable steps to prevent such abuse;
- (b) reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
- (c) cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.

The following 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.

In order to give effect to the above, the following Certificate of Bid Determination must be completed and submitted with the bid. The undersigned, in submitting the accompanying bid, in response to the invitation for the bid do hereby make the following statements that I certify to be true and complete in every respect:

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

Ref	Description	Complete or Circle Applicable
3.0	I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;	
4.0	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;	
5.0	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: <ul style="list-style-type: none"> <li>• has been requested to submit a bid in response to this bid invitation;</li> <li>• could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and</li> <li>• provides the same goods and services as the bidder and/or is in the same line of business as the bidder.</li> </ul>	
6.0	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. (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.	
7.0	In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding: <ul style="list-style-type: none"> <li>• prices;</li> <li>• geographical area where product or service will be rendered (market allocation);</li> <li>• methods, factors or formulas used to calculate prices;</li> <li>• the intention or decision to submit or not to submit, a bid;</li> <li>• the submission of a bid which does not meet the specifications and conditions of the bid;</li> <li>• bidding with the intention not to win the bid.</li> </ul>	
8.0	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.	
9.0	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.	
10.0	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.	

**SECTION I : CONFIRMATIONS, AUTHORITIES, CERTIFICATIONS, ACKNOWLEDGEMENTS and SIGNATURES**

The undersigned, who warrants that he/she is duly authorised to do so on behalf of the enterprise:

- 1.0 Confirms that the contents of these Consolidated MBD returnable questionnaires ( comprising 8 pages) are within my personal knowledge and are to the best of my belief both true and correct;
- 2.0 Confirms that neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercise, or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004;
- 3.0 Confirms that no partner, member, director or other person, who wholly or partly exercise control over the enterprise, has within the last five years been convicted of fraud or corruption;
- 4.0 Confirms that I/we are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the bidders or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest;
- 5.0 Certify that the B-BBEE status level of contribution indicated in Section E : Item 1.0 qualifies the enterprise for preference points and acknowledges that the remedies as per Clause 13 of the Preferential Procurement Regulations (2011) shall apply. In the event of a contract being awarded as a result of points claimed, the enterprise may be required to furnish documentary proof to the satisfaction of the employer that the claims are correct;
- 6.0 Accept that, in addition to cancellation of a contract, action may be taken against me should these declarations prove to be false.

Signed ..... Date .....

Name ..... Position .....

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**SECTION 5 :CONDITIONS OF CONTRACT****GOVERNMENT PROCUREMENT : CONDITIONS OF CONTRACT (July 2010)**

The **Conditions of Contract** are the **General Conditions of Contract** as published by the National Treasury titled "Government Procurement : General Conditions of Contract (July 2010), as amended by National Treasury Circular 52 dated 30 July 2010, hereinafter referred to as **GCC**.

**THE NATIONAL TREASURY**

**Republic of South Africa**



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**GOVERNMENT PROCUREMENT:  
GENERAL CONDITIONS OF CONTRACT**

**July 2010**

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**1. Definitions**

The following terms shall be interpreted as indicated:

- 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7 "Day" means calendar day.
- 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
- 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.10 "Delivery into consignee store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods are so delivered and a valid receipt is obtained.
- 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the goods covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 "Supplier" means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.
- 1.26 "Tort" means in breach of contract.
- 1.27 "Turnkey" means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.
- 1.28 "Written" or "in writing" means hand-written in ink or any form of electronic or mechanical writing.
- 2. Application**
- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services (excluding professional services related to the building and construction industry), sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific goods, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.
- 3. General**
- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 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 not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier 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 shall furnish to the purchaser the performance security of the [amount specified in SCC](#).
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form 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. Inspections, tests and analyses**
- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that goods to be produced or services to be rendered should at any stage be subject to inspections, tests and analyses, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or organization acting on behalf of the purchaser.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Goods and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods, which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.
- 9. Packing**
- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, [including additional requirements](#), if any, and in any subsequent instructions ordered by the purchaser.
- 10. Delivery and documents**
- 10.1 Delivery of the goods and arrangements for shipping and clearance obligations, shall be made by the supplier in accordance with the terms [specified in the contract](#).
- 11. Insurance**
- 11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery [in the manner specified](#).
- 12. Transportation**
- 12.1 Should a price other than an all-inclusive delivered price be required, [this shall be specified](#).

**13. Incidental Services**

- 13.1 The supplier may be required to provide any or all of the following services, [including additional services](#), if any:
- performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - 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
  - training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

**14. Spare parts**

- 14.1 [As specified](#), the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and;
  - in the event of termination of production of the spare parts:
    - advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
    - following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

**15. Warranty**

- 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and 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.
- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, [unless specified otherwise](#).
- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, [within the period specified](#) and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

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

**16. Payment**

- 16.1 The method and conditions of payment to be made to the supplier under this contract [shall be specified](#).
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand [unless otherwise stipulated](#).

**17. Prices**

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

**18. Variation orders**

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

**19. Assignment**

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

**20. Subcontracts**

- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this 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.

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

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the [time schedule prescribed](#) by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the goods are required, or the supplier's services are not readily available.

- 21.4 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of penalties.
- 21.5 Upon any delay beyond the delivery period in the case of a goods contract, the purchaser shall, without cancelling the contract, be entitled to purchase goods of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.
- 22. Penalties**
- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.
- 23. Termination for default**
- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - if the supplier fails to perform any other obligation(s) under the contract; or
  - if the supplier, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner, as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.
- 23.5 Any restriction imposed on any person by the purchaser will, at the discretion of the purchaser, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the purchaser actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- the name and address of the supplier and / or person restricted by the purchaser;
  - the date of commencement of the restriction
  - the period of restriction; and
  - 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.
- 23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name 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.
- 24. Antidumping and countervailing duties and rights**
- 24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such 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.
- 25. Force Majeure**
- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.
- 26. Termination for insolvency**
- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the purchaser.

