



**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**TENDER NUMBER:**

GPM 30 2023/24

<b>TENDER DESCRIPTION:</b>	<b>TENDER INVITATION FOR THE LONG- TERM LEASE AND DEVELOPMENT OF THE FOLLOWING COUNCIL OWNED PROPERTY: ERF 387 WONDERBOOM SOUTH</b>
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**NAME OF BIDDER:** .....

**CSD NUMBER:** .....

**VENDOR NUMBER (WHERE APPLICABLE)** .....

Prepared by:  
City of Tshwane Metropolitan Municipality  
Tshwane House  
320 Madiba Street  
Pretoria CBD  
0002  
Tel: 012 358 9999

<b>BID CLOSING DATE</b>	<b>10 JULY 2024</b>
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Only bidders registered on the central supplier database (CSD) and with a CSD number will be considered for this tender, as this is a requirement from the National Treasury.

“Note: Bidders are required to submit electronic copies of the bid either by memory stick/USB flash drive/CD/DVD together with the hard copy of the Bid/Proposals”



**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**DEPARTMENT: GROUP PROPERTY MANAGEMENT**

Bids are hereby invited from suppliers for the following bid:

Bid number	Description	Department	Contact person	Non-Compulsory briefing session	Closing date
GPM 30 - 2023/24	Tender invitation for the long- term lease and development of the following council owned property: erf 387 Wonderboom South	Group Property Management	Johannah Maenetsa (johannahmae@tshwane.gov.za or 012 358 7389)	N/A	10 July 2024 at 10:00

**THE DOCUMENT IS DOWNLOADABLE ON THE TSHWANE WEBSITE ([www.tshwane.gov.za](http://www.tshwane.gov.za)) and on the E-tender portal( [www.etenders.gov.za](http://www.etenders.gov.za)) .**

**Each tender shall be enclosed in a sealed envelope that bears the correct identification details and shall be placed in the tender box located at:**

**“Note: Bidders are required to submit electronic copies of the bid either by memory stick/USB flash drive/CD/DVD together with the hard copy of the Bid/Proposals”**

**Tshwane House  
320 Madiba Street  
Pretoria CBD  
0002**

**Documents must be deposited in the bid box not later than 10:00 on 10 July 2024**

**Bidders must contact the following officials for any enquiries:**

- Technical enquiries: Johannah Maenetsa (johannahmae@tshwane.gov.za or 012 358 7389)

- Supply chain enquiries: Relebogile Malatswane (relebogilem@tshwane.gov.za or 012 358 2735)
- **Bids will remain valid for a period of 90 days after the closing date.**

Bids received after the closing date and time will not be considered. The City of Tshwane does not bind itself to accept the lowest or any other bid in whole or in part. The validity period for the tender after closure is 60 days. The city shall have right and power to extend any tender validity period beyond any initial validity period set and subsequent extensions. SCM shall ensure that an extension of validity is requested in writing from all bidders before the validity expiry date. Extension of validity shall be finalised while the quotations/bids are still valid.

## INDEX

Number	Details	Document	Page
1.	Very important notice on disqualifications		
2.	Certificate of authority for signatory		
3.	Scope of work		
4.	Pricing schedule		
5.	Invitation to bid	MBD 1	
6.	Pricing schedule: Firm prices (purchases)	MBD 3.1	
7.	Pricing schedule: Non-firm prices (purchases)	MBD 3.2	
8.	Declaration of interest	MBD 4	
9.	Declaration for procurement above r10 million (all applicable taxes included)	MBD 5	
10.	Preference points claim form in terms of the preferential procurement regulations 2022	MBD 6.1	
11.	Contract form: Purchase of goods or works	MBD 7.1	
12.	Contract form: Rendering of services	MBD 7.2	
13.	Declaration of past supply chain management practice	MBD 8	
14.	Certificate of independent bid determination	MBD 9	
15.	General conditions of contract		
16.	Service-level agreement		
<b>LIST OF RETURNABLE DOCUMENTS THAT SHOULD FORM PART OF BID DOCUMENT</b>			
17.	Company registration certificate		
18.	Rates and taxes or lease agreement		
19.	Unique PIN		
20.	CSD summary report		

## VERY IMPORTANT NOTICE ON DISQUALIFICATIONS

A bid that does not comply with the peremptory requirements stated hereunder will be regarded as not being an “acceptable bid”, and such a bid will be rejected. An “acceptable bid” means any bid which, in all respects, complies with the conditions of the bid and the specifications as set out in the bid documents, including the conditions as specified in the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and related legislation as published in *Government Gazette 22549*, dated 10 August 2001, in terms of which provision is made for this policy.

1. If any pages have been removed from the bid document and have therefore not been submitted or if a copy of the original bid document has been submitted.
2. If the bid document is completed using a pencil or Tippex corrections were made, or any other colour ink. Only black ink must be used to complete the bid document.
3. The bidder attempts to influence or has in fact influenced the evaluation and/or awarding of the contract.
4. The bid has been submitted after the relevant closing date and time.
5. If any bidder who, during the last five years, has failed to perform satisfactorily on a previous contract with the municipality, municipal entity or any other organ of state after written notice was given to that bidder that performance was unsatisfactory.
6. The accounting officer must ensure that, irrespective of the procurement process followed, no award may be given to a person –
  - (a) who is in the service of the state;
    - i. 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
    - ii. who is an advisor or consultant contracted to the municipality in respect of a contract that would cause a conflict of interest.
7. Bid offers will be rejected if the bidder or any of his/her directors are listed on the Register of Bid Defaulters in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) as a person prohibited from doing business with the public sector.
8. Bid offers will be rejected if the bidder has abused the City of Tshwane supply chain management system.
9. Failure to complete and sign the certificate of independent determination or disclosure of wrong information.
10. Duly Signed and completed MBD forms (MBD 1, 4, 5, 8 and 9) The person signing the bid documentation must be authorised to sign on behalf of the bidder. Where the signatory is not a Director / Member / Owner / Shareholder of the company, an official letter of authorization or delegation of authority should be submitted with the bid document.
11. All MBD documents fully completed (i.e. no blank spaces) and fully signed? By the authorized personnel.
12. False or incorrect declarations on any of the MBD documents will result in the rejection of the bidder.

- 13 It is the responsibility of the bidder to disclose in MBD4 any interest in any other related companies or business whether they are bidding for this contract. Failure to disclose this interest will result in the rejection of the bid.
- 14 Joint Ventures (JV) – (Only applicable when the bidder tender as a joint venture)
- i. Where the bidder bid as a Joint Ventures (JV), the required or relevant documents under administrative requirements must be provided/submitted for all JV parties. (These include MBD4, MBD5, MBD8, MBD 9, CSD and/ or SARS pin, Confirmation that the bidder’s municipal rates and taxes are up to date.)
  - ii. In addition to the above the bidder must submit a Joint Venture (JV) agreement signed by the relevant parties.
  - iii. It is a condition of this bid that the successful bidder will continue with same Joint Venture (JV) for the duration of the contract, unless prior approval is obtained from City of Johannesburg.
  - iv. JV agreement must be complete, relevant and signed by all parties.

Failure to comply with the above will lead to immediate disqualification.

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**Bidder**

**CERTIFICATE OF AUTHORITY FOR SIGNATORY**

Status of concern submitting tender (delete whichever is not applicable):

COMPANY/PARTNERSHIP/ONE-PERSON BUSINESS/CLOSE CORPORATION/JOINT VENTURE

**A. COMPANY**

If the bidder is a company, a certified copy of the resolution of the board of directors that is personally signed by the chairperson of the board, authorising the person who signs this bid to do so and to sign any contract resulting from this bid, and any other documents and correspondence in connection with this bid or contract on behalf of the company, must be submitted with this bid.

An example is shown below:

By resolution of the board of directors on ..... 20.....,  
Mr/Ms ..... has been duly  
authorised to sign all documents in connection with  
Bid Number .....

**SIGNED ON BEHALF OF THE COMPANY:** .....

**IN HIS/HER CAPACITY AS** .....

**DATE:** .....

**SIGNATURE OF SIGNATORY:** .....

**WITNESSES:** 1. ....

2. ....

**B. PARTNERSHIP**

The following particulars in respect of every partner must be furnished and signed by every partner:

<b>Full name of partner</b>	<b>Residential address</b>	<b>Signature</b>
.....	.....	.....
.....	.....	.....
.....	.....	.....

We, the undersigned partners in the business trading as ....., hereby authorise ..... to sign this bid as well as any contract resulting from the bid and any other documents and correspondence in connection with this bid or contract on our behalf.

.....  
**Signature**                      **Signature**                      **Signature**

.....  
**Date**                              **Date**                              **Date**

**C. ONE-PERSON BUSINESS**

I, the undersigned, ....., hereby confirm that I am the sole owner of the business trading as .....

.....  
**Signature**                      **Date**



**D. CLOSE CORPORATION**

In the case of a close corporation submitting a bid, a certified copy of the founding statement of such corporation shall be included with the bid with a resolution by its members, authorising a member or other official of the corporation to sign the documents and correspondence in connection with this bid or contract on behalf of the company.

An example is shown below:

By resolution of the members at the meeting on ..... 20..... at ..... , Mr/Ms ..... , whose signature appears below, has been duly authorised to sign all documents in connection with Bid Number .....

**SIGNED ON BEHALF OF THE CLOSE CORPORATION:** .....

**IN HIS/HER CAPACITY AS:** .....

**DATE:** .....

**SIGNATURE OF SIGNATORY:** .....

**WITNESSES:**     1. ....

                          2. ....

**E. CERTIFICATE OF AUTHORITY FOR JOINT VENTURES**

This returnable schedule is to be completed by joint ventures.

