



CITY OF TSHWANE METROPOLITAN MUNICIPALITY

TENDER NUMBER:

SS 01 -2023/24

TENDER DESCRIPTION:	TENDER DESCRIPTION: TENDER FOR THE CORPORATE HIRE OF GENERAL CONSTRUCTION VEHICLES AND REFUSE REMOVAL VEHICLES FOR THE CITY OF TSHWANE AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THREE YEARS
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NAME OF BIDDER:

CSD NUMBER:

VENDOR NUMBER (WHERE APPLICABLE)

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

BID CLOSING DATE

19 OCTOBER 2023

Only bidders registered on the central supplier database (CSD) and with a CSD number will be considered for this tender, as this is a requirement from the National Treasury.

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



CITY OF TSHWANE METROPOLITAN MUNICIPALITY

DEPARTMENT: SHARED AND SERVICES

Bids are hereby invited from suppliers for the following bid:

Bid number	Description	Department	Contact person	Compulsory briefing session	Closing date
SS 01 - 2023/24	Tender description: tender for the corporate hire of general construction vehicles and refuse removal vehicles for the city of Tshwane as and when required basis for a period of three years	SHARED SERVICES	Name: Karabo Morake Email: KaraboMor@TSHWANE.GOV.ZA Tel No.: (012 358 0843)	N/A	19 OCTOBER 2023 @ 10:00

THE DOCUMENT IS DOWNLOADABLE ON THE TSHWANE WEBSITE (www.tshwane.gov.za) and on the E-tender portal.

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

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

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

Documents must be deposited in the bid box not later than **10:00 on 19 October 2023**

Bidders must contact the following officials for any enquiries:

- Technical enquiries: Karabo Morake (012 358 0843 or Karabo Morake KaraboMor@TSHWANE.GOV.ZA)
- Supply chain enquiries: Kgomotso Makgale (012 358 5478 or kgomotsomakg@tshwane.gov.za)

Bids will remain valid for a period of 90 days after the closing date.

Bids received after the closing date and time will not be considered. The City of Tshwane does not bind itself to accept the lowest or any other bid in whole or in part.

INDEX

Number	Details	Document	Page
1.	Very important notice on disqualifications		
2.	Certificate of authority for signatory		
3.	Scope of work		
4.	Pricing schedule		
5.	Invitation to bid	MBD 1	
6.	Pricing schedule: Firm prices (purchases)	MBD 3.1	
7.	Pricing schedule: Non-firm prices (purchases)	MBD 3.2	
8.	Declaration of interest	MBD 4	
9.	Declaration for procurement above R10 million (all applicable taxes Included)	MBD 5	
10.	Preference points claim form in terms of the preferential procurement regulations 2022	MBD 6.1	
11.	Contract form: Rendering of services	MBD 7.2	
12.	Declaration of past supply chain management practice	MBD 8	
13.	Certificate of independent bid determination	MBD 9	
14.	General conditions of contract		
15.	Service-level agreement		
LIST OF RETURNABLE DOCUMENTS THAT SHOULD FORM PART OF BID DOCUMENT			
16.	Company registration certificate		
17.	Rates and taxes or lease agreement		
18.	Unique PIN		
19.	CSD summary report		

VERY IMPORTANT NOTICE ON DISQUALIFICATIONS

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

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

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

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

Bidder

CERTIFICATE OF AUTHORITY FOR SIGNATORY

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

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

A. COMPANY

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

An example is shown below:

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

SIGNED ON BEHALF OF THE COMPANY:

IN HIS/HER CAPACITY AS

DATE:

SIGNATURE OF SIGNATORY:

WITNESSES: 1.

2.

B. PARTNERSHIP

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

Full name of partner	Residential address	Signature
.....
.....
.....

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

.....
Signature	Signature	Signature

.....
Date	Date	Date

C. ONE-PERSON BUSINESS

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

.....
Signature	Date

D. CLOSE CORPORATION

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

An example is shown below:

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

SIGNED ON BEHALF OF THE CLOSE CORPORATION:

IN HIS/HER CAPACITY AS:

DATE:

SIGNATURE OF SIGNATORY:

WITNESSES: 1.

 2.

E. CERTIFICATE OF AUTHORITY FOR JOINT VENTURES

This returnable schedule is to be completed by joint ventures.

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

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

SHARED AND SERVICES

BID NAME

TENDER DESCRIPTION: TENDER FOR THE CORPORATE HIRE OF GENERAL CONSTRUCTION VEHICLES AND REFUSE REMOVAL VEHICLES FOR THE CITY OF TSHWANE AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THREE YEARS

BID NUMBER

(SS 01 -2023/24)

Description of the services

Tender for the corporate hire of General Construction vehicles and Refuse Removal Vehicles, for the City of Tshwane, which includes the following, on an as and when required basis. The tender is divided into two categories namely Category B fleet and Category C fleet as per City's classification of fleet and will be awarded per item. Bidders are therefore required to quote for one or more items within a category or categories tendered for. A maximum of 30 suppliers will be appointed per item.

The City reserves the right not to award any of the items advertised, in part or as a whole.

The intention of this contract is to acquire a comprehensive service of hire of equipment and machinery on an as-and-when basis.

NOTE: a 5% discount shall apply to any item rented for more than 4 days continuously and a 10% discount will apply to any item rented continuously for more than 14 days.

Number of days rented	1 – 4 days	5 – 14 days	15 and more days
Rate to apply for billing	Normal daily rate to apply	5% Discount to apply	10% Discount to apply

CATEGORY B FLEET: CONSTRUCTION VEHICLES

- Drivers required.
- Fuel and top-up oil to be supplied by the Contractor.
- Vehicles offered shall not be older than 9 years at the time of first deployment to the City.
- Maintenance and Insurance by Contractor.

Item	Description	Requirements
1	3.5T PANEL VAN FOR ROBOT SECTION	This vehicle must be able to carry robot materials and team. It must have a passenger cab that can carry at least four persons, passenger cab must have a side windows and seats that can be used as a storage, there must be a partition between passenger cab and goods compartment.

2	WATER TANKER TRUCK 10 000 litre	This machine must be self-propelled, must have a capacity of not less than 10 000 litre of water and must be able to spray a mist of water up to 5 m wide through the spray bar. The vehicle must have a power to mass ratio of 6 kW per ton laden and they must have a pump on, to fill tanks above ground level. Truck should be fitted with water meter counter on the inlet.
3	WATER TANKER TRUCK 10 000 litre 6 Wheel Drive (6x6)	This machine must be self-propelled, must have a capacity of not less than 10 000 litre of water and must be able to spray a mist of water up to 5 m wide through the spray bar. The vehicle must have a power to mass ratio of 6 kW per ton laden and they must have a pump on, to fill tanks above ground level. This machine shall be used at the Bon Accord Quarry and must be 6-wheel x 6 wheel driven. Vehicle must be able to spray whilst driving, auto. The vehicle must be fitted with a reversing camera and reversing alarm. Truck should be fitted with water meter counter on the inlet.
4	WATER TANKER TRUCK 14 000 litre	This machine must be self-propelled, must have a capacity of not less than 14 000 litre of water and must be able to spray a mist of water up to 5 m wide through the spray bar. The vehicle must have a power to mass ratio of 6 kW per ton laden and they must have a pump on, to fill tanks above ground level. Truck should be fitted with water meter counter on the inlet.
5	6 m ³ TIPPER TRUCK	This vehicle will be used to transport construction materials. It would further be required to pull mobile compressors or trailers.
6	6 m ³ TIPPER TRUCK with Crew Cab	This vehicle will be used to transport construction materials and personnel. It would further be required to pull mobile compressors or trailers. It must have a passenger compartment (Crew Cab) that can carry at least four persons behind the driver.
7	10 m ³ TIPPER TRUCK	This vehicle will be used to transport construction materials. It would further be required to pull mobile compressors or trailers.
8	14 m ³ TIPPER TRUCK	This vehicle will be used to transport construction materials. It would further be required to pull mobile compressors or trailers.
9	6 M ³ CONCRETE MIXING TRUCK	This truck will be required to transport wet concrete mixes to construction sites.
10	LOWBED TRUCK	This vehicle must be capable to load and transport Graders, Front-end Loaders and Excavators

11	50TON CRANE TRUCK	The machines must be self-propelled. These machines must have lifting capacities 50 tons.
12	15 TON DROPSIDE TRUCK WITH CRANE	The vehicle (15000 GVM) rear single axel must be fitted with a rear-mounted crane, which can carry a load of at least 7 ton at a distance of 2m, a lockable 1/4 crew cab fitted with a storage seats that would also be used as tools storage. Crew cab small side windows are required. The vehicle would also be used to transport construction materials, compressors and trailers.
13	31 TON DROPSIDE TRUCK WITH CRANE	The vehicle (31000kg GCM) rear double axel must be fitted with rear-mounted crane, which can carry a load of at least 9900 kg at a distance of 2.5m. Crew cab small side windows are required. The vehicle would also be used to transport construction materials, compressors and trailers.
14	31 TON TRUCK TRACTOR FULLY FITTED AS ABNORMAL VEHICLE	This machine must be self-propelled, must have a gross combination mass of not less than 31 Ton and a winch which is able to extend to a distance of at least 30 meters to pull heavy machineries such as wheel loaders, graders, dumpers and excavators, it must have a fifth wheel and two rear axles. The vehicle should be able to be used transport heavy machineries (excavators, TLBs, wheel loaders, buses, trucks and dumpers) from one quarries to another. The low bed should be able to be attached to truck tractor through fifth wheel.
15	ROAD SWEEPERS	The road sweeper shall be a hydraulic or hydrostatic powered sweeping machine, working speed from 0.2 km/h – 30 km/h with high suction capacity. The road sweeper shall have a minimum weight of 4 000kg and engine power of 100 kW. The container volume shall be a minimum of 4 m³. No dirty air shall be expelled into the working area at the rear and around the sweeping machine.
16	4 TON, SIDE TIPPER, DROPSIDE TRUCK with Crew Cab	4t LWB 4x2 Truck complete with crew cab, side tipping drop side body. It will be used to transport construction materials and must have a passenger compartment (Crew Cab) that can carry at least four persons behind the driver. It would further be required to pull mobile compressors or trailers.
17	7/8 TON DROPSIDE TRUCK WITH CRANE SIDE TIPPER	The vehicle must be fitted with crane, a lockable 1/4 crew cab fitted with a seats that would also be used as tools storage. Crew cab must have a small side windows and left entrance lockable from outside and inside. The vehicle will be used to transport construction materials (concrete slabs, gravels, sand, bollards etc.) and at least four team members in the crew cab.it will also pull compressors and trailers.

18	7/8 TON DROPSIDE TRUCK WITH 1/4 LOCKABLE CANOPY DOUBLE CAB TYPE	The vehicle must have a lockable 1/4 crew cab, fitted with U-shape seats in the crew cab that would be used as tools storage. Roof rack with rollers should cover the whole width of the roof to carry long pipes. Side ladder step should also be fitted. Crew cab small side windows are required. The vehicle would also be used to carry transport construction materials, compressors and trailers
19	7/8 TON DROPSIDE TRUCK (HALF CANOPY) FOR PAINTING TEAM DOUBLE CAB TYPE	The vehicle must be of a double cab type fitted with 1/2 lockable crew cab, at least four 20L basket holders in crew cab compartment, it must have a secured rack to store traffic signs and tools on the sides within the crew cab, a roof rack with rollers to load long steel poles and pipes, side ladder step. Crew cab small side windows are required. The vehicle would also be used to transport construction materials, compressors and trailers.
20	7/8 TON DROPSIDE TRUCK BUS TRUCK	This vehicle must have a full canopy with the entrance on the left side to be used by passengers/team, it must have at least twelve seats with seatbelts.
21	7/8 TON DROPSIDE TRUCK FULL CANOPY (ROBOT SECTION) DOUBLE CAB TYPE	This vehicle must have a full canopy with the entrance consisting of two doors at the rear to be used by robot teams to store robot IT equipment, the canopy must not have windows. U-shape lockable seats in the canopy which can also be used as a storage, roof rack with rollers should cover the whole width and length of the canopy. Side ladder step is required.
22	7/8 TON MOBILE BOWSER TRUCK	The vehicle must be able to transport at least 3000L of diesel to construction sites and quarries to fill up heavy machineries such as wheel loaders, graders, TLBs, it must be able to pump diesel manually and electronically. Diesel pump meter reader is also required
23	7/8 TON MOUNTED AERIAL PLATFORM TRUCK with Crew Cab	LWB 4x2 Truck with aerial platform that can reach 16m height. This machine must have a crew cab behind the driver's cab.
24	7/8 TON AUTOMATED POTHOLE REPAIR AND PATCHING MACHINE	The vehicle must be of a double cab type/ with crew cab fitted with a 1000l of bitumen emulsion tank, 100l of water tank, 2.5 ton aggregate cube and be used for tar patching purpose. The vehicle should be able to repair potholes, edge breaks, rutting's, depressions, crack seal, fog spray and road marking. The vehicle must be fully fitted with attachments and be able to carry at least five team members excluding the driver.
25	15 TON, DROPSIDE TRUCK with Crane fitted with Orange peel Grapple	The vehicle (15000 GVM) single axel must be fitted with a rear-mounted crane, which can carry a load of at least 7 ton at a distance of 2m, a lockable 1/4 crew cab fitted with a storage seats that would also be used as tools storage. Crew cab small side windows are required. The Crane shall be fitted with an Orange peel Grapple

26	INTER LINKED SIDE TIPPER TRUCK	20-34Ton Super Link Side Tipper truck Complete Horse and trailer
27	BIN WASHING TRUCK (240 LITRE -1000 LITRE REFUSE CONTAINERS)	Unit must be able to hold clean water and used water that has been used for washing 240 Litre -1000litre refuse containers and it shall be able to disinfect the containers internally using compressed air.

CATEGORY C FLEET. REFUSE REMOVAL VEHICLES (SOLID WASTE VEHICLES)

- Drivers and Personnel (Operational Crew) required.
- Fuel and top-up oil to be supplied by the Contractor.
- All vehicles that will be expected to render waste management services will be expected to pay to use City of Tshwane (CoT) landfill sites.
- Bidders are therefore required to take into account all the applicable costs relating to the provision of this service. The current waste management landfill site tariffs are attached as an Annexure however the tariffs are subjected to review and annual increase as approved by Council. The amounts due to the City in this regard will be subtracted from the invoices submitted by the contractor irrespective of whether the service is rendered by the contractor or by an appointed sub-contractor.
- Solid waste vehicles offered shall not be older than 9 years at the time of first deployment to the City.
- Maintenance and Insurance by Contractor.
- Vehicles must have a vehicle tracking system and tracking reports shall be submitted to the City when required.

