

GREATER KOKSTAD MUNICIPALITY



TENDER DOCUMENT

APPOINTMENT OF A PANEL FOR SERVICE PROVIDER FOR SUPPLY AND DELIVERY OF ROADS MAINTENANCE MATERIALS AS AND WHEN REQUIRED FOR 24 MONTHS PERIOD

BID No- GKM 22-23/24

CLOSING DATE: 08 NOVEMBER 2023

CLOSING TIME: 12H00

NAME OF BIDDER:

POSTAL ADDRESS:

.....

.....

TELEPHONE NUMBER:

FAX NUMBER:

E- MAIL ADDRESS:

TENDER SUM (ALL INCLUSIVE):.....

**APPOINTMENT OF SERVICE PROVIDER FOR SUPPLY AND DELIVERY OF ROADS
MAINTENANCE MATERIALS AS AND WHEN REQUIRED FOR 24 MONTHS PERIOD**

BID NUMBER: GKM 22-23/24

Bid documents must be deposited in the tender box marked “**APPOINTMENT OF SERVICE PROVIDER FOR SUPPLY AND DELIVERY OF ROADS MAINTENANCE MATERIALS AS AND WHEN REQUIRED FOR 24 MONTHS PERIOD**” located at the reception area at Adam Kok III Building, 75 Hope Street, Kokstad not later than **08 November 2023 at 12h00**. Bidders must attach the following mandatory returnable documents to be considered for this bid and must note the applicable conditions:

- Price (s) quoted must be firm and must be inclusive of VAT.
- Copy of CSD (Central Supplier Database).
- Copy of company registration documents.
- For Joint Venture Agreements, attach the CK's of each of the joint venture members (if applicable)
- ID(s) copies of company director(s).
- Copy of current municipal account for all Director/s and Company, (must not be in arrears for a period longer than 90 days and not older than 90 days) or copy of lease agreement from the relevant leasing authority. If the business is operated from the residence of one of the Director/s, an original affidavit, certified, must be submitted stating the address of the premises from your local SAPS office. In a case where the directors are not liable for the payment of rates/taxes, an affidavit commissioned by SAPS stating that the director is not liable for the payment of rates must be submitted. In case the director does not own property/is a tenant, leasing agreement should be submitted to confirm the place of residence. Tenders who are not registered with any municipality for the payment of rates and services due to their location may submit proof of residence / business address certified by a Municipal Councillor, but only if the residence is the same address as the business address, accompanied by an affidavit commissioned by SAPS.
- Printed copy of tax clearance certificate accompanied by a pin for further verification.
- Completed and signed Municipal Bidding Document attached to the tender document.
- Tenders will be adjudicated in terms of the Council Supply Chain Management Policy on the 80/20 Preferential Point System. It is therefore compulsory that the municipal tender document be used. Greater Kokstad Municipality is not bound to accept the lowest or any quote.

The following conditions will apply:

- Price(s) quoted must be valid for at least one hundred and twenty (120) days from date of your offer.
- Price(s) quoted must be firm and must be inclusive of VAT.
- The total bid price must be written on MBD 1
- All the required documents must be attached.

NB: No quotations will be considered from persons in the service of the state or persons who owe rates, services, and taxes to any Municipality for a period longer than 90 days.

TENDER ADVERT

BID NO.: GKM 22-23/24**APPOINTMENT PANEL OF SERVICE PROVIDER FOR SUPPLY AND DELIVERY OF ROADS MAINTENANCE MATERIALS AS AND WHEN REQUIRED FOR 24 MONTHS PERIOD**

The Greater Kokstad Municipality hereby invites proposals from reputable Service Providers in respect to the supply, delivery of roads maintenance materials as and when required for a period of 24 months. The scope of work and bid requirements is stipulated in the bid document.

This advert is issued in compliance with the Preferential Procurement Regulation, 2022. Evaluation will be done on the following three-stages process in terms of National Treasury Circular No: 53:

Stage 1:

Assessment of Functionality. Only service providers who achieve a minimum of 39 points of the total available points will qualify for stage two of the Evaluation process. Functionality criteria is as follows:

| | |
|---------------------|-------------|
| Company Experience | (50 points) |
| Financial Viability | (15 points) |

Stage 2:

Evaluation will be done based on the 80/20 preferential point system, where 80 points will be allocated for price and 20 points for specific goals. Bidders must submit the required documentation to claim preference points.

