

**ABAQULUSI MUNICIPALITY**



**PANEL OF LEGAL ATTORNEYS FOR A PERIOD OF 36 MONTHS**

**TENDER NO: 8/2/1/459**

<b>NAME OF THE COMPANY</b>	
<b>BID AMOUNT INCLUDING VAT</b>	
<b>PHYSICAL ADDRESS</b>	
<b>POSTAL ADDRESS:</b>	
<b>CONTACT NUMBER</b>	
<b>FAX NUMBER:</b>	
<b>CLOSING DATE:</b>	

**NO BID WILL BE ACCEPTED FROM THE PERSON IN THE SERVICE OF THE STATE AND NON COMPLIANT ON TAX MATTERS.**



**EXPANDED PUBLIC WORKS PROGRAMME  
CONTRIBUTING TO A NATION AT WORK**

INVITATION TO BID

YOU ARE HEREBY INVITED TO SUBMIT YOUR TENDER FOR **THE PANEL OF LEGAL ATTORNEYS FOR A PERIOD OF 36 MONTHS.**

BID NUMBER: **8/2/1/459**      CLOSING DATE: **13 JANUARY 2022**      CLOSING TIME: **12H00**

**DESCRIPTION: PANEL OF LEGAL ATTORNEYS FOR A PERIOD OF 36 MONTHS**

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

BID DOCUMENTS MAY BE POSTED TO:

**Abaqulusi Municipality  
Corner of high and Mark street  
Vryheid 3100**

OR

DEPOSITED IN THE BID BOX SITUATED AT **CORNER OF HIGH STREET AND MARK STREET**

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

The bid box is generally open 24 hours a day, 7 days a week.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

**NB: NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE (as defined in Regulation 1 of the Local Government: Municipal Supply Chain Management Regulations)**

**THE FOLLOWING PARTICULARS MUST BE FURNISHED  
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)**

NAME OF BIDDER: .....

POSTAL ADDRESS: .....

STREET ADDRESS: .....

TELEPHONE NUMBER: -----

CODE.....NUMBER.....

CELLPHONE NUMBER: .....

FACSIMILE NUMBER:..... CODE ..... NUMBER.....

E-MAIL ADDRESS:.....

VAT REGISTRATION NUMBER:.....

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN ATTACHED? (MBD 2)  
YES/NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (MBD 6.1)  
YES/NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

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

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

A REGISTERED AUDITOR

(Tick applicable box)

**(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE)**

ARE YOU THE ACCREDITED REPRESENTATIVE  
IN SOUTH AFRICA FOR THE GOODS/SERVICES/WORKS OFFERED? YES/NO (IF YES ENCLOSE  
PROOF)

SIGNATURE OF BIDDER:.....

DATE:.....

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

TOTAL BID: .....  
TOTAL NUMBER OF ITEMS OFFERED:.....

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**ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:**

**Municipality:** Abaqulusi

**Department:** Supply Chain Management

**Contact Person:** PH Nxumalo

**ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:**

**Contact Person:** N MASANGO

**Tel:** 034 9822 133 Ext.

**Fax:** 034 9821939

## INVITATION TO TENDER

**TENDER NUMBER: 8/2/1/459**  
**PUBLISHED DATE: 15/12/2021**  
**DEPARTMENT: LEGAL SERVICES**

### **PANEL OF LEGAL ATTORNEYS FOR A PERIOD OF 36 MONTHS**

The Abaqulusi Municipality is hereby inviting legal firms to submit bids for the panel of legal attorneys for the period of 36 months as per specification attached in the quotation document.

Due to current COVID – 19 challenges we encourage suppliers to get Bids documents on E-tenders ([www.e-tenders.gov.za](http://www.e-tenders.gov.za)) as from the 15 DECEMBER 2021.

Acceptable bids will be initially evaluated base on price on the basis of 80 points financial offer and 20 points for meeting B-BBEE contributor status. After the closing date the tender will be valid for 90 days.

Bids are to be completed in accordance with the conditions and bid rules contain in the tender document and supporting documents must be placed in a sealed envelope and clearly marked “**Panel of legal attorneys over 36 months**”, must be deposited in the tender box at ground floor, Abaqulusi Local Municipality, corner of high and Mark street Vryheid 3100 by not later than **13 JANUARY 2022, at 12h00**.

The municipality does not bind itself to accept the lowest or any bid, and reserves the right to accept any bid or part thereof.

### **CONDITIONS:**

No awards will be made to a person:

- ❖ Who is not registered on the Central Supplier Data base
- ❖ Who is in the service of the state
- ❖ If that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state , and / or
- ❖ Who is an advisor or consultant contracted with the Municipality or municipal entity
- ❖ Service Providers should be on Municipal Data Base if not please collect data base forms at SCM Office or down load them from Municipal website ([www.abaqulusi.gov.za](http://www.abaqulusi.gov.za)) and submit them with your proposal document.

The Municipality reserves the right to withdraw any invitation to quote and / or to re-advertise or to reject any quote or to accept a part of it. The municipality does not bind itself to accept the lowest quotation or ward a contract to the bidder scoring the highest number of points.