We, the undersigned, are submitting this bid offer in joint venture and hereby authorise Mr/Ms ..... , authorised signatory of the company..... , acting in the capacity of the lead partner, to sign all documents in connection with the bid offer and any contract resulting from it on our behalf.

NAME OF FIRM	ADDRESS	DULY AUTHORISED SIGNATORY
Lead partner		Signature: ..... Name: ..... Designation: .....
		Signature: ..... Name: ..... Designation: .....
		Signature: ..... Name: ..... Designation: .....
		Signature: ..... Name: ..... Designation: .....

**TENDER INVITATION FOR THE LONG-TERM  
LEASE AND DEVELOPMENT OF MUNICIPAL  
PROPERTY**

**1. INTRODUCTION AND PURPOSE**

The City of Tshwane Municipality (CoT), hereby invites interested Persons/ Entities to submit Tender and Proposals for the lease and development of the following Municipal owned property for business purposes:

<b>PROPERTY INFORMATION</b>	<b>EXTENT</b>	<b>ZONING</b>
Erf 387 Wonderboom South	2 552m <sup>2</sup>	Special



Group Property Department is intending to promote the highest and best utilisation of the City's property assets and to create an opportunity for economic development, revenue generation and Sustainable job creation. The Property will be leased by way of public tender for a determined period of 30 (thirty) years.

## CONTENTS

SECTION	PAGE
1. Introduction and Purpose	1
2. Background	3 -4
3. Project Scope	4 – 6
4. Evaluation of Proposals	6 – 7
5. Deliverables	8
6. Stages of Evaluation	8 – 14
7. Type of Agreement	14
8. Validity Period	14
9. Rental Offer	15
10. All Municipality Bidding Documents (MBD) Forms	15
11. Draft Lease Agreements	15
Annexure 1: Bidders Details, Experience and Capabilities of Bidder	15 - 18
Annexure 2: Type of investment	18 - 20
Annexure 3: Access to Funding	21
Annexure 4: Pricing Schedule	22
Annexure 5: Standard Lease Agreement	23 - 41

## 2. BACKGROUND

Wonderboom South is a northern residential suburb that lies on the hills of the Magaliesberg mountains. The suburb has a number of industrial type operations on Braam-Pretorius Street and the industrial park situated in Lavender Road. It's location has grown in stature due its proximity to other suburbs and places of interest including Magalieskruin, Sinoville, Montana, Annlin and Gezina.

### PROPERTY INFORMATION

Erf 387 Wonderboom South is located at number 1006 Steve Biko Road and corner of Louis Trichardt Street and is strategically positioned for business purposes.

DESCRIPTION	ERF 387 WONDERBOOM SOUTH REGION 2 – WARD 54
Structures and physical features	Site is currently used as parking.
Size (approximate)	2 552m <sup>2</sup>
Zoning	“Special” <u>Permitted Land -Use:</u> Flats with offices on the ground floor.
Access/ Parking Requirements	Access to and from the premises must be provided in accordance with the National Road Traffic Act, 1996 (Act No. 93 of 1996), as amended.  ON-SITE PARKING: To the satisfaction of the City Council there shall be provided on the erf paved and covered parking together with the necessary maneuvering area at a ratio of at least one parking space per dwelling unit and ten paved parking spaces for the offices.  Loading and off-loading shall be done to the satisfaction of the City Council and shall take place on the erf but not on the parking areas.  Land for road widening and municipal purposes measuring 31,49 m by 4,72 m as shown on the plan figure ABCDA shall be transferred

Bulk Contribution	Service	The provision of electricity should be done through following the approved City's electricity application process as is the supplier of electricity in the area. Any removal and relocation of the existing services will be borne by the applicant and must be done in consultation with the Energy and Electricity Division. There must never be any encroachment of the electrical services in the vicinity of the earmarked property/Erf.
Other Requirements		A Site Development Plan indicating the availability of services must be submitted to the Group Head: Roads and Transport for further evaluation. The existing roadway on part of the site must be protected by servitude or other means.
Health Requirements	Department	The lease, use and occupation of the land will comply with all health and safety legislation and relevant health bylaws. The health department reserves the right to legally intervene should there be a suspicion or actual violation of any of the legal health requirements.
Minimum Rental	Upset	R24 000 per month, at an escalation of 7% annually

### 3. PROJECT SCOPE

The Council Property is being made available in accordance with the Property Information Section of which Proposed Development Controls are subject to Council Approval.

3.1 The Property is made available by means of a long-term lease agreement in accordance with City of Tshwane's (CoT) standard agreement. The following terms of contract are non-negotiable:

- a. The Property shall be leased out to the lessee for a maximum period of thirty (30) years only. Upon expiry or termination of the Development and Lease agreement, possession of the Property will revert to the CoT without any compensation.
- b. That since the proposed lease agreement constitutes a long-term lease and is thereby due to be registered against the title deed of the Property at the instance and cost of the Lessee.
- c. That a development Programme and/ or schedule must be provided to demonstrate when the development is expected to commence and the anticipated completion date; a development will be granted a maximum of 3 years (36 months) for construction to commence unless Land Use Rights must be obtained for which an allowance of a further 2 years (24 months) of signature of

the agreement is given. Consideration will be made on reasonable explanation and request for extension by the developer of which such consent and permission shall not be unreasonable withheld:

Project Implementation Plan - Bids must provide the chronological order and time frames events and activities are due to transpire at land preparation, implementation, and completion of the development.

- d. All existing services shall be protected by the lessee at all times during construction of any kind and should any services of the CoT be affected detrimentally or need to be upgraded, relocated and/or repaired as a result of this application, such services shall be upgraded, relocated and or repaired at the expense of the lessee and to the standards and satisfaction of the CoT.

3.2 Access to the Property and the disposal of storm water shall be to the satisfaction of the Group Head: Roads and Transport.

3.3 The Municipality is not liable for any defects, latent or patent, in or on the Property. The size of the Property as indicated is not guaranteed.

3.4 The lessee will be responsible for the removal of illegal structures/ occupants that may have occupied the land.

3.5 In demonstrating ability and capacity to deliver and manage the proposed development, a submission of the following documentation must be accompanying the proposal:

- a. Proposals must demonstrate a workable business model and should demonstrate compliance with the Tshwane Spatial Development Framework requirement in terms of the zoning.
- b. Site Development Plans in respect of buildings to be erected on the Property will be considered by the Municipality. The actual building of improvements on the Property is prohibited until such building plans and site development plans have been approved:
- c. The approval of the site development plans must be obtained within 36 months unless reasonable explanation and request for extension is provided by the developer of which such consent and permission shall not be unreasonably withheld.
- d. Should the successful bidder's proposal include land use rights over and above the allowable proposed land uses, costs of acquiring consents and/ or lodging a

rezoning application for additional land uses will be for the bidder's account; where necessary all land ennoblement requirements will be handled in terms of the appropriate provision of the City of Tshwane Land Use Management By-Law, 2016 and in line with the Tshwane Town Planning Scheme, 2008 (Revised 2014).

- e. The successful bidder will be responsible to obtain all statutory approvals (Environmental, Water Use Licence, Site Development Plan/s, Building Plan/s, etc.) which are required for the development of the Property - the development shall be subject to all related legislation and Municipal By-Laws.
- f. In demonstrating ability and capacity to deliver and manage the proposed development, a submission of detailed profiles of the professional team and their successfully completed developments is required. They must further demonstrate their ability to secure funds required to carry out the project; and
- g. The City of Tshwane has developed an ambitious Climate Action Plan (CAP) with the aim to become net zero and climate resilience by 2050. The target set out in the CAP for buildings and /or the built environment is to have all new & existing City-owned buildings to be net-zero carbon and resource efficient by 2030, following requirements as stipulated in the City of Tshwane Green Buildings By-Law.

*Thus, the consideration of and inclusion of green building elements including energy efficiency, use of renewable energy, sustainable water consumption, waste separation and use of other natural resources etc must be prioritised as a contribution to climate change mitigation and adaptation in accordance with policies and in achieving Sustainable Development Goals.*

### 3.6 The lease cost implications are as follows:

- a. Rent must not be below the set minimum upset rental of R24 000 excluding VAT. Rent is payable upon signature of the lease agreement and at the month end of the first commencement of operations, and thereafter on a month-to-month basis and is subject to an escalation as further specified in the pricing schedule. The rent is exclusive of rates and taxes.
- b. A minimum deposit amount of R24 000 Excluding VAT together with the proof of payment on the contract administrative fee of R565.00 including VAT is payable upon signing the Lease Agreement. The successful bidder shall provide proof of payments made upon signing the Lease Agreement - a deposit is the direct equal amount of one months' rent.



- c. The lessee will take responsibility for the payment of Municipal property rates and taxes as determined by Council. The rates and taxes will be levied by the City's Group Financial Services Department in accordance with approved tariffs and will become payable from the date the lessee takes possession of the site.
- d. The lessee is liable for the payment of all bulk services contributions and pay the normal tariffs and fees to obtain connection to services.

### 3.7 The signing of Lease Agreement and Contract:

- a. The successful bidder shall sign a Lease Agreement within 60 Calendar Days after receiving the offer.
- b. Upon signature it becomes the responsibility of the Lessee/ Developer to secure and maintain the property; failure to do so shall be considered a material breach of agreement.
- c. In the event that the successful bidder fails to comply with the above-mentioned conditions, the property shall be offered to the second successful bidder.