28	REAR END LOADER WASTE COMPACTION TRUCK	<p>19 m³ with 240 and 1000 Litre Container Bin Lifters, inclusive of the following:</p> <ul style="list-style-type: none"> • 4 Workers (loaders) • Must be in possession of a waste transportation permit issued by the City of Tshwane • Fitted with ML325 bin lifter to be able to load 240l and 1000l without spillage. • <i>Fitted with a tag reader system (e.g. RFID bin reader system)</i> • <i>Comprehensive vehicle insurance cover</i>
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29	REAR END LOADER WASTE COMPACTION TRUCK	<p>12 m³ with 240 and 1000 Litre Container Bin Lifters, inclusive of the following:</p> <ul style="list-style-type: none"> • 4 Workers (loaders) • Must be in possession of a waste transportation permit issued by the City of Tshwane • Fitted with ML450 (Low Level Lifter) bin lifter to be able to load 240l and 1000l without spillage. • <i>Fitted with a tag reader system (e.g. RFID bin reader system)</i> • <i>Comprehensive vehicle insurance cover</i>
30	REAR END LOADER WASTE COMPACTION TRUCK	<p>19 m³ with 5, 5 m³ Skip Container Lifter, inclusive of the following:</p> <ul style="list-style-type: none"> • 4 Workers (loaders) • Must be in possession of a waste transportation permit issued by the City of Tshwane • Fitted with winch to empty skips • <i>Fitted with a tag reader system (e.g. RFID bin reader system)</i> • <i>Comprehensive vehicle insurance cover</i>
31	CWS INDUSTRIAL SIDE LOADER COMPACTION TRUCK	<p>With container handling (roll-on chain hoist) system and twin side loader refuse compactor unit, inclusive of the following:</p> <ul style="list-style-type: none"> • 4 Workers (loaders) • Must be in possession of a waste transportation permit issued by the City of Tshwane • Fitted with bin lifter • <i>Fitted with a tag reader system (e.g. RFID bin reader system)</i> • <i>Comprehensive vehicle insurance cover</i>
32	LOAD LUGGER (WITH SWING -ON SKIP LOADER)	<p>Must be able to swing-on containers with a capacity of up to 16 Ton. Use for industrial and household removal. Skip loader must have adjustable arm length.</p> <p>Could work shifts.</p> <p>Inclusive of the following:</p> <p>With container handling (roll-on chain hoist) system and twin side loader refuse compactor unit, inclusive of the following:</p> <ul style="list-style-type: none"> • 4 Workers (loaders) • Must be in possession of a waste transportation permit issued by the City of Tshwane • Fitted with bin lifter • <i>Fitted with a tag reader system (e.g. RFID bin reader system)</i> • <i>Comprehensive vehicle insurance cover</i>

33	CONTAINER HANDLING TRUCK, 6x4 (HOOK LIFT)	Must be able to handle roll-on containers with a capacity up to 24 tons with a length of 7200mm. The tipping torque shall be 60-ton meter (600kNm, max). The tipping action shall be done from inside the drivers' cab and from the left rear of the vehicle by means of two double acting hydraulic cylinders. Rear lights to be caged with steel enclosure
34	CONTAINER HANDLING TRUCK, 6x6(HOOK LIFT)	Must be able to handle roll-on containers with a capacity up to 24 tons with a length of 7200mm. The tipping torque shall be 60-ton meter (600kNm, max). The tipping action shall be done from inside the drivers' cab and from the left rear of the vehicle by means of two double acting hydraulic cylinders. Rear lights to be caged with steel enclosure
35	7/8 TON DROPSIDE TRUCK	Truck must be fitted with wire mash cage and must be provided with 5 workers (loaders)

NOTE: The tender will be awarded per Item.

1.1 DEFINITIONS:

- (a) **"The Official"** means the authorized person representing any of the Departments or Divisions within the City of Tshwane Metropolitan Municipality.
- (b) **"Pump Price"** means the retail price of fuel as listed by the Department of Minerals and Energy (Diesel with 0, 05% Sulphur at the Reef).
- (c) **"Equipment"** is handheld, drawn or require walk behind as listed in the scope.
- (d) **"Machines"** means road construction, earthmoving or compaction machines as listed in the scope.
- (e) **"Vehicles"** means the transport vehicles as listed in the scope - and truck has a corresponding meaning.
- (f) **PrDP** means the Professional Drivers Permit as described in the Road Traffic Act of 1996
- (g) **"Inspector"** means the official appointed from Fleet Management, 9 Bosman Street, to do the inspections on the validity of all documentation, operators, Vehicles, Equipment and/or Machines to ensure all comply with the any requirements in this
- (h) agreement.
- (i) **Security escort services-** provision of additional services to the City as and when required in case of volatile situations.

1.2 BACKGROUND:

The CoT recently commissioned a study in order to ascertain the most suitable method through which to undertake its fleet services. The study recommended that one of the interventions that need to be effected within the CoT's fleet services provision is a centralised co-sourcing of fleet management. A centralised co-sourced fleet services provision entails a hybrid situation where some fleet management functions are undertaken internally within the City, whilst other functions are undertaken externally by the private sector. The City hereby requires the services for the corporate hire of General Construction vehicles and Refuse Removal Vehicles.

SERVICE REQUIREMENTS AND CONDITIONS

2. CONTRACTORS OBLIGATIONS

The Contractor shall be obliged to provide the **Vehicles, Equipment and Machines (VEM's)** at such times and at such places as notified by the Official of the Fleet Management Division of the City of Tshwane Metropolitan Municipality, and as more fully set out in the specification.

- (a) In addition to any insurances required to be held by the contractor in terms of the Multilateral Motor Vehicle Accident Fund Act, 1989 (Act no 93 of 1989) and the Compensation for Occupational Injuries and Diseases Act no 130 of 1993 or any amendments to these acts or any act promulgated as a replacement of any of these aforementioned acts, the contractor, must for the duration of the contract be fully insured against all accidents or misfortunes including death of or injury to persons and/or loss of or damage to property arising out of the condition or operation of the VEM's or any execution of any work in terms of this contract. Such insurances should also provide care against all sums which become legally payable for losses or damages caused to Third Parties arising out of the ownership, possession or use of any VEM's provided in terms of this contract.
- (b) Notwithstanding the terms, conditions and exceptions of the insurances effected by the contractor, the contractor shall be liable for any damages, losses or injuries of whatsoever nature caused directly or indirectly to any municipal, government or private property (including damages to any service installations) that may be positioned in any road reserve area or to any persons as a result of the Contractor's equipment, machines and/or vehicles being operated under the control of his employees in terms of the contract, and the Contractor hereby indemnifies the Tshwane Municipality against all claims for such damage, loss or injury being directed against the Tshwane Municipality, including, but not limited to, the cost of examining, resisting or settling of such claim.
- (c) The Tshwane Municipal Officials or any of its employees shall not be held liable to the contractor for any loss, damage or injury caused to the contractor, his VEM's and employees arising from anything done in terms of this contract unless such loss, damage or injury arises as a direct result of the negligence of the Tshwane Municipality Official or its employees.
- (d) Upon notification and acceptance of the tender, the contractor shall at his own expense furnish to the Tshwane Municipality the following:
- A letter from the Workmen's Compensation Commissioner, or his equivalent in terms of any replacement act, certifying that the contractor is in good standing with the Accident Fund, or its equivalent in terms of any replacement act.
 - Full policy documentation proving the existence and validity of the insurances as required above.
 - The above requirements shall be furnished by the contractor to the Tshwane Municipality within 14 days of the notification of acceptance of the tender.
 - Proof of the continued good standing of the contractor or of the renewal of or extension of insurance cover must be furnished by the Contractor whenever required by the Tshwane Municipality.
- (e) The contractor shall affect for the duration of the contract the following insurances:
- All Risks insurance of Construction Equipment, machines and/or vehicles for a sum sufficient to provide for replacement of such Construction Equipment, machines and/or vehicles
 - Insurance in terms of the provision of the Compensation for Occupational Injuries and Diseases Act no 130 of 1993 as amended or any replacement act thereto.
 - Employers Common Law Liability Insurance with a limit of indemnity of not less than R5, 000,000.00 per event.

- Motor Vehicle Liability Insurance including but not limited to Passenger Liability
Indemnity for both authorized and unauthorized passengers for a limit of indemnity of not less than R5,000,000.00 per event and with a minimum limit of R5,000,000.00 per event and per period of insurance in respect of:
 - Passenger Liability Including Unauthorized Passenger Liability
 - Contingent Liability
 - Liability arising out of fire and/or explosion
- (f) Riot Insurance effected through the South African Special Risks Insurance Association (SASRIA) in respect of all construction equipment, machines and/or vehicles for a sum sufficient to provide for their replacement.
- (g) Public Liability Insurance including, but not limited to, Liability for defective workmanship, Liability for the acts of employees or any principal of the contractor, Liability for accidental loss, damage or injury to property and/or persons for a limit of Indemnity of R5, 000, 000.00 per event and with a minimum limit of R5, 000, 000.00 per event and per period of insurance.

NO EQUIPMENT WILL BE ACCEPTED BY THE CITY OF TSHWANE MUNICIPALITY IF THIS PROOF IS NOT SUBMITTED WITHIN THE ABOVEMENTIONED PERIOD OR IF THE CITY TREASURER DOES NOT CONSIDER THE POLICY TO COMPLY WITH THE NECESSARY REQUIREMENTS.

3. WITHHOLDING OF PERFORMANCE

- 3.1. The Service Provider may not withhold or suspend any services where there is a 30 (thirty) Business days delay of payment.
- 3.2. During the currency of this agreement, the Service Provider has the right to withhold or suspend Services provided to the City after the 30 (thirty) Business days delay referred to in clause 3.1 has lapsed.
- 3.3. If the City still fails to pay within the period referred to in clause 3.1 the Service Provider may provide the City with a further 15 fifteen (fifteen) Business days or any number of days requested by the City to effect payment. Failure of the City to pay despite the further extension referred to herein shall entitle the Service Provider to terminate the agreement and exercise any of its rights it may have in terms of this Agreement or in law.

4. PENALTY

- 4.1 Should the Service Provider fail to comply with its obligations in terms of this Agreement, the City may:
 - 4.1.1. exercise its rights in terms of clause 16 below; alternatively
 - 4.1.2. impose a penalty on the Service Provider as provided in clause 13.4 below.
- 4.2. An election of any of the above by the City shall not mean that the City has waived any other rights, which the City might have in law.
- 4.3. Should the City elect to impose a penalty on the Service Provider, the City shall provide the Service Provider with a written notice requiring the Service Provider to remedy the default within 7 (seven) days from the date of delivery of the notice.
- 4.4. Should the Service Provider fail to remedy the default within 7 (seven) days after receiving the notice, then the City shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the City and without further notice, impose a penalty, which penalty shall be a deduction of 10% of the monthly Contract Price for the Contract Period; and for the avoidance of doubt, the penalty amount shall be 10% of the monies due for payment to the Service Provider monthly
- 4.5 Should there be a dispute as to whether the failure to deliver was caused by the City or was the Service Provider's fault such dispute shall be dealt with in accordance to clause 18 below.

5. ACCESS

- 5.1. The City shall allow the Service Provider reasonable access to its premises, provided that:
 - 5.1.1. access is related to the Services to be provided by the Service Provider; and
 - 5.1.2. the Service Provider adheres to all rules, regulations and instructions applicable at the City's premises.
- 5.2. The Service Provider is required to notify the City monthly of employees who are to provide Services at the Service Areas and/or Delivery Areas.
- 5.3. The City shall grant the Service Provider and/or its employees, referred in clause 5.2 above, access to its premises to perform its obligations in terms of this Agreement.
- 5.4. The Service Provider and its employees shall at all time when entering the premises and/or Service Areas and/or Delivery Areas of the City comply with all rules, laws, regulations and policies of the City.
- 5.5. The Contractor shall instruct his employees that under no circumstances may VEM's under their control be parked, positioned or operated in such a manner as to hinder or obstruct reasonable access to any property or prevent the continued use of vehicle entrance ways, tradesmen's entrances, gateways or any other public or private access routes.

The Contractor shall also ensure that no VEM's under their control be dismantled, repaired, serviced or assembled on any property of the City of Tshwane Metropolitan Municipality.

No VEM's, of the Contractor, will be allowed to be parked overnight on any property of the City of Tshwane Metropolitan Municipality unless the Contractor has applied, in writing and written authority has been given. The contractor is responsible to arrange for his/her own security measures to safeguard the vehicles or equipment and personnel whiles operation or parked on the property of the City of Tshwane Metropolitan Municipality.

6. INSPECTION

- 6.1. The City may at any time inspect the Goods and/or Services of the Service Provider in terms of this Agreement.
- 6.2. If the City is, at any time, dissatisfied with the service levels then the Service Provider shall, within 7 (seven) days, notify the Service Provider in writing of the failure or default.
- 6.3. The Service Provider shall immediately upon receipt of written demand by the City, remedy such failure or default, within 7 (seven) Business Days from the date of receipt of the notice, free of charge.
- 6.4. Should the Service Provider fail to remedy the failure or default referred to above then the City shall have the right to impose penalties as provided for in clause 26 below or invoke the provisions of clause 16 below.
 - 6.4.1. To enable the City to determine whether the Goods and/or Services rendered in terms of this Agreement are being complied with the Service Provider shall:
 - 6.4.1.1 provide the City with such information as it may reasonably require;
 - 6.4.1.2 allow the City to inspect and take copies of any records of the Service Provider relating to the Goods and/or Services, including all hardware, software, data, information, visuals, procedures, event logs, transaction logs, audit trails, books, records, contracts and correspondence;
 - 6.4.1.3 allow the City or its authorised representatives to conduct interviews with any of the Service Provider's employees, subject to reasonable notice being given to the Service Provider.
- 6.5. Service Provider to Provide Reasonable Assistance
 - 6.5.1. Where any information is required for inspection in terms of this clause and the information is kept in a computer, the Service Provider shall give the City reasonable assistance required to facilitate inspection and obtain copies of the information in a visible and legible form or to inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the keeping of the information.

- 6.5.2. Any information required to be provided to the City pursuant to this clause 6 shall be provided by the Service Provider, as the case may be in such form (including a form otherwise than in writing) as the City may reasonably specify.
- 6.5.3. The cost of any inspection contemplated in terms of this clause 6 shall be for the account of the City unless any material irregularity or failure on the part of the Service Provider is determined by the City in the course of such inspection.
- 6.6 The inspection contemplated in this Agreement will be conducted:
 - 6.6.1 . during normal business hours;
 - 6.6.2. save where the circumstances justify it, on reasonable notice to the Service Provider; with the minimum interference in the provision of the Services and the Service Provider's other operations.

7. SERVICE PROVIDER'S WARRANTIES AND INDEMNITIES

7.1 Service Warranties

- 7.1.1 The Service Provider warrants that in relation to each Service provided in terms of this Agreement:
 - 7.1.1.1 it has full capacity and authority to enter into and perform this Agreement, and that this Agreement is executed by duly authorised representatives of the Service Provider;
 - 7.1.1.2 it possesses or has access to the requisite knowledge, skill and experience to provide the Services in an expert manner;
 - 7.1.1.3 it will discharge its obligations under this Agreement and any annexure, appendix or Schedule hereto with all due skill, care and diligence;
 - 7.1.1.4 all work performed and Services rendered under this Agreement shall comply with prevailing practice, standards and specifications within the industry;
 - 7.1.1.5 it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
 - 7.1.1.6 the use or possession by the City of any Materials will not subject the City to any claim for infringement of any Intellectual Property Rights of any third party;
 - 7.1.1.7 with promptness and diligence and in a skilful manner and in accordance with the practices and professional standards of operations while performing Services similar to the Services;
 - 7.1.1.8 which Services will in all aspects comply with industry norms and best practice to the satisfaction of the City with regard to materials and workmanship;
 - 7.1.1.9 using and adopting any standards, processes and procedures required under this Agreement;
 - 7.1.1.10 warranting that it shall employ suitably qualified and trained employees to provide the Services and/or Goods to the City and it shall allocate employees in accordance with the technical skill and knowledge required;
 - 7.1.1.11 free from any defects in material and workmanship;
 - 7.1.1.12 maintaining and causing to be maintained the highest standard of workmanship and care in undertaking the Services and/or processing the Goods;
 - 7.1.1.13 maintaining and caused to be maintained the highest standard of care and diligence in providing the Services, maintenance and support;
 - 7.1.1.14 ensuring that all applicable laws are observed;
 - 7.1.1.15 without derogating from the generality of the foregoing, strictly adhering to any or all laws, regulations and accepted procedures with regard to health, hygiene and the maintaining of the environment in the manufacture, packaging, labelling, identification, storage and transportation of the Goods; and
 - 7.1.1.16 guaranteeing that the Goods shall be in good working condition for the warranty and/or maintenance period of the Goods, and that the Service Provider shall be responsible for the costs of repair of the Goods should the Goods require to be repaired to their normal use.
 - 7.1.1.17 ensuring the Good/s provided and or delivered is tested for quality at intervals required by the City. Intervals for such testing will be communicated by the City's Contact person in writing.