**27. Settlement of Disputes**

- 27.1 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.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
  - (b) the purchaser shall pay the supplier any monies due the supplier for goods delivered and / or services rendered according to the prescripts of the contract.

**28. Limitation of Liability**

- 28.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
  - (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

**29. Governing language**

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

**30. Applicable law**

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

**31. Notices**

- 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

**32. Taxes and duties**

- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No 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.
- 32.4 No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.

**33. Transfer of Contracts**

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

**34. Amendment of contracts**

- 34.1 No agreement to amend or vary 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.

**35. Prohibition of restrictive practices**

- 35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding.
- 35.2 If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 Of 1998.
- 35.3 If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or 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.

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**SECTION 6 :SPECIAL / ADDITIONAL CONDITIONS OF CONTRACT**

The **Conditions of Contract** make reference to the **Special Conditions of Contract (SSC)** for details that apply specifically to this bid. The **Special Conditions of Contract** shall have precedence in the interpretation of any ambiguity or inconsistency between it and the **Conditions of Contract**.

Each item below is cross-referenced to the clause in the **Conditions of Contract** to which it mainly applies.

**SCC 1.2 CONTRACT**

This is a 36 months contract.

**SCC 7.1 PERFORMANCE SECURITY**

The liability of the Performance Security shall be Nil.

**SCC 11.1 INSURANCE**

Service Providers are required to maintain Fidelity Fund Certificate for the duration of the contract. (where the Service Providers are required to be in possession of a Fidelity Fund Certificate);

**SCC 16.1 PAYMENT**

The Service Provider shall submit to the Legal and Compliance Unit a detailed account which shall reflect the identifying number of each item / service. Payment will be made on this account when checked and substantiated by the authorised official.

Payment for goods received and accepted by the Municipality shall be made no later than 30 days after submission of invoice or claim, provided however that all the terms of the contract are duly complied with.

Payment will be made only to the supplier. Factoring arrangements will not be accepted.

No Payments will be made for contingencies, interest on unpaid fees, debriefing and charging for additional resources used in a single matter or instruction.

**SCC 17 PRICES**

Prices are fixed for the duration of the contract.

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**SCC 21.1 DELAYS IN THE SUPPLIER'S PERFORMANCE****Legal Services & Conveyancers**

Lead times shall be determined on each instruction between the Employer and the Service Provider, in line with Annexure A of the Additional Conditions of Contract (ACC) 13 (SERVICE STANDARDS)

**Appeals Authority**

Lead time for finalising and submitting the ruling from the date of instruction shall be 14 days.

**SCC 22.1 PENALTIES**

If the supplier fails to deliver any or to perform the services within the period(s) specified in the Service Level Agreement, the Employer shall, without prejudice to its other remedies under the contract, deduct from the contract price (as a penalty):

- A penalty of 10% of the invoice value shall be charged for each instance the service is delayed.

**ADDITIONAL CONDITIONS OF CONTRACT****ACC1 PERFORMANCE MONITORING & ASSESSMENT OF SERVICE PROVIDERS**

For contract awards that are greater than R10m, the Contractor shall be subjected to "Performance Monitoring" assessments in terms of the applicable Section of the Council's current Supply Chain Management Policy.

**ACC2 QUALITY OF PRODUCTS**

No inferior products will be accepted under this enquiry.

Should there be any cause for complaint against the standard of service or quality of products offered which is not resolved within a period of 10 working days, the Municipality reserves the right to cancel the contract after serving one month's notice, in writing, to the supplier involved. Should such notice be given, the supplier shall nevertheless be obliged to perform the duties covered by the contract up to the date of expiration of the period of notice.

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**ACC3 SATISFACTORY PERFORMANCE**

The supplier shall employ for the purpose of this contract only such personnel as are careful and competent and the Municipality shall be at liberty to object to and require the supplier to remove from the job forthwith any person, including supervisory staff, employed by the supplier who, in the opinion of the Municipality, misconducts himself/herself or is incompetent or negligent in the proper performance of his/her duties and such person shall not again be employed upon this contract without the permission of the Municipality.

**ACC4 OCCUPATIONAL INJURIES AND DISEASES ACT**

**The supplier shall, before commencement of work, produce documentary proof to the Deputy Municipal Manager, Treasury : Finance , that he has complied in all respects with the provisions of the Occupational Injuries and Diseases Act.** The supplier undertakes that he/she will perform and comply with all provisions of the Occupational Injuries and Diseases Act and more particularly that he/she will render all returns and pay all assessments for which he/she is liable in terms of such Act.

**ACC5 DAMAGE TO PERSONS AND PROPERTY**

- (1) The supplier **shall** indemnify and keep indemnified the Council against any claim for death, injury, damage or loss to any person or property whatsoever in respect thereof or in relation thereto.
- (2) The supplier enters into this contract as an independent contractor and shall be solely liable in respect of any claim for death, injury, damage or loss to any person or property whatsoever in respect thereof or in relation thereto.

**ACC6 SERVICE PROVIDER OFFICE REQUIREMENTS**

The service provider must have, for the duration of the contract, law offices registered/recognized by the Legal Practice Council (within the geographical eThekweni boundary).

**ACC7 TRAINING**

Service Providers shall be required to conduct research and to hold training/discussion seminars with officials of the Employer on the latest developments in the legal field (Case Law / Legislation) at least on a quarterly basis upon the instructions from the Employer.

