



## INVITATION TO BID

(In terms of the Supply Chain Management Regulations (Government Gazette 27636 of 30 May 2005))

**BID NO: MAM2026-003**

### **APPOINTMENT OF PANEL OF SERVICE PROVIDERS TO PROVIDE CAPITAL RAISING SERVICES FOR THE FINANCING OF INFRASTRUCTURE PROJECTS FOR A PERIOD OF 36 MONTHS AS AND WHEN REQUIRED**

**Closing Date and Time: Friday, 13 February 2026 at 12:00**

<b>NAME OF BIDDER:</b>		<b>Bidder VAT registered?</b>
<b>TOTAL BID PRICE (INCL VAT):</b> (Brought forward from <b>MBD 3.1</b> )		Yes: <input type="checkbox"/>
		No: <input type="checkbox"/>
<b>CSD REGISTRATION NO</b>		

Please note that it is compulsory for all service providers to complete the above required information



## INVITATION TO BID

Bid No.	Description of Bid	Requirements/ Evaluation Criteria	Specific Goal	Closing Date and Time
MAM2026 - 003	Appointment of panel of service providers to provide capital raising services for the financing of infrastructure projects for a period of 36 Months as and when required	Functionality	Locality - 10 BBB-EE -10	13 February 2026 at 12:00

Bidding documents containing the specifications and details of deliverables are obtainable from [www.etenders.gov.za](http://www.etenders.gov.za) from **Friday, 23 January 2026**. A **non-refundable deposit of R500.00** is payable through municipal bank account. Proof of Payment must be attached to the tender document on submission, Failure to do so will result in an automatic disqualification.

Account Name	Bank Name	Account number	Branch code	Account Type
Mamusa Local Municipality	FNB	5363 001 8381	240239	Public Sector – Cheque account

Completed Bids must be in a Sealed envelope clearly marked with the name and tender number must be placed in the tender box situated at the offices of the MAMUSA LOCAL MUNICIPALITY, 28 Schweizer Street, SCHWEIZER-RENEKE, 2780, on or before the closing date and time at which time the bids will be opened in public.

Technical enquiries may be directed to [kvvmasire@gmail.com](mailto:kvvmasire@gmail.com) and bidding enquiries to [samatsatsa@gmail.com](mailto:samatsatsa@gmail.com).

**No late and fax/ email bids will be accepted.**

Please note that it is a prerequisite of the Municipality that all service providers are to be registered on the National Treasury Central Supplier database. It must therefore be understood that only bids from suppliers registered on the National treasury central supplier database (CSD) will be considered.

Prospective service providers are required to ensure full completion and correctness of information when responding to MBD 4 and all other required declarations in the document. The municipality reserves the right to validate the correctness of the declarations through various databases inclusive of the Central Supplier Database (CSD). Failure to fully complete and/or provision of incorrect information in the declaration will be regarded by the employer as a non-responsive tender.

The MAMUSA LOCAL MUNICIPALITY does not bind itself to accept the lowest or any bid and the Municipality reserves the right to accept the whole or part of any bid and further reserves the right to re-advertise if it so wishes to. No reasons for the acceptance or rejection of any bid will be given.

**Bids will be adjudicated based on the preferential procurement regulations 2022 using compliance, functionality as set out in the bid document and 80/20 preference point system (80 for price and 20 for specific goals) and MAMUSA LOCAL MUNICIPALITY'S supply chain management policy.**

**R.R Gincane**  
**Municipal Manager**

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## 1. BID CHECKLIST

Suppliers are to use this checklist to ensure that the Bid documentation is complete for administrative compliance. The supplier is to indicate that the documentation is complete and included in the Quotation document by completing the table below.