### **MINIMUM REQUIREMENTS**

The following documents have to be attached:

- ❖ Central Supplier Data base registration report ( Detailed / Summary)
- ❖ Valid copy of company registration document

- ❖ Certified B- BBEE Certificate from registered accountant is required or original Sworn Affidavit from Commissioner of Oath.
- ❖ Bidders must be registered with the Law Society
- ❖ Bids above R10m, Annual Financial Statements (AFS) are required,
- ❖ Fully Completed all the MBD'S on the tender document
- ❖ Fully completed tender document ( bidder will be disqualified for incomplete document)
- ❖ Original certified copy of Registration certificate with the authority ( Relevant boards)
- ❖ Late bid will not be accepted,
- ❖ This bid will be valid for a period of 90 days after the closing date
- ❖ This bid must only submitted on the documentation provided by Abaqulusi Municipality ( Original document)
- ❖ An original latest account in terms of water and electricity / rates and taxes obtainable from your local municipality must be submitted or lease agreement
- ❖ Certified copies of identity documents of directors and owners of the company must be submitted
- ❖ Failure to comply with these minimum requirements will result in immediate disqualification of the bid.
- ❖ Service Providers should be on Municipal Data Base if not please collect data base forms at SCM Office or down load them from Municipal website ([www.abaqulusi.gov.za](http://www.abaqulusi.gov.za)) and submit them with your bid document.

For more information please contact Supply Chain Management office on 034 9822133.

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**MR MPE MTHEMBU –  
ACTING MUNICIPAL MANAGER**

**Notice No: 50/2021**

To be advertised at Isolezwe, e-tenders portal and Municipal Website

## SPECIFICATION

### SCOPE OF WORK

#### 1. INTRODUCTION

The Municipality invites written proposals from suitably qualified attorneys to be placed on the Panel of Legal Experts to assist the Legal Services Section of the Municipality. The Legal Services Section is responsible for the Municipality's legal work which, inter alia, includes the following:

- (a) Litigations & Claims;
- (b) Compliance;
- (c) Debt Collection;
- (d) Labour law;
- (e) Public law
- (f) Conveyancing and any other legal matters

Due to the high volume of the work undertaken, it has become necessary to appoint a Panel of Attorneys to assist the Municipality's Legal Services Section in the execution of its work, statutory functions and powers. The Municipality hereby invites interested firms of Attorneys to submit their proposals to be included on the Municipality's Panel of Attorneys for a period of 3 (three) years.

#### 1. REQUIRED SERVICES

Firms of attorneys will be required to render services to the Municipality on a wide range of legal matters relating to, amongst others, the following fields of law:

- (a) Commercial and Contract Law;
- (b) Commercial and Civil Litigation;
- (c) Labour and Employment Law;
- (d) Constitutional Law;

- (e) Administrative Law;
- (f) Insurance Law;
- (g) Corporate Governance;
- (h) Environmental Law; and
- (i) Other specialised fields of law relevant to the working environment of the Municipality.

## **2. CONDITIONS OF TENDER**

### **2.2 Appointment of Panel**

Only firms of attorneys recognized in terms of the provisions of the Legal Practice Act 28 of 2014 and duly registered to practice with the Law Society of KwaZulu-Natal will be considered for this tender.

The invitation applies to qualified and suitable firm of attorneys situated within the KwaZulu-Natal Province.

A service level agreement will be entered into with each firm of attorneys appointed to render services to the Municipality.

The cost of each assignment will be agreed upon upfront and/or the Municipality together with the relevant firm of attorney will negotiate and agree on the applicable rates.

The Municipality does not guarantee that any work or assignment will be given to any firm of attorneys on the panel.

The Municipality may in its sole discretion award any assignment or part thereof to more than one firm of attorneys. The services of appointed firm of attorneys will be utilised by the Municipality as and when the need arises. The Municipality reserves the right to categorize the tenderers' expertise according to different fields of law.

A firm of attorneys assigned any work may not cede or subcontract any part thereof to any person except with the written consent of the Municipality or as may be required by the applicable laws, e.g. in instances where correspondent attorneys may be necessary.

The term of the appointed panel shall be 3 (three) years. The Municipality, however, reserves the right to continue with any firm of attorneys to complete any assignment awarded by the Municipality prior to the expiry of the 3 (three year term and/or may appoint any firm of attorneys to complete any task not completed.

The Municipality reserves the right to cancel the appointment of firms of attorneys and remove such firms from its panel if such firms do not meet the standards agreed upon and/or expected from such firms. The appointment of a panel of attorneys for the Municipality will not preclude it from utilising the services of any other firm of attorneys that is not appointed on the panel.

Each firm undertakes not to become involved in any matter against the Municipality or its Municipal entities or in any way prejudice its rights and interests. Firms that have matters pending against the Municipality or its entities at the time of the evaluation and adjudication of the tender will not be appointed to the panel.

### **2.3 Required attributes**

The following attributes, among others, will be considered by the Municipality:

- (a) knowledge and application of the Municipal regulatory framework;
- (b) conformance to exceptional quality and standard of work, and meticulous attention to detail; and
- (c) a fast turnaround time and ability to adapt quickly.

### **3. SUBMISSION INSTRUCTIONS**

The following must also be included in the proposal:

- (a) a proven track record in the provision of required services (three reference letters to be submitted);
- (b) relevant experience;
- (c) necessary acumen and logistics to provide services;
- (d) Black economic empowerment initiatives;

(e) Names, ranks and experience of personnel – detailed CV's to be provided;

(f) Hourly fees in providing the services and administration charges (if applicable) (All fees subject to tariffs such as the Magistrates Court and High Court tariffs shall be billed in accordance with those tariffs);

(g) Company profile.

#### **4. COMPANY PROFILE**

Your company profile must address the following areas / headings in the following order:

##### **5.1 History**

Provide a brief history of the firm and an outline of the firm's geographic structure (excluding alliances or affiliation you may have with other law firms)

##### **5.2 Client Base**

Provide a list of local government clients for whom legal services were rendered on a regular basis in the past 3 years and specify the nature of all work done.

##### **3 Field of Expertise**

Each proposal must include the specialist fields of law of the firm, with specific reference to the fields as set out in paragraph 2 above.

If a firm of attorneys has expertise in more than one field of law, all relevant fields must be indicated in the proposal together with demonstrated experience in the specified areas of law. Clearly indicate for which of the specialist fields (as set out in paragraph 2) your firm tenders to provide legal services to the Municipality.