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**ACC8      OBLIGATIONS OF THE SERVICE PROVIDER**

- 1      It is mandatory for the Service Provider to familiarize itself with, the minimum main municipal prescripts below, and Municipal framework, regardless of the category of work for which it has been appointed:
  - 1.1    The Municipal Finance Management Act
  - 1.2    The Municipal Systems Act
  - 1.3    Municipal Structures Act
  - 1.4    Supply Chain Management Policy
  - 1.5    Delegations of Authority;

AND all Regulations enacted thereunder;

AND all subsequent amendments thereto;
2.      The Service Provider is deemed to be an expert in the area of law to which it has been appointed and accordingly, warrants that it is knowledgeable in the law applicable to the category of appointment and must demonstrate that it has the knowledge to carry out instructions with the appropriate level of skill and diligence.
3.      The Service Provider is to avail itself during Business Hours/Days and shall provide the Head: Legal and Compliance with mobile contact details of at least 2 personnel who can be in attendance for urgent matters before and after Business Hours. Should the Service provider indicate that it is not available to take an instruction at its turn, it is to indicate its unavailability in writing, (email is acceptable) whereupon the next available service provider will be allocated the instruction in its place.
4.      The Service Provider shall pay over to Counsel fees due within 5 calendar days of receipt of such disbursement from the Municipality. Failure to pay monies due to Counsel at all will be treated as misconduct and grounds for termination.
5.      The Service Provider shall use WATSAPP or SMS communication in extraordinary circumstances only, and charge for such at the actual cost of the transmission.
6.      The Service Provider shall NOT charge interest on overdue fees.
7.      The Service Provider shall not be entitled to charge for:

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7.1 Quarterly Reports to the Executive Management of Legal and Compliance

7.2 Drawing up Bills

8. The Service Provider shall utilize an Agent for service and attendances of matters out of eThekweni jurisdiction matters where it will be more cost effective than for the Service provider to travel personally.
9. The Service provider shall make its file relating to an Instruction available for inspection on reasonable notice and on reasonable grounds at the request by the Legal and Compliance Unit, or Municipality's Auditors.
10. The Service Provider acknowledges that the Legal and Compliance Unit is required to account to the Municipal Treasury on Contingent Liability, which forms a note to the financial statements of the Municipality.
11. The Deputy Head: Litigation or any other person nominated by the Head: Legal and Compliance will make a request from the Service Provider for details of contingent liability being handled by the Service Providers firm. The Service Provider shall comply by furnishing the information required in this regard, within the time frames and in the format requested by the aforementioned persons.
12. The Service provider is to have professional indemnity Insurance in place to the satisfaction of the Municipality.
13. The Service Provider shall ensure that its Fidelity Fund Certificate is in place and that it is in good standing with the Legal Practice Council. The Onus is on the Service Provider to advise the Head: Legal and Compliance of any suspension or termination of its Fidelity Fund Certificate and good standing with the Legal Practice Council within 5 days of knowing of this state of affairs. The Municipality may terminate this contract for this reason, and/or for failure to advise the Municipality of such.
14. The Service Provider shall ensure that it's Tax / VAT is up to date for the duration of this contract. Failure to do so will entitle the Municipality to cancel the contract.
15. The Service Provider shall use the format for Invoices as required by the Legal and Compliance Department and ensure:

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- 15.1 Line item billing
  - 15.2 Detailed narrative on all time-based attendances
  - 15.3 Details on time based and rates-based items
  - 15.4 State the eThekweni reference provided by the Legal advisor handling the file on Invoices
  - 15.5 Keep proof of supporting documents for disbursements
16. The Service Provider shall not raise any charges for travel where its Offices are situated within the Durban CBD (8km within the Durban High Court). Out of CBD travel charges shall, unless varied by prior agreement, be capped at a maximum of 30 minutes per trip.
  17. Perusal charges shall, unless varied by prior agreement, be capped at a maximum of 100 pages per instruction.
  18. The Service provider shall abide by ANNEXURE "A", which amplifies the responsibilities and service levels expected of the Service Provider.

ACC9

**OBLIGATIONS OF THE EMPLOYER**

1. Will prepare a detailed brief, with the appropriate Delegation of Authority attached, all Annexures and relevant Information for the Service provider under cover of Legal and Compliance Department's letterhead. ("The Instruction")
2. Arrange consultations on the advice of the Service Provider with Line Departments or other relevant role players.
3. Through the Legal advisor handling the matter, advise Service Provider on whether it requires the Instruction to be dealt with by the Service Provider's firm internally, or whether Counsel may be briefed and advise of his/her preference of Counsel and the level of Counsel to be briefed, if so required.
4. Monitor the Performance of the Service Provider in line with ANNEXURE "A" (ACC13)
5. Attend Consultations with the Service Provider and/or Counsel.
6. Give timeous instructions to the Service provider, save for in the case of urgent matters which necessitate immediate action.

7. Photocopy documents to save copy costs, where possible.
8. Check Invoices that are submitted by the Service Provider to ensure that charges are in line with attendances AND a Service Level Agreement which will be entered into by the parties.
9. Query Invoices if he/she requires clarity on attendances or disputes an attendance or a charge.
10. Amend its Instruction in writing should it become necessary due to new facts that arise subsequent to the original instruction.
11. Ensure that Invoices are authorized within 14 business days of receipt (unless the Invoice requires clarification or is in dispute) and transmit to Accounts Payable for processing.
12. Recall an Instruction for whatsoever reason, provided that it pays the Service Provider an amount due, owing and payable, up to the point it recalls the Instruction
13. May make application for the Blacklisting of any non-performing Service Provider, or a service provider who commits fraud and corruption in the bidding process or the execution of the contract, or any grounds for blacklisting as contained in the SCM Policy, as amended from time to time.

#### **ACC 10 CONFIDENTIALITY**

All Confidential Information shall be protected from unauthorized disclosure, whether so marked or not.

The Service Provider shall ensure that its staff shall not disclose such information, nor duplicate such information (save for as is necessary for the institution of a legal matter or the defense of the municipality or necessary to perform an obligation in terms of this agreement) without the prior written consent of the Municipality.

This Clause shall survive the termination of this contract for a period of at least 3 years.

#### **ACC11 GOOD RELATIONS**

The Parties agree to act in the best interest of the Municipality at all times.

The Parties commit to a quarterly meeting of their teams to provide feedback with the view of improving enhancing and strengthening processes and initiatives.

The Parties agree to treat each other with dignity, respectability and to co-operate with each other in a dignified and professional manner.