POINTS AWARDED FOR SPECIFIC GOALS

The 80/20 preferential point system will be applied, where 80 points will be allocated for price and 20 points for Municipality's specific goals that is on ownership and RDP goals.

| GOALS 1 - OWNERSHIP | MAX POINTS =10 | Documents required for verification |
|--|-----------------------|--|
| Business owned more than 50% by black person | 10 | <ul style="list-style-type: none"> ▪ ID copy of director/Owner ▪ Detailed CSD |
| GOAL 2 -RDP | MAX POINTS =10 | |
| Business falls under the SMME Category- QSE/EME | 5 | <ul style="list-style-type: none"> ▪ Certified BBBE Certificate / Sworn Affidavit |
| Business falls under the Greater Kokstad Municipality Jurisdiction | 5 | <ul style="list-style-type: none"> ▪ Municipal accounts not older than 90 days/ ▪ Lease agreement/ ▪ Affidavit if you are residing in rural areas |

The tender document **must** be downloaded on the **Greater Kokstad Municipality website** www.kokstad.gov.za at no cost. **The Greater Kokstad Municipality will not be held responsible for any incomplete documents downloaded on the Greater Kokstad Municipality website.**

Sealed tenders, marked "**Bid No.: GKM 22-23/24 "APPOINTMENT OF SERVICE PROVIDER FOR SUPPLY AND DELIVERY OF ROADS MAINTENANCE MATERIALS AS AND WHEN REQUIRED FOR 24 MONTHS PERIOD"**" must be deposited in the **BOX** located at the Reception Area, Adam Kok III Building, 75 Hope Street, Kokstad, not later than **08 November 2023 at 12H00**, where after, bids will be opened in public.

Late, telegraphic, e-mailed or faxed bids will not be considered.

Technical Enquiries: Mr. Z. Godlimpi on Tel: 039 797 6674; Fax: 039 727 3676, or email: zamindlela.godlimpi@kokstad.gov.za. Supply Chain Management enquiries: Ms. A. Mahlaka on Tel. 039 797 6600, or email: andiswa.mahlaka@kokstad.gov.za

Greater Kokstad Municipality does not bind itself to accept the lowest or any bid and reserves the right to accept the Bid in whole or part, at the rates quoted

**MR. S R ZWANE
MUNICIPAL MANAGER
NOTICE NO.: 52-2023/2024**

NAME OF THE PROJECT: APPOINTMENT OF SERVICE PROVIDER FOR SUPPLY AND DELIVERY OF ROADS MAINTENANCE MATERIALS AS AND WHEN REQUIRED FOR 24 MONTHS PERIOD**1.1 PROJECT DETAILS**

Invitation for service providers to form a panel of Services Provider for Greater Kokstad Local Municipality. Projects will be based within the Greater Kokstad area of jurisdiction for a period of not more than 24 months. A service provider will be awarded, as and when required. Appointment of Service providers will be per Item. Service Providers will be selected based on their preferences in terms of ranking.

1.2 The purpose

The Greater Kokstad Local Municipality has a mandatory obligation to be responsible for road maintenance in the jurisdiction of the Kokstad Municipality.

This is the service for which the municipality would like to get a service provider to supply and deliver road maintenance materials within Greater Kokstad Municipality area of jurisdiction.

1.3 OBJECTIVES

Provision of acquire road maintenance materials for the Greater Kokstad Municipality to enhance service delivery to the community of Kokstad.

2. SCOPE OF WORKS

The scope of work is for the duration of the contract is summarized below:

- Supply and deliver road Maintenance Materials for Civil Engineering Unit as and when required for the period of 24 Months.
- Aggregates to conform to COLTO Standard Specifications for Road and Bridge Works for State Authorities.

PRICE SCHEDULE:

| TOOLS AND EQUIPMENT: PRICING SCHEDULE | | | | |
|---------------------------------------|--|------------------|--------|--------|
| Item No | Description | Unit | Year 1 | Year 2 |
| 1.0 | Asphalt (To comply with COLTO specifications) | | | |
| 1.1 | Supply of Medium Grade Hot Asphalt, 50/70 Continuously Graded Bitumen. | 1 Tonne | | |
| 1.2 | Supply and Delivery of 25kgs bags of All-Weather Cold Mix Asphalt. | 1 No. | | |
| 1.3 | Bitumen Emulsion SS60 210I | 1 No. | | |
| | | | | |
| 2.0 | Aggregates: (To comply with COLTO Specifications) | | | |
| 2.1 | G2 Crusher Run | 1 Tonne | | |
| 2.2 | G5 Crusher Run | 1 Tonne | | |
| 2.3 | Ready Blend Mix | 1 Tonne | | |
| 2.4 | Crusher Dust | 1 Tonne | | |
| 2.5 | Plaster Sand | 1 Tonne | | |
| 2.6 | 19mm Crushed Stone | 1 Tonne | | |
| 2.7 | 9.5mm Asphalt Stones/ Road Stones | 1 Tonne | | |
| 2.8 | 6.7mm Asphalt Stones/ Road Stones | 1 Tonne | | |
| | | | | |
| 3.0 | Bricks/Blocks | | | |
| 3.1 | Cement Bricks | 1 No. | | |
| 3.2 | Blocks 6" M140 | 1 No. | | |
| 3.3 | Paver 60mm Interlocking Grey Bricks | 1 No. | | |
| 3.4 | Paver 60mm Interlocking Red Bricks | 1 No. | | |
| | | | | |
| 4.0 | Ready Mix Concrete | | | |
| 4.1 | Concrete Ready Mix 25mpa | 1 m ³ | | |
| 4.2 | Concrete Ready Mix 30mpa | 1 m ³ | | |
| | | | | |
| 5.0 | Concrete Products | | | |
| 5.1 | 600mm Diameter Ogee concrete pipes 100D | 1 No. | | |
| 5.2 | 600mm Diameter Ogee concrete pipes 100D | 1No. | | |
| 5.3 | 600mm Diameter Ogee concrete pipes 100D | 1No. | | |
| 5.4 | 1200mmx1200mm Heavy duty Catchpit cover with lid | 1 No. | | |
| 5.5 | 1200mmx1200mm Heavy duty catchpit splay | 1 No. | | |