7.2 Indemnity

7.2.1 The Service Provider hereby indemnifies the City against any claim which may be brought against the City by the Service Provider's personnel or a third party arising from the execution of this Agreement alternatively which arises against the City as a result of the Service Provider's breach of any of the provisions of this Agreement, provided that the City shall notify the Service Provider in writing within a reasonable time, and in any event not less than 14 (fourteen) Business days of the City becoming aware of any such claim to enable the Service Provider to take steps to contest it and shall provide the Service Provider with such reasonable assistance as may be necessary to enable the Service Provider to defend the claim to the extent only that it is in a position to render such assistance. The Service Provider may, within 5 (five) Business Days of receipt of written notice from the City aforesaid, elect in writing to contest such a claim in the name of the City and shall be entitled to control the proceedings in regard thereto, provided that the Service Provider indemnifies the City against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the City as a consequence of the defence of the claim.

8. SERVICE PROVIDER'S PERSONNEL

8.1 Liability for Criminal Acts of Employees

The Service Provider shall be liable to the City for any loss that the City or any third party may suffer as a result of any theft, fraud or other criminal act of any employee of the Service Provider which arises within the course and scope of such employees' employment with the Service Provider.

8.2 Character of Employees

8.2.1 Due to the confidential nature of certain aspects of the Services and the position of trust which the Service Provider's employees will fulfil, the Service Provider hereby undertakes to use its best commercial endeavours to ensure that it only assigns to the City employees who are fit and proper persons and who display the highest standards of personal integrity and honesty and who have not, to their knowledge, being convicted of any crime.

8.2.2 The Service Provider shall, at its own cost, conduct all reasonable background checks into members of its employees prior to utilizing same to provide the Services in terms of this Agreement.

8.3 The City shall conduct all reasonable background checks into the Service Provider's employees from time to time, where it deems it necessary to do so.

9. STATUTORY AND EMPLOYMENT ISSUES

9.1 The Service Provider shall comply with all employment legislation

9.1.1 The Service Provider warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its personnel and its relationship with the City. This includes, but is not limited to, the Labour Relations Act, the Basic Conditions of Employment Act, 1977, the Employment Equity Act, 1998 and any other applicable employment legislation currently in force.

9.1.2 The Service Provider warrants further that it is not and will not in future be in contravention of any of the provisions of any such legislation and in the event of such contravention, the Service Provider shall immediately take all steps to remedy such contravention. If the City advises the Service Provider of any contravention of such legislation in writing, the Service Provider shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep the City informed regarding the steps taken and the implementation and the result thereof.

9.2 No employment

The Service Provider warrants that none of its personnel shall be regarded as employees of the City. The Service Provider shall assist to defend and bear all costs in the event that the City is

required to defend a claim, whether civil or employment related, instituted against it by the Service Provider's personnel should the City defend the matter, the Service Provider hereby indemnifies the City against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the City as a consequence of the defence of the claim.

9.3 Occupational Health and Safety Act, 1993

The Service Provider shall be responsible for ensuring compliance with all the provisions of the Occupational Health and Safety Act, 1993 and it indemnifies the City against any claim which may arise in respect of such Act by its personnel against the City.

10. SUBCONTRACTING

10.1 The Service Provider may not Subcontract the whole of or any portion of the Services in terms of this Agreement to any third party without the prior consent of the City.

10.2 In the event the Service Provider wishes to Subcontract the whole of or any portion of the Services in terms of this Agreement, it shall apply to the City in writing for consent to do so.

10.3 In its application, the Service Provider shall give the name of the Subcontractor, the Subcontractor's obligations, the proposed date of commencement of the Subcontract which shall include the fees payable to the Subcontractor, and a report of the background security check on the Subcontractor's suitability, financial and otherwise.

10.4 The City may, in its sole and absolute discretion refuse consent to Subcontract. In the event the City approves the Subcontracting of the whole of or any portion of the Services in terms of this Agreement, then:

10.4.1 the Service Provider shall ensure that the Subcontractor's B-BBEE level is equal or better than that of the Service Provider, their price is competitive and they have the capacity to provide the Service;

10.4.2 such Subcontracting shall not absolve the Service Provider from responsibility for achieving the Service Levels or complying with its obligations in terms of this Agreement and the Service Provider hereby indemnifies and holds the City harmless against any loss, harm or damage which the City may suffer as a result of such Subcontracting;

10.4.3 the Service Provider shall at all times remain the sole point of contact for the City in respect of the acquisition of Services by the City; and

10.4.4 no such Subcontracting shall have any effect on the Contract Price and charges payable by the City to the Service Provider in terms of this Agreement.

11. CONFIDENTIALITY

11.1 The Service Provider acknowledge that all information relating to the City confidential business and technical information, data, documents or other information necessary or useful for the carrying on by the City of its business which shall include, but shall not be limited to operating procedures, quality control procedures, approximate operation personnel requirements, descriptions and trade names and trademarks, know how, techniques, technology, information relating to clients, customers, suppliers, relevant authorities, copyright, trade secrets and all goodwill relating to the business and any other intellectual property rights, technical data and documents in whole or in part, used by the City in respect of its business; ("Confidential Information"), shall remain confidential and shall not be made known unless the City has given written consent to do so.

11.2 The information provided by the City in the context of this Agreement is Confidential Information and the Service Provider shall take all reasonable measures to keep the information confidential and will only use the information for the purpose for which it was provided.

11.3 The Service Provider undertakes to not disclose any such Confidential Information. However, there will be no obligation of confidentiality or restriction on use where:

11.3.1 the information is publicly available, or becomes publicly available otherwise than by action of the receiving Party; or

- 11.3.2 the information was already known to the receiving Party (as evidenced by its written records) prior to its receipt under this or any previous agreement between the Parties or their affiliates; or
- 11.3.3 The information was received from a third Party not in breach of an obligation of confidentiality.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 All Intellectual Property Rights of the Service Provider and/or third party vest in the Service Provider and/or third party, as appropriate.
- 12.2 All rights in the City name and logo remain the absolute property of the City.
- 12.3 The Service Provider warrants that no aspect of the Services provided in terms thereof will infringe any Patent, Design, Copyright, Trade Mark or trade secret or other proprietary right of any third party.
- 12.4 The Service Provider shall promptly notify the City, in writing, of any infringement or apparent or threatened infringement or any circumstances which may potentially give rise to an infringement, or any actions, claims or demands in relation to any Intellectual Property Rights.
- 12.5 In the event the City becomes aware of any such infringement, the Service Provider shall, at its cost, defend the City against any claim that the Services infringe any such third party Intellectual Property Rights, provided that the City gives notice to the Service Provider of such claim and the Service Provider controls the defence thereof. The Service Provider further indemnifies the City against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the City in any action which is attributable to such claim and will reimburse the City with all costs reasonably incurred by the City in connection with any such action.
- 12.6 Should any claim be made against the City by any third party in terms of clause 12.1 above, the City shall give the Service Provider written notice thereof within 3 (three) days of becoming aware of such claim to enable the Service Provider to take steps to contest it.
- 12.7 Should any third party succeed in its claim for the infringement of any third party proprietary rights, the Service Provider shall, at its discretion and within 30 (thirty) days of the Services having been found to infringe, at its own cost:
 - 12.7.1 obtain for the City the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or
 - 12.7.2 replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement; or
 - 12.7.3 alter the subject of infringement in such a way as to render it non infringing while still in all respects operating in substantially the same manner as the subject of infringement; or
 - 12.7.4 withdraw the subject of infringement.

13. FORCE MAJEURE

- 13.1 For the purposes hereof, Force Majeure shall mean civil strife, riots, insurrection, sabotage, national emergency, acts of war of public enemy, rationing of supplies, flood, storm, fire or any other like forces of nature beyond the reasonable control of the party claiming Force Majeure and comprehended in the terms thereof.
- 13.2 If Force Majeure causes delays in or failure or partial failure of performance by a Party of all or any of its obligations hereunder, this Agreement shall be suspended for the period agreed in writing between the Parties.
- 13.3 In the event of circumstances arising which the other Party believes that it constitutes a Force Majeure ("the Affected Party") then such Affected Party shall send, within 5 (five) days from the interrupting circumstances, a written notice of the interrupting circumstances specifying the nature and date of commencement of the interrupting event to the other Party. The Parties shall agree, in writing, to suspend the implementation of this Agreement for a specific period ("Agreed Period").

13.4 In the event that both Parties reasonably believe that the Affected Party shall be unable to continue to perform its obligations after the Agreed Period, then either Party shall be entitled to terminate this Agreement without further notice to the other Party.

13.5 The Party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such party shall give notice to that effect with a written notice of the interrupting circumstances as provided above, to extend the period of this Agreement by a period equal to the time that its performance is so prevented.

14. CESSATION

The Service Provider shall not be entitled to cede or assign or transfer in any other way and/or alienate its rights and obligations in terms of this Agreement without the prior written consent of the City.

15. CHANGE OF CONTROL / CIRCUMSTANCE

15.1 The Service Provider shall notify the City, in writing, of any change in the Service Provider's shareholding or membership or any change in the Service Provider's subsidiary companies or holding or its affiliates such change shall be considered a material change in the constitution and identity of the Service Provider. The City may terminate this Agreement upon becoming aware of such material change.

15.2 The Parties agree that should there be a change as envisaged in clause 15.1 above, the Service Provider will no longer exist and a new third party/entity shall have been constituted. In this regard, such third party shall not be entitled to inherit any of the Service Provider's rights and obligations in terms of this Agreement, which will only be transferred to the new entity in writing by the City following the City's satisfaction and approval in writing of such new entity.

15.3 The Service Provider shall further notify the City of any material changes or circumstance which might have led the City to appoint the Service Provider to Provide the Goods and/or Services. In the event that any material change or circumstance occurs and the Service Provider fails to inform the City of such a change or circumstance, the Service Provider shall be deemed to have breached a material term of this Agreement and the City shall be entitled to cancel the Agreement on 1 (one) month's prior notice.

16. BREACH OF CONTRACT AND REMEDIES

(a) In addition to any other remedies for breach of contract which are set out in this Agreement, the Tshwane Municipality shall be entitled to regard any breach of this contract as a material breach entitling it to:

- Either perform the Contractor's duties itself or appoint another contractor to do so, and in both cases hold the Contractor liable for any additional expenditure incurred thereby over and above the rates agreed upon in terms of this contract and/ or
- Forthwith cancel the contract and/or recover any damages it may have sustained consequent to any such breach.
- To facilitate the administration of this clause the Council Official shall set out the amount of damages suffered by the Tshwane Municipality through exercising its powers under this clause in a certificate and the Contractor shall pay the Tshwane Municipality the amount so certified.

(b) In particular, and without prejudice to the generality of the remedy set out in subparagraph (a) above, the Tshwane Municipality shall be entitled to regard the following acts as material breaches of contract:

- If the Contractor or any person employed by or associated with him, or, in the case of a Company, a Director or shareholder or person similarly associated with such Company, either directly or indirectly gives or offers to give any gratitude, reward or commission or other bribe to any Tshwane Municipality or any person in the employment of the Tshwane Municipality.
- If the Contractor should be convicted on any charge including dishonesty, bribery or corruption.
- If the Contractor or his employee shall supply false information to the Tshwane Municipality on any document required to be completed in terms of this contract such as time sheets, invoices and delivery notes.

(c) The Tshwane Municipality shall at any time be entitled to invoke the provisions of this clause, notwithstanding that it may previously have disregarded any particular breach or breaches of this contract by the Contractor that it may previously have accorded to the Contractor, expressly or by implication, permission to perform otherwise than strictly in accordance with his obligations hereunder.

17. EARLY TERMINATION

The City shall have the right to terminate this Agreement by giving 30 (thirty) days' notice in writing to the Service Provider of its intention to terminate the Agreement.

18. DISPUTES

18.1 Save for clause 16 above or any other clause in this Agreement which provides for its own remedy, should any dispute arise between the Parties in respect of or pursuant to this Agreement, including, without limiting the generality of a foregoing, any dispute relating to:

- 18.1.1 the interpretation of the Agreement;
- 18.1.2 the performance of any of the terms of the Agreement;
- 18.1.3 any of the parties' rights and obligations;
- 18.1.4 any procedure to be followed;
- 18.1.5 the termination or cancellation or breach of this Agreement; or
- 18.1.6 the rectification or repudiation of this Agreement; then any Party may give the other Party written Party written notice of such dispute, in which event the provisions below shall apply.

18.2 Within 7 (seven) days of the declaration of such dispute, the Parties representatives or their nominated persons shall meet in the spirit of goodwill and endeavour to resolve the dispute, failing which (and without prejudice to any other alternative dispute resolution to which the Parties may agree, either prior to or concurrently with arbitration) the provisions of clause 18 above shall apply.

18.3 If the Parties are unable to resolve the dispute within 14 (fourteen) days of the notice of the dispute (or such longer period as they may have agreed to in writing), then either Party may, on written notice to the other Party, require that the dispute be submitted to and decided by arbitration, in terms of the Arbitration Act, 42 of 1965 of South Africa ("the Arbitration Act").

18.4 The arbitration shall be held under the provisions of the Arbitration Act provided that the arbitration shall be:

- 18.4.1 at any place which the Parties agree, in writing, to be mutually convenient.
- 18.4.2 in accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not

be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery or respect rules of evidence.

18.5 If the arbitration is:

18.5.1 a legal matter, then the arbitrator shall be a practicing advocate or a practicing attorney of not less than 10 (ten) years' standing;

18.5.2 an accounting matter, then the arbitrator shall be a practicing chartered accountant of not less than 10 (ten) years' standing; and

18.5.3 any other matter, then the arbitrator shall be any independent person agreed upon between the parties.

18.6 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the Parties, by the president for the time being of the Law Society of the Northern Provinces.

18.7 Should the Parties fail to agree whether the dispute is of a legal, accounting or other nature within 7 (seven) days after the arbitration has been demanded, then it shall be deemed to be a dispute of a legal nature.

18.8 The arbitrator may:

18.8.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose, shall have the widest powers of investigating all documents and records of any party having a bearing on the dispute;

18.8.2 interview and question under oath the parties of any of their representatives;

18.8.3 decide the dispute according to what he considers just and equitable in the circumstances; and

18.8.4 make such award, including an award for specific performance, damages or otherwise, as he in his discretion may deem fit and appropriate. The arbitration shall be held as quickly as possible after it is requested, with a view to it being completed within 30 (thirty) days after it has been so requested.

18.9 The arbitrator's decision and award shall be in writing with reasons and shall be final and binding upon the Parties.

18.10 The arbitrator's award may, on application by either Party to a court of competent jurisdiction and after due notice is given to the other Party, be made an order of court.

18.11 Notwithstanding the provisions of clauses 18.1, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7 above, in the event of either Party having a claim against the other Party for a liquidated amount or an amount which arises from a liquid document, or for an interdict or other urgent relief, then the other Party having such a claim shall be entitled to institute action therefore in a court of law rather than in terms of the above clauses, notwithstanding the fact that the other Party may dispute the claim.

18.12 The provisions of this clause 18 are severable from the rest of this Agreement and shall remain in effect even where this Agreement is terminated or cancelled for any reason.

19. LAWS AND JURISDICTION

19.1 This Agreement shall be governed by and interpreted according to the Law of the Republic of South Africa.

19.2 Each Party submits to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with this Agreement including its termination. Each Party further consents to the jurisdiction of the High Court of South Africa (North Gauteng High Court (Pretoria)).

20. ALLOCATION OF WORK

A maximum of 30 suppliers will be appointed per item. The appointment of suppliers will be on an 'as-and-when' needed basis and therefore the services will only be required as the City needs them and the City will be under no obligation to allocate any work to the bidder over the term of contract should the services never be needed. The City further has no obligation to allocate the

full quota of the number of vehicles, equipment and machinery indicated as available in bidder's tender submission.

The inspection of VEM's will be conducted during the first deployment as provided for in the tender specification.

Since these tenders are awarded to provide vehicles on an as-and-when basis with varying demand, it is critical that a fair and transparent allocation criteria to drive the allocation of work is determined and communicated. The principles of allocation have been formulated to guide allocation of work.