##### **5.4 Your Team**

CV's of your core service team that will be attending to the Municipality's work with specific reference to their educational/ professional background and their relevant experience.

Certified copies of qualifications are to be submitted.

### 5.5 Fees

Set tariffs such as the Magistrates Court and High Court tariff shall apply whenever applicable. **The proposal must expressly confirm acceptance of this condition.** It must further provide details of hourly rates for all levels of staff and stating fees for disbursements (e.g. photocopies and travelling per kilometre).

## 5. QUERIES

Any service provider requiring clarification on any matter whatsoever, including questions relating to the specifications required of the service provider to perform this project or the tender and evaluation process must do so via the telephone number provided.

## PRICE SCHEDULE

Legal Advisor/Attorney levels	Rate/hr in rands	Level1 >15yrs article experience	Level2 >7 to 15 yrs post article experience	Level3 >3 to 7 yrs post article experience	Level4 <3 yrs post article experience	Level5 Candidate Attorney
Taking Instructions						
Legal Opinions						
Notices and correspondence						
Telephone Calls						
Photocopying						
Travelling km/hr						
Other(specify)						
Other(specify)						

Other(specify)						
Other(specify)						
Other(specify)						
Other(specify)						
Other(specify)						
Other(specify)						
Other(specify)						
Other(specify)						
Other(specify)						
Other(specify)						
Total per Item						
Total Cost						

Escalation to the rate of CPIX for that year will be permitted. It is the responsibility of the service provider to inform the municipality about changes to stated rates.

**Please Note:** No other fees will be entertained other than those that are declared above.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

**THE ESTABLISHMENT OF THE PANEL OF ATTORNEYS FOR THE PROVISION OF LEGAL SERVICES TO ABAQULUSI MUNICIPALITY FOR THE PERIOD OF 36 MONTHS**

The AbaQulusi Municipality seeks legal professional service providers with offices based in KwaZulu-Natal to be placed on the Panel of Attorneys to assist with Legal Services.

The Legal Services responsibilities includes the following: Contract Management; Litigations & Claims; Compliance & policy development; By-laws formulation & Gazetting; Debt Collection; Labour Law; Public Law, conveyancing and any other legal related matters.

The contract will be for a period of three years.

## 1. Field Of Expertise Table

No	Specialized service	Yes	No
1.1	Local Government Law		
1.2	Commercial Law		
1.3	Planning and Development Law		
1.4	Environmental Law		
1.5	Litigation (Magistrate Court, High Court, Supreme Court of Appeal and Constitutional Court)		
1.6	Conveyancing		
1.7	Constitutional Law		
1.8	Administrative Law		
1.9	Labour law		
1.10	Collections		

Interested service providers must have extensive knowledge and expertise in the selected fields of specialization offered.

## 2. Special conditions:

The following specific requirements must be met by the service providers and it will be expected of them to supply proof or confirm their commitment where applicable.

- 2.1 The service provider must attach a certified copy of a valid certificate of good standing from the Law Society
- 2.2 The service provider must provide proof of a valid fidelity fund certificate
- 2.3 Whilst being a Member of the Panel and for the duration of 36 months the service provider undertakes not to act or represent any person in any matter against AbaQulusi Municipality or in any way prejudice the rights and interests of Council.
- 2.4 The appointment of any advocate may only take place after consultation with the Municipal Manager.
- 2.5 Constant written feedback must be given to the Municipality on all matters at no cost to AbaQulusi Municipality.
- 2.6 The Municipality must be kept informed about the course of a matter to the extent that it may be expected to attend certain appearances.
- 2.7 The first consultation in a matter must take place within a week's time after the instruction was given; and on urgent court applications within 12 (twelve) hours or earliest after the instruction is given.
- 2.8 When cases have been postponed at the request of the attorney acting on behalf of AbaQulusi Municipality owing to non-compliance with any procedural requirements, the attorneys who were negligent in this regard will bear the costs of postponement, and this amount will not be claimed from AbaQulusi Municipality.
- 2.9 The appointed service provider will be required to negotiate fees with advocates before a brief is finalized.
- 2.10 Payment of legal fees by AbaQulusi Municipality will be effected within thirty (30) days from date of receipt of acceptable invoice.

- 2.11 AbaQulusi Municipality reserves the right to appoint a firm for matters according to their area of expertise.
- 2.12 The service provider must indicate area(s) of law in respect of which its bid is submitted on the table provided.
- 2.13 The service provider is responsible for any costs associated with the submission of their tender;
- 2.14 Payment of fees will be linked to specific deliverables;
- 2.15 Disbursements will only be paid once these are matched against vouchers, which the tenderer shall be required to submit. AbaQulusi Municipality shall have the right to decline payment of any unreasonable disbursement claims;
- 2.16 The prescribed fees as set out, inter alia, in the Schedule of the Magistrates Court Act, Act No. 32 of 1944 and the Rules of the Supreme Court or the fee structure as approved from time to time by Council, are the maximum fees that AbaQulusi Municipality will pay an attorney for his/her services as agreed between the attorney and own client. It is specifically agreed upon that attorneys will not demand rates exceeding the prescribed fees.

### **3. COMPLIANCE & FUNCTIONALITY**

- 3.1 Tenders will be evaluated in respect of administrative compliance and failure to submit information as required in section “E” will/may lead to your tender being disqualified.

### **4. Evaluation**

- 4.1 Functionality evaluation will be as per the following criteria explained below. A successful tenderer who scores less than **70** percent, in respect of “functionality” will be regarded as submitting a non-responsive tender and will be disqualified.
- 4.2 The following criteria will be applicable and the maximum weight of each criterion is indicated in brackets:

AbaQulusi Municipality will evaluate all bids in order to award the contract. The evaluation of tenderers will be done in terms of AbaQulusi Municipality’s Supply Chain Management Policy.