| | | | | |
|------------|---|--------|--|--|
| 5.6 | Figure 3 Kerb | 1 No. | | |
| 5.7 | Figure 6 Kerb | 1 No. | | |
| 5.8 | Figure 12 Kerb | 1 No. | | |
| | | | | |
| 6.0 | Heath and Safety | | | |
| 6.1 | Red/Orange Barricading safety net | 1 Roll | | |
| 6.2 | Goggles | 1 Box | | |
| 6.3 | Dust Musk N95 | 1 Box | | |
| | | | | |
| 7.0 | <u>Temporary Road Signage (Supplied with temporary stands)</u> | | | |
| 7.1 | Gravel Heaps TW339 | 1 No. | | |
| 7.2 | Road works TW336 | 1 No. | | |
| 7.3 | Wet Paint TW339 / TIN11-4. | 1 No. | | |
| 7.4 | Delineator TW401 (Right) | 1 No. | | |
| 7.5 | Delineator TW402 (Left) | 1 No. | | |
| 7.6 | Stop & Go R1.5 A/B | 1 No. | | |
| 7.7. | Deep Excavation M208 | 1 No. | | |
| 7.8 | Red Roadside Flag 750mm x 750mm | 1 No. | | |
| 7.9 | Yellow Road Barrier 1m x 2m – SXS100 Premium Plastic. | 1 No. | | |
| 7.10 | Stop TW343 / TIN11-3 | 1 No. | | |
| 7.11 | Traffic Cones | 1 No. | | |

NB.

- Rate for Bituminous materials will be fixed for the first 12 months (1 year), on the second year the rate will increase based on the CPI.
- Appointment of Service Providers will be per Item.
- The municipality reserves the right to appoint or not to appoint the lowest bidder in an event the bidder is below the market related rates.

3. EXPECTED OUTCOMES

3.1 The signing of service level agreement.

3.2 Supply and delivery within 14 days of receipt of order as and when required by Project Manager.

4. KEY COMPETENCIES

4.1 Proof of registration as a registered company

4.2 Technical Skills and knowledge to interpret the requirements of the terms of reference.

4.3 In-depth knowledge and experience in supply and delivery of tools and equipment

4.4 Sound financial capacity to be able to fulfil all contractual obligations.

4.5 Bidders must be registered/listed on the Central Supplier Database.

5. PROJECT MANAGEMENT

5.1 The successful service provider will work very closely with the Civil Engineering Maintenance unit of the Greater Kokstad Municipality.

6. PROJECT TIMEFRAME

The panel will be appointed for a period of 24 months, from the date of appointment.

7. EVALUATION CRITERIA

This bid will be evaluated in two stages:

Stage 1 – Functionality Assessment

Stage 2 – Price and Specific Goals Contribution

7.1 FUNCTIONALITY ASSESSMENT

| Functionality Criteria | Basis for points allocation | Score | Max. Points | Verification Method |
|--|--|-------|-------------|--|
| Proven track record with respect to the supply and delivery of road maintenance materials by means of signed appointment letters / orders and reference letters/completion certificate relating to the experience for points to be awarded. | 5 or more completed projects for the supply and delivery of road maintenance materials | 50 | 50 | Bidders are to provide appointment Letter/ Orders and Reference Letter/ completion certificate of the same project for points to be awarded. NB: POINTS WILL ONLY BE GIVEN FOR EACH PROJECT WERE THE TENDERER HAS SUBMITTED ALL THE REQUIRED DOCUMENTS |
| | 4 or more completed projects for the supply and delivery of road maintenance materials | 40 | | |
| | 3 or more completed projects for the supply and delivery of road maintenance materials | 30 | | |
| | 2 or more completed projects for the supply and delivery of road maintenance materials | 20 | | |
| | 1 or more completed projects for the supply and delivery of road maintenance materials | 10 | | |
| Financial Viability | Tenderer to demonstrate the financial viability to execute the project by submitting a bank rating | | 15 | Bank Rating letter with a minimum value of R 300 000.00 not older than 3 Months. FAILURE TO SUBMIT BANK RATING LETTER WILL RESULT IN NO POINTS BEING AWARDED |
| | • Code B | 15 | | |
| | • Code C | 10 | | |
| | • Code D | 5 | | |
| TOTAL POINTS | | | | |

The Bidder must score a minimum of 39 points/ 60% in order to advance to the next stage of evaluation. Any Bidder scoring below will not be considered for price.