The objectives of the allocation criteria are:

- To allocate the most work to least costly service providers in order to achieve cost efficiencies for the City;
- To achieve fair distribution of work amongst all service providers to have capacity to deliver services to the City under this tender.
- To allocate work equitably across all service providers with the bias towards least costly service providers.
- To ensure a systematic approach to selecting service providers, avoiding bias and random selection of service providers across different service providers.
- To build a pool of capable service providers in the City especially amongst previously disadvantaged communities.

The City will ensure that there is a fair distribution of work amongst all service providers and that most of the work is allocated to least costly service providers in order to achieve cost

The allocation criteria is based on the tender conditions and the Supply Chain Management Policy of the City. It is further critical that the appointment letters and the SLA further emphasizes the right of the City to choose the allocation criteria. The allocation criteria will be applied as follows:

- I. The maximum number of service providers which will be appointed per item is 30.
- II. It follows there that in the event of withdrawal or removal of any service provider for any reason whatsoever in the initial and top 30 service providers will systematically be replaced by another service provider in the sequence from high scoring service provider outside the top 30.
- III. Bigger allocation to most cost-effective suppliers
- IV. Equitable allocation per group
- V. Allocation to the cost-effective supplier with capacity
- VI. Round up cost effective and round down the most expensive group.

21. DRIVERS AND OPERATORS

The attention of the Contractor is drawn to the requirements of the Industrial Conciliation Act 1956, as amended and any determination relevant to the driving or operating of VEM's used for this Contract.

The attention of the Contractor is also drawn to the requirements of the Occupational Health and Safety Act, Act 85 of 1993.

Construction Regulation 21

4.1 A Contractor shall ensure that all construction vehicles and Refuse Removal Vehicles;

- a) Are of an acceptable design and construction*

- b) *Are maintained in a good working order*
- c) *Are used in accordance with their design and the intention for which they were designed, having due regards to safety and health;*
- d) *Are operated by workers who-*
 - *Have received appropriate training and been certified competent and been authorized to operate such machinery;*
 - *Are physically and psychologically fit to operate such construction vehicles and Refuse Removal Vehicles by being in possession of a medical certificate of fitness;*
- e) *Have safe and suitable means of access*

It is therefore required that the contractor submit a certificate of competence from an approved institute for each machine operator/driver, to prove that the operator is competent to operate the machine on request by the City. Drivers and Operators must be in possession of a valid, driver's license and PrDP where applicable.

The City of Tshwane reserves the right to test Operators at Tshwane Leadership Management Academy at any given time as and when required.

Should the Contractor's operator or employee be incompetent, impertinent, unreasonable, fail to carry out his instructions, no valid documentation available or otherwise hinder the progress of the work the Contractor shall remove him from the site of the works immediately upon receiving the Official's objection to this employee and replace him within 12 hours. Such an objection or request shall be confirmed in writing. This employee shall not be re-employed for work in terms of this contract without the written consent of the Official and/or until the valid documentation have been received.

No payment will be made for the VEM's from the time that a report has been made, provided that the VEM's has not been used for other purposes, until a replacement has been provided.

Operators shall be responsible persons able to fully comprehend written or oral instructions given in either official language by Tshwane Municipality Officials. In addition the operators and drivers must be generally competent persons for the task they are to perform and must have a working knowledge of all traffic laws or by-laws and be specifically instructed to observe such laws at all times.

The Official may give instructions to the Contractor's employees to follow a particular route and generally perform the work to be done as required by the Official.

STANDARD WAGES

(a) The Contractor undertakes in the case of its employees engaged upon work under this Contract for the Council, to pay wages at not less than the current local standard rates, to observe the hours and other conditions of labour recognised as proper in the district and to employ only skilled tradesmen with bona fide apprentices in the performance of skilled tradesman's work.

(b) For the purpose of this clause "Current local standard rates" of wages shall be such rates as are, for the time being, recognised and agreed upon as standard rates by a local body recognised as representing workmen in the particular trade concerned on the one hand, and any local association representing employers in such trade on the other, and "the hours and other conditions of labour recognised as proper in the district" shall be hours and conditions of labour as are similarly recognised and agreed upon, provided that where in any trade there are no rates of wages, hours and conditions of labour so recognised and agreed upon, reference shall be made to the practice with regard to such trade obtaining in the district.

(c) The Contractor shall for the purpose of satisfying the Council as to the fulfilment of his obligations under this clause, at all times afford to the Council and its authorised agents, reasonable facilities for inspecting, copying and making extracts from all relevant books and pay-sheets of the Contractor.

(d) The Contractor is warned that in the event of a breach of the provisions of this clause, the Council may consider such breach as sufficient ground for refusing to accept any bid for other works thereafter submitted by the Contractor.

22. LOADS

The Contractor shall ensure that the trucks are loaded to the maximum capacity, but within the legal limits and that their loads are delivered in accordance with the Official's instructions by the shortest practicable route and that the trucks return by a similar route and within a reasonable time as determined by the Official.

Note: It is the responsibility of the Contractor and his driver to ensure that trucks are not overloaded

23. AREA TO BE WORKED IN

VEM's are to work where and when required in ALL of the Tshwane Municipal regions.

The Contractor will be notified by the Official 48 hours in advance of the number of VEM's required of him and of the name of the official of the relevant Department, depot or work site to whom he must report for more specific details as to where and when the VEM's under his control will be required to work. The onus is on the Contractor to contact this official within the period of 48 hours to obtain this information.

24. EQUIPMENT, MACHINES AND VEHICLES WHICH DO NOT COMPLY WITH REQUIREMENTS

(a) All VEM's must at all times fully comply with the Road Traffic Act of 1996

(b) Notwithstanding the provisions of Clause 21 and without prejudice and in addition to the Tshwane Municipality's rights in terms of Clause 21, any VEM's which in the opinion of the Council Official is VEM's not capable of performing the duties prescribed in terms of the specification, owing to its mechanical condition shall on the written instruction of the Official be taken to the Tshwane Municipality's

Mechanical Workshop, 9 Bosman Street for testing. If the VEM's is found to be faulty no payment shall be made to the Contractor from the day on which the tests were carried out and be removed from the list until such time as it shall have been repaired to the satisfaction of the Mechanical Inspector. The Contractor shall then make an appointment with the Inspector; giving notice to have the VEM's reexamined before it can be re-admitted to the contract. If any VEM's is not readmitted after 14 days, the penalty clause will apply.

(c) The Contractor shall ensure that for the duration of this contract his VEM's being operated in terms of this contract will have all the necessary valid documents relating to the VEM's and operators and these documents shall be made available to the Council Official on request. The documents required shall include a current applicable license, fitness certificate, contractors all risk insurance policy from an approved insurance company to indicate that the VEM's is properly insured.

Should it be deemed necessary before the contract is awarded the Official may inspect any or all the items of equipment tendered, for purposes of adjudication.

(d) All items of VEM's accepted on the contract may be inspected by the Official or Inspector at any time. The equipment will be checked to ensure that it complies in all respects with the Tshwane Municipality's requirements as detailed in the tender documents.

(e) Any machine found by the Official to be unsuitable shall be removed immediately by the contractor.

(f) All trucks must be fitted with efficient bodies of a permanent nature without any temporary additions. A truck's body which allows the load to spill out is not to be used.

(g) Only all metal trucks will be accepted for this contract.

(h) All the VEM's with fixed equipment such as locking devices on movable body panels must be maintained in good working order at all times, and must be kept in substantially the same condition as when accepted by the Tshwane Municipality for this contract in terms of the conditions. The decision as to whether a body is suitable or not will be taken by the Official, whose decision will be final and binding.

(i) VEM's shall be free from leaks of any type of fluid.

(j) At all times the trucks shall be kept in a fully roadworthy condition.

(k) If a bid for the rendering of the service in an area is awarded to the bidder, the bidder shall during the currency of the contract ensure that –

- the vehicle(s) and drivers comply to Road Traffic Act and/or Occupational Health and Safety Act
- the vehicle(s) and equipment are in a good state of repair;
- the vehicle(s) and equipment are comprehensively insured;

(l) Proof that the aforesaid vehicles and equipment are comprehensively insured must be submitted when requested by the City.

(m) A certified copy of an unendorsed public vehicle driver's license(s) of the driver(s) of the aforesaid vehicle(s); must be submitted when requested by the City.

- **Contractors who for any reason can no longer meet the supply requirements must indicate in writing.**

25. MAINTENANCE OF VEM's

VEM's shall be maintained in the same condition, fair wear and tear excepted, as they were in when accepted by the Tshwane Municipality in terms of the Special Conditions and Specifications and the relevant documents required of the Special Conditions must remain valid and be updated as necessary, for the duration of this contract.

The Contractor shall, whenever possible, undertake to do all servicing or maintenance as may be required for the equipment, machines and/or vehicles during the contracts non-working hours.
VEM's taken in for repairs must be replaced by the Contractor within 12hrs.

Where this is not possible, the contractor shall give the Official 24 hours' notice of his intention to withdraw the equipment, machines and/or vehicles for this purpose.

Should any VEM's doing work in terms of this contract break down or become defective, the operator is absent, there is a fuel shortage or the stoppage is due to any inefficiency on the part of the Contractor or his employees so causing a delay of work at any time of day, then the following procedure in applying the penalties will be adopted:

- (a) Where in the opinion of the Official an unavoidable stoppage occurs, the downtime only will be deducted, in effecting payment for actual hours worked as per the quoted rates.

No payment will be made for down-time or in cases of equipment breakdown.

- (b) Should hired equipment, machines and/or vehicles break down and other VEM's, from the same hire company are used, and thereby cannot be further utilized as a result of the VEM's breakdown, neither the VEM's, will receive payment.
- (c) Any loss of perishable materials due to breakdowns or fuel shortages that is caused by the Contractor or its Operator will be subtracted from the payment.
- (d) Should the contractor remove VEM's from the site without the written consent of the Official, such removal may render him liable to a penalty in terms of clause 4 above.
- (e) On reporting for duty, VEM's shall carry sufficient fuel to complete a normal day's duties unless the fuel is supplied by the Tshwane Municipality. Should any VEM's not work as a result of lack of fuel, penalty in terms of clause 4 above shall apply.
- (f) Should the VEM's report on site and is not in a working order, such as non-working lights, break lights or flicker lights or does not have a valid license disc or registration plates, penalty in terms of clause 4 above shall apply.
- (g) A breakdown shall be reported by the contractor's operator (when supplied) by the quickest practicable means to the contractor and Council official. The Official will render assistance in conveying those reports, but the onus of reporting breakdowns to the contractor rests with the contractor's operator. The Official will be responsible for notifying the contractor of any breakdowns where no operator is supplied. Record of such incidents will be kept

The contractor's operator must be equipped with a cellular phone.

Daily rates are to be based on 8 working hours. Payment shall be made for work done and services rendered in accordance with the approved rates.

Invoices for payment must be submitted under the same name as that appearing on the signed contract documents.

In cases where the VEM's are required for less than 8 (eight) hours a day, the total for such usage will be determined on a pro-rata basis, based on the actual number of hours used.

The City reserves the right to conduct a market analysis to determine the fair price offered and to avoid exploitation.

28. COMPLIANCE WITH BY-LAWS AND SPECIFICATIONS

- (a) The Contractor shall comply with the Tshwane Municipality's By-laws and any other laws or regulations and shall give all notices and pay all fees required by the provisions of such by-laws and regulations to the Tshwane Municipality and other authorities specified therein.
- (b) The Contractor shall comply with all the requirements prescribed in the Specification.

29. DUMPING

The Contractor shall not dump any material in any place without the prior approval of or on the instructions of the Official. The Contractor will be liable for any fines imposed for dumping in any but the prescribed places.

30. WATER AND SANITATION

The Contractor shall make his own arrangements with regard to water and sanitation as may be required for his employees.

31. CAMP AND WATCHMEN

The Contractor shall be responsible for making his own arrangements in this regard.

32. SECURITY

Vehicles will be operational on City of Tshwane Municipality property and must comply to all the security arrangements.

33. WORKING HOURS

The Contractor will be required to work at least a five-day week.

The tender provides for the Contractor to have VEM's available for normal working hours which are between:

From 7:00 to 17:00 from Mondays to Fridays.

Note: This time period of 10 hours accommodates different Departments starting and ending at different times, e.g. 07:00 to 15:30; 07:30 to 16:00; 08:00 to 16:30; 08:30 to 17:00 etc.

Should the VEM's be required outside normal **working** hours **for the Division where the VEM is utilised** such time shall be considered at overtime rates.

Overtime:

Overtime will be referred to as all-time worked outside the normal working hours.

Overtime rate will only be paid on the labour portion of the tendered price. The City deems the labour portion as 5% of the tendered rate (daily rate or hourly rate). Overtime rate will therefore be calculated as follows:

<u>Overtime on weekdays and Saturdays</u>
Total overtime daily rate = ((5% of Tendered price per day x 1,5) + Tendered Price)

Or

5% of Tendered price per hour determined by	<u>daily rate</u>
	8 hours x 1,5

(ii) Sundays and Public Holidays

5% Tendered price per day x 2

Total overtime daily rate = ((5% of Tendered price per day x 2) + Tendered Price) Or

5% Tendered price per hour determined by	<u>daily rate</u>
	8 hours x 2

Tendered price" means the price for the equipment, machines and/or vehicles for normal working Hours

No overtime will be paid for machines/equipment/vehicles that are not accompanied by labour(driver/operator).

34. PRICE BASIS

- (a) Rates quoted should be as per the pricing schedule and should indicate prices **Exclusive of VAT** as well as **Inclusive of VAT**.
- (b) Daily rates must be quoted and must include the services of an operator (if required), fuel, oil, stores, insurance and all other expenses related to the hire and operation of the VEM's **except** for the items as indicated in the specifications where fuel and oil will be supplied by the Tshwane Municipality. Differentiated rates (i.e. for various Departments or various types of work) will not be permitted.
- (c) Only one rate per item per tenderer will be accepted.
- (d) In cases where the VEM's are utilised for less than 8 (eight) hours a day, the total for such usage will be determined on a pro-rata basis, based on the actual number of hours used.
- (e) For the hire of VEM's (except small equipment) working outside normal working hours payment will be made as specified in Clause 33 of the Specifications. Payment will be made in respect of transport of certain equipment by means of a "low-bed" or similar conveyance at the rate charged for one day. Payment will be effected each time the transport is completed. (Delivered and collected=8 hours). If for whatever reason the Contractor wishes to move equipment during the hire period and such moving does not constitute a necessary move in terms of this contract, no payment for transport will be made. It should be noted that the equipment as set out in the Schedule of Equipment and Rates may, at the Official's discretion, be transported by towing, trailer or a low-bed either

belonging to the Tshwane Municipality or hired from a third party, in which case no payment for transport will be made to the Contractor.

- (g) During a daily hire, no extra payment will be made in respect of pneumatic tyred equipment moved under its own power from one job to another job on this contract.

3 Any charge for payment for transport must be submitted within one month of the date of transport and must be accompanied by a delivery note certified and signed by a Tshwane Municipality official. A copy of this delivery note must be handed to the Tshwane Municipality official accepting delivery of the equipment, machines and/or vehicles, or authorizing removal thereof.

4 All VEM's shall at all times whilst on hire be accompanied by a book, containing in triplicate, daily time sheets. These time sheets shall reflect the following details:

Date, Name of contractor, Make and Company Fleet number of the equipment, Item number under which tendered in Schedule of, Equipment and Rates, working time, "Down" time, reason for "down" time, signature of Official in charge of the work.

At the end of each day all time sheets shall be clearly signed by the Official in charge of the work and the Equipment Operator and the persons so signing shall also clearly print their names, pay number and telephone numbers. If any of these details are not on the time sheet, no payment will be done for that machine.

The Tshwane Municipality shall be charged on the basis of such daily time sheets, when signed by the City's responsible official or whoever Tshwane Municipality Official as appointed. A copy of such time sheets shall be kept in the custody of the contractor's operator, if an operator is supplied, and shall be presented to the Official within 1 working day of the completion of the shift, for signature and if signed by the Official such Daily Time Sheets shall be deemed to have been accepted by him. In the event of the Official refusing to sign any Daily Time Sheets and to accept the figures appearing thereon the Official shall notify the contractor of this refusal and the reasons therefore within 1 working day of his decision not to sign. The contractor must give an explanation to the satisfaction of the Official within 7 days of such notification, failing which penalties in terms of Clause 4 shall apply.