Tenderers must submit a comprehensive written (typed) profile, for example the founding company statements, as well as a detailed exposition of previous work done.

In summary it must contain the following: -

## EVALUATION CRITERIA:

Functionality=105

- Profile of the firm: Number of practitioners with a right of appearance in the High Court together with examples of matters in which this right was exercised and the success rate. (20)
  - Exceed Expectation : 20 points
  - Adequate meets Expectation : 15 points
  - Fairly meets Expectation : 10 points
  - Does not meets Expectation : 05 points
  
- The names and CV's of the Legal practitioners applicable to the team assigned to AbaQulusi Municipality Cases (staff experience and qualifications) (10)
  - 7(seven)-10+ (ten) years : 10 points
  - 4 (four) – 7 (seven) years : 8 points
  - 2 (two) – 4 (four) years : 5 points
  - Less than 2 (two) years : 1 point
  
- Number of practitioners with a right of appearance in the High Court together with examples of matters in which this right was exercised and the success rate. (10)
  
- Original or certified copies of written contactable business references, which will be verified
  - 5 or more : 10
  - 3-4 : 6
  - 2 references or less : 4
  
- Relevant experience in practice of the partners/directors (50)

irrespective of their number in a firm will be allocated points as follows: -

- 10+ (ten) years : 50 points
- 5 (five) – 10 (ten) years : 40 points
- 2 (two) – 5 (five) years : 30 points
- Less than 2 (two) years : 20 points

- Social responsibility matters: A written commitment to (10)  
provide pro bono legal services in accordance with the  
Legal Services Sector Charter and/or negotiate fees to represent beneficiaries  
from community members falling within the areas serviced by AbaQulusi  
Municipality, particularly those registered in the indigent register of AbaQulusi  
Municipality.

Pro bono services offered: 10 points

No pro bono services: 0

## EVALUATION CRITERIA:

### THE ESTABLISHMENT OF THE PANEL OF ATTORNEYS FOR THE PROVISION OF LEGAL SERVICES TO ABAQULUSI MUNICIPALITY FOR THE PERIOD OF 36 MONTHS

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The Legal Services responsibilities includes the following: Contract Management; Litigations & Claims; Compliance & policy development; By-laws formulation & Gazetting; Debt Collection; Labour Law; Public Law, conveyancing and any other legal related matters. The contract will be for a period of three years.

#### 2. Field Of Expertise Table

No	Specialized service	Yes	No
1.1	Local Government Law		
1.2	Commercial Law		
1.3	Planning and Development Law		
1.4	Environmental Law		
1.5	Litigation (Magistrate Court, High Court, Supreme Court of Appeal and Constitutional Court)		
1.6	Conveyancing		
1.7	Constitutional Law		
1.8	Administrative Law		

1.9	Labour law		
1.10	Collections		

### **EVALUATION CRITERIA**

Functionality – bidders should meet the minimum eligibility of 70 out of 105 points to be evaluated further for PRICE and B-BBEE POINTS.

#### **1. Company Experience [50 points] – a separate sheet can be used for details below.**

<b>(i) Provide up to 5 contracts of Legal Services (one point allocated to each contract). Appointment letters / purchased order must be provided to claim points. (5 points)</b>						
	Client	Project Name	Contract Value	Period	Contact Person	
					Name	Tel. No
1.1						
1.2						
1.3						
1.4						
1.5						
<b>(ii) Number of years in Legal Services Business (Company Registration Certificate and Company Profile must be used to claim points)</b>						
					<b>Number of years in security business</b>	
a)	More than 10 years			<b>10</b>		
b)	Between 5 to 10 years			<b>7</b>		
c)	Between 1 to 4 years			<b>3</b>		
d)	Less than 1 year			<b>0</b>		

## 2. Key Personnel : [40 points]

**(i)** Relevant experience in practice of the partners/directors (40)irrespective of their number in a firm will be allocated points as follows: -  
*(attach CV clearly indicating contactable references and certified qualifications to claim points)*

2.1	Partner / Director	More than 10 years	<b>30</b>
		Between 5 to 10 years	<b>20</b>
		Between 1 to 4 years	<b>10</b>
		Less than 1 year	0
2.2	Legal Practitioner	More than 10 years	<b>10</b>
		Between 5 to 10 years	7
		Between 1 to 4 years	3
		Less than 1 year	0

### LOCALITY = 15 POINTS

<b>3.</b>	<b>Locality of the Company office</b>	<b>Points</b>
3.1.	Company has an office within the Abaqulusi Local Municipality boundary.	15
3.2	Company has an office within the Zululand District Municipality boundary.	10
3.3	Company has an office within the KwaZulu Natal boundary.	5
3.4	Company has an office outside the KwaZulu Natal boundary.	0
	<b>Possible Full Points =</b>	<b>15</b>
	<b>Full total points for evaluation</b>	<b>105</b>

Note: Tenderers are to submit a copy of their business' municipal account or copy of lease agreement of business property which must be attached to this page.

## **DEMONSTRATIONS AND INSPECTIONS**

1. All tenderers must be prepared to demonstrate where required, free of charge and obligation, at AbaQulusi Municipality or any other area within the boundary of AbaQulusi Municipality, any items offered in this tender.
1. Where officials are required to attend demonstrations or inspections outside the AbaQulusi Municipality boundary, all costs to attend such demonstration must be borne by the tenderer.