7.2 POINTS AWARDED FOR PRICE AND SPECIFIC GOALS CONTRIBUTION

The following preference point systems are applicable to this bid:

The 80/20 system for requirements with a Rand value below R50 000 000.00

The value of this bid is estimated to be below R50 000 000.00 and therefore the 80/20 system shall be applicable.

Points for this bid shall be awarded for:

Price and Preferential Procurement Framework Act

The points allocated for price will be calculated as follows:

80/20 Preference point system [(for acquisition of services, works or goods with a Rand value below R1million) (all applicable taxes included)].

Where

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

P_s = Points scored for comparative price of bid or offer under consideration

P_t = Comparative price of bid or offer under consideration

P_{\min} = Comparative price of lowest acceptable bid or offer.

Points scored will be rounded off to the nearest 2 decimal places.

Step 2: Calculation of points for specific goals

Points will be awarded to a bidder for attaining the specific goals in accordance with the table below:

| The specific goals allocated points in terms of this tender | Number of points allocated (80/20 system) (To be completed by the organ of state) | Number of points claimed (80/20 system) (To be completed by the tenderer) |
|---|---|---|
| GOAL 1 – Ownership (10) | | |
| Business owned more than 50% by black person | 10 | |
| GOAL 2 – RDP (10) | | |
| Business falls under the SMME Category- QSE/EME | 5 | |
| Business falls under the Greater Kokstad Jurisdiction | 5 | |

The points scored for price will be added to the points scored for specific goals to obtain the bidder's total points scored out of 100

Total points for the price and specific goals must not exceed 100.

MBD1

PART A

INVITATION TO BID

| | | | | | |
|---|--|----------------------|---|---|-------|
| YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE GREATER KOKSTAD MUNICIPALITY | | | | | |
| BID NUMBER: | GKM 22-23/24 | CLOSING DATE: | 08 NOVEMBER 2023 | CLOSING TIME: | 12H00 |
| DESCRIPTION | APPOINTMENT OF SERVICE PROVIDER FOR SUPPLY AND DELIVERY OF ROAD MAINTENANCE MATERIALS AS AND WHEN REQUIRED FOR 24 MONTHS PERIOD | | | | |
| THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7). | | | | | |
| BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS | | | | | |
| 75 HOPE STREET KOKSTAD 4700 | | | | | |
| SUPPLIER INFORMATION | | | | | |
| 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 | | | | | |
| BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO: | | | TECHNICAL INFORMATION MAY BE DIRECTED TO: | | |
| DEPARTMENT | Budget and Treasury Office | | CONTACT PERSON | Asanda Mandlana | |
| CONTACT PERSON | Andiswa Mahlaka | | TELEPHONE NUMBER | 039 797 6600 | |
| TELEPHONE NUMBER | 039 797 6600 | | FACSIMILE NUMBER | 039 727 3676 | |
| FACSIMILE NUMBER | 039 727 3676 | | E-MAIL ADDRESS | Zamindlela.godlimpi@kokstad.gov.za | |
| E-MAIL ADDRESS | andiswa.mahlaka@kokstad.gov.za | | | | |

MBD1

PART B**TERMS AND CONDITIONS FOR BIDDING**

| | |
|--|--|
| 1. BID SUBMISSION: | |
| 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION. | |
| 1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT. | |
| 2. TAX COMPLIANCE REQUIREMENTS | |
| 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) | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? | <input type="checkbox"/> YES <input type="checkbox"/> 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 WILL 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:

.....

MBD 3.1**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**

MBD 3.1

| DESCRIPTION | QUANTITY | AMOUNT |
|---|------------------|--------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
|  | | |
| | SUB-TOTAL | |
| | VAT (15%) | |
| | TOTAL | |

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.

CONDITIONS OF TENDER

- Price(s) quoted must be valid for at least thirty (120) days from date of offer for evaluation purposes.
- Price(s) quoted must be firm and include VAT (**Non-compliance** with the Value Added Tax Act,1991; i.e. In terms of this Act **it is mandatory** for any business **to register for VAT** if the income earned in any consecutive twelve (12) month period exceeds or is likely to exceed R 1 million.
NB: Bidder/s failing to comply with this provision of the Value Added Tax Act,1991 **WILL NOT BE CONSIDERED**, therefore rejected)
- Tenderers SARS Tax PIN must be attached.
- Tender original or certified B-BBEE Certificate must be attached to the document
- Tender documents signed by a person who does not have authority to sign will be disqualified.
- Tenderers who did not complete the compulsory questionnaire, who abuse the employer’s supply chain management system will not be conceded
- Non-collusion affidavit to be executed by bidder and submitted with the bid.

MBD 4**DECLARATION OF INTEREST**

1. No bid will be accepted from persons in the service of the state¹.
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, hareholder²):.....