35. TYPE AND ALLOCATION OF WORK

- (a) In general the VEM's will be required for the type of work as set out in Clause 1 of the Specification. The Official will notify the Contractor 48 hours in advance of requirements, with respect to the number and type of equipment, machines and/or vehicles required and the type of work which VEM's will be called upon to do, and 24 hours' notice when VEM's are no longer required
- (b) No guarantee as to the period required is given provided that the necessary notification in terms of sub-clause (a) is given.
- (c) The attention of the tenderer is drawn to the fact that this contract is intended generally to supplement Tshwane Municipality VEM's, and it is possible that the City may elect to utilise its own internal resources.
- (d) Certain items of equipment accepted may not be used at all during the contract period. The use of VEM's will be of an occasional nature and the duration of its use will be variable.
- (e) In the case of large scale earthworks, the Tshwane Municipality reserves the right to hire the necessary equipment from multiple contractors to the benefit of the Tshwane Municipality.

36. EVALUATION CRITERIA

THE TENDER WILL BE EVALUATED AS FOLLOWS

Stage 01: Administrative requirement

All the proposals will be evaluated against the Administrative requirements as set out in the list of returnable documents

Compulsory Returnable Documentation (Submission of these are compulsory)	Submitted (YES or NO)	Checklist (Guide for Bidder and the Bid Evaluation Committee)
<p>a) To enable The City to verify the bidder's tax compliance status, the bidder must provide; <input type="checkbox"/> A copy of their Tax Clearance Certificate (TCS);</p> <p>or</p> <p><input type="checkbox"/> Indicate their tax compliance status PIN.</p>		<p>TCS must be in the same business name as the bidding company.</p> <p>TCS must be valid.</p> <p>Tax status must be compliant before the award.</p>
<p>b) a copy of their Central Supplier Database (CSD) registration; or indicate their Master Registration Number / CSD Number;</p>		<p>CSD must be valid. Tax status must be compliant before the award.</p>
<p>c) Confirmation that the bidding company's rates and taxes are up to date: • Original or copy of Municipal Account Statement of the Bidder (bidding company) not older than 3 months and account must not be in arrears for more than ninety (90) days; or ,signed lease agreement or In case of bidders located in informal settlement, rural areas or areas where they are not required to pay Rates and Taxes a letter from the local councilors confirming they are operating in that area</p>		<p>Was a Municipal Account Statement or landlord letter provided for the bidding company? The name and / or addresses of the bidder's statement correspond with CIPC document, Address on CSD or Company profile? Are all payment(s) up to date (i.e. not in arrears for more than 90 days?</p>
<p>d) In addition to the above, confirmation that all the bidding company's owners / members / directors / major shareholders rates and taxes are up to date: • Original or copy of Municipal Account Statement of all the South African based owners / members / directors / major shareholders not older than 3 months and the account/s may not be in arrears for more than ninety (90) days; or a signed lease agreement of owners / members / directors / major shareholders or In case of bidders located in informal settlement, rural areas or areas where they are not required to pay Rates and Taxes a letter from the local councilors confirming they are residing in that area</p>		<p>Was a Municipal Account Statement or landlord letter provided for the bidding company? The name and / or addresses of the bidder's statement correspond with CIPC document, Address on CSD or Company profile? Are all payment(s) up to date (i.e. not in arrears for more than 90 days?</p>
<p>e) Duly Signed and completed MBD forms (MBD 1, 4, 5, 8 and 9) The person signing the bid documentation must be authorised to sign on behalf of the bidder. Where the signatory is not a Director / Member / Owner / Shareholder of the company, an official letter of authorization or delegation of authority should be submitted with the bid document.</p>		<p>All documents fully completed (i.e. no blank spaces)? All documents fully signed? Signature authorised (any director / member / trustee as indicated on the CIPC document, alternatively a delegation of authority would be required? Documents completed in black ink (i.e. no "Tippex" corrections, no</p>

Compulsory Returnable Documentation (Submission of these are compulsory)	Submitted (YES or NO)	Checklist (Guide for Bidder and the Bid Evaluation Committee)
<p>NB: Bidders must ensure that the directors, trustees, managers, principle shareholders, or stakeholders of this company</p> <p>declare any interest in any other related companies or business whether or not they are bidding for this contract. <u>See Question 3.14 of MBD 4. Failure to declare interest will result in a disqualification</u></p>		<p>pencil, no other colour ink, or none submission of the above, will be considered)?</p>
<p>f) Financial Statements for the most recent three (3) years or financial statements from date of existence for companies less than three years.</p> <p>NB: The bidder must submit signed audited annual financial statements for the most recent 3 years, or if established for a shorter period, submit audited annual financial statements from date of establishment.</p> <p>If the bidder is not required by law to prepare signed annual financial statements for auditing purposes, then the bidder must submit Proof that the bidder is not required by law to prepare Audited financial statements.</p>		<p>Applicable for tenders above R10m in conjunction with MBD 5)</p> <p>Are Audited financial statements provided (Audited financials must be signed by auditor)? Or</p>
<p>g) Joint Ventures (JV) – (Only applicable when the bidder tender as a joint venture) • Where the bidder bid as a Joint Ventures (JV), the required or relevant documents as per (a) to I above must be provided for all JV parties. • In addition to the above the bidder must submit a Joint Venture (JV) agreement signed by the relevant parties.</p> <p>• Note: It is a condition of this bid that the successful bidder will continue with same Joint Venture (JV) for the duration of the contract, unless prior approval is obtained from The City.</p>		<p>If applicable. JV agreement provided? JV agreement complete and relevant?</p> <p>Agreement signed by all parties? All required documents as per (i.e. a to e) must be provided for all partners of the JV.</p>
<p>h) Bidder attended a compulsory briefing session where applicable</p>		<p>A compulsory briefing register must be signed by the bidder.</p> <p>Bidders will be disqualified should they fail to attend compulsory briefing session</p>
<p>i) Pricing schedule (All items must be quoted for in pricing schedule and if not all items are quoted the bidder will be disqualified). Unless the tender is awarded per item or per section where the bidder only quoted the items or sections they are interested in.</p>		<p>Incomplete pricing schedule results in totals being incomparable. Bidder must be disqualified.</p> <p>Bidder will be disqualified should they make corrections on the price schedule without attaching a signature thereto.</p>

Compulsory Returnable Documentation (Submission of these are compulsory)	Submitted (YES or NO)	Checklist (Guide for Bidder and the Bid Evaluation Committee)
		Bidder will be disqualified should they use tippex/ correction ink, on the price schedule.

Stage 02: Mandatory Requirement

Bidders must comply with the mandatory requirements below failing which will results with immediate disqualification.

If the bidder is the owner of the vehicles, equipment and machines (VEM), the bidder is required to submit details of the VEM including proof of registration or proof of ownership of the machines, vehicles, equipment (VEM) tendered for. Proof of registration or ownership shall be in the name of the company or in the name the directors of the company.

If the bidder is not the owner of the VEM, the bidder is required to submit a lease agreement or rental agreement of the machines, vehicles, equipment tendered for. In order to confirm existence of the VEM, the lease agreement or rental agreement shall specify the details of the VEM. Proof of registration or ownership of the VEM from the lessor or rental company must be attached.

Stage 03: Functional Criteria

Bidders complying with ALL the requirements of stage 1 and 2 will be evaluated against the Functional Evaluation Criteria as set below. Bidders must score 70 points or more out of a total of 100 points allocated for Functional Criteria. Bidders that score less than 70 points will be disqualified and will not be evaluated further.

A bid that scores less than 70 points out of 100 allocated for functionality shall be regarded as non-responsive.

CRITERIA	SUBCRITERIA	SCALE	WEIGHT	HIGHEST POSSIBLE SCORE
Experience in the hire of General Construction vehicles and/or Refuse Removal Vehicles. Bidders will be scored on the number of projects completed and should demonstrate proof of experience. Each project completed must be of minimum three (3) years. Attach: Reference letters from previous clients on company letterhead clearly indicating the contract number, date of inception and completion date. (Reference letters must be signed by the previous client and must be on company letterhead of the client with contact details and confirmation of successful project completion.)	1 Project	1	10	50
	2 Projects	2		
	3 Projects	3		
	4 Projects	4		

CRITERIA	SUBCRITERIA	SCALE	WEIGHT	HIGHEST POSSIBLE SCORE
Appointment letters will not be accepted as reference. Bidders will forfeit all the points allocated to this criterion should they fail to comply with the above requirements.	5 Projects and above	5		
Access to financial facility by institution accredited by Financial Sector Conduct Authority (FSCA) and/or National Credit Regulator (NCR) Attach a letter of Financial Support from institution accredited by Financial Sector Conduct Authority (FSCA) and/or National Credit Regulator (NCR). Letter should indicate the amount offered to the bidder. Proof of financial support shall be on the financial institution letterhead and shall be stamped/signed by the Financial Institution.	≥ R 1 Million (Amount is greater or equals to R1 million but less than R2 million)	3	10	50
	≥ R 2 Million (Amount is greater or equals to R2 million but less than R3 million)	4		
	≥ R 3 Million (Amount is greater or equals to R3 million)	5		

As per the above tender functionality criteria, bidders are requested to provide a proof of financial support from institution accredited by FSCA and/or NCR as proof of financial capacity. In order to clarify this requirement above, the following will be accepted proof of financial support:

1. Bank Guarantee
2. Letter of credit
3. Overdraft facility
4. Letter of financial support
5. Any other form of funding from financial service provider accredited by FSCA and/or NCR

The City may make use of an independent probity to verify the supporting documents supplied and where misrepresentation or forgery is detected the service provider will be disqualified and blacklisted.

4.4 PREFERENTIAL POINT SYSTEM

The preferential point system to be used will be the 90/10 points system in terms of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) Regulations 2022.

- 90 points for Price
- 10 points for Specific Goal

Specific goals

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

The specific goal for this bid is outlined below.

Specific goals	90/10 preference point system	Proof of specific goals to be submitted
BB-BEE score of companies <ul style="list-style-type: none"> • Level 1 • Level 2 • Level 3 • Level 4 • Level 5 • Level 6 • Level 7 • Level 8 • Non-compliant 	<ul style="list-style-type: none"> • 4 Points • 3.5 Points • 3 Points • 2.5 Points • 2 Points • 1.5 Points • 1 Point • 0.5 Points 0 Points 	Valid Certified copy of BBBEE certificate. Sworn Affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises or CIPC BBBEE certificate.
EME and/ or QSE	1 Point	Valid Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises or CIPC BBBEE certificate
At least 51% of Women-owned companies	1 Point	Certified copy of Identity Document/s and proof of ownership (Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises, CIPC registration or any other proof of ownership)
At least 51% owned companies by People with disability	1 Point	Medical Certificate with doctor's details (Practice Number, Physical Address, and contact numbers) and proof of ownership (Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises, CIPC registration or any other proof of ownership)
At least 51% owned companies by Youth	1 Point	Certified copy of Identity Document/s and proof of ownership (Sworn affidavit for B-BBEE qualifying small enterprise or Exempt Micro Enterprises, CIPC registration or any other proof of ownership)
Local Economic Participation <ul style="list-style-type: none"> • City of Tshwane • Gauteng • National 	2 Points 1 Point 1 Point	Municipal Account statement/Lease agreement.

PRICE SCHEDULE

NOTE: a 5% discount shall apply to any item rented for more than 4 days continuously and a 10% discount will apply to any item rented continuously for more than 14 days.

Number of days rented	1 – 4 days	5 – 14 days	15 and more days
Rate to apply for billing	Normal daily rate to apply	5% Discount to apply	10% Discount to apply

ITEM	CATEGORY B FLEET: CONSTRUCTION VEHICLES Drivers required Fuel and top-up oil to be supplied by the Contractor Vehicles offered shall not be older than 9 Years at the time of first deployment to the City. Maintenance and Insurance by Service Provider	Does the offer comply with the tender requirements? STATE: YES or NO	TOTAL NUMBER of MACHINES OFFERED	WORKING RATE: DAILY RATE Normal working hours(8hours)		
				Rates quoted should be EXCLUDING Value Added Tax (VAT).	15% VAT	Rates quoted should be INCLUSIVE of Value Added Tax (VAT).

1	3.5T PANEL VAN FOR ROBOT SECTION			R...../Day	R.....	R...../Day
2	WATER TANKER TRUCK 10 000 litre			R...../Day	R.....	R...../Day
3	WATER TANKER TRUCK 10 000 litre 6x6			R...../Day	R.....	R...../Day

4	WATER TANKER TRUCK 14 000 litre			R...../Day	R.....	R...../Day
5	6 m ³ TIPPER TRUCK			R...../Day	R.....	R...../Day
6	6 m ³ TIPPER TRUCK with Crew Cab			R...../Day	R.....	R...../Day
7	10 m ³ TIPPER TRUCK			R...../Day	R.....	R...../Day
8	14 m ³ TIPPER TRUCK			R...../Day	R.....	R...../Day
9	6 M ³ CONCRETE MIXING TRUCK			R...../Day	R.....	R...../Day
10	LOWBED TRUCK			R...../Day	R.....	R...../Day
11	50TON CRANE TRUCK			R...../Day	R.....	R...../Day
12	15 TON DROPSIDE			R...../Day	R.....	R...../Day

	TRUCK WITH CRANE					
13	31 TON DROPSIDE TRUCK WITH CRANE			R...../Day	R.....	R...../Day
14	31 TON TRUCK TRACTOR FULLY FITTED AS ABNORMAL VEHICLE			R...../Day	R.....	R...../Day
15	ROAD SWEEPERS			R...../Day	R.....	R...../Day
16	4 TON, SIDE TIPPER, DROPSIDE TRUCK with Crew Cab			R...../Day	R.....	R...../Day
17	7/8 TON DROPSIDE TRUCK WITH CRANE SIDE TIPPER			R...../Day	R.....	R...../Day
18	7/8 TON DROPSIDE TRUCK WITH 1/4 LOCKABLE CANOPY DOUBLE CAB TYPE			R...../Day	R.....	R...../Day

19	7/8 TON DROPSIDE TRUCK (HALF CANOPY) FOR PAINTING TEAM DOUBLE CAB TYPE			R...../Day	R.....	R...../Day
20	7/8 TON DROPSIDE TRUCK BUS TRUCK			R...../Day	R.....	R...../Day
21	7/8 TON DROPSIDE TRUCK FULL CANOPY (ROBOT SECTION) DOUBLE CAB TYPE			R...../Day	R.....	R...../Day
22	7/8 TON MOBILE BOWSER TRUCK			R...../Day	R.....	R...../Day
23	7/8 TON MOUNTED AERIAL PLATFORM TRUCK with Crew Cab			R...../Day	R.....	R...../Day
24	7/8 TON AUTOMATED POTHOLE REPAIR AND PATCHING MACHINE			R...../Day	R.....	R...../Day
25	15 TON, DROPSIDE TRUCK with Crane fitted with Orange peel Grapple			R...../Day	R.....	R...../Day

26	20-34 TON SUPER LINK SIDE TIPPER TRUCK			R...../Day	R.....	R...../Day
27	BIN WASHING TRUCK (240 LITRE -1000 LITRE REFUSE CONTAINERS)			R...../Day	R.....	R...../Day

ITEM	CATEGORY C FLEET: REFUSE REMOVAL VEHICLES (SOLID WASTE VEHICLES) <ul style="list-style-type: none"> Drivers and Personnel (Operational Crew) required. Fuel and top-up oil to be supplied by the Contractor. Solid waste vehicles offered shall not be older than 9 Years at the time of first deployment to the City Maintenance and Insurance by Service Provider 	Does the offer comply with the tender requirements? STATE: YES or NO	TOTAL NUMBER of MACHINES OFFERED	WORKING RATE: DAILY RATE Normal working hours(8hours)		
				Rates quoted should be EXCLUDING Value Added Tax (VAT).	15% VAT	Rates quoted should be INCLUSIVE of Value Added Tax (VAT).