## **DELIVERIES, COMPLETION AND PENALTIES**

1. Delivery date to be negotiated on placing the order.
2. Tenderers shall furthermore note that goods or services will not be considered acceptable and consequently their obligations not fulfilled should goods or services fail to comply with the specifications in the tender document.
3. Where the supplier fails to deliver within the scope of the specifications of this tender, the Municipality reserves the right to obtain services from any other supplier that complies with the specifications and the tenderer will be held responsible for all costs involved.

## **PAYMENTS**

1. Payment will be made within 30 days from statement invoice date subject to satisfactory execution of the contract conditions and provided that the statement/invoice is without error.
2. Tenders must clearly state all settlement and trade discounts.

## **SECTION C**

3. Any additional payment for extra work carried out on a contract will only be made provided that the contractor is issued with a variation order by the procurement section of AbaQulusi Municipality.
4. AbaQulusi Municipality hereby indemnifies itself from any claims whatsoever, which may arise as a result of loss of income suffered by the tenderer for any reason directly or indirectly during the course of this tender and AbaQulusi Municipality reserves the right to consider compensation at its own terms.

**SECTION D**

**FORM OF ACCEPTANCE & DECLARATION**

**The Municipal Manager**

AbaQulusi Municipality

P.O.BOX 57

VRYHEID

3100

I/We ..... (To be completed)

***(Representative or Company Name)***

The undersigned, having examined the Specification, hereby offer to supply the Municipality with the requirements called for on the Municipality's Form of Specifications, "Form A" attached, in accordance with the conditions of this application.

I/We further undertake that this offer shall not be retracted or withdrawn from the closing date of this application up to the order date.

I/We further undertake, in the event of the acceptance of this application, either wholly or in part, to enter into a formal contract, if required, and to provide one good and sufficient surety for the due fulfillment of the contract to the satisfaction of the Municipality.

I/We also agree:

- (a) that if the application be accepted, the acceptance may be communicated to us by letter through the post and that in such case the Post Office shall be regarded as our agents and delivery of such acceptance to the Post Office shall be treated as delivery to us;
- (b) The Municipality chooses as its "domicilium citandi et executandi" for the purpose of the contract, the following address:

AbaQulusi Municipality Offices

P.O Box 57

VRYHEID 3100

- c) the law of South Africa will govern the contract created by acceptance of our application and we agree to submit to the jurisdiction of the South African Courts;
  
- d) that if our application be accepted by the Municipality either wholly or in part, and the acceptance be notified to us, we undertake to be bound by the term of the agreement constituted by our said application and the acceptance thereof by the said Municipality, until a formal contract has been executed between us and the Municipality, and that if we are not required by the Municipality to execute such formal contract, we undertake to be bound by the terms of the agreement constituted by our said application and the acceptance thereof by the said Municipality.

## SECTION E

### I/WE ALSO DECLARE THAT:

- 1) the information provided is true and correct;
- 2) the signatory to the application document is duly authorized;
- 3) I/we are registered for Workman's Compensation and the valid original (or valid certified copy) of the workman's compensation commissioner's letter of good standing is attached. When applicable the option to submit an original or certified copy of the letter from the agent authorized by Workmen's Compensation Commissioner will be accepted

In the case where it is not possible for an applicant to obtain the above letter of good standing from the workmen's compensation commissioner, an affidavit is to be submitted advising that the business has registered with the workmen's compensation commissioner.

In the case where a business does not employ any employees an affidavit together with a letter from the workmen's compensation commissioner addressed to the business, confirming that registration is not required, must be submitted.

- 4) documentary proof regarding any application issue will, when required, be submitted to the satisfaction of the relevant organ of state;
- 5) the original valid tax clearance certificate is attached;
- 6) My municipal rates and taxes are paid up to date and the following is attached:

**A. APPLICANT IS LANDOWNER FOR PURPOSE OF CONDUCTING BUSINESS  
FROM ITS PREMISES**

A.1 In the case where the applicant owns the property from which the applicant's business operates from, an original or certified copy of the applicants business most recent municipal account indicating the status of payment of all municipal rates and taxes i.e. property rates, electricity, water, refuse & sewer from the Municipality in which jurisdiction the said property is situated, must be submitted.

**NB:** Should there be **separate** tax invoices from the municipality for property rates and services (taxes), you are required to submit the most recent of each of these invoices

**OR**

**B. APPLICANT IS THE TENANT FOR PURPOSE OF CONDUCTING  
IT'S BUSINESS FROM PREMISES**

B.1 In the case where the applicant does not own property and is a tenant for the purpose of its business establishment, the applicant to provide an original or certified copy of a certificate from it's landlord certifying that all the tenants payments in respect of all municipal rates and taxes i.e. property rates, electricity, water, refuse & sewer are paid up to date, or

B.2 In the case where the applicant as tenant is responsible for its own municipal accounts with the municipality then the applicant must attach the letter from the landlord certifying the above together with all most recent relevant municipal invoices i.e. property rates, electricity, water refuse & sewer.

**PAGE TO WHICH VALID ORIGINAL (OR VALID CERTIFIED COPY) OF THE WORKMEN'S COMPENSATION LETTER OF GOOD STANDING MUST BE ATTACHED**

Please attach valid original (or valid certified copy) of the Workmen's Compensation Letter of Good Standing to this page.

**OR**

In the case where it is not possible for an applicant to obtain the above Letter of Good Standing from the Workmen's Compensation Commissioner, an affidavit is to be submitted advising that the business has registered with the Workmen's Compensation Commissioner.

**OR**

In the case where a business does not employ any employees an affidavit together with a Letter from the Workmen's Compensation Commissioner addressed to the business, confirming that registration is not required, must be submitted.