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.

.....

¹MSCM 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.

² Shareholder" means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 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 Number | Employee |
|-----------|-----------------|--------------|----------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

.....

Signature

.....

Date

.....

Position

.....

Name of TENDERER

MBD 6.1**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022 (MBD 6.1)**

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Specific Goals Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 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 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 The maximum points for this tender are allocated as follows:

| | POINTS |
|--|------------|
| PRICE | 80 |
| SPECIFIC GOALS | 20 |
| Total points for Price and SPECIFIC GOALS | 100 |

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:

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

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:

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

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

- 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.)

| The specific goals allocated points in terms of this tender | Number of points allocated (80/20 system) (To be completed by the organ of state) | Number of points claimed (80/20 system) (To be completed by the tenderer) |
|--|---|---|
| GOAL 1 – Ownership (10) | | |
| Business owned more than 50% by black person | 10 | |
| GOAL 2 – RDP (10) | | |
| Business falls under the SMME Category-QSE/EME | 5 | |
| Business falls under the Greater Kokstad Municipality Jurisdiction | 5 | |

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: | |
| | |
| | |
| | |
| | |

MBD 8

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

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

| 4.2 | Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page. | Yes <input type="checkbox"/> | No <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: | | |
| Item | Question | Yes | No |
| 4.4 | Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months? | Yes <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

.....
Position

.....
Name of Bidder

MBD 9**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Municipal Bidding Document (MBD) must form part of all bids¹ 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).² 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:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

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

MBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

**GKM 22-23/24: APPOINTMENT OF SERVICE PROVIDER FOR SUPPLY AND DELIVERY OF
ROADS MAINTENANCE MATERIALS AS AND WHEN REQUIRED FOR 24 MONTHS PERIOD.**

(Bid Number and Description)

in response to the invitation for the bid made by:

GREATER KOKSTAD MUNICIPALITY

(Name of Municipality / Municipal Entity)

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

I certify, on behalf of:

that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;

- (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

INSTRUCTIONS TO BIDDERS

PUBLICATION REFERENCE:

In submitting their bid, bidders must respect all instructions, forms, Terms of reference, contract provisions and specifications contained in this bid dossier. Failure to submit a bid containing all the required information and documentation within the deadline specified will lead to the rejection of the bid.

SUBMISSION REQUIREMENTS AND SELECTION CRITERIA

Bidders are required to submit the following documents:

- Price (s) quoted must be firm and must be inclusive of VAT
- All Municipal Bid Documents (MBD) must be completed and returned, where applicable. MBD4 is compulsory.
- Copy of CSD (Central Supplier Database).
- Copy of company registration documents.
- For Joint Venture Agreements, attach the CK's of each of the joint venture members (if applicable)
- ID(s) copies of company director(s).
- Copy of current municipal account for all Director/s and Company (not owing more than 90 days and not older than 90 days) or copy of lease agreement from the relevant leasing authority. If the business is operated from the residence of one of the Director/s, an original affidavit, certified, must be submitted stating the address of the premises from your local SAPS office. In a case where the directors are not liable for the payment of rates/taxes, an affidavit commissioned by SAPS stating that the director is not liable for the payment of rates must be submitted. In case the director does not own property/is a tenant, leasing agreement should be submitted to confirm the place of residence. Tenders who are not registered with any municipality for the payment of rates and services due to their location may submit proof of residence / business address certified by a Municipal Councillor, but only if the residence is the same address as the business address, accompanied by an affidavit commissioned by SAPS.
- Printed copy of SARS Tax pin for further verification.
- Completed and signed Municipal Bidding Document attached to the tender document.
- Tenders will be adjudicated in terms of the Council Supply Chain Management Policy on the 80/20 Preferential Point System. It is therefore compulsory that the municipal tender document be used. Greater Kokstad Municipality is not bound to accept the lowest or any quote.

1. Services to be provided

These services required by the Contracting Authority are described in these Terms of Reference/Specification.

2. Participating and sub-contracting

2.1 Participation in this bid is open to everyone.

2.2 Bids should be submitted by the same service provider or consortium, which has submitted the proposal based on the above. **No change whatsoever in the identity or composition of the bidder is permitted;**

2.3 **Short-listed service provider or consortia are allowed to form alliances with any other firms or to sub-contract to each other for the purpose of this contract;**

2.4 **Sub-contracting will be allowed, only in so far as it was stated in the initial bid.**

2.5 Duplication of bid document is prohibited.

3. Contents of Bids

Bid must comprise of a financial offer must be submitted with the bid.

4. Financial offer

The financial offer must state the bidder's price in South African Rand for providing the services according to its technical offer and the bidders offer must be inclusive of vat and any other relevant taxes.

The same person, who signed the corresponding must sign this document.