28	REAR END LOADER WASTE COMPACTION TRUCK 19 m³			R...../Day	R.....	R...../Day
29	REAR END LOADER WASTE COMPACTION TRUCK 12 m³			R...../Day	R.....	R...../Day
30	REAR END LOADER WASTE COMPACTION TRUCK (Skip)			R...../Day	R.....	R...../Day
31	CWS INDUSTRIAL SIDE LOADER COMPACTION TRUCK			R...../Day	R.....	R...../Day
32	LOAD LUGGER (WITH SWING-ON SKIP LOADER)			R...../Day	R.....	R...../Day
33	CONTAINER HANDLING TRUCK, 6x4 (HOOK-LIFT)			R...../Day	R.....	R...../Day

34	CONTAINER HANDLING TRUCK, 6x6 (HOOK-LIFT)			R...../Day	R.....	R...../Day
35	7/8TON DROPSIDE TRUCK			R...../Day	R.....	R...../Day
SECURITY ESCORT SERVICES (Provision of additional services to the City as and when required in case of volatile situations)		To be sourced on a quotation basis as and when services are needed. The City reserves the right to carry out the services itself if deemed necessary.				

SIGNATURE OF TENDERER:

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

Person Authorized to sign Tender:

FULL NAME (IN BLOCK LETTERS): SIGNATURE:

DATE

.....

.....

MBD1

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CITY OF TSHWANE MUNICIPALITY					
BID NUMBER:	SS 01 -2023/24	CLOSING DATE:	19 OCTOBER 2023	CLOSING TIME:	10:00
DESCRIPTION	TENDER DESCRIPTION: TENDER FOR THE CORPORATE HIRE OF GENERAL CONSTRUCTION VEHICLES AND REFUSE REMOVAL VEHICLES FOR THE CITY OF TSHWANE AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THREE YEARS				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).					

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

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

[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]			
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT	Supply Chain Management	CONTACT PERSON	Karabo Morake
CONTACT PERSON	Kgomotso Makgale	TELEPHONE NUMBER	012 358 0843
TELEPHONE NUMBER	012 358 5478	FACSIMILE NUMBER	n/a
FACSIMILE NUMBER	n/a	EMAIL ADDRESS	karabomor@tshwane.gov.za
EMAIL ADDRESS	kgomotsomakg@tshwane.gov.za		

PART B TERMS AND CONDITIONS FOR BIDDING

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

2.3	APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.	
2.4	FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.	
2.5	BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.	
2.6	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.	
2.7	WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.	
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS		
3.1	IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? YES <input type="checkbox"/> NO <input type="checkbox"/>	
3.2	DOES THE ENTITY HAVE A BRANCH IN THE RSA? YES <input type="checkbox"/> NO <input type="checkbox"/>	
3.3	DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? YES <input type="checkbox"/> NO <input type="checkbox"/>	
3.4	DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? YES <input type="checkbox"/> NO <input type="checkbox"/>	
3.5	IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? YES <input type="checkbox"/> NO <input type="checkbox"/>	
<p>IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.</p>		

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

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

DATE:

PRICING SCHEDULE: FIRM PRICES (PURCHASES)

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

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

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

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

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

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

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

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

* Delete if not applicable

PRICING SCHEDULE: NON-FIRM PRICES (PURCHASES)

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

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

Name of Bidder	Bid number
Closing Time	Closing Date

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

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

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

PRICE ADJUSTMENTS

A. NON-FIRM PRICES SUBJECT TO ESCALATION

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

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

Where:

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

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

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

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

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

B. PRICES SUBJECT TO RATE OF EXCHANGE VARIATIONS

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

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

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

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

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

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

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
3. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
 - 3.1 Full Name of bidder or his or her representative:
 - 3.2 Identity Number:
 - 3.3 Position occupied in the Company (director, trustee, shareholder²)
 - 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.
.....

¹ MSCM Regulations: "in the service of the state" means to be –

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

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

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

3.9.1 If yes, furnish particulars.

.....

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

3.10.1 If yes, furnish particulars.

.....

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

3.11.1 If yes, furnish particulars.

.....

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

3.12.1 If yes, furnish particulars.

.....

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

3.13.1 If yes, furnish particulars.

.....

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

3.14.1 If yes, furnish particulars:

.....

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

Full Name	Identity Number	State Employee Number

.....

Signature

.....

Date

.....

Capacity

.....

Name of Bidder

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

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

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

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

.....

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

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

2.2 If yes, provide particulars.

.....

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

3.1 If yes, furnish particulars

.....

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

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

4.1 If yes, furnish particulars

.....
.....

CERTIFICATION

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

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

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

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

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to invitations to tender:
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- 1.2 **To be completed by the organ of state**
(delete whichever is not applicable for this tender).
- a) The applicable preference point system for this tender is the 90/10 preference point system.
- 1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:
- (a) Price; and
 - (b) Specific Goals.
- 1.4 **To be completed by the organ of state:**
 The maximum points for this tender are allocated as follows:

	Points
PRICE	90
SPECIFIC GOALS	10
TOTAL POINTS FOR PRICE AND SPECIFIC GOALS	100

- 1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

2. DEFINITIONS

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

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

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

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

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

Where

Ps = Points scored for price of tender under consideration
Pt = Price of tender under consideration
Pmin = Price of lowest acceptable tender

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

3.2.1. POINTS AWARDED FOR PRICE

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

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

Where

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

4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
 - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,
- then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

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

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

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

Specific goals	90/10 preference point system	Number of points claimed (90/10 system) (To be completed by the tenderer)
BB-BEE score of companies <ul style="list-style-type: none"> Level 1 Level 2 Level 3 Level 4 Level 5 Level 6 Level 7 Level 8 Non-compliant 	<ul style="list-style-type: none"> 4 Points 3.5 Points 3 Points 2.5 Points 2 Points 1.5 Points 1 Point 0.5 Points 0 Points 	
EME and/ or QSE	1 Point	
At least 51% of Women-owned companies	1 Point	
At least 51% owned companies by People with disability	1 Point	
At least 51% owned companies by Youth	1 Point	
Local Economic Participation <ul style="list-style-type: none"> City of Tshwane Gauteng National 	2 Points 1 Point 1 Point	

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

DECLARATION WITH REGARD TO COMPANY/FIRM

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

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution, if deemed necessary

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

SURNAME AND NAME:

DATE:

ADDRESS:

.....

CONTRACT FORM: PURCHASE OF GOODS/WORKS

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

PART 1 (TO BE FILLED IN BY THE BIDDER)

1. I hereby undertake to supply all or any of the goods and/or works described in the attached bidding documents to **CITY OF TSHWANE MUNICIPALITY** in accordance with the requirements and specifications stipulated in bid number **SS 01 -2023/24** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the purchaser during the validity period indicated and calculated from the closing time of bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
 - (i) Bidding documents, viz
 - Invitation to bid;
 - Tax clearance certificate;
 - Pricing schedule(s);
 - Technical Specification(s);
 - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
 - Declaration of interest;
 - Declaration of bidder's past SCM practices;
 - Certificate of Independent Bid Determination;
 - Special Conditions of Contract;
 - (ii) General Conditions of Contract; and
 - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES

1.

2.

DATE:

CONTRACT FORM: RENDERING OF SERVICES

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

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

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number **GFS 01 -2023/24** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
 - (i) Bidding documents, viz
 - Invitation to bid;
 - Tax clearance certificate;
 - Pricing schedule(s);
 - Filled in task directive/proposal;
 - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2022;
 - Declaration of interest;
 - Declaration of Bidder's past SCM practices;
 - Certificate of Independent Bid Determination;
 - Special Conditions of Contract;
 - (ii) General Conditions of Contract; and
 - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.

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

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES

1

2

DATE:

CONTRACT FORM: RENDERING OF SERVICES

PART 2 (TO BE FILLED IN BY THE PURCHASER)

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

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

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

SIGNED AT ON

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1
2

DATE:

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

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

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

CERTIFICATION

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

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

.....
Signature

.....
Date

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Municipal Bidding Document (MBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - a. take all reasonable steps to prevent such abuse;
 - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid: **SS 01 -2023/24.**

TENDER DESCRIPTION: TENDER FOR THE CORPORATE HIRE OF GENERAL CONSTRUCTION VEHICLES AND REFUSE REMOVAL VEHICLES FOR THE CITY OF TSHWANE AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THREE YEARS

(Bid Number and Description)

in response to the invitation for the bid made by:

CITY OF TSHWANE MUNICIPALITY

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

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

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.

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

7. 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.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT

July 2010

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

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

General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 “Day” means calendar day.
 - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
 - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
 - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
 - 1.12 “Force majeure” means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
 - 1.13 “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

- 1.14 “GCC” means the General Conditions of Contract.
- 1.15 “Goods” means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 “Order” means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 “Project site,” where applicable, means the place indicated in bidding documents.
- 1.21 “Purchaser” means the organization purchasing the goods.
- 1.22 “Republic” means the Republic of South Africa.
- 1.23 “SCC” means the Special Conditions of Contract.
- 1.24 “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

1. Application

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

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

Where applicable a non-refundable fee for documents may be charged.

	3.2	With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za
4. Standards	4.1	The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
5. Use of contract documents and information inspection.	5.1	The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
	5.2	The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
	5.3	Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
	5.4	The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
6. Patent rights	6.1	The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
7. Performance security	7.1	Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
	7.2	The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
	7.3	The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms: <ul style="list-style-type: none"> (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or (b) a cashier's or certified cheque
	7.4	The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.
8. Inspections, tests and analyses	8.1	All pre-bidding testing will be for the account of the bidder.

- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

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

11. Insurance	11.1	The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
12. Transportation	12.1	Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
13. Incidental services, services	13.1	<p>The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:</p> <ul style="list-style-type: none"> (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods; (b) furnishing of tools required for assembly and/or maintenance of the supplied goods; (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods; (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
	13.2	Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.
14. Spare parts	14.1	<p>As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:</p> <ul style="list-style-type: none"> (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and (b) in the event of termination of production of the spare parts: <ul style="list-style-type: none"> (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.
15. Warranty	15.1	The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
	15.2	This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the

final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
 - 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
 - 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.
- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
 - 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
 - 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
 - 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract**
- 18.1 No variation in or modification of the terms of the contract shall be made **amendments** except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
 - 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.
- 22. Penalties**
- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.
- 23. Termination for default**
- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
 - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
 - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated

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

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

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

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

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

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

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

25. Force Majeure

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

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all

		reasonable alternative means for performance not prevented by the force majeure event.
26. Termination for insolvency	26.1	The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
27. Settlement of Disputes	27.1	If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
	27.2	If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
	27.3	Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
	27.4	Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
	27.5	Notwithstanding any reference to mediation and/or court proceedings herein, <ul style="list-style-type: none"> (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and (b) the purchaser shall pay the supplier any monies due the supplier.
28. Limitation of liability	28.1	Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6; <p>the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and</p> <p>the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.</p>
29. Governing language	29.1	The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
30. Applicable law	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
31. Notices	31.1	Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties**
- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme**
- 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation
- 34. Prohibition of Restrictive practices**
- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

Js General Conditions of Contract (revised July 2010)

SERVICE-LEVEL AGREEMENT

ENTERED INTO BETWEEN

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

AND

Registration number: _____

Doc2 Version 1 3 March 2022

SERVICE-LEVEL AGREEMENT

ENTERED INTO BETWEEN

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

A municipality, as described in Section 2 of the Local Government: Municipal Systems Act, 2000 and as contemplated in Section 155 of the Constitution of the Republic of South Africa, 1996 as a category A municipality, or the Assignee, if applicable, herein represented by Mr Johann Mettler in his/her capacity as City Manager duly authorised thereto under and by virtue of a resolution passed on 26 January 2012, and who by his/her signature hereto warrants that he/she is properly authorised to sign this Agreement.

(Herein referred to as the “**CITY**”)

AND

Registration number: _____

Herein represented by _____ in his/her capacity as _____ is duly authorised thereto under and by virtue of a resolution of the board passed on _____, a copy of which is annexed as Annexure A, and who by his/her signature hereto warrants that he/she is properly authorised to sign this agreement.

(Herein referred to as the “**SERVICE PROVIDER**”)

CONTENTS

- 1. DEFINITIONS**
- 2. INTERPRETATION**
- 3. APPOINTMENT**
- 4. PURPOSE OF THE AGREEMENT**
- 5. RELATIONSHIP**
- 6. DURATION**
- 7. CONTACT PERSON**
- 8. SCOPE OF GENERAL SERVICES**
- 9. PRICE AND PAYMENT**
- 10. PRICE RESTRUCTURING**
- 11. SERVICE LEVELS**
- 12. WITHHOLDING OF PERFORMANCE**
- 13. PENALTY**
- 14. ACCESS**
- 15. ORDERS OF GOODS**
- 16. DELIVERY OF GOODS**
- 17. DEFECTIVE GOODS OR LATENT PRODUCTS**
- 18. AMENDMENT OR CANCELLATION OF PURCHASE ORDER**
- 19. INSPECTION**
- 20. MAINTENANCE AND SUPPORT**
- 21. TRAINING**
- 22. SERVICE PROVIDER'S WARRANTIES AND INDEMNITIES**
- 23. SERVICE PROVIDER'S PERSONNEL**
- 24. STATUTORY AND EMPLOYMENT ISSUES**
- 25. SUBCONTRACTING**
- 26. CONFIDENTIALITY**

- 27. INTELLECTUAL PROPERTY RIGHTS
- 28. *FORCE MAJEURE*
- 29. CESSION
- 30. CHANGE OF CONTROL OR CIRCUMSTANCE
- 31. BREACH
- 32. EARLY TERMINATION
- 33. DISPUTES
- 34. LAWS AND JURISDICTION
- 35. NOTICES AND COMMUNICATION
- 36. GENERAL AND MISCELLANEOUS
- 37. EXECUTION

ANNEXURE A: BOARD RESOLUTION

ANNEXURE B: SCOPE OF WORK AND DELIVERABLES

ANNEXURE C: PAYMENT TERMS

RECORDAL:

WHEREAS the City requires various services to be provided or carried out and delivered at the service areas;

AND WHEREAS the City wishes to appoint the service provider;

AND WHEREAS the service provider wishes to provide such services;

AND WHEREAS the service provider has indicated that it has the necessary expertise, skills and capabilities to provide the service;

NOW THEREFORE, the parties have agreed to enter into this agreement, in terms of which the service provider shall provide the services in the service areas and/or delivery area, and provide maintenance and support thereof to the City in accordance with the terms and subject to the conditions of this agreement.

1. DEFINITIONS

Unless otherwise expressly stated, or if the context requires otherwise, the following words and expressions, when used in this agreement, including in this introduction, shall bear the following meanings ascribed to them:

- 1.1 **“Agreement”** means this service-level agreement and shall include any annexures, schedules, attachments, appendices and/or any addenda hereto or incorporated herein by reference, as amended from time to time;
- 1.2 **“Business day”** means any day from Monday to Friday, excluding public holidays, as defined in the Public Holidays Act, 1994 (Act 36 of 1994), as amended from time to time;
- 1.3 **“Business week”** means five consecutive business days, excluding public holidays as defined in the Public Holidays Act, 1994;
- 1.4 **“City”** means the City of Tshwane Metropolitan Municipality, a metropolitan municipality established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);
- 1.5 **“Contact persons”** means persons identified by the parties as persons who are responsible for the execution of the agreement and whose names are set out in Clause 35 below and who can be substituted in writing from time to time;
- 1.6 **“Contract price”** means the amount reflected as the contract price in Clause 9 below;
- 1.7 **“Contract period”** means the contract period as reflected in Clause 6 below;
- 1.8 **“Effective date”**, notwithstanding the signature date, means _____;
- 1.9 **“Intellectual property”** means patents, designs, know-how, copyright, trademarks and all rights having an equivalent or similar effect which may exist anywhere in the world, introduced and required by either party to give effect to

their obligations under this agreement, owned in whole or in part by, or licenced to either party before the commencement date or developed after the commencement date, and includes all further additions and improvements to the intellectual property, otherwise pursuant to this agreement;

- 1.10 **“Month”** means a calendar month;
- 1.11 **“Parties”** means the City of Tshwane and the service provider and “party” means either of these, as the context requires;
- 1.12 **“Services”** means services to be provided by the service provider to the City as detailed in Clause 8 below;
- 1.13 **“Service provider”** means _____, a company duly incorporated in accordance with the company laws of the Republic of South Africa with company registration number: _____;
- 1.14 **“Signature date”** means the date of signature of this agreement by the party signing last;
- 1.15 **“Subcontract”** means any contract, agreement or proposed contract between the service provider and any third party whereby that third party agrees to provide to the service provider the services or any part thereof;
- 1.16 **“Subcontractor”** means the third party with whom the service provider enters into a subcontract;
- 1.17 **“Tax invoice”** means the document, as required by Section 20 of the Value-added Tax Act, 1991 (Act 89 of 1991), as amended from time to time;
- 1.18 **“VAT”** means value-added tax, as defined in terms of the Value-added Tax Act, 1991.