**FAILURE TO DO SO MAY LEAD TO YOUR TENDER BEING DISQUALIFIED.**

**PAGE TO WHICH ANY OF THE FOLLOWING MUST BE ATTACHED**

**IN THE CASE WHERE:**

**A. APPLICANT AS LANDOWNER FOR PURPOSE  
OF CONDUCTING BUSINESS FROM PREMISES**

Please select the relevant option by ticking below

A.1 In the case where the applicant owns the property from which the applicant's business operates from, an original

or certified copy of the applicant's business most recent municipal account indicating the status of payment of all municipal rates and taxes i.e. property rates, electricity, water, refuse & sewer from the Municipality in which jurisdiction the said property is situated must be submitted.

**NB:** Should there be **separate** tax invoices from the municipality for property rates and services (taxes), you are required to submit the most recent of each of these invoices

**OR**

**B. APPLICANT IS THE TENANT FOR PURPOSE OF CONDUCTING IT'S BUSINESS FROM PREMISES**

B.1 In the case where the applicant does not own property and is an applicant for the purpose of its business establishment? the applicant to provide a valid original or valid certified copy of a certificate from its landlord certifying that all the tenants payments in respect of all municipal rates and taxes i.e. property rates, electricity, water, refuse & sewer are paid up to date, or

B.2 In the case where the applicant as tenant is responsible for its own municipal accounts with the municipality then the applicant must attach an original or certified copy of a letter from the landlord certifying the above together with all most recent relevant municipal invoices i.e. property rates, electricity, water refuse & sewer.

**FAILURE TO DO SO MAY LEAD TO YOUR TENDER BEING DISQUALIFIED.**

**PAGE TO WHICH VALID CERTIFIED COPIES OF CERTIFICATE OF GOOD STANDING FROM THE LAW SOCIETY MUST BE ATTACHED**

Please attach valid certified copies of certificate of good standing from the law society to this page.

**FAILURE TO DO SO WILL LEAD TO YOUR TENDER BEING DISQUALIFIED.**

**PAGE TO WHICH A CERTIFIED VALID FIDELITY FUND CERTIFICATE MUST BE ATTACHED**

Please attach valid certified fidelity fund certificate to this page.

**FAILURE TO DO SO WILL LEAD TO YOUR TENDER BEING DISQUALIFIED.**

**PAGE TO WHICH VALID CERTIFIED COPIES YOUR CIPC (formerly CIPRO) CERTIFICATE MUST BE ATTACHED**

Please attach valid original or certified copies of your Cipc/Cipro Certificate to this page.

**FAILURE TO DO SO MAY LEAD TO YOUR TENDER BEING DISQUALIFIED.**

**TAX CLEARANCE CERTIFICATE REQUIREMENTS**

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

1 In order to meet this requirement bidders are required to complete in full the attached form TCC 001

"Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax

Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.

2 SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.

3 The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax

Clearance Certificate will not be acceptable.

4 In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.

5 Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website [www.sars.gov.za](http://www.sars.gov.za).

6 Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website [www.sars.gov.za](http://www.sars.gov.za).

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

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

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

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

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

---

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

---

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

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

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

\*Delete if not applicable

**MBD4**

**DECLARATION OF INTEREST**

- 1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
- 2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make 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, shareholder<sup>2</sup>):.....

3.4 Company Registration Number:.....

3.5 Tax Reference Number:.....

3.6 Vat Registration Number:.....

3.7 The names of all directors/ trustees/ shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

3.8 Are you presently in the service of the state? **YES/ NO**

3.8.1 If yes, furnish particulars.....

.....

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

- (a) a member of –
  - (i) any municipal council;
  - (ii) any provincial legislature; or
  - (iii) the national Assembly or the national council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public

entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 ( Act No. 1 of 1999);

(e) a member of the accounting authority of any national or provincial public entity; or

(f) an employee of Parliament or a provincial legislature.

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

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

3.9.1 If yes, furnish particulars.....

.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and 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 the 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, trustee, managers, principle shareholders, or

stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract.

**YES / NO**

3.14.1 If yes, furnish particulars

.....  
.....

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

Full Name	Identity Number	State Employee Number

.....  
**Signature**

.....  
**Date**

.....  
**Capacity**

.....  
**Name of Bidder**

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2011**

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of 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, 2011.**

**2. GENERAL CONDITIONS**

2.1 The following preference point systems are applicable to all bids:

- 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).

2.2 The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the.....80/20.....system shall be applicable.

2.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contribution.

1.3.1 The maximum points for this bid are allocated as follows:

	POINTS
<b>1.3.1.1 PRICE</b>	.....80.....
<b>1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	.....20.....
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.5 The purchaser reserves the right to require of a bidder, either before a bid is

adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

## 2. DEFINITIONS

- 2.1 **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 2.2 **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 2.3 **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 2.4 **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- 2.5 **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.6 **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- 2.7 **“consortium or joint venture”** 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;
- 2.8 **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- 2.9 **“EME”** means any enterprise with an annual total revenue of R5 million or less .
- 2.10 **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

- 2.11 **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 **“non-firm prices”** means all prices other than “firm” prices;
- 2.13 **“person”** includes a juristic person;
- 2.14 **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.16 **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- 2.17 **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.18 **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

### **3. ADJUDICATION USING A POINT SYSTEM**

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.

3.5 However, when functionality is part of the evaluation process and two or more bids have

scored equal points including equal preference points for B-BBEE, the successful bid must

be the one scoring the highest score for functionality.