## **4. EVALUATION OF PROPOSALS**

- 4.1 The Municipality reserves the right to seek clarification or further information from Bidder(s) and to appoint professionals to advise and verify information on aspects of the Proposals submitted in a manner that the COT or its agent deems appropriate.
- 4.2 The Municipality reserves the right to request that presentations to the Municipality be illustrated and expanded upon in any suitable manner.
- 4.3 The Bidder(s) shall be deemed to know and understand the content of the Request for Proposal document and a submission of all the required documentation and forms will be the Bidder(s) unconditional acceptance of all the terms and conditions contained in the Request for Proposal all document.
- 4.4 The Bidder(s) shall be deemed to have satisfied itself as to all of the conditions, procedures and performance and discharge of the obligations required in terms of the Request for Proposal document.
- 4.5 The non-acceptance or variation of any of the conditions, or the inclusion of any

other conditions in the Request for Proposal all document by the Bidder(s) will be treated as a qualified bid and will be disqualified.

4.6 The Proposal(s) will be evaluated by the Municipality. COT may accept any Proposal in whole or in part and is not bound to accept any Proposal.

4.7 Proposals will be evaluated using the evaluation criteria stated in Page 8 -14.

- a. The Proposal(s) will be adjudicated by the COT's Bid Evaluation Committee and awarded in terms of the City's Supply Chain Management Policy;
  - b. The COT will not be held responsible or liable for any costs whatsoever and /or losses incurred or suffered by the Bidder(s) or any other party or parties for whatsoever reason as a result of the Proposal;
  - c. Any Proposal in the name of a partnership or joint venture or consortium will, on acceptance, be deemed as joint and several agreements with all parties;
  - d. In the event that the successful bidder fails to comply with the conditions specifications of the bid, the CoT reserves the right to make an offer to second successful bidder.
- and  
the

4.8. Bidders may bid for multiple Property through one bid document. Bidders are required to submit a covering letter indicating the property for which the bids are being submitted.

4.9. The tender will not be awarded to the service provider scoring the highest points but the service provider with the best price offer and highest proposed value of development.

4.10. All proposals shall remain valid for a period of **90 (Ninety) days** after the closing date, provided that bidders may extend the validity of the proposal on request of COT specifically in the event that a contract with the preferred bidder fails.

## **5. DELIVERABLES**

Proof of availability of funding qualifies as a letter from the Bank or a recognised Financial Institution, on an official letter head, confirming the bidder's ability to access the funding required for the development of the Property.

## 6. STAGES OF EVALUATION

The following tenders will be evaluated according to the following stages:

Stage 1: Administration Compliance

Stage 2: Mandatory Requirements

Stage 3: Functionality Criteria

Stage 4: Preferential Point System

### STAGE 1: ADMINISTRATIVE COMPLIANCE

All the bids will be evaluated against the administrative responsiveness requirements as set out in the list of returnable documents.

<b>Compulsory Returnable Documentation (Submission of these are compulsory)</b>	<b>Submitted (YES or NO)</b>	<b>Checklist (Guide for Bidder and the Bid Evaluation Committee)</b>
<p>a) To enable The City to verify the bidder's tax compliance status, the bidder must provide; <input type="checkbox"/> A copy of their Tax Clearance Certificate (TCS);</p> <p>or</p> <p><input type="checkbox"/> Indicate their tax compliance status PIN.</p>		<p>TCS must be in the same business name as the bidding company.</p> <p>TCS must be valid.</p> <p>Tax status must be compliant before the award.</p>
<p>b) a copy of their Central Supplier Database (CSD) registration; or indicate their Master Registration Number / CSD Number;</p>		<p>CSD must be valid. Tax status must be compliant before the award.</p>
<p>c) Confirmation that the bidding company's rates and taxes are up to date: • Original or copy of Municipal Account Statement of the Bidder (bidding company) not older than 3</p>		<p>Was a Municipal Account Statement or landlord letter provided for the bidding company? The name and / or addresses of the bidder's</p>

<b>Compulsory Returnable Documentation (Submission of these are compulsory)</b>	<b>Submitted (YES or NO)</b>	<b>Checklist (Guide for Bidder and the Bid Evaluation Committee)</b>
months and account must not be in arrears for more than ninety (90) days; or signed lease agreement.		statement correspond with CIPC document or Company profile or CSD profile? Are all payment(s) up to date (i.e. not in arrears for more than 90 days)?
d) In addition to the above, confirmation that all the bidding company's owners / members / directors / major shareholders rates and taxes are up to date: <ul style="list-style-type: none"> <li>• Original or copy of Municipal Account Statement of all the South African based owners / members / directors / major shareholders not older than 3 months and the account/s may not be in arrears for more than ninety (90) days; or a signed lease agreement of owners / members / directors / major shareholders.</li> </ul>		Was a Municipal Account Statement(s) or landlord letter(s) provided for ALL the bidding company's (SA based) directors? The names and/or addresses of all directors on statement correspond with CIPC document or Company profile or CSD profile? Are all payments up to date (i.e. not in arrears for more than 90 days)?
e) Duly Signed and completed MBD forms (MBD 1, 4, 5, 8 and 9) The person signing the bid documentation must be authorised to sign on behalf of the bidder. Where the signatory is not a Director / Member / Owner / Shareholder of the company, an official letter of authorization or delegation of authority should be submitted with the bid document.  <b>NB: Bidders must ensure that the directors, trustees, managers, principle shareholders, or stakeholders of this company</b>		All documents fully completed (i.e. no blank spaces)? All documents fully signed? Signature authorised (any director / member / trustee as indicated on the CIPC document, alternatively a delegation of authority would be required? Documents completed in black ink (i.e. no "Tippex" corrections, no pencil, no other colour ink, or <b>none submission of the above</b> , will be considered)?

<b>Compulsory Returnable Documentation (Submission of these are compulsory)</b>	<b>Submitted (YES or NO)</b>	<b>Checklist (Guide for Bidder and the Bid Evaluation Committee)</b>
<p>declare any interest in any other related companies or business whether or not they are bidding for this contract. <u>See Question 3.14 of MBD 4. Failure to declare interest will result in a disqualification</u></p>		
<p>Financial Statements for the most recent three (3) years or financial statements from date of existence for companies less than three years.</p> <p>NB: The bidder must submit signed audited annual financial statements for the most recent 3 years, or if established for a shorter period, submit audited annual financial statements from date of establishment.</p> <p>If the bidder is not required by law to prepare signed annual financial statements for auditing purposes, then the bidder must submit Proof that the</p>		<p>Applicable for tenders above R10m in conjunction with MBD 5)</p> <p>Are Audited financial statements provided (Audited financials must be signed by auditor)? Or</p>

<b>Compulsory Returnable Documentation (Submission of these are compulsory)</b>	<b>Submitted (YES or NO)</b>	<b>Checklist (Guide for Bidder and the Bid Evaluation Committee)</b>
bidder is not required by law to prepare Audited financial statements.		
<p>f) Joint Ventures (JV) – (Only applicable when the bidder tender as a joint venture) • Where the bidder bid as a Joint Ventures (JV), the required or relevant documents as per (a) to l above must be provided for all JV parties. • In addition to the above the bidder must submit a Joint Venture (JV) agreement signed by the relevant parties.</p> <p>• Note: It is a condition of this bid that the successful bidder will continue with same Joint Venture (JV) for the duration of the contract, unless prior approval is obtained from The City.</p>		<p>If applicable. JV agreement provided? JV agreement complete and relevant?</p> <p>Agreement signed by all parties? All required documents as per (i.e. a to e) must be provided for all partners of the JV.</p>
Bidder attended a compulsory briefing session where applicable		<p>A compulsory briefing register must be signed by the bidder.</p> <p><b>Bidders will be disqualified should they fail to attend compulsory briefing session</b></p>
Pricing schedule (All items must be quoted for in pricing schedule and if not all items are quoted the bidder will be disqualified). Unless the tender is awarded per item or per section where the bidder only quoted the items or sections they are interested in.		<p>Incomplete pricing schedule results in totals being incomparable. Bidder must be disqualified.</p> <p><b>Bidder will be disqualified should they make corrections</b></p>

<b>Compulsory Documentation (Submission of these are compulsory)</b>	<b>Returnable</b>	<b>Submitted (YES or NO)</b>	<b>Checklist (Guide for Bidder and the Bid Evaluation Committee)</b>
			<p>on the price schedule without attaching a signature thereto.</p> <p>Bidder will be disqualified should they use tippex/ correction ink, on the price schedule.</p>

## STAGE 2: MANDATORY REQUIREMENTS

- ***BIDDERS MUST PROVIDE PROOF OF FUNDING FOR THE PROPOSED DEVELOPMENT***

Bidders must provide proof of access to financial facility by institution accredited by Financial Sector Conduct Authority (FSCA) and/or National Credit Regulator (NCR) Attach a letter of Financial Support from institution accredited by Financial Sector Conduct Authority (FSCA) and/or National Credit Regulator (NCR).

Letter should indicate the amount offered to the bidder and must be aligned to the development cost. Proof of financial support shall be on the financial support letterhead and shall be stamped/signed by the Financial Institution.

\*The funding required on the estimated development cost will be based on a **6 months** incremental value at the time of award and signature of the agreement.

<b>PROPERTY DESCRIPTION</b>	<b>EXTENT</b>	<b>ESTIMATED DEVELOPMENT COSTS</b>	<b>ANTICIPATED DEVELOPMENT COSTS</b>
Erf 387 Wonderboom	2 552m <sup>2</sup>	R25 000 000	

\*Submission to the relevant department every three months, proof by your company the availability of funding letter from the Bank or recognized Financial Institution.