2. INTERPRETATION

- 2.1 Headings and subheadings are inserted for information purposes only and shall not be used in the interpretation of this agreement.
- 2.2 Unless the context clearly indicates a contrary intention, any word that connotes –
 - 2.2.1 any singular shall be deemed to include a reference to the plural and *vice versa*;
 - 2.2.2 any one gender shall be deemed to include a reference to any other gender; and
 - 2.2.3 a natural person shall be deemed to include a reference to a legal or juristic person.

- 2.3 The expiry or termination of this agreement shall not affect provisions of this agreement, which expressly provide that they will operate after any such expiry or termination of this agreement. Provisions of necessity shall continue to have been effective after such expiry or termination of this agreement, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.4 The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply.
- 2.5 Where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail.
- 2.6 Any reference to any legislation is a reference to such legislation as at the signature date and as amended or re-enacted from time to time.
- 2.7 If any provision in a definition is a substantive provision that confers any rights or imposing any obligations on any party, then, notwithstanding that it is only in this interpretation clause, effect shall be given to it as if it were a substantive provision in this agreement.

3. APPOINTMENT

The City hereby appoints the service provider, who accepts such appointment, to provide the services in accordance with the terms and subject to the conditions of this agreement.

4. PURPOSE OF THE AGREEMENT

- 4.1 The purpose of this agreement is to –
- 4.1.1 formalise and regulate the working relationship between the parties;
 - 4.1.2 set out the roles and responsibilities of the parties; and
 - 4.1.3 define process and procedures to be followed by the parties.

5. RELATIONSHIP

Nothing in this agreement shall constitute or be deemed to constitute a partnership or joint venture between the parties. Furthermore, the service provider acknowledges and agrees that its status under this agreement is that of an independent service provider and its status shall in no way be deemed to be that of an agent or employee of the City for any purpose whatsoever. The service provider shall have no authority or power to bind the City or to contract in the name of the City or create a liability against the City in any way or for any purpose.

6. DURATION

This agreement shall commence on the effective date and shall subsist for _____ years, unless terminated earlier, pursuant to Clause 32 below.

7. CONTACT PERSON

- 7.1 The work to be performed by the service provider hereunder will be supervised by City's contact person referred to in Clause 35 below.
- 7.2 The parties shall notify each other in writing from time to time of the details of the nominated contact person.
- 7.3 The contact persons shall liaise and update each other on the progress of the services rendered and shall endeavour to resolve and remedy any problems or disputes that may arise in relation to the services.
- 7.4 Either party may substitute a contact person at its discretion, provided that each party shall give the other party reasonable notice of such substitution and will provide replacement employees of equivalent ability.
- 7.5 Without derogating from the foregoing, should either party replace a contact person for any reason whatsoever, it shall ensure, to the greatest extent possible in the circumstances, that the suitable period of handover and overlap takes place, at its cost, between the new and the incumbent contact person.

8. SCOPE OF GENERAL SERVICES

The service provider shall, for the duration of this agreement, provide the services set out in the scope of work and in accordance with the deliverables and milestones attached hereto as Annexure B, including but not limited to the maintenance and support services, as provided for in Clause 20 below.

9. PRICE AND PAYMENT

- 9.1 The City shall pay to the service provider the contract price in the sum of R_____ (_____ rand), payable in accordance with the terms of the appointment letter, attached hereto as Annexure C, and subject to deliverables.
- 9.2 All payments under this agreement shall be made by electronic fund transfer or other forms of payment as the parties may agree upon from time to time, upon receipt of valid and undisputed tax invoices and month-end statements together with the supporting documentation from the service provider, once the undisputed tax invoices or such portion of the tax invoices which are undisputed become due and payable.
- 9.3 All amounts and other sums payable in terms of this agreement and schedules hereto will be stipulated exclusive of VAT, unless expressly stated otherwise.

- 9.4 Unless otherwise provided in the schedules, valid tax invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by the City within 30 (thirty) days after the date of receipt by the City of the service provider's statement together with the relevant valid and undisputed tax invoice(s) and supporting documentation, but in any event no later than 90 (ninety) days of receipt of such statement.
- 9.5 Where the payment of any valid and undisputed tax invoice, or any part of the said tax invoice which is not in dispute, is not made by the due date, the service provider shall be entitled to charge interest on the outstanding amount, at the service provider's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is fully paid.
- 9.6 There shall be no interest levied on a tax invoice that is in dispute between the parties.
- 9.7 The City shall pay the amount reflected on a tax invoice once the City's contact person has verified that the services set out in a schedule have been rendered and the tax invoice amount has been approved by the City.
- 9.8 All tax invoices shall be addressed to the City's contact person.
- 9.9 All payments shall be transferred by the City to the service provider electronically into the service provider's bank account, the details of which are as follows:
- Bank: _____
Account type: _____
Account number: _____
Branch number: _____
- 9.10 Failure to comply with the clauses above may result in late payment of the total amount of an invoice by the service provider to the City. The City shall not be liable for any costs or damages suffered by the service provider as a result of such late payment.

10. PRICE RESTRUCTURING

- 10.1 The service provider shall be subject to a price review every year.
- 10.2 The City shall embark on a benchmarking exercise every 12 (twelve) months where the City shall benchmark the service provider's contract price against the prevailing market rates.
- 10.3 In the event that it emerges that the service provider's charges regarding the contract price and other charges under this agreement are materially higher than the reasonable benchmark ascertained by the City or that the City can acquire similar services of a like quality from another supplier at a total delivered cost that is lower than the total delivered cost of the services acquired hereunder from the service provider, the City shall have the right to notify the service provider of such total delivered cost and the service provider shall have an opportunity to adjust the contract price and any other charges hereunder, on

such a basis as to result in the same total delivered cost to the City, within 30 (thirty) calendar days of such notice.

10.4 If the service provider fails to do so or cannot legally do so, the City may –

10.4.1 acquire the services from such other supplier in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of the City and the service provider hereunder shall be reduced accordingly;

10.4.2 terminate this agreement without any penalty, liability or further obligation; or

10.4.3 continue under this agreement.

10.5 Within 30 (thirty) calendar days of a notice by the City or at any time the City so requests, the service provider shall certify in writing to the City that it is in compliance with this clause and shall provide all information that the City reasonably requests in order to verify such compliance.

11. SERVICE LEVELS

11.1 The service provider recognises that the City has entered into this agreement relying specifically on the service provider's representations regarding service levels including, *inter alia* –

11.1.1 capacity allocations in accordance with the service to be provided; and

11.1.2 all work to be performed and services rendered under this agreement shall comply with industry norms and best practice acceptable within the services industry and shall be executed by the service provider to the total satisfaction of the City.

11.2 The service provider shall provide suitably qualified and trained employees to provide the services to the City in terms of this agreement, and shall allocate, in its discretion, employee resources in accordance with the technical skill and knowledge required, provided that any exercise of such discretion by the service provider shall not negatively impact the provision of the services by the service provider to the City. The service provider shall also allocate employees with the technical skill and knowledge on-site at the City at all times during normal working hours, if the City so requires.

11.3 Among others, the service provider shall comply with and provide the services as set out in Clause 8 above.

12. WITHHOLDING OF PERFORMANCE

The service provider may not, under any circumstances, including, without limitation, non-payment by the City, withhold any services from the City during the currency of this agreement, unless it validly terminates this agreement, in terms of Clause 32 below.

13. PENALTY

- 13.1 Should the service provider fail to comply with its obligations in terms of this agreement, the City may –
 - 13.1.1 exercise its rights in terms of Clause 31 below; or
 - 13.1.2 impose a penalty on the service provider.
- 13.2 An election of any of the above by the City shall not mean that the City has waived any other rights which the City might have in law.
- 13.3 Should the City choose to impose a penalty on the service provider, the City shall provide the service provider with a written notice requiring the service provider to remedy the default within 7 (seven) days from the date of delivery of the notice.
- 13.4 Should the service provider fail to remedy the default within 7 (seven) days after receiving the notice, the City shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the City and without further notice, to impose a penalty, which penalty shall be a deduction of 10% of the monthly contract price for the contract period. For the avoidance of doubt, the penalty amount shall be 10% of the monies due for payment to the service provider monthly, in terms of Clause 9 above.
- 13.5 Should there be a dispute as to whether the failure to deliver was caused by the City or was the service provider's fault, such dispute shall be dealt with in accordance with Clause 33 below.

14. ACCESS

- 14.1 The City shall allow the service provider reasonable access to its premises, provided that –
 - 14.1.1 access is related to the services to be provided by the service provider; and
 - 14.1.2 the service provider adheres to all rules, regulations and instructions applicable at the City's premises.
- 14.2 The service provider is required to notify the City every month of employees who are to provide services at the service areas and/or delivery areas.
- 14.3 The City shall grant the service provider and/or its employees, referred in Clause 14.2 above, access to its premises to perform its obligations in terms of this agreement.
- 14.4 The service provider and its employees shall at all times, when entering the premises and/or service areas and/or delivery areas of the City, comply with all rules, laws, regulations and policies of the City.

15. ORDERS OF GOODS

- 15.1 The service provider's contact person shall advise the City in writing of the goods required to enable the service provider to render the services. On the order form, the service provider shall set out the quantity, description of goods and the anticipated date of delivery of the goods ("delivery date").
- 15.2 The City shall confirm the order in writing and authorise the service provider to order the goods necessary for the provision of the service.
- 15.3 All orders for goods ordered under Clause 15 shall be for the separate account of the City, the cost of which shall be invoiced to the City by the service provider upon confirmation of the order, in terms of Clause 15.2 above. The City shall not be obliged to order the goods from the service provider and shall be entitled to use any company that it deems most suitable for the provision of the goods.

16. DELIVERY OF GOODS

- 16.1 The service provider shall deliver the goods on the delivery date.
- 16.2 Should the service provider be unable to deliver the goods on the delivery date, the service provider shall inform the City of its inability to deliver the goods, the reason therefor, and shall provide the City with a reasonable alternative delivery date, which, in any event, shall not be more than 14 (fourteen) days from the original delivery date.
- 16.3 In the event that the service provider is unable to deliver the goods on the delivery date 3 (three) times in a period of 6 (six) months, the City shall be entitled to terminate this agreement by giving the service provider one (1) month's written notice to terminate.
- 16.4 Upon delivery of the goods by the service provider, the City's contact person shall sign the delivery document provided by the service provider as acknowledgement of receipt of the goods. Such acknowledgement of receipt shall not constitute an acceptance –
 - 16.4.1 that the goods were received in good condition;
 - 16.4.2 that the goods were free of any defects;
 - 16.4.3 that the goods were fit for the purpose for which they were purchased; and/or
 - 16.4.4 of any terms and conditions of the delivery document.
- 16.5 In the event that the City notifies the service provider, within 5 (five) business days, that the goods delivered are not in accordance with the order, the City shall be entitled to return the goods to the service provider at the service provider's cost and the service provider shall deliver the replacement goods ordered within 5 (five) business days of taking delivery of the defective goods.

17. DEFECTIVE GOODS OR LATENT PRODUCTS

- 17.1 The service provider shall verify whether the goods received are in order and without any defects.
- 17.2 In the event that the City realises that the goods have any defect, including (but not limited to) manufacture and/or latent defects, the City shall inform the service provider in writing within 5 (five) days of becoming aware of the defect ("Notice of Defect").
- 17.3 Upon receipt of the Notice of Defect, the service provider shall immediately deliver replacement goods to the City within 14 (fourteen) business days of receiving the Notice of Defect, referred to in Clause 17.2 above, and replace the defective goods.
- 17.4 The cost of returning and replacing the defective goods shall be borne by the service provider.
- 17.5 The service provider shall be responsible for the replacement amount of any parts of the goods that are to be replaced in terms of this agreement.

18. AMENDMENT OR CANCELLATION OF PURCHASE ORDER

The City is entitled to cancel an order, reschedule delivery of the goods or change the delivery area and delivery date on 14 (fourteen) days' written notice to the service provider.

19. INSPECTION

- 19.1 The City may, at any time, inspect the goods and/or service levels of the service provider in terms of this agreement.
- 19.2 If the City is, at any time, dissatisfied with the service levels, the City shall, within 7 (seven) days, notify the service provider in writing of the failure or default.
- 19.3 The service provider shall immediately upon receipt of written demand by the City remedy such failure or default, within 7 (seven) business days from the date of receipt of the notice, free of charge.
- 19.4 Should the service provider fail to remedy the failure or default referred to above, the City shall have the right to impose penalties as provided for in Clause 12 above or invoke the provisions of clauses and/or Clause 31 below.
 - 19.4.1 To enable the City to determine whether the goods and/or services rendered in terms of this agreement are being complied with, the service provider shall –
 - 19.4.1.1 provide the City with such information as it may reasonably require;
 - 19.4.1.2 allow the City to inspect and take copies of any records of the service provider relating to the goods and/or services, including all hardware, software, data, information, visuals,

procedures, event logs, transaction logs, audit trails, books, records, contracts and correspondence; or

- 19.4.1.3 allow the City or its authorised representatives to conduct interviews with any of the service provider's employees, subject to reasonable notice being given to the service provider.

19.5 Service provider to provide reasonable assistance

19.5.1 Where any information is required for inspection in terms of this clause and the information is kept in a computer, the service provider shall give the City reasonable assistance required to facilitate inspection and obtain copies of the information in a visible and legible form or to inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the keeping of the information.

19.5.2 Any information required to be provided to the City, pursuant to Clause 19, shall be provided by the service provider, as the case may be in such form (including a form otherwise than in writing) as the City may reasonably specify.

19.5.3 The cost of any inspection contemplated in terms of Clause 19 shall be for the account of the City unless any material irregularity or failure on the part of the service provider is determined by the City in the course of such inspection.

19.6 The inspection contemplated in this agreement will be conducted –

- 19.6.1 during normal business hours; and

- 19.6.2 where the circumstances justify it, on reasonable notice to the service provider, with the minimum interference in the provision of the services and the service provider's other operations.

20. MAINTENANCE AND SUPPORT

The essential and critical elements of the maintenance and support to be provided by the service provider to the City shall be detailed in the scope of work attached hereto as Annexure B.

21. TRAINING

If required, the service provider shall, after delivery and installation of the goods, and as part of maintenance and support, ensure that the City's nominated employees, from time to time, receive the required and necessary training relating to the nature, purpose and appropriate use of the goods.