3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

**4. POINTS AWARDED FOR PRICE**

**4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS**

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

**80/20 or 90/10**

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

$P_s$  = Points scored for comparative price of bid under consideration

$P_t$  = Comparative price of bid under consideration

$P_{\min}$  = Comparative price of lowest acceptable bid

**5. Points awarded for B-BBEE Status Level of Contribution**

5.1 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of points (90/10 system)</b>	<b>Number of points (80/20 system)</b>
1	10	20
2	9	18
3	8	16
4	5	12
5	4	8
6	3	6

7	2	4
8	1	2
Non-compliant contributor	0	0

- 5.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.
- 5.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity,  
provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated  
entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group  
structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that  
such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise  
that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-  
contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other  
enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the

contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

## 6. BID DECLARATION

6.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

## 7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1

7.1 B-BBEE Status Level of Contribution: ..... = .....(maximum of 10 or 20 points)

**(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA).**

## 8 SUB-CONTRACTING

8.1 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)

8.1.1 If yes, indicate:

- (i) what percentage of the contract will be subcontracted? .....%
- (ii) the name of the sub-contractor? .....
- (iii) the B-BBEE status level of the sub-contractor? .....
- (iv) whether the sub-contractor is an EME? YES / NO (delete which is not applicable)

## 9 DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of firm .....

9.2 VAT registration number .....

9.3 Company registration number  
..... :

## 9.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

## 9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES



- (d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, 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

**WITNESSES:**

6. ....

.....  
SIGNATURE(S) OF BIDDER(S)

3. ....

DATE:.....

ADDRESS:.....

.....

.....

**MBD 7.1**

**C1.1. Form of Offer and Acceptance (Contract Form)**

**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)**

I hereby undertake to supply all or any of the goods and/or works described in the attached bidding documents to Abaqulusi Municipality..... in accordance with the requirements and 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 time of bid.

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract in respect of the following works:

The tenderer, identified in the offer signature block below, has examined the documents listed in the tender data and addenda thereto as listed in the Schedule of Returnable Documents, and by submitting this offer has accepted the conditions of tender.

By the representative of the tendered, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance, the tenderer offers to perform all of the obligations and liabilities of the contractor under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the Conditions of Contract identified in the Contract Data, within \_\_\_\_\_ days of the commencement date.

**THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX IS:**

.....

.....RAND (in words);

R .....(in figures)

This offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document to the tendered before the end of the period of validity stated in the Tender Data, whereupon the Tendered becomes the party named as the Contractor in the Conditions of Contract identified in the Contract Data.

1. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, viz
    - Invitation to bid;
    - Tax clearance certificate;

- Pricing schedule(s);
  - Technical Specification(s);
  - Preference claims for 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)

2. 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.
3. 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 fulfilment of this contract.
4. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
5. I confirm that I am duly authorised to sign this contract.

**SIGNED ON BEHALF OF/BY THE TENDERER:**

**NAME**

**SIGNATURE**

**CAPACITY**

**DATE**

**Name and address of Organisation:**

.....

.....

.....

**SIGNED BY WITNESS:**

**NAME**

**SIGNATURE**

**DATE**

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

*By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the Tenderer's offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the Conditions of Contract identified in the Contract Data. Acceptance of the tenderer's offer shall form an Agreement between the Employer and the Tendered upon the terms and conditions contained in this Agreement and in the Contract that is the subject of this Agreement.*

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto as listed in the Returnable Documents as well as any changes to the terms of the Offer agreed by the Tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Agreement. No amendments to or deviations from said documents are valid unless contained in this schedule which must be duly signed by the authorised representative(s) of both parties.

The tenderer shall within two weeks of receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), or when or just after this Agreement comes into effect, contact the employer's agent (whose details are given in the Contract Data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the Conditions of Contract identified in the Contract Data. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this Agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any). Unless the tenderer (now Contractor) within five days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this Agreement, this Agreement shall constitute a binding contract between the parties.

**SIGNED ON BEHALF OF/BY THE EMPLOYER:**

**NAME**

**SIGNATURE**

**CAPACITY**

**DATE**

**Error! Reference source not found.** - CORNER MARK AND HIGH STREET,

VRYHEID

.....

.....

.....

**SIGNED BY WITNESS:**

**NAME**

**SIGNATURE**

**DATE**

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

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

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

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

1 This Municipal Bidding Document (MBD) must form part of all bids<sup>1</sup> invited.

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

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

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

4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.

5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

**<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.<sup>2</sup> Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

\_\_\_\_\_  
(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

**ACCEPTANCE**

**NB:**

**♣ FAILING TO ATTACH ANY OF THE DOCUMENTS SPECIFIED IN THIS APPLICATION DOCUMENT, OR FAILURE TO COMPLETE IN FULL THOSE SECTIONS REQUIRING COMPLETION, WILL INVALIDATE THE APPLICATION.**

*FOR AND ON BEHALF OF*

**NAME OF COMPANY**

\_\_\_\_\_

**ADDRESS**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
**NAME OF APPLICANT**

\_\_\_\_\_  
**SIGNATURE OF APPLICANT**

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

## **GENERAL CONDITIONS OF CONTRACT**

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## GENERAL CONDITIONS OF CONTRACT

<b>1. Definitions:</b>	The following terms shall be interpreted as indicated:
	1.1 <b>“Closing time”</b> means the date and hour specified in the bidding advertisement for the receipt of bids.
	1.2 <b>“Contract”</b> 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 <b>“Contract price”</b> means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
	1.4 <b>“Corrupt practice”</b> 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 <b>“Countervailing duties”</b> are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
	1.6 <b>“Country of origin”</b> 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 <b>“Day”</b> means calendar day.
	1.8 <b>“Delivery”</b> means delivery in compliance of the conditions of the contract or order.