## STAGE 3: FUNCTIONALITY CRITERIA

Bids will be evaluated to establish whether they meet a minimum threshold of 70 points out of 100 for Functionality, based on the following criteria:

CRITERIA	SUB-CRITERIA	SCALE	WEIGHT	SCORE
1. ENTITY EXPERIENCE	<p><b>BIDDERS' EXPERIENCE:</b>  <i>*Demonstrate experience in completing a construction or project of a similar nature</i></p> <ul style="list-style-type: none"> <li>• 3 completion certificates</li> <li>• 2 Completion certificates</li> <li>• 1 Completion Certificates</li> <li>• None provided.</li> </ul> <p><i>*Proof will be signed completion certificates received from building contractor for each of the completed developments.</i></p>	5 4 3 0	10	50
2. ENTITY'S CAPABILITY	<p><b>BIDDERS' CAPABILITY:</b>  <i>*Demonstrate capability by proven experience measured by way of investment value of work to be completed equal to the lease value of the proposed development (which may be held by the Bidder acting as Developer or development Agent, or in the bidder's Professional team)</i></p> <ul style="list-style-type: none"> <li>• More than the anticipated development cost</li> <li>• Equivalent to the anticipated development cost.</li> <li>• Below the anticipated development cost</li> <li>• No provision</li> </ul> <p><i>*Proof will be a signed completion certificates reflecting the project value for each of the completed developments</i></p>	5 4 3 0	10	50
<b>TOTAL</b>				<b>100</b>

**\*Bids which do not meet the minimum threshold of 70 points will not be considered further.**



## STAGE 4: PREFERENTIAL POINT SYSTEM

The preferential points to be used will be the 80/20 points system for the revenue generating tender in terms of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) Regulations 2022.

The system comprises of the following elements:

- 80 points for price
- 20 points for Specific goals

### SPECIFIC GOALS

- 1) Bidders are required to submit supporting documents for their bids to claim the specific goal points.
- 2) Non-compliance with specific goals will not lead to disqualification but bidders will not be allocated specific goal points. Bidders will score points out of 90 or 80 for price only and zero (0) points out of 10 or 20 for specific goals.
- 3) Cot shall act against any bidder or person when it detects that the specific goals were claimed or obtained on a fraudulent basis.

The specific goal for this bid is outlined below.

Specific goals	80/20 preference point system	Proof of specific goals to be submitted
BB-BEE score of companies <ul style="list-style-type: none"> <li>• Level 1</li> <li>• Level 2</li> <li>• Level 3</li> <li>• Level 4</li> <li>• Level 5</li> <li>• Level 6</li> <li>• Level 7</li> <li>• Level 8</li> <li>• Non-compliant</li> </ul>	<ul style="list-style-type: none"> <li>• 8 Points</li> <li>• 7 Points</li> <li>• 6 Points</li> <li>• 5 Points</li> <li>• 4 Points</li> <li>• 3 Points</li> <li>• 2 Points</li> <li>• 1 Point</li> <li>• 0 Points</li> </ul>	Valid Certified copy of BBEE certificate. Sworn Affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises or CIPC BBEE certificate.
EME and/ or QSE	2 Points	Valid Sworn affidavit for B-BBEE qualifying small enterprise or

Specific goals	80/20 preference point system	Proof of specific goals to be submitted
		Exempt Micro Enterprises or CIPC BBEE certificate
At least 51% of Women-owned companies	2 Points	Certified copy of Identity Document/s <b>and</b> proof of ownership (Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises, CIPC registration or any other proof of ownership)
At least 51% owned companies by People with disability	2 Points	Medical Certificate with doctor's details (Practice Number, Physical Address, and contact numbers) and proof of ownership (Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises, CIPC registration or any other proof of ownership)
At least 51% owned companies by Youth	2 Point	Certified copy of Identity Document/s <b>and</b> proof of ownership (Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises, CIPC registration or any other proof of ownership)
Local Economic Participation <ul style="list-style-type: none"> <li>• City of Tshwane</li> <li>• Gauteng</li> <li>• National</li> </ul>	4 Points 2 Points 1 Point	Municipal Account statement/Lease agreement.

For points to be allocated as per above the tenderers will be required to submit proof of documentation as evidence for claims made. Any tenderer that does not submit evidence as stated in the bid document to claim applicable points will be allocated zero points.

**Bidders are to note that the following tender is a revenue generating tender and the below formula will be used.**

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

## 7. TYPE OF AGREEMENT REQUIRED

- A 30 Year Lease Agreement will be requested from Group Legal and will be signed by the successful bidder.
- A Notarial Lease Agreement will be registered against the Title Deed at the successful bidders cost.

## 8. VALIDITY PERIOD

The validity period for the tender after closure is **90 days**. City of Tshwane shall have right and power to extent any tender validity period beyond any initial validity period set and subsequent extensions. SCM shall ensure that an extension of validity is requested in writing from all bidders before the validity expiry date. Extension of validity shall be finalized while the quotations/bids are still valid.

## 9. RENTAL OFFER

PROPERTY DESCRIPTION	EXTENT	MINIMUM UPSET RENTAL PER MONTH (EXCL. VAT)	VAT.	MINIMUM UPSET RENTAL (INCL. VAT)
Erf 387 Wonderboom South	2 552m <sup>2</sup>	R 24 000 pm 7% escalation per annum	R3 600.00	R27 600.00
<b>INDICATE RENTAL OFFER (EXCL.VAT)</b>				

<b>VAT</b>	
<b>INDICATE RENTAL OFFER (INCL.VAT)</b>	

**10 DRAFT LEASE AGREEMENTS**

- Standard Lease Agreement will be provided in the Request for Proposal Document.

**ANNEXURE 1: BIDDERS DETAILS, EXPERIENCE AND CAPABILITIES OF BIDDER**

<b>PARTICULARS OF BIDDER (INDIVIDUAL/COMPANY/ORGANIZATION)</b>				
1.1	Surname		Title:	
1.2	First Names			
1.3	Identity Number / Passport Number			
1.4	Registered Names of Company represented			
1.5	Registration Number			
1.6	Type of Business/ Organization			
1.7	Residential Address			
1.8	Postal Address			
1.9	Telephone Numbers	Cell	Bus ( )	Home ( )

1.10	E-mail address	
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Experience of bidder, bidder’s principals and professional team to be stated below and supporting information to be supplied in tables below.

<b>Summary of Developer and Team</b>	
Value of Developments completed <b><u>by bidder, acting as “Developer”</u></b>	R
Value of Developments completed <b><u>by bidder’s principals, acting as project manager / development manager.</u></b>	R

<i>NOTE: Any experience as "Contractor" to be duplicated here</i>	
Total combined value of FEEs earned to date by all key members of bidders proposed professional team.	<b>R</b>

**Details of construction experience completed by bidder, acting as contractor OR by bidder's principals, acting as project manager / development manager but not under the name of the bidder.**

(PLEASE EXPAND TABLE IF REQUIRED)

NB: DO NOT ATTACH A SEPARATE TABLE

Name of Development	Year completed	Value of Development	Bidder / Bidders' Principals	Client & contact Numbers

Total value of developments				



## ANNEXURE 2: TYPE OF INVESTMENT

### 2.1 Development Summary – Demonstrating the concept and operation of the business

Use	Total Floor area (m2)
<b>TOTALS</b>	

The bidder must illustrate an understanding of delivering a development plan for the Property, outline the EIA processes and required licenses how these will integrate with the Local Authority’s approvals.

### 2.2 Operational Plan

<p><b>Economic benefits:</b></p> <ul style="list-style-type: none"> <li>○ Temporary and permanent job creation</li> </ul>	
<p><b>Social benefits:</b></p> <ul style="list-style-type: none"> <li>○ Occupant’s comfort and health</li> </ul>	

<ul style="list-style-type: none"> <li>○ <b>Minimize strain on local infrastructure</b></li> </ul>	
----------------------------------------------------------------------------------------------------	--

### 2.3 Estimated development time frames

Estimated time, in months, from date of signature of development agreement to date of start of construction.	Months
Estimated time, in months, from start of construction to completion of construction.	Months

### 2.4 Estimated Cost of Development

***A breakdown of all costs to be incurred by the bidder in the preparation of the site must be provided. The cost provided in this section will form a critical part of the evaluation of proposals and will be a contractual condition of the development agreement awarded.***

No.	Item Description	Estimated cost (Including vat)
1	Civil and Electrical Services	R
2	Civil Works	R
3	Top Structure (Building) Costs	R

4	Professional Fees	R
5	Sundry Development Costs	R
6	External/Bulk Services Contributions	R
7.	Other	R
	<b>Total</b>	<b>R</b>

### ANNEXURE 3: ACCESS TO FUNDING

***The bidder must submit proof of the availability of finance to fund the development cost through equity funding***

***Please note that the following definitions will be used in assessing the proof of availability of finance:***

Proof of available funds qualifies as a letter from the Bank or a recognised Financial Institution or Sponsor, on an official letter head confirming the bidder's ability to access the funding required for the proposed development.

Provide funding model to incorporate how and where the funding will be sourced/raised and it must include collateral to be pledged against such funding if required.

Total Development Cost	R
Debt Finance	R
Equity Investments (if any)	R



## ANNEXURE 4: PRICING SCHEDULE

### **CORRECTION OF ENTRIES MADE BY TENDERER**

*Any entry made by the Tenderer in the Price Schedule, forms, etc., which the tenderer desires to change, shall not be erased or painted out. A line shall be drawn through the incorrect entry and the correct entry shall be written above in black ink and the full signature of the Tenderer shall be placed next to the correction.*

### **RENTAL OFFER**

PROPERTY DESCRIPTION	EXTENT	MINIMUM UPSET RENTAL PER MONTH (EXCL. VAT)	VAT.	MINIMUM UPSET RENTAL (INCL. VAT)
Erf 387 Wonderboom South	2 552m <sup>2</sup>	R 24 000 pm 7% escalation per annum	R 3 600.00	R 27 600.00
<b>INDICATE RENTAL OFFER (EXCL.VAT)</b>				
<b>VAT</b>				
<b>INDICATE RENTAL OFFER (INCL.VAT)</b>				

*The undersigned, who warrants that he / she is duly authorized to do so on behalf of the enterprise, confirms that the contents of this schedule are within my personal knowledge and are to the best of my belief both true and correct.*

**Person Authorized to sign Tender:**

FULL NAME (IN BLOCK LETTERS):

SIGNATURE:

.....