The Parties agree to perform their respective obligations with promptness and the highest levels of professionalism.

The Parties agree to resolve complaints fairly, consistently and promptly.

The Service provider shall avoid a conflict of interest, and refrain from accepting an instruction against the Municipality unless:

- a) It seeks the Municipality's prior written consent from the Head: Legal and Compliance;
- b) It demonstrates that it will not be conflicted; and
- c) Signs an undertaking that it will not use the confidential information of the Municipality, the knowledge, trade secrets or knowledge that it acquired solely as a result of its appointment in terms of this contract to benefit any third party.

ACC12 **IMPROPER ACTIVITIES**

The Service Provider shall refrain from committing any Improper Activities.

ACC12 **REVIEW**

The performance of the Service provider must be reviewed at least once a year. A written record of the review must be kept by Legal and Compliance Unit. A Template of the Review Document will be provided to the Service Provider. Such documents will be used as supporting documents for Blacklisting or terminating the contract for nonperformance.

**ACC13 ANNEXURE A- SERVICE STANDARDS****DRAFTING OF CONTRACTS/LEGAL OPINIONS AND OTHER LEGAL INSTRUMENTS****1. FORMATTING**

All legal documentation is to be in ARIAL font, 11, in MS WORD with single Line Spacing.

All contracts should bear the City's emblem on the top right-hand corner and the other contracting Parties emblem on the top Left hand. No Marks of the Service provider are to be inserted on any Municipal document produced by the Service provider

All Business Plans, Programmes, Diagrams and Annexures are to accompany the Main contract.

**2. QUALITY AND OUTPUT**

Service Providers must have knowledge of latest developments in case law, legislation and best practise.

**3. CONSULTATIONS**

Consultations with internal and external stakeholders will be facilitated by the Legal and Compliance Unit only.

**4. PREPARATION AND DRAFTS**

Service Providers are to ensure that they are thoroughly prepared for meetings and must demonstrate this by active participation in discussions and expressing views on matters

Consultation should yield sufficient information for the Service provider to vet or draft and the need for consultations should be kept to a minimum.

A First draft shall be available within 14 calendar days of the first consultation.

If the Service provider is not able to comply with this service standard, he must prepare a written report on what factors prevented him from compliance.

Service provider must ensure that contracts are accurate. The onus is on the Service Provider to ensure that they have done a spell and grammar check, a check on numbering and cross references.

Legal advisors will revert to the Service Provider with comments on the draft agreement within 10 calendar days, unless input is required from an external party, in which case within a reasonable time.

The Master Copy of the agreement is to be filed and kept by Legal and Compliance. The Service provider is required to keep a file copy

## 5. **RESOURCES**

The service provider is to use a single resource on a matter, unless it has sought the written consent of the Head Legal Services/ his nominee to utilise more than one resource. In such case, the designation and charge of the additional resource must be indicated when the Service Provider seeks consent.

<u>ATTENDANCE</u>	<u>TIME FRAME</u>
1. Receipt of instruction	24 hours
2. Peruse and familiarise with instruction and law	Within 5 business days of receipt of instruction
3. Arrange for consult via Legal advisor	Within 5 business days of receipt of instruction
4. First draft	Within 14 calendar days of receipt of instructions
5. Second Draft	Within a week of receiving comments on Draft 1
6. Finalisation	Within two weeks of finalising all comments

NB These time Frames do not apply to Urgent Matters, in which case the time frames will be shorter.

## 6. **WRITTEN OUTPUT**

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Please note that all legal opinions, including Counsel Advice, will be by way of written Memorandum of Advice.

Reporting (in Contracts/Opinions/Legal advisory matters)

A written report must be made monthly in matters exceeding a month. The Report must be directed to the Legal advisor concerned via email.

6.1 The Report is to contain the following:

- 6.1.1 Progress in all matters
- 6.1.2 Challenges experienced
- 6.1.3 Way forward
- 6.1.4 Expected time frames for finalisation

## **7 LITIGATION**

The Service Provider will be required:

- 7.1 To arrange consultations via the legal advisor only and not directly.
- 7.2 To act ONLY on the instructions of personnel of the Legal and Compliance Department and not other Municipal Officials, save for the Accounting Officer
- 7.3 If instructed by a Legal advisor to attend to a matter personally, to do so.
- 7.4 Brief Counsel of Legal Advisor's choice and level, if instructed to do so.
- 7.5 Actively participate in discussions at consultations.
- 7.6 Advise the Legal Advisor on prospects of success early on in the matter in order to curtail costs and prevent wasteful expenditure.
- 7.7 To judiciously use time and resources by appointing one resource to deal with a matter, unless warranted, which the Legal Advisor will confirm.
- 7.8 To avoid duplication of attendances.
- 7.9 To engage the Legal advisor on whether to make photocopies or not, prior to making copies.
- 7.10 To file documents timeously in Court and to paginate and index court file timeously
- 7.11 To advise the Municipality timeously of Court dates for facilitation of witnesses

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- 7.12 To provide the Municipality with copies of Third Parties pleadings and all relevant documents to the matter hereto
  - 7.13 To keep telephone calls to shortest duration without compromising the service.
  - 7.14 To ensure that filing and administrative duties are performed by appropriate levels in their organisations to keep costs reasonable
  - 7.15 To update the legal Advisor on developments as and when they occur, or at least monthly in a written report. Where a matter is not moving for want of a court date, or the status has not changed, an email report monthly on each such matter will suffice.
  - 7.16 Quarterly reports should be furnished in written format, containing the name of the matter and the status quo, challenges experienced, and way forward/ time anticipated for finalisation.