5. Submission of samples

Where necessary, Prospective service providers may be requested to supply samples to the Municipality to enable verification of SABS and SANS specifications on samples provided and compliance with Local Content Criteria. These are to be supplied at the request of the Municipality prior to the evaluation of compliant bids. **Samples supplied will serve as standard quality.**

6. Variant solutions

Any variant solutions will not be taken into consideration.

Period during which Bid are binding.

Bidders are bound by their bids for 120 days after the deadline for the submission of bids. In exceptional cases, before the period of validity expires, the Contracting Authority may ask bidders to extend the period for a specific number of days, which may not exceed 60.

The successful bidder must maintain its bid for a further 60 days from the date of notification that its bid has been selected for the contract.

7. Additional information before the deadline for submission of bidders

The bid dossier should be clear enough to avoid the Contracting Authority from having request additional information during the procedure. If the Contracting Authority, either on own initiative or in response to the request of a short-listed candidate, provides additional information on the bid dossier, such information will be sent in writing to all other bidders at the same time.

Bidders may submit questions in writing to the following address up to 10 days before the deadlines for submission of bids, specifying the **publication reference** and the **contract title**:

Attention: Ms. A. Mahlaka
Greater Kokstad Municipality
75 Hope Street
P.O. Box 8
KOKSTAD
4700
Email: andiswa.mahlaka@kokstad.gov.za

Any prospective bidders seeking to arrange individual meetings with either the Contracting Authority during the bid period may be excluded from the bid procedure.

Any clarification of the bid dossier will be communicated simultaneously in writing to all bidders at the latest 7 calendar days before the deadline for submission of bids. No further clarifications will be given after this date.

Visit by individual prospective bidder during the bid period are not permitted other than the site visit for good reasons.

8. Submission of Bids

Bids must be submitted in English such that they are received before the deadline specified by in the letter of invitation to bid.

Any infringement of these rules (e.g. unsealed envelopes) is to be considered a breach of the rules, and will lead to rejection of the bid.

The envelope should carry the following information:

- a) The address for submission of bid indicated above;);
- b) The words "Not to be opened before the bid opening sessions";
- c) The pages of the Technical and Financial offers must be numbered.

9. Alterations or Withdrawal of Bids

9.1 Bidders may alter or withdraw bids by written notification prior to the deadline for submission of bids. No bid may be altered after this deadline.

9.2 Any such notification of alteration or withdrawal shall be prepared and submitted in accordance with clause 8. The envelope must be marked "Alteration" or "Withdrawal" as appropriate.

10. Costs for preparing Bids

No costs incurred by the bidder in preparing and submitting the bid shall be reimbursable. All such costs shall be borne by the bidder. In particular, if proposed key members were interviewed, all costs shall be borne by the bidder.

11. Ownership of Bids

The Contracting Authority retains ownership in all bid received (this excludes intellectual property for all but the successful bidder) under this tendering procedure. Consequently, bidders have no right to have their bids returned to them.

12. Confidentiality

The entire evaluation procedure, from the drawing up of the shortlist to the signature of the contract, is confidential. The Evaluation / Adjudication Committee's decisions are collective and its deliberations are held in closed session. The members of the Evaluation / Adjudication Committee are bound to secrecy.

The evaluation reports and written records are for official use only and may be communicated to neither the bidders nor to any party other than the Contracting Authority.

13. Ethics clauses / Corruptive practices

- a) Any attempt by a bidder to obtain confidential information, enter into unlawful agreements with competitors or influence the Evaluation / Adjudication Committee or the Contracting Authority during the process of examining, clarifying, evaluating, comparing and adjudication bid will lead to the rejection of its bid and may result in administrative penalties.
- b) The bidder must not be affected by any potential conflict of interest.
- c) The Greater Kokstad Municipality reserves the right to suspend or cancel funding to this project if corrupt practices of any kind are discovered at any stage of the award process or during the implementation of a contract, if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this

provision, “corrupt practices” are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the Contracting Authority.

- d) Bids will be rejected, or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions paid to a payee who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

Failure to comply with one or more of the ethics clauses may result in the exclusion of the bidder or contractor from other Community contracts and in penalties.

14. Documentary evidence required from the successful Bidder

The successful bidder will be informed in writing that its bid has been accepted (notification of award). Before the Contracting Authority signs the contract with a Successful bidder, a successful bidder may be requested to provide additional information as deemed necessary by the Contracting Authority.

This evidence or these documents must carry a date, which cannot be more than 180 days in relation to the deadline for the submission of the bidder. In addition, a sworn statement shall be furnished stating that the situations described in these documents have not changed since then.

If the successful bidder fails to provide these documents or is found to have provided false information, the award will be considered null and void. In such a case, the Contracting Authority may award the bid to another bidder or cancel the bid procedure.

15. Signature of contract(s)

Within 7 days of receipt of the contract already signed by the Contracting Authority, the selected bidder shall sign and date the contract and return it to the Contracting Authority.

Failure of the selected bidder to comply with this requirement may constitute grounds for the annulment of the decision to award the contract. In such a case, the Contracting Authority may award the bid to another bidder or cancel the bid procedure.