	1.9 <b>“Delivery ex stock”</b> means immediate delivery directly from stock actually on hand.
	1.10 <b>“Delivery into consignees store or to his site”</b> 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 <b>“Dumping”</b> 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 <b>“Force majeure”</b> 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 <b>“Fraudulent practice”</b> 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 <b>“GCC”</b> means the General Conditions of Contract.
	1.15 <b>“Goods”</b> means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

	<p>1.16 <b>“Imported content”</b> 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.</p>
	<p>1.17 <b>“Local content”</b> means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.</p>
	<p>1.18 <b>“Manufacture”</b> means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.</p>
	<p>1.19 <b>“Order”</b> means an official written order issued for the supply of goods or works or the rendering of a service.</p>
	<p>1.20 <b>“Project site,”</b> where applicable, means the place indicated in bidding documents.</p>
	<p>1.21 <b>“Purchaser”</b> means the organization purchasing the goods.</p>
	<p>1.22 <b>“Republic”</b> means the Republic of South Africa.</p>
	<p>1.23 <b>“SCC”</b> means the Special Conditions of Contract.</p>
	<p>1.24 <b>“Services”</b> 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.</p>
	<p>1.25 <b>“Supplier”</b> means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.</p>
	<p>1.26 <b>“Tort”</b> means in breach of contract.</p>
	<p>1.27 <b>“Turnkey”</b> 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.</p>

	1.28 <b>“Written” or “in writing”</b> means hand-written in ink or any form of electronic or mechanical writing.
<b>2. Application</b>	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.
<b>3. General</b>	3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a nonrefundable fee for documents may be charged
	3.2 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.
<b>4. Standards</b>	4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
<b>5. Use of contract documents and information inspection</b>	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 as 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.

	<p>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.</p> <p>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.</p>
<b>6. Patent Rights</b>	<p>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.</p> <p>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.</p>
<b>7. Performance security</b>	<p>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.</p> <p>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.</p>

	<p>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:</p> <p>(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</p> <p>(b) a cashier's or certified cheque</p> <p>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.</p>
<p><b>8. Inspections, tests and analyses</b></p>	<p>8.1 All pre-bidding testing will be for the account of the bidder.</p> <p>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.</p> <p>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.</p> <p>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.</p>

	<p>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.</p>
	<p>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.</p>
	<p>8.7 Any contract goods may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected 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.</p>
	<p>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.</p>
<p><b>9. Packing</b></p>	<p>9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.</p>

	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.
<b>10. Delivery and documents</b>	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.
<b>11. Insurance</b>	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.
<b>12. Transportation</b>	12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified.
<b>13. Incidental Services</b>	<p>13.1 The supplier may be required to provide any or all of the following services, including additional services, if any:</p> <ul style="list-style-type: none"> <li>(a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;</li> <li>(b) furnishing of tools required for assembly and/or maintenance of the supplied goods;</li> <li>(c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;</li> <li>(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</li> <li>(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.</li> </ul>

	<p>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.</p>
<p><b>14. Spare parts</b></p>	<p>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:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) in the event of termination of production of the spare parts: <ul style="list-style-type: none"> <li>(i) advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and</li> <li>(ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.</li> </ul> </li> </ul>
<p><b>15. Warranty</b></p>	<p>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.</p>

	<p>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.</p>
	<p>15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.</p>
	<p>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.</p>
	<p>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.</p>
<b>16. Payment</b>	<p>16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified.</p>
	<p>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.</p>
	<p>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.</p>
	<p>16.4 Payment will be made in Rand unless otherwise stipulated.</p>
<b>17. Prices</b>	<p>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.</p>

<b>18. Variation orders</b>	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.
<b>19. Assignment</b>	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.
<b>20. Subcontracts</b>	20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
<b>21. Delays in the supplier's performance</b>	<p>21.1 Delivery of the goods and performance of services shall be made the supplier in accordance with the time schedule prescribed by the purchaser in the contract.</p> <p>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.</p> <p>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.</p>

	<p>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.</p>
	<p>21.5 Upon any delay beyond the delivery period in the case of a goods contract, the purchaser shall, without canceling 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.</p>
<p><b>22. Penalties</b></p>	<p>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.</p>
<p><b>23. Termination for default</b></p>	<p>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:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) if the supplier fails to perform any other obligation(s) under the contract; or</li> <li>(c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.</li> </ul>

- 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 enterprises 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 associate.
- 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

<p><b>24. Antidumping and countervailing duties and rights</b></p>	<p>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 favorable 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.</p>
<p><b>25. Force Majeure</b></p>	<p>25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance 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.</p> <p>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.</p>
<p><b>26. Termination for solvency</b></p>	<p>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.</p>

<b>27. Settlement of Disputes</b>	<p>27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or 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.</p>
	<p>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.</p>
	<p>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.</p>
	<p>27.4 Notwithstanding any reference to mediation and/or court proceedings herein,</p> <ul style="list-style-type: none"> <li>(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and.</li> <li>(b) the purchaser shall pay the supplier any monies due the supplier for goods delivered and / or services rendered according to the prescripts of the contract.</li> </ul>

<p><b>2 Limitation of Liability</b></p>	<p>28.1 Except in cases of criminal negligence or willful misconduct, and in the case of Infringement pursuant to Clause 6;</p> <p>(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</p> <p>(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.</p>
<p><b>29. Governing language</b></p>	<p>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.</p>
<p><b>30. Applicable law</b></p>	<p>30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified</p>
<p><b>31. Notices</b></p>	<p>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.</p> <p>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.</p>
<p><b>32. Taxes and duties</b></p>	<p>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.</p> <p>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.</p>

	<p>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.</p> <p>32.4 No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.</p>
<b>33. Transfer of contracts</b>	33.1 The contractor shall not abandon, transfer, cede assign or sublet a contract or part thereof without the written permission of the purchaser
<b>34. Amendment of contract</b>	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.
<b>35. Prohibition of restrictive practices</b>	<p>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.</p> <p>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 investigating and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 of 1998.</p> <p>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</p>

	the bidder(s) or contractor(s) concerned.
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