Tick to indicate that the information is included

Item	Description	Yes	No	n/a
1.	Is your business registered as accredited prospective supplier with the Central Supplier Database (CSD)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	Is the Quotation document administration fee paid and a copy of the receipt attached to the Quotation document?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Did you read and understand all pages of the Quotation document?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	Did you complete the Quotation documents in black ink?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	Did you provide registration certificate pertaining to the relevant industry e.g. (Electrical Contractors Board), if applicable?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	Did you complete and sign the Quotation Declaration Form? (section 3)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.	Where applicable, is the resolution taken the Board of Directors/Members/Partners completed and signed? (section 4)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.	Where applicable, is the resolution taken the Board of Directors of a Consortium or Joint Venture completed and signed? (section 5)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.	Is invitation to Quotation completed and signed?( <b>MBD 1</b> )	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	Is the Declaration of Interest completed and signed? ( <b>MBD 4</b> )	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	Is the Declaration of Supplier's Past Supply Management Practices completed and signed? ( <b>MBD 8</b> )	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	Is the Certificate of Independent Quotation Determination completed and signed? ( <b>MBD 9</b> )	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	Did you complete and sign the Previous Work Experience of a Similar Nature section? (section 9)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	Is the Preference Points Claim Form in Terms of the Preferential Procurement Regulation 2017 completed and signed? ( <b>MBD 6.1</b> )	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15	Did you provide an original and valid B-BBEE status level verification certificate or a certified copy thereof or, if you qualify as an EME, did you provide a verification certificate? ( <b>MBD 6.1</b> )	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16	Does the product/service offered conform to the Quotation Specifications?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17	Is Pricing Schedule completed?( <b>MBD 3.1</b> )	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## **2. SPECIAL CONDITIONS OF BID**

1. The document must be completed in full as per the guide provided under administrative evaluation - document completion.
2. All mandatory documents must be attached as per the guide under administrative evaluation - attachment of mandatory documents.
3. The document must not be dismantled; page numbers must be sequential.
4. Bidders must be registered on CSD.
5. For all documents that will need certification (and affidavits where applicable) bidders must not submit copies/ copies of certified copies.
6. Only black ink must be used when completing the tender document.
7. Electronic signatures are not allowed.
8. Bidders are not allowed to use correction pens. In a case where a wrong answer is ticked, a straight line must be made across the wrong answer, then initial next to the mistake and a correct answer must be ticked or provided in writing.

**NB! FAILURE TO ADHERE TO THE ABOVE INSTRUCTIONS WILL RENDER THE TENDER INVALID AND RESULT IN DISQUALIFICATION**

### **ADMINISTRATIVE EVALUATION (ATTACHMENT OF MANDATORY DOCUMENTS)**

- Deposit slip with tender reference number as indicated on the advert
- Proof of CSD registration (CSD report)
- Required CIDB Grading Certificate (where applicable)
- Signatory resolution – Please attach a copy of Signatory resolution where instructed
- If the submission is from a Joint Venture, then a JV agreement must be attached
- A valid and certified (not older than (3) three months on the date of tender closure) BBBEE Certificate for the company (if it is a JV the BBBEE must be consolidated)
- Company registration documents
- Certified ID Copies of shareholders

**FOR ALL DOCUMENTS THAT WILL NEED CERTIFICATION (AND AFFIDAVITS WHERE APPLICABLE) BIDDERS MUST NOT SUBMIT COPIES/ COPIES OF CERTIFIED COPIES.**

### **MUNICIPAL RATES AND TAXES STATEMENTS OF THE DIRECTORS**

- Municipal rates and taxes statement of the last billable month on the date of tender closure for each directors' address must be attached; or
- Valid lease agreement of the director/s (showing lease period) or,
- An original letter (not a copy) from tribal authority not older than three (3) months if the director/s are residing in a tribal land, or
- If the rates and taxes account are not in the names of the director/s the attached municipal rates and taxes ,statement must be submitted together with an original affidavit from the property owner whose names are reflecting on the municipal rates and taxes statement to confirm that the director resides in their property.

#### **MUNICIPAL RATES AND TAXES STATEMENTS OF THE COMPANY**

- Municipal rates and taxes statement of the last billable month on the date of tender closure for the company's' address must be attached; or
- Valid lease agreement of the company (showing all critical contractual obligations, or
- An original letter (not a copy) from a tribal authority not older than three (3) months if the company is operating from a tribal, or
- If the rates and taxes account are not in the names of the company, the attached municipal rates taxes, statement must be submitted together with an original affidavit from the property owner whose names are reflecting on the municipal rates and taxes statement to confirm that the company operates from their property.