## **8. APPEALS AUTHORITY**

Business Process:

- 8.1 Appellants will lodge a written appeal with the SCM Department and/or Legal and Compliance Unit.
- 8.2 Legal and Compliance will compile a full bundle of documents for transmission to the Appeal Authority.
- 8.3 Legal and Compliance will not compile a synopsis of the matter as the matter must be understood and finalised by the independent authority.
- 8.4 The bundle will usually compromise the Following where the Appeal is based on substantive facts:
  - 8.4.1 Minutes of Bid Adjudication Committee
  - 8.4.2 Minutes and Report to the Bid Evaluation Committee
  - 8.4.3 Appeal as received from the Appellant
  - 8.4.4 Bid document of the Successful Bidder
  - 8.4.5 Bid Document of the appellant
- 8.5 Where the Appeal is procedural in nature, Legal and Compliance will compile a bundle of documents relevant to the complaint.

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- 8.6 The Appeal Authority is to acknowledge receipt of the Instructions in writing and liaise with the Deputy Head Legal Support or the Legal and Compliance Paralegal tasked with assisting the Appeal Authority.
  - 8.7 All administrative services are for the responsibility of the Appeal Authority, i.e. photocopying, typing its Ruling, minutes of meetings.
  - 8.8 The appeal Authority is to comply with the Terms of Reference provided to it. In the Event that it is unable to comply with time frames for delivery, it is to provide a written report to the Head Legal and Compliance and the Deputy Head: Legal Support and explain the reasons for non-compliance. If in such person's opinion, the grounds for delay are not justifiable, this will be regarded as non-performance and/or breach of this contract.
  - 8.9 A written Ruling is to be provided for each Appeal/complaint/dispute.
  - 8.10 The Ruling must be provided in a professional manner, checked for spelling and grammatical errors, be accurate and legally sound.
  - 8.11 The Appeal Authority warrants that it is an expert in administrative justice and fully able to execute the work relevant to its appointment at the appropriate level of expertise.
  - 8.12 The Appeal Authority further warrants knowledge in the area of supply chain management in the Municipal sphere, the eThekweni Municipal Supply Chain Management Policy, all prescripts relating thereto and the leading case law applicable to supply chain management.
  - 8.13 All information submitted to the Appeal Authority shall be kept in a safe or locked cupboard with due regard to the confidential nature of the information at hand.
  - 8.14 No information regarding an Appeal/Complaint/Dispute shall be shared with any other person.
  - 8.15 The Appeal Authority may not communicate directly with any Official/Political Office Bearer or External Person on the merits of any matter before him, or finalised by him, unless ordered to do so by a Court of Law.
  - 8.16 The Appeal Authority shall only charge for perusal of documents which are relevant to the Appeal at hand. The Municipality shall in its sole discretion determine whether a document requested is relevant or not. Any additional documents

requested shall be for his information and the Municipality shall not pay for such perusal.

8.17 The Appeal Authority must be familiar with recent case law developments which impact on its Rulings, Treasury Circulars and SCM prescripts.

8.18 Upon finalisation of matters, must return all municipal information to Legal and Compliance.

8.19 Bill the Legal and Compliance Unit as per the Tariff which has been agreed to by the parties

8.19.1 Refrain from overcharging.

8.19.2 Use its resources judiciously.

8.19.3 Ensure no duplication of charges or unnecessary attendances.

## **9. INVOICES FOR ALL MATTERS**

The Minimum information on an Invoice shall be:

Date of Invoice

Name of the Firm

VAT number of Firm

Invoice Number

Address

Contract no and Name of person dealing with the matter

Name of Legal Advisor and Reference of Municipality

Banking Details

VAT no of the Municipality

9.1 Each Invoice should set out the date of attendance, a narrative of work done, by whom and their rank together with the rate of charge and the total charge.

9.2 Where more than one resource was utilised, the names of all resources and ranks and charge out rate must be indicated on the Invoice.

9.3 The Service Provider shall not charge the Municipality for debriefing

9.4 The Service Provider shall not charge a contingency fee

9.5 Invoices must be sent to Legal and Compliance Unit

Name of Legal Advisor

18<sup>th</sup> Floor Embassy Building, Legal and Compliance Unit

199 Anton Lembede Street

Durban

- 9.6 Invoices must be generated and forwarded at least at 3 monthly intervals until finalisation of the matter.
- 9.7 **NB:** The Municipal Financial year commences on 1<sup>st</sup> July and ends on 30<sup>th</sup> June. Service Providers are to ensure that all Invoices for matters finalised in a financial year are lodged with the Municipality within such financial year.
- 9.8 **NB:** Service Providers are requested to be aware of prescription and that once a debt has prescribed the Municipality is precluded from making payment in such matters. It is therefore incumbent on Service Providers to ensure that they are not in this position.

#### **ACC14 EMPOWERMENT REQUIREMENT**

##### Option 1

The Service Provider is required for the duration of the contract to have a minimum of three (3) Candidate Attorneys who are black people and from the priority population group:

- e) Black people;
- f) Black people who are youth;
- g) Black people who are women;
- h) Black people with disabilities;
- i) Black people living in rural or underdeveloped areas or townships;
- j) Black people who are military veterans;

Supply Chain Management Policy 2020 defines “**Priority population group**” as per the following definition:

*“must mean black individuals who fall into population groups that were not offered a franchise in the national elections before or after the introduction of the 1984 tri-cameral parliamentary system and only received a franchise during 1994”.*

#### **ACC15 EMPOWERMENT REQUIREMENT: PENALTY**

Failure to meet the empowerment requirement referred to in ACC14 shall result in the application of penalties. The Municipality reserves the right to impose a penalty of **10% of invoice value** each time the Service Provider fails to have a minimum of three (3) Candidate Attorneys who are black people and from the priority population group.

## **SECTION 7 : SCOPE AND SPECIFICATION OF REQUIRED SUPPLY / SERVICES**

### **Scope of Supply / Services**

#### **PANEL OF ATTORNEYS**

The eThekweni Municipality (“the Municipality”) requires services of suitably qualified, skilled and experienced firms of attorneys and conveyancers to provide a wide range of legal services to the Municipality. It is the intention of the Municipality to appoint up to a maximum of 30 law firms for a period of three years in accordance with the categories set out in the table below. The Municipality encourages firms which are wholly owned and managed by Historically Disadvantaged Individuals to participate.