The other candidates will be informed that their bids were not accepted, by means of a standard letter.

16. Cancellation of the Bids procedure

In the event of cancellation of the bid procedure, bidders will be notified of the cancellation by the Contracting Authority. If the bid procedure is cancelled before the envelopes of any bid has been opened, the unopened and sealed envelopes will be returned to the bidders.

Cancellation may occur when:

- The bid procedure has been unsuccessful, i.e., no qualitatively or financially worthwhile bid has been received or there is no response at all;
- The economic or technical data of the project have been fundamentally altered;
- Exceptional circumstances or *force majeure* render normal performance of the contract impossible;
- All technically compliant bids exceed the financial resources available;
- There have been irregularities in the procedure, in particular where these have prevented fair competition.

In no event shall the Contracting Authority be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a bid even if the Contracting Authority has been advised of the possibility of damages.

The publication of a procurement notice does not commit the Contracting Authority to implement the programme or project announced.

17. Intentions to award

Bidders will be informed of the Municipality's intention to award (notification of the intention to award). A notice will communicated in the manner in which the bid was advertised.

PRICING INSTRUCTIONS

1. The Conditions of Contract, the Contract Data, the Specifications (including the Project Specifications) and the Drawings shall be read in conjunction with the Bill of Quantities.
2. The Bill comprises items covering the Contractor's profit and costs of general liabilities and of the construction of Temporary and Permanent Works.

Although the Tenderer is at liberty to insert a rate of his own choosing for each item in the Bill, he should note the fact that the Contractor is entitled, under various circumstances, to payment for additional work carried out and that the Contracting Authority is obliged to base his assessment of the rates to be paid for such additional work on the rates the Contractor inserted in the Bill.

3. Descriptions in the Bill of Quantities are abbreviated and may differ from those in the Standardized and Project Specifications. No consideration will be given to any claim by the Contractor submitted on such a basis. The Bill has been drawn up generally in accordance with the latest issue of Civil Engineering Quantities. Should any requirement of the measurement and payment clause of the appropriate Standardized or Project Specification(s) be contrary to the terms of the Bill or, when relevant, to the Civil Engineering Quantities, the requirement of the appropriate Standardized, Project, or Particular Specification as the case may be, shall prevail
4. Unless stated to the contrary, items are measured net in accordance with the Drawings without any allowance having been made for waste.
5. The amounts and rates to be inserted in the Bill of Quantities shall be the full inclusive amounts to the Employer for the work described under the several items. Such amounts shall cover all the costs and expenses that may be required in and for the construction of the work described, and shall cover the costs of all general risks, profits, taxes (but excluding value-added tax), liabilities and obligations set forth or implied in the documents on which the Tender is based.
6. An amount or rate shall be entered against each item in the Bill of Quantities, whether or not quantities are stated. An item against which no amount or rate is entered will be considered to be covered by the other amounts or rates in the Bill.

The Tenderer shall also fill in a rate against the items where the words "rate only" appear in the amount column. Although no work is foreseen under these items and no quantities are consequently given in the quantity column, the tendered rates shall apply should work under these items actually be required.

Should the Tenderer group a number of items together and tender one sum for such group of items, the single tendered sum shall apply to that group of items and not to each individual item, or should he indicate against any item that full compensation for such item has been included in another item, the rate for the item included in another item shall be deemed to be nil.

The tendered rates, prices and sums shall, subject only to the provisions of the Conditions of Contract, remain valid irrespective of any change in the quantities during the execution of the Contract.

7. The quantities of work as measured and accepted and certified for payment in accordance with the Conditions of Contract, and not the quantities stated in the Bill of Quantities, will be used to determine payments to the Contractor. The validity of the Contract shall in no way be affected by differences between the quantities in the Bill of Quantities and the quantities certified for payment.

Ordering of materials is not to be based on the Bill of Quantities, but only on information issued for construction purposes.

8. For the purposes of this Bill of Quantities, the following words shall have the meanings hereby assigned to them:

| | | |
|----------|---|---|
| Unit | : | The unit of measurement for each item of work as defined in the Standardized, Project or Particular Specifications |
| Quantity | : | The number of units of work for each item |
| Rate | : | The payment per unit of work at which the Tenderer tenders to do the work |
| Amount | : | The quantity of an item multiplied by the tendered rate of the (same) item |
| Sum | : | An amount tendered for an item, the extent of which is described in the Bill of Quantities, the Specifications or elsewhere, but of which the quantity of work is not measured in units |

9. The units of measurement indicated in the Bill of Quantities are metric units. The following abbreviations may appear in the Bill of Quantities:

| | | |
|----------------------|---|-------------------|
| mm | = | millimetre |
| m | = | metre |
| km | = | kilometre |
| km-pass | = | kilometre-pass |
| m ² | = | square metre |
| m ² -pass | = | square metre-pass |
| ha | = | hectare |

| | | |
|--------------------|---|-----------------------|
| m ³ | = | cubic metre |
| m ³ -km | = | cubic metre-kilometre |
| kW | = | kilowatt |
| kN | = | kilonewton |
| kg | = | kilogram |
| t | = | ton (1 000 kg) |
| % | = | per cent |
| MN | = | meganewton |
| MN-m | = | meganewton-metre |
| PC Sum | = | Prime Cost Sum |
| Prov Sum | = | Provisional Sum |