### 3. BID DECLARATION

1. I/we Mr/Mrs/Messrs \_\_\_\_\_ duly assigned to represent the supplier for the purpose of this Quotation, hereby Quotation to supply the goods and/or render services described in the attached documents to the MAMUSA LOCAL MUNICIPALITY on terms and conditions stipulated in this Quotation and in accordance with the specifications stipulated in the Quotation documents (which shall be taken as part of, and incorporated into this Quotation) at the prices reflected in the Pricing Schedule.
2. I/we agree that this offer shall remain valid for a period of **120** days commencing from the closing date and time of this bid.
3. I/We further agree that:
  - 3.1 This Quotation and its acceptance shall be subject to the terms and conditions contained in the in the MAMUSA LOCAL MUNICIPALITY's Supply Chain Management Policy;
  - 3.2 if I/we withdraw my/our Quotation within the period for which I/we have agreed that the Quotation shall remain open for acceptance, or fail to fulfil the contract when called upon to do so, the MAMUSA LOCAL MUNICIPALITY may, without prejudice to its other rights, agree to the withdrawal of my/our Quotation or cancel the contract that may have been entered into between me/us and the MAMUSA LOCAL MUNICIPALITY and I/we will then pay to the MAMUSA LOCAL MUNICIPALITY any additional expense incurred by the MAMUSA LOCAL MUNICIPALITY having either to accept any less favourable Quotation or, if fresh quotations have to be invited, the additional expenditure incurred by the invitation of fresh quotations and by the subsequent acceptance of any less favourable Quotation; the MAMUSA LOCAL MUNICIPALITY shall also have the right to recover such additional expenditure by set-off against moneys which may be due or become due to me/us under this or any other Quotation or contract or against any guarantee or deposit that may have been furnished by me/us or on my/our behalf for the due fulfilment of this or any other Quotation or contract and pending the ascertainment of the amount of such additional expenditure to retain such moneys, guarantee or deposit as security for any loss the MAMUSA LOCAL MUNICIPALITY may sustain by reason of my/our default;
  - 3.3 If my/our Quotation is accepted the acceptance may be communicated to me/us by letter or order by certified mail or registered mail. Such posting shall be deemed to be proper service of such notice with effect from the date of posting/dispatch of such notice;
  - 3.4 The law of the Republic of South Africa shall govern the contract created by the acceptance of my/our Quotation and that I/we choose *domicilium citandi et executandi* in the Republic of South Africa, where any and all legal notices may be served at (full street address of this place):
4. I/we furthermore confirm that I/we have satisfied myself/ourselves as to the correctness and validity of my/our Quotation; that the price(s) and rate(s) quoted cover all the work/item(s) specified in the Quotation documents and that the price(s) and rate(s) cover all my/our obligations under a resulting contract and that I/we accept that any mistakes regarding price(s) and calculations will be at my/our risk.
5. I/we hereby accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me/us under this agreement as the Principal(s) liable for the due fulfilment of this contract.

6. I/we agree that any action arising from this contract may in all respects be instituted against me/us and I/we hereby undertake to satisfy fully any sentence or judgment which may be pronounced against me/us as a result of such action.
7. I/we declare that I/we have participation/no participation\* in the submission of any other offer for the supplies/services described in the attached documents. \*If in the affirmative, state name(s) of Quotation(s) involved.

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Name of Supplier: \_\_\_\_\_ Signature \_\_\_\_\_



#### 4. RESOLUTION TAKEN BY THE BOARD OF DIRECTORS / MEMBERS / PARTNERS

**RESOLUTION** of a meeting of the Board of Directors / Members / Partners of

\_\_\_\_\_  
(Name of Supplier)

Held at \_\_\_\_\_ On \_\_\_\_\_  
(Place) (Date)