.....

.....

**ANNEXURE 5: STANDARD LEASE AGREEMENT**

**STANDARD LEASE AGREEMENT**

**THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

(hereinafter referred to as “the MUNICIPALITY”)

A metropolitan municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), herein represented by Johann Frederic Mettler, in his capacity as the City Manager, duly authorized by powers delegated to her by the Executive Mayor by virtue of sub-delegation dated 20 April 2021, in terms of the Corporate System of Delegation approved by Council on the 11 September 2020.

and

.....

(Registration number .....)

(hereinafter referred to as “the LESSEE”)

On the other part herein represented by ..... in his/ her capacity as ....., herein acting by virtue of a resolution passed by the Lessee at ..... on .....

WHEREAS the MUNICIPALITY is the owner of ERF .....herein attached as Annexure **A**.

AND WHEREAS the LESSEE is desirous to develop and hire the above-mentioned property for..... purpose, (hereinafter referred to as the Lease property).

AND WHEREAS the MUNICIPALITY has agreed to lease the Leased Property to the LESSEE, per Council Resolution dated....., the Committee agreed to approve the proposed lease of ERF..... (the property for..... years.

THEREFORE, the parties agree that the MUNICIPALITY hereby leases to the LESSEE, who hereby hires from the MUNICIPALITY, the Lease property, subject to the following conditions:

**PERIOD OF LEASE**

The Lease Agreement takes effect on the date that this Agreement is signed by both parties for a period of .....years and lease is not renewable. Upon expiry or termination of the development and Lease agreement, possession of the property will revert to the City of Tshwane without any compensation.



The Lessee is responsible for registration cost for a long term lease against the tittle deed.

This Agreement is subject to Section 14 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), which prescribes that a municipality may not allow, approve or commit to giving any future property rights to any party without following the prescribed process which must be “*fair, equitable, transparent, competitive and consistent with the supply chain management policy*”. No right to renew the lease for another term can be agreed to.

Occupation of the Leased property shall be given to the Lessee on the effective date that this Agreement is signed by both parties, unless otherwise in writing agreed to by the Lessor on request of the Lessee which request shall not unreasonably be withheld.

The Lessee undertakes to, apply in terms of the appropriate provisions of the Spatial Planning and Land Use Management Act 16 of 2013, SPLUMA ,within 3 (three) months of signing of this Lease Agreement, to amend the Tshwane Town-planning Scheme,2008 by rezoning the Property from existing zoning to .....zoning, at their own cost and risk.

The property with all improvements on it will revert to the City of Tshwane after the expiry of the .....year’s lease period.

## **RENTAL AND ASSESSMENT RATES**

The Lessee shall be liable to pay a rental of the amount of R.....( ) per month exclusive of Value Added Tax (VAT). VAT shall be payable by the lessee in addition to the rental, at the applicable rate.

The lessee shall pay a deposit exclusive of the first month's installment simultaneously on signing of the lease agreement by the Lessee.

The Lessee shall not cede, sublet, transfer , pledge of in any way alienate any of his/ her right in terms of this agreement.

The lessee shall protect all existing services at all times during construction of any kind. Should any services of the COT be affected detrimentally or need to be upgraded, relocation and / or repaired as a result of this lease, such services shall be upgraded, relocated and or repaired at the expense of the lessee and to the standards and satisfaction of the COT.

The development programme and / or schedule must be provided to Group Property Department to demonstrate when the development is expected to commence and the anticipated completed date, a development will be granted a maximum of 3 (three) years for construction to commence.

The Lessee will take possession of the site on the date of signature of the Development Lease Agreement.

The Lessee will be responsible for the removal of illegal structures/occupants that may have occupied the land.

The monthly rental stipulated in clause 2.1 shall be subjected to escalation of .... % (.....) per annum.

The rental amount shall be payable by the LESSEE, into the Lessor's debtor account opened and managed by Finance Department : Debtors Management Division ,Levies & Sundry Debtors, Revenue Management, 12<sup>th</sup> Floor, Middestad Building, Corner Thabo Sehume- and Pretorius Street.

(Pretoria, PO Box 440,| 0001,| www.tshwane.gov.za; Tel: (012) 012 358 1233/04 or other address that the Lessor communicates to the Lessee.

The LESSEE shall, without having been so requested, pay the basic rental monthly in advance and any other amounts owing under the agreement, monthly in advance during the MUNICIPALITY's applicable office hours, on or before the 30 (third) day of each calender month, free of bank commission or other costs, at the address of the MUNICIPALITY referred to in clause 2.3 or at such other address of which the MUNICIPALITY may notify the LESSEE in writing from time to time.

The Lessee will be responsible to obtain all statutory approvals (Environmental, Water Use Licence, Site Development Plan/s, Building Plans etc.) which are required for development of the property.

#### **PURPOSE FOR WHICH LEASE PROPERTY SHALL BE USED**

The LESSEE undertakes to use the property for ....., in terms of the Tshwane Town-planning Scheme, 2008, as amended. In the event of non-compliance to these conditions, the contract shall at the instance of the Lessor be cancelled in terms of clause 9 below and Lessee shall be obliged to vacate

the property on cancellation.

The LESSEE shall also be obliged to comply, at his own expense and risk, with the requirements of all laws, provincial ordinances and municipal by-laws that concern the execution of the LESSEE's .....

The Lessee accepts the property in the condition and extent in which it is as at the Signature Date. The Lessee acknowledges having inspected the Property.

The Lessor does not warrant that the Property is fit for the purposes for which it is let and the Lessee shall be responsible for satisfying itself that the Property is suitable for its intended use and for obtaining approvals for this purpose.

All risk in and to the Property will pass to the Lessee on the Signature Date.

The Lessee shall at all times during the currency of this Agreement keep and maintain the Property in reasonably good order and condition and the Lessee shall upon the termination of this Agreement restore the Property to the Lessor in substantially the same state and condition, fair wear and tear excepted.

The Lessor will not be liable to the Lessee for any injury, loss or damage of any description whatsoever which the Lessee or any employee or contractor of the Lessee may sustain directly or indirectly in or about the Property from whatsoever cause arising.

The Lessee shall not use the Property or permit the same to be used for any illegal purpose or cause an unlawful nuisance or disturbance on the Property.

The Municipality is not liable for any defects, latent or patent in or on property. The size of the property as indicated is not guaranteed.

### **APPROVAL FOR THE DEVELOPMENT PROJECT**

The Lessee shall take all necessary steps and do all things required to procure the approval for the development project in accordance with its own requirements and any applicable laws within the period of 3 (three) years after the signature date of the Lease. The Lessor shall use its best endeavours to assist the Lessee for this purpose and facilitate the procuring of the required approval.

The Lessor, as owner of the Property, hereby appoints the Lessee as its agent with Power of Attorney to make application to the local authority and do all things necessary to obtain the Approval of the local authority for the purposes of this Agreement.

To the extent that the Lessee is not able to procure the required approval for the development project and develop the property within 36 (thirty six) months of the signature date, the Lessor shall be entitled to terminate this Agreement on not less than 60 (sixty) days' notice in writing. The Lessor shall furthermore be entitled without detracting from the said right of termination, to extend the period of 36 (thirty six) months by a further period of 12 (twelve) months upon request in writing to the Lessor with reasonable explanation for non-compliance, as the Lessor shall in its sole discretion decide.

Existing sewer services on the property are insufficient for this development. The sewer connection and/or sewer extension that will be required for this application will be at the cost of the Lessee. Such sewer extension and connection must be designed by a Consulting Engineer and installed by suitable qualified private plumbing contractor under the engineer's supervision.

Existing water services are insufficient for this development and therefore the Lessee's Consulting Engineer must investigate the required water network services improvements that might have to be installed at the cost of the Lessee.

Any structure/building being erected on the premises must confirm to the provisions of the national building, Regulations and National Standard SANS 10400.

The lessee required and at his cost and risk apply to lodge site development plans, building plans, licences or any applications necessary for the proposed development.

The Lessee should ensure that the access to the property and the disposal of stormwater shall be to the satisfaction of the Group Head : Road and Transport..

The cost of the bulk municipal services, where applicable, shall be at the cost and risk of the lessee at the rates payable at the time of construction and the Lessee shall pay the normal tariffs and fees to obtain connection services.

The lessee take cognizance that all services are to be constructed in accordance with the City of Tshwane's standard and specification and to the satisfaction of the Lessors Departments of Utility Services and Roads and Transport.

- 4.11 The Lessee undertakes to develop the property within the period of 3 (three) years after the lease agreement is signed and if not complied with, the lease be cancelled. The Lessor may extend this provisional development period on the

lessee's request, provided that it is reasonable to do so.

The Lessee shall protect the municipal services by not building over the municipal services or plant large trees near the municipal services.

## **5. MAINTENANCE AND ALTERATIONS**

5.1 The LESSEE shall accept the Lease property as indicated to him and in the condition in which it is, and shall undertake to keep the Lease property to the satisfaction of the MUNICIPALITY, in a clean, sanitary and orderly condition, free of weeds, refuse, rodents, termites or other insects, parasites and stagnant water.

5.2 The LESSEE shall, from the date referred to in clause 1 to the satisfaction of the MUNICIPALITY, be responsible for the supervision of and all maintenance of, and repairs to the Lease property including, but not limited to, all accessories within as well as outside the building and on the Lease property and the LESSEE shall, at the expiry of this Agreement for whatever reason, return to the MUNICIPALITY the Lease Property and the installations on the Lease property in good order and condition, fair wear and tear excepted. Should the LESSEE, in the sole judgement of the MUNICIPALITY, fail to comply with this clause, the MUNICIPALITY may itself, or through a contractor carry out such maintenance and may recover the costs thereof from the LESSEE.