Bidders must demonstrate the ability and experience to handle work without having to instruct Counsel. bidders’ practitioners appeared in person before the High Court and/or the Labour Court in detail. Bidders will be evaluated on the extent to which they use Counsel to augment the professional capacity within the Firm or make appearances in the High / Labour Court without Counsel

<b>No.</b>	<b>CATEGORIES</b>	<b>Number of Law Firms Required</b>
1.	Litigation Sub-panel	3
2.	Commercial Law Advisory and Contracts Sub-panel	5
3.	Labour Law Sub-panel	5
4.	Town Planning Sub-panel	3
5.	Environmental Law Advisory Sub-panel	3
6.	Conveyancing Sub-panel	4

#### **PANEL OF APPEALS AUTHORITY**

In addition to the above, the Municipality seeks to appoint a maximum of 6 suitably qualified Independent and Impartial Persons (“Appeals Authority”), to assist in the resolution of disputes between the Municipality and other persons regarding any decisions or actions taken in the implementation of the supply chain management system

or any matter arising from a contract awarded in the course of the supply chain management system and to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract. The Municipality encourages suitably qualified Historically Disadvantaged Individuals to participate.

No.	APPEALS AUTHORITY CATEGORY	Number of Appeals Authority Required
1.	Appeals Authority	4

### **REQUIRED SERVICES**

No.	Service	Nature of Services
1.	Litigation	General litigation in the High Court and through private arbitrations which arise from litigation initiated against the Municipality and defended debt collection matters.
2.	Commercial Law Advisory and Contracts	Assisting with the drafting and vetting a wide range of contracts, such as joint venture contracts, private public partnership contracts, development agreements, lease agreements, etc.  High level advice and negotiation support in the structuring of commercial transactions with development partners and financial institutions, inclusive of due diligence investigations, etc.  Preparing legal opinions on a wide range of constitutional and administrative law matters as well as legislative compliance matters on short notice
3.	Labour Law	South African Local Government Bargaining Council arbitration and Labour Court Reviews and Trials.  Presiding and prosecution in certain disciplinary hearings.
4.	Town Planning	Litigation and general legal guidance in Town Planning matters.
5.	Environmental Law	Litigation and general guidance in Environmental Law matters.
6.	Conveyancing	Attending to the registration of property transfers, township

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	Work	establishment, cancellations and applications for lost title deeds.
7.	Appeals Authority	Resolution of disputes between the Municipality and other persons regarding decisions or actions taken in the implementation of supply chain management system or any matter arising from a contract awarded in the course of the supply chain management system and to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

**SECTION 8A : BILL OF QUANTITIES / SCHEDULE OF RATES / ACTIVITIES****LEGAL SERVICES**(Bidders **MUST** complete the table below if they are bidding for the Legal Services Panel)

NO	DESCRIPTION OF SERVICE	CHARGE <sup>a</sup>
1.	All consultations with a client and/or witness; any conference with an advocate; any other necessary conference; any inspection <i>in situ</i> , or otherwise, per quarter of an hour	
	(a) By an attorney	R
	(b) By a candidate attorney	R
2.	Attendance by an attorney in court, arbitration and in pre-trial proceedings, per quarter of an hour	R
3.	Attendance by a candidate attorney, where necessary, to assist at a contested proceeding, per quarter of an hour	R
4.	Attending to give or take disclosure, per quarter of an hour -	
	(a) By an attorney	R
	(b) By a candidate attorney	R
5.	Appearance by an attorney in court, arbitration and other formal proceedings or the performance by an attorney of any of the other functions of an advocate, in terms of the Right of Appearance in Court Act, 1995 (Act No. 62 of 1995)	R
6.	Time spent travelling <sup>b</sup> -	
	(a) By an attorney	R
	(b) By a candidate attorney	R
7.	Reasonable time spent waiting, per quarter of an hour	
	(a) By an attorney	R
	(b) By a candidate attorney	R
8.	The drawing up of all necessary documents, per page of the original only <sup>c</sup>	R
9.	Letters, telegrams and facsimiles: inclusive tariff for drawing up, checking, typing, printing, delivery, copies, postage, posting thereof, per page	R
10.	Attending on receipt, entry, perusing, considering and filing of necessary documents, Per page <sup>d</sup>	R
11.	Sorting, arranging and paginating papers, per quarter of an hour -	
	(a) By an attorney	R
	(b) By a candidate attorney	R
12.	For making necessary copies, including photocopies, of any document or papers not already provided for in this tariff, per A4 size page.	R
13.	Attending to arrange translation and thereafter to procure same, per quarter of an hour-	
	(a) By an attorney	R
	(b) By a candidate attorney	R
14.	Necessary telephone calls: per quarter of an hour -	
	(a) By an attorney	R
	(b) By a candidate attorney	R
	<b>Subtotal</b>	R
	<b>Add VAT</b>	R
	<b>TOTAL</b> (total to be carried to the specific official tender form)	R

**Notes:** If bidding for the Legal Services Panel, it is compulsory to price all items under this section, including the total. Failure to do so shall lead to disqualification of the bid.