**RESOLVED THAT:**

1. The enterprise submits a Bid to the MAMUSA LOCAL MUNICIPALITY in respect of the following project:

**MAM2026-003: APPOINTMENT OF PANEL OF SERVICE PROVIDERS TO PROVIDE CAPITAL RAISING SERVICES FOR THE FINANCING OF INFRASTRUCTURE PROJECTS FOR A PERIOD OF 36 MONTHS AS AND WHEN REQUIRED**

2. Mr/Mrs/Ms \_\_\_\_\_

In his/her capacity as \_\_\_\_\_ and who will sign as follows:

\_\_\_\_\_  
(Specimen Signature)

be, and is hereby, authorised to sign the Bid and/or all other documents and/or correspondence in connection with and relating to the Quotation, as well as to sign any contract, and/or all documentation resulting from the award of the Quotation to the enterprise mentioned above.

Note: The resolution must be signed by all the directors or members/partners of the bidding enterprise. Should the space provided below not be sufficient for all directors to sign, please provide a separate sheet in the same format as below.

	Name	Capacity	Signature
1			
2			
3			
4			
5			

Enterprise Stamp

## 5. RESOLUTION TAKEN BY THE BOARD OF DIRECTORS OF A CONSORTIUM OR JOINT VENTURE

**RESOLUTION** of a meeting of the Board of Directors / Members / Partners of

\_\_\_\_\_  
(Name of Supplier)

Held at \_\_\_\_\_ On \_\_\_\_\_  
(Place) (Date)

### RESOLVED THAT:

1. The enterprise submits a Bid to the MAMUSA LOCAL MUNICIPALITY in respect of the following project:

**MAM2026-003: APPOINTMENT OF PANEL OF SERVICE PROVIDERS TO PROVIDE CAPITAL RAISING SERVICES FOR THE FINANCING OF INFRASTRUCTURE PROJECTS FOR A PERIOD OF 36 MONTHS AS AND WHEN REQUIRED**

**As a Consortium/Joint Venture comprising** *(list all the legally correct full names and registration numbers, if applicable, of the Enterprises forming the Consortium/Joint Venture)*

\_\_\_\_\_  
(Enterprise full Name and Registration Number)

\_\_\_\_\_  
(Enterprise full Name and Registration Number)

2. Mr/Mrs/Ms \_\_\_\_\_

In his/her capacity as \_\_\_\_\_ and who will sign as follows:

\_\_\_\_\_  
(Specimen Signature)

be, and is hereby, authorised to sign the Bid and/or all other documents and/or correspondence in connection with and relating to the Quotation, as well as to sign any contract, and/or all documentation resulting from the award of the Quotation to the **Consortium/Joint Venture** enterprise mentioned above.

3. The enterprise in the form of a consortium or joint venture accept jointly and several liability with parties under item 1 above for the fulfilment of the obligations of the joint venture deriving from, and in any way connected with the contract to be entered into with the MAMUSA LOCAL MUNICIPALITY in respect of the project described above under item 1.
4. The **Consortium/Joint venture** enterprise chooses as its *domicilium citandi et executandi* for all purposes arising from this joint venture agreement and contract with the MAMUSA LOCAL MUNICIPALITY in respect of the project under item 1:

\_\_\_\_\_  
(Physical Address)

Note: The resolution must be signed by all the directors or members / partners of the bidding enterprise. Should the space provided below not be sufficient for all directors to sign, please provide a separate sheet in the same format as below.

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			

Enterprise Stamp

**TERMS OF REFERENCE - APPOINTMENT OF PANEL OF SERVICE PROVIDERS TO PROVIDE CAPITAL RAISING SERVICES FOR THE FINANCING OF INFRASTRUCTURE PROJECTS FOR A PERIOD OF 36 MONTHS AS AND WHEN REQUIRED**

**1) SCOPE OF WORK**

The scope of work of the project will include but not limited to those indicated below:

**1.1 Develop and implement a funding/sponsor strategy for identified projects in the IDP**

Panel members will also be expected to undertake comprehensive secondary research by reviewing relevant research reports, legislation and regulation, academic papers, commentaries on the structure and capital requirements of infrastructure and property development sectors. The research will be used as a basis for a capital sourcing strategy for the funding of development projects.