5.3 At the expiry of this Agreement for whatever reason, the MUNICIPALITY shall not be liable for the development cost of the improvements on the property, or for the value of the improvements on the property.

## **6. INSPECTION, BUILDING ACTIVITIES AND REPAIRS**

The MUNICIPALITY's representatives, employees or officials may have access to the Lease property at all reasonable times for purposes of inspection and/or the execution of any work that in the sole judgement of the MUNICIPALITY, has to be undertaken on the Lease property or to effect any alterations or improvements on the Lease property, without let or hindrance or interference on the part of the LESSEE and the LESSEE shall not be entitled to claim any remission of rental on the grounds for the exercising of the foregoing right by the MUNICIPALITY.

## **7 NON-LIABILITY OF THE MUNICIPALITY**

7.1 The MUNICIPALITY is under no circumstances liable for any loss of, or damage to property, or for damage resulting from personal injury or death caused to the LESSEE or any other person on the Lease property, in whatever way such loss or damage was caused and, notwithstanding the fact that such loss or damage was caused through the fault or negligence of the MUNICIPALITY, its contractors, agents or officials.

7.2 The LESSEE shall not, except in the ordinary course of his business, be permitted in terms of clause 4.1 of this agreement, keep hazardous or combustible goods on the Lease property or permit such goods to be kept on the Lease property, and he shall neither carry out nor permit any action thereon whereby the MUNICIPALITY's fire insurance cover could or would be affected detrimentally. The LESSEE undertakes to purchase, install and maintain at his own expense all firefighting equipment required by the MUNICIPALITY's Emergency Services for fire fighting on the Lease property, as well as take any



steps required by Emergency Services with a view to reducing fire risk on the Lease property or for fire fighting.

- 7.3 In order to indemnify the MUNICIPALITY against all claims arising from such loss or damage the LESSEE shall at his own cost, take out a public liability policy in the joint names of the LESSEE and the MUNICIPALITY for the duration of this agreement in terms of which both the LESSEE and the MUNICIPALITY, jointly and severally shall enjoy coverage for their respective rights and interests of at least R5 million (five million rands) per claim with the number of claims being unlimited, subject thereto that the MUNICIPALITY's Chief Financial Officer may at any time require that the coverage be increased in terms of such policy.

## **8. NUISANCE**

The LESSEE shall neither permit nor cause anything to be done which, in the sole judgement of the MUNICIPALITY, constitute a nuisance or may cause inconvenience or which, in whatever manner, disturbs the peace and rest of other LESSEES on the Lease property or affects the general tidy appearance of the Lease property detrimentally.

## **9 BREACH AND CANCELLATION**

- 9.1 If the Lessor fails to fulfil any obligation contained in this agreement timeously or in the event of a party acting in contravention of any legislation or regulation, and after 60 (Sixty) days' written notice (or such longer period as may be

extended) to fulfil such obligation, the party still fails to fulfil such obligation or fail to remedy the breach, the party to whose detriment such failure is, shall without prejudice to any other common law remedy available to it, be entitled to:

9.1.1 terminate the agreement where the breach is regarded as material breach; or

9.1.2 claim damages due to any kind of breach; or

9.1.3 claim specific performance in accordance with the stipulations of this agreement, or

9.1.4 both terminate the agreement and claim damages, in case of any material breach.

9.2 Material breach in the context of clause 9.1 shall mean breach of a material or vital term of this agreement which render this agreement irreparably broken, and which defeats the purpose of this agreement, which shall include but not limited to a failure to effect improvements on the property within a period of 36 (thirty six) months of the signature date, to maintain insurance policy contemplated in this agreement and to pay rental, rates and taxes, as well as services charges in respect of the property. Material breach shall also include any material adverse action of the lessee which renders the performance by the Lessee or the Lessor of substantially all of its obligations hereunder illegal or impossible, and which cannot be or is not remedied within a 90 day period;or

9.3 The Lessee shall have the right to terminate the agreement if:

9.3.1 The Municipality commits a material breach in respect of the performance of any of its material obligations hereunder;

9.3.2 Any material adverse governmental action of the Municipality which renders performance by the Lessee of substantially all of its obligations

hereunder illegal or impossible, and which cannot be or is not remedied within a 90 day period; or

- 9.4 If the agreement is terminated in terms of clause 9.1, the Lessee shall not be entitled to claim payment from the Municipality of any damages suffered consequent upon termination of the agreement. Without limiting the generality of the foregoing, the Municipality shall be entitled to all developments or part thereof and fixed assets accruing to the Lessor through attachment to the land, plus the sum of any amounts outstanding and payable by the Lessee to the Municipality.

#### **FINANCIER'S STEP IN RIGHTS**

- 10.1 The parties acknowledge and represent that the development or any part thereof, in terms of this lease agreement, may be financed by a third-party financier ("Financial Institution") pursuant to financing agreements to be concluded between the Financial Institution and the Lessee.
- 10.2 The parties agree that should the Lessee fail to carry out its obligations under this Agreement or commit a material breach of this Agreement, which would entitle the Lessor to cancel this Agreement, the Lessor shall not be entitled to cancel this Agreement without prior written notification of such failure to perform or breach and/or its intention to cancel this Agreement first having been given to the Financial Institution, and the Financial Institution being given the opportunity to exercise its step-in-rights.

- 10.3 Upon receipt of the notification referred to above, the Financial Institution shall be entitled to exercise its step-in-rights within a period of 90 (ninety) days from the date of receipt of such notification, which step-in-rights shall entitle the Financial Institution to assignment of all the rights and obligations of the Lessee to perform the Services and carry out the Lessee's obligations under this Agreement, as Agents of the Lessee to ensure completion of the project in terms of the Lease.
- 10.4 In terms of the step-in-rights referred to above, the Financial Institution shall take over the development of the property and improvements as contemplated in the Lease, in the place of the Lessee.
- 10.5 The Lessee shall procure that the Financial Institution shall ensure that security interests granted in its favor and obligations under Financial Institution documents in respect of this agreement are adequately perfected. The Lessee shall procure that the Financial Institution shall include an obligation in the financing documents in respect of the agreement relating to the perfection of any security interest granted to the Financial Institution within applicable time limits in terms of this Agreement.
- 10.6 The Lessee may secure its funding through this agreement and have the Notarial Lease as security but may not encumber the property described herein by a Mortgage Bond to secure the funding by the Financial Institution.

10.7 The contents of this clause constitute a stipulatio alteri in favour of the Financial Institution, the benefits of which the Financial Institution shall be entitled to accept at any time after the Signature Date.

## **11. VIS MAJOR**

Notwithstanding anything to the contrary contained in this Lease Agreement, should compliance with any term or condition hereof become impossible, whether by **vis major, casus fortuitus** or any other factor beyond the control of the LESSEE or the MUNICIPALITY, this lease agreement shall automatically be terminated without any further rights, obligations or claims between the LESSEE and the MUNICIPALITY excluding any existing claim the parties may have against each other and the MUNICIPALITY's right to any arrear rental and other monies payable by the LESSEE for any period prior to such termination.

## **12. SUB-LEASE AND ALIENATION**

The LESSEE shall not cede, transfer, pledge or, in any way alienate any of his rights in terms of this agreement, nor shall he sub-let the Lease property or any part thereof or allow any other person to occupy the Lease property or any part thereof, whether for a limited or unlimited period.

## **13. LIABILITY OF LESSEE**

Should two or more persons be the LESSEE, these persons shall be jointly and severally liable for the due observance of all the obligations of the LESSEE in terms of the lease agreement.

#### **14. LESSOR'S HYPOTHEC**

For the duration of this Lease Agreement all furniture, fixed and moveable accessories or equipment, stock, etc., brought onto the Lease property, shall be subject to the lessor's hypothec and serve as collateral security for the due observance by the LESSEE of all his obligations in terms of the provisions of this Lease Agreement. The LESSEE shall not pledge or in any other way encumber or dispose of or remove from the Lease property the aforesaid assets, except in the ordinary course of business.

#### **15. JURISDICTION OF COURT**

The LESSEE hereby agrees that, notwithstanding the provisions of the Magistrate's Court Act, 1944 (Act 32 of 1944) (as amended or substituted from time to time), with regard to the powers concerning cause of guilt and/or the amount claimed, the powers with regard to any legal action resultant from this Lease Agreement which the MUNICIPALITY may institute against the LESSEE, shall vest in a Magistrates Court. The MUNICIPALITY shall, notwithstanding the foregoing, be entitled to institute, at its own discretion against the LESSEE, any legal action exceeding the powers of a Magistrate Court, in the competent division of the Supreme Court.

## **16. LEGAL COSTS**

The LESSEE shall indemnify and hold the MUNICIPALITY harmless against any claims, including legal costs, that may be instituted against the MUNICIPALITY by virtue of this Agreement, irrespective of the fact that such claims may have resulted from any action, whether willfully or negligently, on the part of the MUNICIPALITY, its employees or agents.

## **17. GENERAL**

- 17.1 The headings of the clauses in this Lease Agreement serve only as reference and shall under no circumstances affect the interpretation of clauses.
- 17.2 This Lease Agreement constitutes the full agreement and any amendment or addition thereto shall be in writing and be signed by both parties.

17.3 Should the lease agreement not be returned to the MUNICIPALITY duly completed and signed, within 30 (thirty) days after the LESSEE has been requested to do so, the MUNICIPALITY may without prejudice to any other rights of the MUNICIPALITY, review and amend the rental, terms and conditions contained herein.