<sup>a</sup> Fixed for a period of three (3) years

<sup>b</sup> Subject to Clause 16 of ACT8, Additional Conditions of Contract

<sup>c</sup> An inclusive tariff – drawing up, checking, typing, printing, copies, delivery and fining thereof

<sup>d</sup> Subject to Clause 17 of ACT8, Additional Conditions of Contract

**SECTION 8B : BILL OF QUANTITIES / SCHEDULE OF RATES / ACTIVITIES****APPEALS AUTHORITY**(Bidders **MUST** complete the table below if they are bidding for the Appeals Authority Panel)

NO	DESCRIPTION OF SERVICE	CHARGE <sup>e</sup>
1.	All consultations with a client and/or witness; any conference with an advocate; any other necessary conference; any inspection <i>in situ</i> , or otherwise, per quarter of an hour	
	(c) By an attorney	R
	(d) By a candidate attorney	R
2.	Attendance by an attorney in court, arbitration and in pre-trial proceedings, per quarter of an hour	R
3.	Attendance by a candidate attorney, where necessary, to assist at a contested proceeding, per quarter of an hour	R
4.	Attending to give or take disclosure, per quarter of an hour -	
	(c) By an attorney	R
	(d) By a candidate attorney	R
5.	Appearance by an attorney in court, arbitration and other formal proceedings or the performance by an attorney of any of the other functions of an advocate, in terms of the Right of Appearance in Court Act, 1995 (Act No. 62 of 1995)	R
6.	Time spent travelling <sup>f</sup> -	
	(c) By an attorney	R
	(d) By a candidate attorney	R
7.	Reasonable time spent waiting, per quarter of an hour	
	(c) By an attorney	R
	(d) By a candidate attorney	R
8.	The drawing up of all necessary documents, per page of the original only <sup>g</sup>	R
9.	Letters, telegrams and facsimiles: inclusive tariff for drawing up, checking, typing, printing, delivery, copies, postage, posting thereof, per page	R
10.	Attending on receipt, entry, perusing, considering and filing of necessary documents, Per page <sup>h</sup>	R
11.	Sorting, arranging and paginating papers, per quarter of an hour -	
	(c) By an attorney	R
	(d) By a candidate attorney	R
12.	For making necessary copies, including photocopies, of any document or papers not already provided for in this tariff, per A4 size page.	R
13.	Attending to arrange translation and thereafter to procure same, per quarter of an hour-	
	(c) By an attorney	R
	(d) By a candidate attorney	R
14.	Necessary telephone calls: per quarter of an hour -	
	(c) By an attorney	R
	(d) By a candidate attorney	R
	<b>Subtotal</b>	R
	<b>Add VAT</b>	R
	<b>TOTAL</b> (total to be carried to the specific official tender form)	R

**Notes:** If bidding for the Appeals Authority Panel, it is compulsory to price all items under this section, including the total. Failure to do so shall lead to disqualification of the bid.

<sup>e</sup> Fixed for a period of three (3) years

<sup>f</sup> Subject to Clause 16 of ACT8, Additional Conditions of Contract

<sup>g</sup> An inclusive tariff – drawing up, checking, typing, printing, copies, delivery and fining thereof

<sup>h</sup> Subject to Clause 17 of ACT8, Additional Conditions of Contract

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**SECTION 8C : BILL OF QUANTITIES / SCHEDULE OF RATES / ACTIVITIES**
**CONVEYANCING**

(Bidders **MUST** complete the table below if they are bidding for the Conveyancing Panel)

NO	DESCRIPTION OF SERVICE	CHARGE <sup>i</sup>
1.	Registration of Notarial Deed of Lease	R
2.	Registration of Notarial Deed of Servitude	R
3.	Noting Deproclamations	R
4.	Opening Township Register	R
5.	Noting of Expropriations	R
6.	Postage and Petties	R
	<b>Subtotal</b>	R
	<b>Add VAT</b>	R
	<b>TOTAL</b> <i>(total to be carried to the specific official tender form)</i>	R

**Notes:** If bidding for the Conveyancing Panel, it is compulsory to price all items under this section, including the total. Failure to do so shall lead to disqualification of the bid.

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<sup>i</sup> Fixed for a period of three (3) years

**SECTION 9A : OFFICIAL TENDER FORM**  
**LEGAL SERVICES**

**(Bidders MUST complete this page if they are bidding for the Legal Services Panel)**

In response to **Tender Number : 1A-4258** I / we hereby offer to supply the goods / services detailed hereunder in accordance with the Technical Specification, and subject to the Standard and Special Conditions of Tender (Goods/Services), and General and Special Conditions of Contract, which accompanied your Tender (with which I / we acknowledge myself / ourselves to be fully acquainted) at the price stated below, or in the case of individual rates are indicated in Section 8 : Bill Of Quantities / Schedule of Rates / Activities.

QUOTATION PRICE EXCLUSIVE OF VAT	VAT AMOUNT	QUOTATION PRICE INCLUSIVE OF VAT
R	R	* R
* AMOUNT IN WORDS (incl. VAT): .....		
.....		

**\*Please note that the Price shall be the total of items in Section 8A above. It is mandatory to complete this page if bidding for Legal Services.**

I / We hereby agree that this tender will hold good and remain open for acceptance as specified in the Conditions of Tender or during such other period as may be specified in the Special Conditions of Tender.

eThekwini Vendor Portal Registration Number: \_\_\_\_\_

C.S.D Registration Number: \_\_\_\_\_

S.A.R.S Pin Number: \_\_\_\_\_

**Completion of the following is compulsory. Failure to declare the following will invalidate your offer.**

**Declaration of Interest**

Are any of the entity's directors, managers, principle shareholder or stakeholders currently in the service of the state or have been in the service of the state in the past twelve (12) months?					<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is any spouse, child or parent of the entity's directors, managers, principle shareholder or stakeholder currently in the service of the state or have been in the service of the state in the past twelve (12) months?					<input type="checkbox"/> Yes	<input type="checkbox"/> No
Name of entity's member	Position in Entity	Name of Relative (if applicable)	Name of State Institution	Nature of Relationship		
Do you or any other directors, managers, principle shareholder or stakeholder of your entity have any relationship (spouse, family, friend, associate) with persons in the service of the state and/or who may be involved with the evaluation of this quotation? If yes, please furnish particulars below					<input type="checkbox"/> Yes	<input type="checkbox"/> No
Name of entity's member	Position in Entity	Name of Relative (if applicable)	Name of State Institution	Nature of Relationship		

Refer to the Consolidated MBD Documents in Section 4(d) for the definition of " in service of the State"