**1.2 Facilitate the sourcing of capital funding in line with applicable legislative guidelines**

The envisaged capital sourcing strategy and implementation protocols need to be developed and implemented in compliance with the requirements of *inter alia* applicable National & Provincial Treasury Regulations, the Municipal Finance Management Act (MFMA) and other relevant legislation which will protect not only government interests, but also private sectors and other institutions participating in the development of the priority projects. Additionally, the implementation of the capital sourcing strategy must be governed by existing governance protocols within Mamusa Local Municipality and those of related and interested parties.

**1.3 Performance Monitoring, Evaluation and Reporting**

The implementation of the capital sourcing strategy will be monitored continuously and panel members will be expected to prepare and present regular reports on key performance parameters of each project.

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## **2) PROJECT DELIVERABLES**

Panel members are expected to deliver among other things the following:

- 2.1 A review of local and international infrastructure and property development funding mechanisms;
- 2.2 An analysis of the MFMA and other legal and financial regulatory instruments.
- 2.3 A capital sourcing strategy and implementation plan required to kick-start and sustain a capital raising programme for priority projects.
- 2.4 Monitoring, Evaluation and Reporting during the implementation of priority projects funded through the capital sourcing

## **3) FINANCIAL PROPOSAL**

The price proposal must contain an indicative fee structure and amount in R (including VAT) for the provision of Transaction Advisory and Capital Raising services under the following project values:

- Projects in excess of R 1.5 million but less than R 500 million
- Project in excess of R 500 million but less than R1 billion
- Project in excess of R 1 billion but less than R 2billion
- Project in excess of R 2 billion

The bidder to clearly indicate the assumptions made underpinning the proposed fee structure and fee.

## **4) EVALUATION CRITERIA**

### **4.1 Suitability Assessment**

This section contains information that will enable Mamusa Local Municipality to assess the suitability of the bidder to provide the required Capital Raising and related advisory services. It is advisable that the bidder provides the information as indicated in the following sub-section. The evaluation of the suitability of a bidder will be against the criteria set under “PROPOSAL EVALUATION” section of this document. It is therefore advisable that the bidders use the stated evaluation criteria as a guide to compile their submissions under this section.

## **4.2 Bidder Experience and Expertise**

The bidder is to submit its profile indicating all the relevant experience and expertise to provide the required services to Mamusa Local Municipality. The bidder is to make reference to previous or current transactions similar to the defined scope of work. For each relevant experience cited, outline the precise role the bidder played, contract duration, contract outcomes, and the contract value. In addition, the current contact details of the client representative(s) for the current/competed assignments must be provided to enable Mamusa Local Municipality verify (if necessary) any information provided by the bidder.

## **4.3 Methodology and Approach**

The bidder must submit a “Methodology and Approach” statement demonstrating:

- The bidder’s understanding and experience in providing transaction advisory and capital raising services;
- An organogram indicating the resources the bidder will utilize, and the curriculum vitae (CV’s) of key resources, and their availability (percentage of their time) during the execution of the assignment;

## **5) Proposal Evaluation**

The following evaluation criteria will be applied for the evaluation of the bidders for pre-qualification into the proposed panel. Bidders are therefore requested to submit information listed in the table below to enable Mamusa Local Municipality to evaluate the capability and capacity of the bidding entity. The bidders will be required to do a presentation to the Bid Committees for understanding.

## **6) Financial Implications**

The Mamusa Local Municipality intends to appoint a panel of service providers to source funds and implement municipal developmental projects. The appointment will be on a risk basis and no cash outflow from the municipality.