17.4 The property with all improvements on it will revert to the City of Tshwane after the expiry of the ..... years lease period.

## 18. **WARRANTY OF AUTHORITY**

Each party warrants to the other party that it has the power, authority and legal right to sign and perform this Lease and that this Lease has been duly authorized by all necessary actions of its directors and constitutes valid and binding obligations on it in accordance with the terms of this Lease.

## 19. **DOMICILIUM (DOMICILE OF SUMMONS AND EXECUTION)**

19.1 The LESSEE hereby chooses.....  
.....  
..... as their **domicilium citandi et executandi** for all matters that may arise from this lease agreement including, but not limited to the receipt of all notices and processes of court.

19.2 The MUNICIPALITY's chosen **domicilium citandi et executandi** as Department Group Property Management Ou Raad Saal building Church square, Pretoria, (Pretoria , PO Box 440, 0001) with the Group Head : Group Property Management. , as addressee.

19.3 All notices served by the MUNICIPALITY on the LESSEE by virtue of the lease agreement, shall either be sent by pre-paid registered mail, fax or be delivered to the LESSEE by hand. In the case of notices sent by pre-paid registered mail,



such notices shall be deemed to have been received by the LESSEE at the latest on the 4<sup>th</sup> (fourth) business day after the date of despatch. Notices delivered by hand and for which a dated acknowledgement of receipt has not been obtained, shall be deemed to have been received by the LESSEE on the date of delivery, unless the LESSEE is able to prove the contrary.

19.4 All notices served by the LESSEE on the MUNICIPALITY by virtue of the lease agreement shall likewise be deemed to have been duly served, provided that the same procedure has been followed.

THUS DONE at PRETORIA on this ..... day of ..... 2024 in the presence of the undersigned witnesses.

AS WITNESSES:

.....

.....

.....

CITY OF TSHWANE

THUS DONE at PRETORIA on this ..... day of ..... 2024 in the presence of the undersigned witnesses.

AS WITNESSES:

.....

.....

.....

LESSEE

**MBD1**

**PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CITY OF TSHWANE MUNICIPALITY</b>					
BID NUMBER:	GPM 30 2023/24	CLOSING DATE:	10 July 2024	CLOSING TIME:	10:00
DESCRIPTION	TENDER INVITATION FOR THE LONG- TERM LEASE AND DEVELOPMENT OF THE FOLLOWING COUNCIL OWNED PROPERTY: ERF 387 WONDERBOOM SOUTH				
<b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).</b>					

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (*STREET ADDRESS*)

<b>Tshwane House</b>					
<b>Supply Chain Management</b>					
<b>320 Madiba Street</b>					
<b>Pretoria CBD</b>					
<b>0002</b>					
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		<input type="checkbox"/> Yes <input type="checkbox"/> No

**[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]**

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER	.....	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>		<b>TECHNICAL INFORMATION MAY BE DIRECTED TO:</b>	
DEPARTMENT	Supply Chain Management	DEPARTMENT	Group Property Management
CONTACT PERSON	Relebogile Malatswane	CONTACT PERSON	Johannah Maenetsa
TELEPHONE NUMBER	012 358 2735	TELEPHONE NUMBER	012 358 7389
EMAIL ADDRESS	<a href="mailto:RelebogileM@tshwane.gov.za">RelebogileM@tshwane.gov.za</a>	EMAIL ADDRESS	johannahmae@tshwane.gov.za

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

<b>1. BID SUBMISSION</b>
1.1 BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
<b>1.2 ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR ONLINE</b>
1.3 THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.

- 2.3 APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
- 2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

**3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

- 3.1 IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? YES  NO
- 3.2 DOES THE ENTITY HAVE A BRANCH IN THE RSA? YES  NO
- 3.3 DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? YES  NO
- 3.4 DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? YES  NO
- 3.5 IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? YES  NO

**IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.**

**NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID. NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE.**

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....

DATE: .....

**PRICING SCHEDULE: FIRM PRICES (PURCHASES)**

**NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED**

**IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT**

Name of Bidder.....	Bid Number .....
Closing Time .....	Closing Date .....

OFFER TO BE VALID FOR ..... DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
----------	----------	-------------	----------------------------------------------------------------

- Required by: .....
- At: .....
- Brand and Model .....
- Country of Origin .....
- Does the offer comply with the specification(s)? \*YES/NO
- If not to specification, indicate deviation(s) .....
- Period required for delivery .....
- \*Delivery: Firm/Not firm
- Delivery basis .....

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

\*\* "all applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

\* Delete if not applicable

**PRICING SCHEDULE: NON-FIRM PRICES (PURCHASES)**

**NOTE: PRICE ADJUSTMENTS WILL BE ALLOWED AT THE PERIODS AND TIMES SPECIFIED IN THE BIDDING DOCUMENTS.**

**IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT**

Name of Bidder .....	Bid number .....
Closing Time .....	Closing Date .....

OFFER TO BE VALID FOR 90 DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
----------	----------	-------------	----------------------------------------------------------------

- Required by: .....
  - At: .....
  - Brand and model .....
  - Country of origin .....
  - Does the offer comply with the specification(s)? \*YES/NO
  - If not to specification, indicate deviation(s) .....
  - Period required for delivery .....
  - Delivery: \*Firm/Not firm
- \*\* "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.
- \* Delete if not applicable

**PRICE ADJUSTMENTS**

**A. NON-FIRM PRICES SUBJECT TO ESCALATION**

1. IN CASES OF PERIOD CONTRACTS, NON FIRM PRICES WILL BE ADJUSTED (LOADED) WITH THE ASSESSED CONTRACT PRICE ADJUSTMENTS IMPLICIT IN NON FIRM PRICES WHEN CALCULATING THE COMPARATIVE PRICES
2. IN THIS CATEGORY PRICE ESCALATIONS WILL ONLY BE CONSIDERED IN TERMS OF THE FOLLOWING FORMULA:

$$Pa = (1 - V)Pt \left( D1 \frac{R1t}{R1o} + D2 \frac{R2t}{R2o} + D3 \frac{R3t}{R3o} + D4 \frac{R4t}{R4o} \right) + VPt$$

Where:

- Pa = The new escalated price to be calculated.
- (1-V) Pt = 85% of the original bid price. **Note that Pt must always be the original bid price and not an escalated price.**
- D1, D2.. = Each factor of the bid price eg. labour, transport, clothing, footwear, etc. The total of the various factors D1,D2...etc. must add up to 100%.
- R1t, R2t..... = Index figure obtained from new index (depends on the number of factors used).
- R1o, R2o = Index figure at time of bidding.
- VPt = 15% of the original bid price. This portion of the bid price remains firm i.e. it is not subject to any price escalations.

3. The following index/indices must be used to calculate your bid price:

Index..... Dated.....      Index..... Dated.....      Index..... Dated.....  
 Index..... Dated.....      Index..... Dated.....      Index..... Dated.....

4. FURNISH A BREAKDOWN OF YOUR PRICE IN TERMS OF ABOVE-MENTIONED FORMULA. THE TOTAL OF THE VARIOUS FACTORS MUST ADD UP TO 100%.

FACTOR (D1, D2 etc. eg. Labour, transport etc.)	PERCENTAGE OF BID PRICE




**B. PRICES SUBJECT TO RATE OF EXCHANGE VARIATIONS**

1. Please furnish full particulars of your financial institution, state the currencies used in the conversion of the prices of the items to South African currency, which portion of the price is subject to rate of exchange variations and the amounts remitted abroad.

PARTICULARS OF FINANCIAL INSTITUTION	ITEM NO	PRICE	CURRENCY	RATE	PORTION OF PRICE SUBJECT TO ROE	AMOUNT IN FOREIGN CURRENCY REMITTED ABROAD
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		

2. Adjustments for rate of exchange variations during the contract period will be calculated by using the average monthly exchange rates as issued by your commercial bank for the periods indicated hereunder: (Proof from bank required)

AVERAGE MONTHLY EXCHANGE RATES FOR THE PERIOD:	DATE DOCUMENTATION MUST BE SUBMITTED TO THIS OFFICE	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE	DATE UNTIL WHICH NEW CALCULATED PRICE WILL BE EFFECTIVE

ADJUSTMENT PERIODS	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE
1 <sup>st</sup> Adjustment	After 12 calendar months
2 <sup>nd</sup> Adjustment	After 24 calendar months

**NB: Unless prior approval has been obtained from Supply Chain Management, no adjustment in contract prices will be made**

**DECLARATION OF INTEREST**

1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
3. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
  - 3.1 Full Name of bidder or his or her representative: .....
  - 3.2 Identity Number: .....
  - 3.3 Position occupied in the Company (director, trustee, hareholder<sup>2</sup>) .....
  - 3.4 Company Registration Number: .....
  - 3.5 Tax Reference Number: .....
  - 3.6 VAT Registration Number: .....
  - 3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.
  - 3.8 Are you presently in the service of the state? **YES / NO**
  - 3.8.1 If yes, furnish particulars. ....  
.....

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

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

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

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

3.9.1 If yes, furnish particulars. ....

.....

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

3.10.1 If yes, furnish particulars. ....

.....

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

3.11.1 If yes, furnish particulars. ....

.....

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

3.12.1 If yes, furnish particulars. ....

.....

3.13 Are any spouse, child or parent of the company's directors trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars. ....

.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. **YES / NO**

3.14.1 If yes, furnish particulars: .....

.....

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

Full Name	Identity Number	State Employee Number

.....

**Signature**

.....

**Date**

.....

**Capacity**

.....

**Name of Bidder**

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

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

1 Are you by law required to prepare annual financial statements for auditing? **\*YES / NO**

1.1 If yes, submit audited annual financial statements for the past three years or since the date of establishment if established during the past three years.