THE NATIONAL TREASURY
Republic of South Africa



**GOVERNMENT PROCUREMENT:
GENERAL CONDITIONS OF CONTRACT**

July 2010

TABLE OF CLAUSES

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General Conditions of Contract

Definitions indicated:

1. The following terms shall be interpreted as
 - 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 any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 "Day" means calendar day.
 - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
 - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
 - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods are so delivered and a valid receipt is

- o market its goods on own initiative in the
b RSA at lower prices than that of the country
t of origin and which have the potential to
a harm the local industries in the RSA.
- 1.12 "Force majeure" means an event beyond the
i control of the supplier and not involving the
n supplier's fault or negligence and not
e foreseeable. Such events may include, but
d is not restricted to, acts of the purchaser in
its sovereign capacity, wars or revolutions,
1.11 "fires, floods, epidemics, quarantine
D restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a
u misrepresentation of facts in order to
m influence a procurement process or the
p execution of a contract to the detriment of
i any bidder, and includes collusive practice
n among bidders (prior to or after bid
g 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,
s machinery, and/or other materials that the
purchaser 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
h components, parts or materials which have
e been or are still to be imported (whether by
n the supplier or his subcontractors) and
a which costs are inclusive of the costs
abroad, plus freight and other direct
p importation costs such as landing costs,
r dock dues, import duty, sales duty or other
i similar tax or duty at the South African place
v of entry as well as transportation and
a handling charges to the factory in the
t Republic where the goods covered by the bid
e will be manufactured.
- 1.17 "Local content" means that portion of the
bidding price, which is not included in the
n imported content provided that local
t manufacture does take place.
- 1.18 "Manufacture" means the production of
e products in a factory using labour,
r materials, components and machinery and
p includes other related value-adding activities.
- 1.19 "Order" means an official written order
i issued for the supply of goods or works or
s the rendering of a service.
- 1.20 "Project site," where applicable, means
e the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization
a purchasing the goods.
- 1.22 "Republic" means the Republic of South

- vices” 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.
- 1.23 “Supplier” means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.
- 1.24 “Tort” means in breach of contract.
- 1.25 “Turnkey” means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.
- 1.26 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.
- 2. Application**
- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services (excluding professional services related to the building and construction industry), sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific goods, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.
- 3. General**
- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

- 5.1 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

Be extended only so far as may be necessary for the purpose of 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 the purposes of performing the contract.

- 5.3 Any documents 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 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.

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

- 6 Patent Rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 6.2 When a supplier developed documentation / projects for the municipality / municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the municipality / municipal entity.
- 7 Performance security**
- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque.
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

8 *Inspection, tests and analyses*

- 8.1. All pre-bidding testing will be for the account of the bidder.
- 8.2. If it is a bid condition that goods to be produced or services to be rendered should at any stage be subject to inspections, tests and analyses, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or organization acting on behalf of the purchaser.
- 8.3. If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4. If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5. Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6. Goods and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7. Any contract goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods, which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.
- 8.8. The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.

9 Packing

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

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

**10 Delivery
and
documents**

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

11 Insurance

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

12 Transportation

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

**13 Incident
al Services**

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

- 13.1.1. performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- 13.1.2. furnishing of tools required for assembly and/or maintenance of the supplied goods;
- 13.1.3. furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- 13.1.4. 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
- 13.1.5. training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2. Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be

agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

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

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and;
- (b) in the event of termination of production of the spare parts:
 - (i) advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15 Warranty 15.1 The supplier warrants that the goods supplied under the

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

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise.

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

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

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

16 Payment

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

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

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

16.4 Payment will be made in Rand unless otherwise stipulated.

17 **Prices**

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

18 ***Variation orders***

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

19 **Assignment**

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

20 ***Subcontracts***

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

21 *Delays in the supplier's performance*

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

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend

the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the

21.4 goods 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 22.2 without the application of penalties.

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

22 **Penalties**

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

23 ***Termination for default***

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

- (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 judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

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

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

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.

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

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

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

25 ***Force Majeure***

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

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

26 ***Termination for insolvency***

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

27 ***Settlement of Disputes***

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

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

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

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

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

28. Limitation of Liability

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

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

28 *Governing language*

28.1. 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.

29 *Applicable law*

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

30 *Notices*

30.1 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.

30.2 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.

**31 *Taxes and
duties***

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

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

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

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

32 ***Transfer
of
contracts***

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

33 ***Amendmen
t of contracts***

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

34 Prohibition of 35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of

restrictive practices 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding.

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

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