**\* Signature :** \_\_\_\_\_ **\* Name**  
*(in capitals) :* \_\_\_\_\_

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

**\* Name of Business :** \_\_\_\_\_ **Tel :** \_\_\_\_\_

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

\* Denotes Mandatory Information

**Failure to complete the Mandatory Information and sign this Tender Form will invalidate the tender**

**SECTION 9B : OFFICIAL TENDER FORM**  
**APPEALS AUTHORITY**

**(Bidders MUST complete this page if they are bidding for the Appeals Authority Panel)**

In response to **Tender Number : 1A-4258** I / we hereby offer to supply the goods / services detailed hereunder in accordance with the Technical Specification, and subject to the Standard and Special Conditions of Tender (Goods/Services), and General and Special Conditions of Contract, which accompanied your Tender (with which I / we acknowledge myself / ourselves to be fully acquainted) at the price stated below, or in the case of individual rates are indicated in Section 8 : Bill Of Quantities / Schedule of Rates / Activities.

QUOTATION PRICE EXCLUSIVE OF VAT	VAT AMOUNT	QUOTATION PRICE INCLUSIVE OF VAT
R	R	* R
* AMOUNT IN WORDS (incl. VAT): .....		
.....		

\*Please note that the Price shall be the total of items in Section 8B above. It is mandatory to complete this page if bidding for Appeals Authority.

I / We hereby agree that this tender will hold good and remain open for acceptance as specified in the Conditions of Tender or during such other period as may be specified in the Special Conditions of Tender.

eThekwini Vendor Portal Registration Number: \_\_\_\_\_

C.S.D Registration Number: \_\_\_\_\_

S.A.R.S Pin Number: \_\_\_\_\_

**Completion of the following is compulsory. Failure to declare the following will invalidate your offer.**

**Declaration of Interest**

Are any of the entity's directors, managers, principle shareholder or stakeholders currently in the service of the state or have been in the service of the state in the past twelve (12) months?					<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is any spouse, child or parent of the entity's directors, managers, principle shareholder or stakeholder currently in the service of the state or have been in the service of the state in the past twelve (12) months?					<input type="checkbox"/> Yes	<input type="checkbox"/> No
Name of entity's member	Position in Entity	Name of Relative (if applicable)	Name of State Institution	Nature of Relationship		
Do you or any other directors, managers, principle shareholder or stakeholder of your entity have any relationship (spouse, family, friend, associate) with persons in the service of the state and/or who may be involved with the evaluation of this quotation? If yes, please furnish particulars below					<input type="checkbox"/> Yes	<input type="checkbox"/> No
Name of entity's member	Position in Entity	Name of Relative (if applicable)	Name of State Institution	Nature of Relationship		

Refer to the Consolidated MBD Documents in Section 4(d) for the definition of " in service of the State"

\* **Signature** : \_\_\_\_\_ **\* Name**  
(in capitals) : \_\_\_\_\_

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

\* **Name of Business** : \_\_\_\_\_ **Tel** : \_\_\_\_\_

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

\* Denotes Mandatory Information

**Failure to complete the Mandatory Information and sign this Tender Form will invalidate the tender**

**SECTION 9C : OFFICIAL TENDER FORM  
CONVEYANCING**

**(Bidders MUST complete this page if they are bidding for the Conveyancing Panel)**

In response to **Tender Number : 1A-4258** I / we hereby offer to supply the goods / services detailed hereunder in accordance with the Technical Specification, and subject to the Standard and Special Conditions of Tender (Goods/Services), and General and Special Conditions of Contract, which accompanied your Tender (with which I / we acknowledge myself / ourselves to be fully acquainted) at the price stated below, or in the case of individual rates are indicated in Section 8 : Bill Of Quantities / Schedule of Rates / Activities.

QUOTATION PRICE EXCLUSIVE OF VAT	VAT AMOUNT	QUOTATION PRICE INCLUSIVE OF VAT
R	R	* R
* AMOUNT IN WORDS (incl. VAT): ..... .....		

**\*Please note that the Price shall be the total of items in Section 8C above. It is mandatory to complete this page if bidding for Conveyancing.**

I / We hereby agree that this tender will hold good and remain open for acceptance as specified in the Conditions of Tender or during such other period as may be specified in the Special Conditions of Tender.

eThekwini Vendor Portal Registration Number: \_\_\_\_\_

C.S.D Registration Number: \_\_\_\_\_

S.A.R.S Pin Number: \_\_\_\_\_

**Completion of the following is compulsory. Failure to declare the following will invalidate your offer.**

**Declaration of Interest**

Are any of the entity's directors, managers, principle shareholder or stakeholders currently in the service of the state or have been in the service of the state in the past twelve (12) months?					<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is any spouse, child or parent of the entity's directors, managers, principle shareholder or stakeholder currently in the service of the state or have been in the service of the state in the past twelve (12) months?					<input type="checkbox"/> Yes	<input type="checkbox"/> No
Name of entity's member	Position in Entity	Name of Relative (if applicable)	Name of State Institution	Nature of Relationship		
Do you or any other directors, managers, principle shareholder or stakeholder of your entity have any relationship (spouse, family, friend, associate) with persons in the service of the state and/or who may be involved with the evaluation of this quotation? If yes, please furnish particulars below					<input type="checkbox"/> Yes	<input type="checkbox"/> No
Name of entity's member	Position in Entity	Name of Relative (if applicable)	Name of State Institution	Nature of Relationship		

Refer to the Consolidated MBD Documents in Section 4(d) for the definition of " in service of the State"

<b>* Signature :</b> _____	<b>* Name</b> <i>(in capitals) :</i> _____
<b>Date :</b> _____	<b>Capacity :</b> _____
<b>* Name of Business :</b> _____	<b>Tel :</b> _____
<b>Address :</b> _____	<b>Fax :</b> _____

\* Denotes Mandatory Information

**Failure to complete the Mandatory Information and sign this Tender Form will invalidate the tender**

**SECTION 10 : ANNEXURES** (if applicable)

Insert as required