	EVALUATION CRITERIA	WEIGHT
1	Currentand/orprevious transaction advisory services provided to the private and/or public sector.	10
2	Methodology and Approach	20
3	Quality of the statement by the bidder demonstrating the understanding of the scope of work.	30
4.	The project structure (organogram) and the quality (experience and availability/involvement) of the key resources.	30
5.	Clarity and detail provided in the pricing of the service	10
	<b>TOTAL SCORE</b>	100

## MBD 1: INVITATION TO BID/TENDER

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE MAMUSA LOCAL MUNICIPALITY</b>					
BID NUMBER:	MAM2026-002	CLOSING DATE:	13 February 2026	CLOSING TIME:	12:00
DESCRIPTION	Appointment of panel of service providers to provide capital raising services for the financing of infrastructure projects for a period of 36 Months as and when required				
<b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).</b>					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
<b>MAMUSA LOCAL MUNICIPALITY</b>					
<b>28 Schweizer Street</b>					
<b>SCHWEIZER-RENEKE</b>					
<b>2780</b>					
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes  <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT  <input type="checkbox"/> Yes  <input type="checkbox"/> No		
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes  <input type="checkbox"/> No  [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?  <input type="checkbox"/> Yes  <input type="checkbox"/> No  [IF YES, ANSWER PART B:3 ]		
TOTAL NUMBER OF ITEMS OFFERED			TOTAL BID PRICE		R
SIGNATURE OF BIDDER	.....		DATE		
CAPACITY UNDER WHICH THIS BID IS SIGNED					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>			<b>TECHNICAL INFORMATION MAY BE DIRECTED TO:</b>		
DEPARTMENT	SCM		CONTACT PERSON	Mr.Van Vuur Masire	
CONTACT PERSON	Ms S. Sirwe		TELEPHONE NUMBER	053 963 1331	
TELEPHONE NUMBER	053 963 1331		CELLPHONE NUMBER	0828587238	
FACSIMILE NUMBER	N/A		E-MAIL ADDRESS	kvvmasire@gmail.com	
E-MAIL ADDRESS	samatsatsa@gmail.com				



**PART B  
TERMS AND CONDITIONS FOR BIDDING**

<b>1. BID SUBMISSION:</b>
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED--(NOT TO BE RE-TYPED) OR ONLINE</b></p> <p>1.3. 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.</p>
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>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.</p> <p>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.</p> <p>2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.</p> <p>2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p>
<b>3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>
<p>3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span></p> <p>3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span></p> <p>3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span></p> <p>3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span></p> <p>3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span></p> <p><b>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.</b></p>

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

SIGNATURE OF BIDDER: .....

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

DATE: .....

## DECLARATION OF INTEREST

1. **No bid will be accepted from persons in the service of the state\*.**
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 and/or take an oath declaring his/her interest.
3. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid:
  - 3.1 Full Name:  
.....
  - 3.2 Identity Number:  
.....
  - 3.3 Company Registration Number:  
.....
  - 3.4 Tax Reference Number:  
.....
  - 3.5 VAT Registration Number:  
.....
  - 3.6 Are you presently in the service of the state **\*YES / NO**

---

\* MSCM Regulations: "in the service of the state" means to be –

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

3.6.1 If so, furnish particulars.

.....

.....

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

3.7.1 If so, furnish particulars.

.....

.....

3.8 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**

3.8.1 If so, furnish particulars.

.....

.....

3.9 Are you aware of any relationship (family, friend, other) between a 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**

3.9.1 If so, furnish particulars

.....

.....

3.10 Are any of the company's directors, managers, principal shareholders or stakeholders in service of the state? **\*YES / NO**

3.10.1 If so, furnish particulars.

.....

.....

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

3.11.1 If so, furnish particulars.

.....

.....

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

3.14.1 If yes, furnish particulars:

.....  
 .....

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

Full Name	Identity Number	State Employee Number

#### CERTIFICATION

I, THE UNDERSIGNED (NAME)

.....

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

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

..... Signature	..... Date
..... Position	..... Name of Bidder

## MAMUSA LOCAL MUNICIPALITY

### CONFIRMATION OF OUTSTANDING MUNICIPAL RATES AND TAXES FOR THE BUSINESS ENTITY AND DIRECTORS/OWNERS/MEMBERS/PARTNERS

Section 38 (1) (d) (i) of the supply chain management of the Mamusa Local Municipality stipulates that the bidder or any of the directors does not owe rates or municipal services for more than (3) three months.

According to the supply chain management policy of the Mamusa Local Municipality a bid will be rejected if the municipal rates and taxes are in arrears for more than 3 months based on outcome of the verification carried out before the evaluation and adjudication of tender.