.....  
.....

2 Do you have any outstanding undisputed commitments for municipal services towards any municipality for more than three months or any other service provider in respect of which payment is overdue for more than 30 days? **\*YES / NO**

2.1 If no, this serves to certify that the bidder has no undisputed commitments for municipal services towards any municipality for more than three months or other service provider in respect of which payment is overdue for more than 30 days. **\*YES / NO**

2.2 If yes, provide particulars.

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

3 Has any contract been awarded to you by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract? **\*YES / NO**

3.1 If yes, furnish particulars

.....  
.....

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

the Republic, and, if so, what portion and whether any portion of payment from the municipality / municipal entity is expected to be transferred out of the Republic?

4.1 If yes, furnish particulars

.....  
.....

**CERTIFICATION**

**I, THE UNDERSIGNED (NAME) .....  
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM  
IS CORRECT. I ACCEPT THAT THE STATE MAY ACT AGAINST ME SHOULD THIS  
DECLARATION PROVE TO BE FALSE.**

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

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

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

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

**1. GENERAL CONDITIONS**

- 1.1 The following preference point systems are applicable to invitations to tender:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
  - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

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

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

- a) The applicable preference point system for this tender is the **80/20** preference point system.

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

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

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

The maximum points for this tender are allocated as follows:

	POINTS
<b>PRICE</b>	80
<b>SPECIFIC GOALS</b>	20
<b>TOTAL POINTS FOR PRICE AND SPECIFIC GOALS</b>	<b>100</b>

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.



## 2. DEFINITIONS

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

## 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

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

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

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

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

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

#### 3.2.1. POINTS AWARDED FOR PRICE

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

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

Where

- Ps = Points scored for price of tender under consideration  
 Pt = Price of tender under consideration  
 Pmax = Price of highest acceptable tender

#### 4. POINTS AWARDED FOR SPECIFIC GOALS

Specific goals	80/20 preference point system	Number of points claimed (80/20 system) (To be completed by the tenderer)
BB-BEE score of companies <ul style="list-style-type: none"> <li>• Level 1</li> <li>• Level 2</li> <li>• Level 3</li> <li>• Level 4</li> <li>• Level 5</li> <li>• Level 6</li> <li>• Level 7</li> <li>• Level 8</li> <li>• Non-compliant</li> </ul>	<ul style="list-style-type: none"> <li>• 8 Points</li> <li>• 7 Points</li> <li>• 6 Points</li> <li>• 5 Points</li> <li>• 4 Points</li> <li>• 3 Points</li> <li>• 2 Points</li> <li>• 1 Point</li> <li>• 0 Points</li> </ul>	
EME and/ or QSE	2 Points	
At least 51% of Women-owned companies	2 Points	
At least 51% owned companies by People with disability	2 Points	
At least 51% owned companies by Youth	2 Point	
Local Economic Participation <ul style="list-style-type: none"> <li>• City of Tshwane</li> <li>• Gauteng</li> <li>• National</li> </ul>	4 Points 2 Points 1 Point	

4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
- (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

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

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

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

**N.B** For points to be allocated as per above the tenderers will be required to submit proof of documentation as evidence for claims made. Any tenderer that does not submit evidence as stated in the bid document to claim applicable points will be allocated zero points.

**DECLARATION WITH REGARD TO COMPANY/FIRM**

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

4.4. Company registration number: .....

4.5. TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
  - (a) disqualify the person from the tendering process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person’s conduct;

- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution, if deemed necessary.

.....

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

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

**DATE:** .....

**ADDRESS:** .....

.....

.....

**CONTRACT FORM: PURCHASE OF GOODS/WORKS**

**THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SUCCESSFUL BIDDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SUCCESSFUL BIDDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.**

**PART 1 (TO BE FILLED IN BY THE BIDDER)**

1. I hereby undertake to supply all or any of the goods and/or works described in the attached bidding documents to **CITY OF TSHWANE MUNICIPALITY** in accordance with the requirements and specifications stipulated in bid number **GPM 30 2023/24** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the purchaser during the validity period indicated and calculated from the closing time of bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, viz
    - Invitation to bid;
    - Tax clearance certificate;
    - Pricing schedule(s);
    - Technical Specification(s);
    - Preference claims for specific goals in terms of the Preferential Procurement Regulations 2022;
    - Declaration of interest;
    - Declaration of bidder’s past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract; and
  - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

WITNESSES	
1.	.....
2.	.....
DATE: .....	

**CONTRACT FORM: PURCHASE OF GOODS/WORKS**

**PART 2 (TO BE FILLED IN BY THE PURCHASER)**

1. I ..... in my capacity as ..... accept your bid under reference number ..... dated ..... for the supply of goods/works indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating delivery instructions is forthcoming.
3. I undertake to make payment for the goods/works delivered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice accompanied by the delivery note.

ITEM NO.	PRICE (ALL APPLICABLE TAXES INCLUDED)	BRAND	DELIVERY PERIOD	B-BBEE STATUS LEVEL OF CONTRIBUTION

4. I confirm that I am duly authorized to sign this contract.

SIGNED AT ..... ON.....

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

WITNESSES

1. ....

2. ....

DATE: .....

**CONTRACT FORM: RENDERING OF SERVICES**

**THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SERVICE PROVIDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SERVICE PROVIDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.**

**PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)**

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number **GPM 30 2023/24** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, *viz*
    - Invitation to bid;
    - Tax clearance certificate;
    - Pricing schedule(s);
    - Filled in task directive/proposal;
    - Preference claims for specific goals in terms of the Preferential Procurement Regulations 2022;
    - Declaration of interest;
    - Declaration of Bidder's past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract; and
  - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.

6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

WITNESSES	
1	.....
2	.....
DATE: .....	



**CONTRACT FORM: RENDERING OF SERVICES**

**PART 2 (TO BE FILLED IN BY THE PURCHASER)**

1. I..... in my capacity as ..... accept your bid under reference number ..... dated..... for the rendering of services indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating service delivery instructions is forthcoming.
3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION

4. I confirm that I am duly authorised to sign this contract.

SIGNED AT ..... ON .....

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

WITNESSES

- 1 .....
- 2 .....

DATE: .....

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

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be rejected if that bidder, or any of its directors have:
  - a. abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
  - b. been convicted for fraud or corruption during the past five years;
  - c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</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 <i>audi alteram partem</i> rule was applied).</p> <p><b>The Database of Restricted Suppliers now resides on the National Treasury's website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</b></p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p><b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b></p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>

4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

### CERTIFICATION

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

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

.....  
**Signature**

.....  
**Date**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Municipal Bidding Document (MBD) must form part of all bids<sup>1</sup> invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
  - a. take all reasonable steps to prevent such abuse;
  - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
  - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

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

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

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid: **GPM 30 2023/24**

(Bid Number and Description)

**TENDER INVITATION FOR THE LONG- TERM LEASE AND DEVELOPMENT OF THE FOLLOWING COUNCIL OWNED PROPERTY: ERF 387 WONDERBOOM SOUTH**

in response to the invitation for the bid made by:

**CITY OF TSHWANE MUNICIPALITY**

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

I certify, on behalf of: \_\_\_\_\_ that:  
(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.

<sup>3</sup> Joint venture or consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.



# **THE NATIONAL TREASURY**

**Republic of South Africa**



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**GOVERNMENT PROCUREMENT**

**GENERAL CONDITIONS OF CONTRACT**

**July 2010**

## GOVERNMENT PROCUREMENT

# GENERAL CONDITIONS OF CONTRACT

July 2010

### NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.



## TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

## General Conditions of Contract

### 1. Definitions

1. 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 consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies 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 supplies 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 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

**1. Application**

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, 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 supplies, 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 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)
- 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.
- 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 in SCC.
- 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 supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 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 supplies 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 supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies 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 supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies 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 supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies 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 23 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 and 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, specified in SCC, and in any subsequent instructions ordered by the purchaser.

**10. Delivery and documents**

- 10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 10.2 Documents to be submitted by the supplier are specified in SCC.

- 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 in the SCC.
- 12. Transportation** 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
- 13. Incidental services, services** 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
  - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.
- 14. Spare parts** 14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
  - (b) in the event of termination of production of the spare parts:
    - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
    - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.
- 15. Warranty** 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and 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 in SCC.

- 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 in SCC 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 in SCC, 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 in SCC.
- 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 in SCC.
- 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 in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract**
- 18.1 No variation in or modification of the terms of the contract shall be made **amendments** except by written amendment signed by the parties concerned.
- 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 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 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 supplies are required, or the supplier's services are not readily available.
- 21.5 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 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies 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:
  - (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
  - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated



fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, 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 Accounting Officer / Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
  - (ii) the date of commencement of the restriction
  - (iii) the period of restriction; and
  - (iv) the reasons for the restriction.

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

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

- 24.1 When, after the date of bid, provisional payments are required, or antidumping 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 contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies 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.
<b>26. Termination for insolvency</b>	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.
<b>27. Settlement of Disputes</b>	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	Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
	27.5	Notwithstanding any reference to mediation and/or court proceedings herein, <ul style="list-style-type: none"> <li>(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and</li> <li>(b) the purchaser shall pay the supplier any monies due the supplier.</li> </ul>
<b>28. Limitation of liability</b>	28.1	Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6; <p>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</p> <p>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.</p>
<b>29. Governing language</b>	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.
<b>30. Applicable law</b>	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
<b>31. Notices</b>	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 the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme**
- 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation
- 34. Prohibition of Restrictive practices**
- 34.1 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 (or bid rigging).
- 34.2 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 the Competition Act No. 89 of 1998.
- 34.3 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.