In order for Mamusa Local Municipality to abide by the above stated section, you are hereby requested to confirm that the following business entity and its directors/owners/members/partners do not owe rates and taxes to your municipality.

#### PLEASE COMPLETE THE FOLLOWING INFORMATION REQUIRED.

Business entity name : \_\_\_\_\_

Municipality where business is situated : \_\_\_\_\_

Municipal Account No. (Business entity) : \_\_\_\_\_

Name of Directors/Members/Partners/ Owners	Municipality where the Directors/Members/Partners/Owners reside	Municipal Account Number

## Mamusa Local Municipality

### CONFIRMATION OF RATES AND TAXES BY MUNICIPALITY

I, ----- in my capacity as-----  
(Full names) (Designation)

Of the municipality-----hereby certifies that  
(Name of Municipality)

- I have examined the municipal accounts of the above named person / business entity and i am satisfied that all his/her municipal accounts are up to date.
- I have examined the above named municipal accounts and have found that the said accounts to be in arrears.

Comments (if any)

.....

.....

.....

.....

**MUNICIPAL STAMP**

Signature of official.....

**NB: 1. PLEASE ATTACH THE LATEST MUNICIPAL SERVICE CHARGES STATEMENT OF THE COMPANY AND ITS DIRECTORS / OWNERS / MEMBERS / PARTNERS.**

**2. FAILING TO COMPLETE THE REQUIRED INFORMATION SHALL INVALIDATE THE BID.**

**MBD 5**

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

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

- 1 Are you by law required to prepare annual financial statements for auditing?
- 1.1 If yes, submit audited annual financial statements for the past three years or since the date of establishment if established during the past three years.

.....  
.....

- 2 Do you have any outstanding undisputed commitments for municipal services towards any municipality for more than three months or any other service provider in respect of which payment is overdue for more than 30 days?
- 2.1 If no, this serves to certify that the bidder has no undisputed commitments for municipal services towards any municipality for more than three months or other service provider in respect of which payment is overdue for more than 30 days.
- 2.2 If yes, provide particulars.

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

\* Delete if not applicable

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

**YES / NO**

- 3.1 If yes, furnish particulars

.....  
.....

Will any portion of goods or services be sourced from outside South Africa?

YES/NO

If yes, what portion of payment from the municipality / municipal entity is expected to be transferred out of the South Africa?

- 1.1 If yes, furnish particulars

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

4.1 If yes, furnish particulars

.....  
.....

**CERTIFICATION**

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

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

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

**FALSE.**

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder



## MBD 6.1

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

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

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

#### 1. GENERAL CONDITIONS

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

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included)

1.2 a. The applicable preference point system for this tender is the 80/20 preference point system.

- b. 80/20 preference point system will be applicable in this tender. The lowest acceptable tender will be used to determine the accurate system once tenders are received.

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

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

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

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS	20
Locality = 10	
BBBEE = 10	
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 PREFERENCE POINT SYSTEMS

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

**80/20**

$$Ps = 80 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right) \text{ Where}$$

Ps = Points scored for price of tender under consideration Pt =

Price of tender under consideration

Pmin = Price of lowest 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 the 80/20 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 the 80/20 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 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.)**

(a) 50% of the 20/10 points will be allocated to promote this goal and points will be allocated in terms of the B-BBEE scorecard as follows:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of Points for Preference (80/20)</b>	<b>Number of Points for Preference (90/10)</b>
1	10	5
2	9	4.5
3	7	3
4	6	2.5
5	4	2
6	3	1.5
7	2	1
8	1	0.5
Non-compliant contributor	0	0

b) 50% of the 20/10 points will be allocated to promote this goal. Points will be allocated as follows:

<b>Locality of supplier (Branch network within Mamusa Local Municipality Region)</b>	<b>Number of Points for Preference (80/20)</b>	<b>Number of Points for Preference (90/10)</b>
Within the boundaries of Mamusa Local Municipality	10	5
Within the boundaries of the Dr RSM District	5	2.5
Within the boundaries of the North West Province	2	1
Outside the boundaries of the North West province or failure to provide proof	0	0

<b>The specific goals allocated points in terms of this tender</b>	<b>Number of points allocated (80/20 system) (To be completed by the organ of state)</b>	<b>Means of Verification</b>	<b>Number of points claimed (80/20 system) (To be completed by the tenderer)</b>
BBB-EE Status	10		
Local Enterprises	10		

## DECLARATION WITH REGARD TO COMPANY/FIRM

3.1. Name of company/firm.....

3.2. Company registration number: .....

3.3. 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]

3.4. 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

forward the matter for criminal prosecution, if deemed necessary.

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

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

**DATE**.....

**ADDRESS**.....

## CONTRACT FORM - RENDERING OF GOODS/WORKS

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

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

1. I hereby undertake to supply all or any of the goods and/or works described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
  
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, viz
    - Invitation to bid;
    - Tax clearance certificate;
    - Pricing schedule(s);
    - Filled in task directive/proposal;
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
    - Declaration of interest;
    - Declaration of Bidder's past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract; and
  - (iii) Other (specify)
  
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
  
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
  
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
  
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

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

## MAMUSA LOCAL MUNICIPALITY

## DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES ()

1. This Standard Bidding Document must form part of all bids invited.
2. This serves as a declaration 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 supply chain management system or committed any improper conduct in relation to such system;
  - b. been convicted for fraud or corruption during the past five years;
  - c. wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
1. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

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



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

## CERTIFICATION

**I, THE UNDERSIGNED (FULL NAME).....  
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM TO BE  
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.**

..... Name of Bidder	..... Signature
..... Position in the firm/Company	..... Date

## CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

# **CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

---

(Bid Number and Description)

in response to the invitation for the bid made by:

---

(Name of Municipality / Municipal Entity)

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

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

(Name of Bidder)

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

7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
- (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

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

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

**THE NATIONAL TREASURY**  
**Republic of South Africa**

---

**GOVERNMENT PROCUREMENT:**  
**GENERAL CONDITIONS OF CONTRACT**  
**July 2010**

**TABLE OF CLAUSES**

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information inspection
6. Patent Rights
7. Performance security
8. Inspections, tests and analyses
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental Services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Variation orders
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Anti-dumping and countervailing duties and rights
25. Force Majeure
26. Termination for insolvency
27. Settlement of Disputes
28. Limitation of Liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. Transfer of contracts
34. Amendments of contracts
35. Prohibition of restrictive practices

## **General Conditions of Contract**

### **1. Definitions**

1. The following terms shall be interpreted as indicated:

1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.

1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.

1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

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

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

1.7 "Day" means calendar day.

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

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

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

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

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

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

1.14 "GCC" means the General Conditions of Contract.

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

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

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

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

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

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

1.21 "Purchaser" means the organization purchasing the goods.

1.22 "Republic" means the Republic of South Africa.

1.23 "SCC" means the Special Conditions of Contract.

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

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

1.26 "Tort" means in breach of contract.

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

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

## **2. Application**

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

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

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

## **3. General**

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



fee for documents may be charged.

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

#### **4. Standards**

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
- (b) a cashier's or certified cheque.

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

## **8. Inspections, tests and analyses**

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

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

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

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

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

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

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

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

## **9. Packing**

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

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

## **10. Delivery and documents**

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

## **11. Insurance**

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

## **12. Transportation**

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

## **13. Incidental Services**

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

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

## **14. Spare parts**

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

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

## **15. Warranty**

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and 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 fulfilment 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 goods are required, or the supplier's services are not readily available.

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

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

## **22. Penalties**

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

## **23. Termination for default**

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

- (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. Antidumping and countervailing duties and rights**

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

## **25. Force Majeure**

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

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

## **26. Termination for insolvency**

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

## **27. Settlement of Disputes**

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

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

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

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

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

## **28. Limitation of Liability**

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

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

## **29. Governing language**

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

## **30. Applicable law**

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

## **31. Notices**

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

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

### **32. Taxes and duties**

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

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

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

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

### **33. Transfer of contracts**

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

### **34. Amendment of contracts**

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

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

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

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

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