22. SERVICE PROVIDER'S WARRANTIES AND INDEMNITIES

22.1 Service warranties

- 22.1.1 The service provider warrants that, in relation to each service provided in terms of this agreement, –

- 22.1.1.1 it has full capacity and authority to enter into and perform this agreement, and that this agreement is executed by duly authorised representatives of the service provider;
- 22.1.1.2 it possesses or has access to the requisite knowledge, skill and experience to provide the services in an expert manner;
- 22.1.1.3 it will discharge its obligations under this agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;
- 22.1.1.4 all work performed and services rendered under this agreement shall comply with prevailing practice, standards and specifications within the industry;
- 22.1.1.5 it will be solely responsible for the payment of remuneration and associated benefits, if any, of its personnel and for withholding and remitting income tax for its personnel in conformance with any applicable laws and regulations;
- 22.1.1.6 the use or possession by the City of any materials will not subject the City to any claim for infringement of any intellectual property rights of any third party;
- 22.1.1.7 it will, with promptness and diligence, and in a skilful manner and in accordance with the practices and professional standards of operations, perform services and/or deliver goods;
- 22.1.1.8 its services and/or goods will, in all aspects, comply with industry norms and best practice to the satisfaction of the City with regard to materials and workmanship;
- 22.1.1.9 it will use and adopt any standards, processes and procedures required under this agreement;
- 22.1.1.10 it shall employ suitably qualified and trained employees to provide the services and/or goods to the City and it shall allocate employees in accordance with the technical skills and knowledge required;
- 22.1.1.11 the goods and/or services will be free from any defects in material and workmanship;
- 22.1.1.12 it will maintain and cause to be maintained the highest standard of workmanship and care in undertaking the services and/or processing the goods;

- 22.1.1.13 it will maintain and cause to be maintained the highest standard of care and diligence in providing the services, maintenance and support;
- 22.1.1.14 it will ensure that all applicable laws are observed;
- 22.1.1.15 without derogating from the generality of the foregoing, it will strictly adhere to any or all laws, regulations and accepted procedures with regard to health, hygiene and the maintaining of the environment in the manufacture, packaging, labelling, identification, storage and transportation of the goods; and
- 22.1.1.16 it guarantees that the goods shall be in good working condition for the warranty and/or maintenance period of the goods, and that the service provider shall be responsible for the costs of repair of the goods should the goods require to be repaired to their normal use.

22.2 Indemnity

22.2.1 The service provider hereby indemnifies the City against any claim which may be brought against the City by the service provider's personnel or a third party arising from the execution of this agreement or which arises against the City as a result of the service provider's breach of any of the provisions of this agreement. This is provided that the City notifies the service provider in writing within a reasonable time, and, in any event, no less than 14 (fourteen) business days of the City becoming aware of any such claim to enable the service provider to take steps to contest it. The City shall provide the service provider with such reasonable assistance as may be necessary to enable the service provider to defend the claim to the extent only that it is in a position to render such assistance. The service provider may, within 5 (five) business days of receipt of written notice from the City aforesaid, elect in writing to contest such a claim in the name of the City and shall be entitled to control the proceedings in regard thereto. This is provided that the service provider indemnifies the City against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the City as a consequence of the defence of the claim.

23. SERVICE PROVIDER'S PERSONNEL

23.1 Liability for criminal acts of employees

The service provider shall be liable to the City for any loss that the City or any third party may suffer as a result of any theft, fraud or other criminal act of any employee of the service provider which arises within the course and scope of such employee's employment with the service provider.

23.2 Character of employees

23.2.1 Due to the confidential nature of certain aspects of the services and the position of trust which the service provider's employees will fulfil, the service provider hereby undertakes to use its best commercial endeavours to ensure that it only assigns to the City employees who are fit and proper persons, who display the highest standards of personal integrity and honesty, and who have not, to their knowledge, been convicted of any crime.

23.2.2 The service provider shall, at its own cost, conduct all reasonable background checks into its employees before using them to provide the services in terms of this agreement.

23.3 The City shall conduct all reasonable background checks into the service provider's employees from time to time, where it deems it necessary to do so.

24. STATUTORY AND EMPLOYMENT ISSUES

24.1 The service provider shall comply with all employment legislation

24.1.1 The service provider warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its personnel and its relationship with the City. This includes, but is not limited to, the Labour Relations Act, 1995 (Act 66 of 1995), the Basic Conditions of Employment Act, 1977 (Act 75 of 1997), the Employment Equity Act, 1998 (Act 55 of 1998) and any other applicable employment legislation currently in force.

24.1.2 The service provider warrants further that it is not and will not in future be in contravention of any of the provisions of any such legislation and in the event of such contravention, the service provider shall immediately take all steps to remedy such contravention. If the City advises the service provider of any contravention of such legislation in writing, the service provider shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep the City informed regarding the steps taken and the implementation and result thereof.

24.2 No employment

The service provider warrants that none of its personnel shall be regarded as employees of the City. The service provider shall assist to defend and bear all costs in the event that the City is required to defend a claim, whether civil or employment related, instituted against it by the service provider's personnel should the City defend the matter. The service provider hereby indemnifies the City against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the City as a consequence of the defence of the claim.

24.3 Occupational Health and Safety Act, 1993

The service provider shall be responsible for ensuring compliance with all the provisions of the Occupational Health and Safety Act, 1993 (Act 85 of 1993)

and it indemnifies the City against any claim which may arise in respect of such act by its personnel against the City.

25. SUBCONTRACTING

- 25.1 The service provider may not subcontract the whole of or any portion of the services in terms of this agreement to any third party without the prior consent of the City.
- 25.2 In the event the service provider wishes to subcontract the whole of or any portion of the services in terms of this agreement, it shall apply to the City in writing for consent to do so.
- 25.3 In its application, the service provider shall give the name of the subcontractor, the subcontractor's obligations, the proposed date of commencement of the subcontract, which shall include the fees payable to the subcontractor, and a report of the background security check on the subcontractor's suitability, financial and otherwise.
- 25.4 The City may, in its sole and absolute discretion, refuse consent to subcontract. In the event the City approves the subcontracting of the whole of or any portion of the services in terms of this agreement, –
 - 25.4.1 the service provider shall ensure that the subcontractor's BBBEE level is equal or better than that of the service provider, its price is competitive and it has the capacity to provide the service;
 - 25.4.2 such subcontracting shall not absolve the service provider from the responsibility of achieving the service levels or complying with its obligations in terms of this agreement, and the service provider hereby indemnifies and holds the City harmless against any loss, harm or damage which the City may suffer as a result of such subcontracting;
 - 25.4.3 the service provider shall, at all times, remain the sole point of contact for the City in respect of the acquisition of services by the City; and
 - 25.4.4 no such subcontracting shall have any effect on the contract price and charges payable by the City to the service provider in terms of this agreement.

26. CONFIDENTIALITY

- 26.1 The service provider acknowledges that all information relating to the City's confidential business and technical information, data, documents or other information necessary or useful for the carrying on by the City of its business which shall include, but shall not be limited to, operating procedures, quality control procedures, approximate operation personnel requirements, descriptions, trade names and trademarks, know how, techniques, technology, information relating to clients, customers, suppliers and relevant authorities, copyright, trade secrets and all goodwill relating to the business and any other intellectual property rights, technical data and documents in whole or in part, used by the City in respect of its business ("confidential information") shall

remain confidential and shall not be made known unless the City has given written consent to do so.

- 26.2 The information provided by the City in the context of this agreement is confidential information and the service provider shall take all reasonable measures to keep the information confidential and will only use the information for the purpose for which it was provided.
- 26.3 The service provider undertakes to not disclose any such confidential information. However, there will be no obligation of confidentiality or restriction on use where –
 - 26.3.1 the information is publicly available, or becomes publicly available otherwise than by action of the receiving party;
 - 26.3.2 the information was already known to the receiving party (as evidenced by its written records) prior to its receipt under this or any previous agreement between the parties or their affiliates; or
 - 26.3.3 the information was received from a third party not in breach of an obligation of confidentiality.

27. INTELLECTUAL PROPERTY RIGHTS

- 27.1 All intellectual property rights of the contractor and/or third party vest in the contractor and/or third party, as appropriate.
- 27.2 All rights in the City name and logo remain the absolute property of the City.
- 27.3 The contractor warrants that no aspect of the services provided in terms thereof will infringe any patent, design, copyright, trademark, trade secret or other proprietary right of any third party.
- 27.4 The contractor shall promptly notify the City, in writing, of any infringement or apparent or threatened infringement or any circumstances which may potentially give rise to an infringement, or any actions, claims or demands in relation to any intellectual property rights.
- 27.5 In the event the City becomes aware of any such infringement, the contractor shall, at its cost, defend the City against any claim that the services infringe any such third party intellectual property rights, provided that the City gives notice to the contractor of such claim and the contractor controls the defence thereof. The contractor further indemnifies the City against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the City in any action which is attributable to such claim and will reimburse the City with all costs reasonably incurred by the City in connection with any such action.
- 27.6 Should any claim be made against the City by any third party in terms of Clause 27.1 above, the City shall give the contractor written notice thereof within 3 (three) days of becoming aware of such claim to enable the contractor to take steps to contest it.

27.7 Should any third party succeed in its claim for the infringement of any third party proprietary rights, the contractor shall, at its discretion and within 30 (thirty) days of the services having been found to infringe, at its own cost, –

27.7.1 obtain for the City the right to continue using the subject of infringement or the parts thereof which constitute the infringement;

27.7.2 replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement;

27.7.3 alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or

27.7.4 withdraw the subject of infringement.

28. FORCE MAJEURE

28.1 For the purposes hereof, “*force majeure*” shall mean civil strife, riots, insurrection, sabotage, national emergency, acts of war of public enemy, rationing of supplies, flood, storm, fire or any other like forces of nature beyond the reasonable control of the party claiming *force majeure* and comprehended in the terms thereof.

28.2 If *force majeure* causes delays in or failure or partial failure of performance by a party of all or any of its obligations hereunder, this agreement shall be suspended for the period agreed in writing between the parties.

28.3 In the event of circumstances arising which the other party believes that it constitutes a *force majeure* (“the affected party”), such affected party shall send, within 5 (five) days from the interrupting circumstances, a written notice of the interrupting circumstances specifying the nature and date of commencement of the interrupting event to the other party. The parties shall agree, in writing, to suspend the implementation of this agreement for a specific period (“agreed period”).

28.4 In the event that both parties reasonably believe that the affected party shall be unable to continue to perform its obligations after the agreed period, either party shall be entitled to terminate this agreement without further notice to the other party.

28.5 The party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such party shall have given notice to that effect with a written notice of the interrupting circumstances as provided above, to extend the period of this agreement by a period equal to the time that its performance is so prevented.

29. CESSION

The service provider shall not be entitled to cede, assign or transfer in any other way and/or alienate its rights and obligations in terms of this agreement without the prior written consent of the City.

30. CHANGE OF CONTROL OR CIRCUMSTANCE

- 30.1 The service provider shall notify the City in writing of any change in the service provider's shareholding or membership or any change in the service provider's subsidiary companies or holding or its affiliates (such change shall be considered a material change in the constitution and identity of the service provider). The City may terminate this agreement upon becoming aware of such material change.
- 30.2 The parties agree that should there be a change, as envisaged in Clause 30.1 above, the service provider will no longer exist and a new third party or entity shall have been constituted. In this regard, such third party shall not be entitled to inherit any of the service provider's rights and obligations in terms of this agreement, which will only be transferred to the new entity in writing by the City following the City's satisfaction and approval in writing of such new entity.
- 30.3 The service provider shall further notify the City of any material changes or circumstance which might have led the City to appoint the service provider to provide the goods and/or services. In the event that any material change or circumstance occurs and the service provider fails to inform the City of such a change or circumstance, the service provider shall be deemed to have breached a material term of this agreement and the City shall be entitled to cancel the agreement on 1 (one) month's prior notice.

31. BREACH

- 31.1 Subject to Clause 30.3 above, should either party commit a breach of any term of this agreement ("the defaulting party") then the affected party ("aggrieved party") shall be entitled to inform the defaulting party in writing to remedy such failure or default within 5 (five) business days. Should the defaulting party fail to remedy the breach within 5 (five) business days after receipt of the notice, the aggrieved party shall be entitled, without prejudice to any of its rights under this agreement or law, to –
- 31.1.1 immediately terminate this agreement without giving written notice and claim damages (which shall include legal costs on an attorney or client scale);
- 31.1.2 request specific performance and claim damages (which shall include legal costs on an attorney or client scale); or
- 31.1.3 impose penalties as provided for in Clause 13 above.

32. EARLY TERMINATION

The City shall have the right to terminate this agreement by giving 30 (thirty) days' notice in writing to the service provider of its intention to terminate the agreement.

33. DISPUTES

33.1 Save for Clause 31 above or any other clause in this agreement which provides for its own remedy, should any dispute arise between the parties in respect of or pursuant to this agreement, including, without limiting the generality of the foregoing, any dispute relating to –

33.1.1 the interpretation of the agreement;

33.1.2 the performance of any of the terms of the agreement;

33.1.3 any of the parties' rights and obligations;

33.1.4 any procedure to be followed;

33.1.5 the termination or cancellation or breach of this agreement; or

33.1.6 the rectification or repudiation of this agreement,

any party may give the other party written notice of such dispute, in which event the provisions below shall apply.

33.2 Within 7 (seven) days of the declaration of such dispute, the parties' representatives or their nominated persons shall meet in the spirit of goodwill and endeavour to resolve the dispute, failing which (and without prejudice to any other alternative dispute resolution to which the parties may agree, either prior to or concurrently with arbitration) the provisions of Clause 33 shall apply.

33.3 If the parties are unable to resolve the dispute within 14 (fourteen) days of the notice of the dispute (or such longer period as they may have agreed to in writing), then either party may, on written notice to the other party, require that the dispute be submitted to and decided by arbitration, in terms of the Arbitration Act, 1965 (Act 42 of 1965).

33.4 The arbitration shall be held under the provisions of the Arbitration Act, 1965 provided that the arbitration shall be –

33.4.1 at any place which the parties agree, in writing, to be mutually convenient; and

33.4.2 in accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery or respect rules of evidence.

33.5 If the arbitration is –

33.5.1 a legal matter, then the arbitrator shall be a practising advocate or a practising attorney of no less than 10 (ten) years' standing;

- 33.5.2 an accounting matter, then the arbitrator shall be a practising chartered accountant of no less than 10 (ten) years' standing; and
- 33.5.3 any other matter, then the arbitrator shall be any independent person agreed upon between the parties.
- 33.6 Should the parties fail to agree on an arbitrator within 14 (fourteen) days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the parties, by the president for the time being of the Law Society of the Northern Provinces.
- 33.7 Should the parties fail to agree whether the dispute is of a legal, accounting or other nature within 7 (seven) days after the arbitration has been demanded, it shall be deemed to be a dispute of a legal nature.
- 33.8 The arbitrator may –
 - 33.8.1 investigate or cause to be investigated any matter, fact or thing which he/she considers necessary or desirable in connection with the dispute and, for that purpose, shall have the widest powers of investigating all documents and records of any party that have a bearing on the dispute;
 - 33.8.2 interview and question under oath the parties or any of their representatives;
 - 33.8.3 decide the dispute according to what he/she considers just and equitable in the circumstances; and
 - 33.8.4 make such award, including an award for specific performance, damages or otherwise, as he/she in his/her discretion may deem fit and appropriate. The arbitration shall be held as quickly as possible after it is requested, with a view to it being completed within 30 (thirty) days after it has been so requested.
- 33.9 The arbitrator's decision and award shall be in writing with reasons and shall be subject to appeal by either party.
- 33.10 Subject to the provisions of Clause 33.9 above, the arbitrator's award may, on application by either party to a court of competent jurisdiction and after due notice is given to the other party, be made an order of court.
- 33.11 Notwithstanding the provisions of Clauses 33.1, 33.2, 33.3, 33.4, 33.5, 33.6 and 33.7 above, in the event of either party having a claim against the other party for a liquidated amount or an amount which arises from a liquid document, or for an interdict or other urgent relief, then the other party having such a claim shall be entitled to institute action therefor in a court of law rather than in terms of the above clauses, notwithstanding the fact that the other party may dispute the claim.

- 33.12 The provisions of Clause 33 are severable from the rest of this agreement and shall remain in effect even where this agreement is terminated or cancelled for any reason.

34. LAWS AND JURISDICTION

- 34.1 This agreement shall be governed by and interpreted according to the law of the Republic of South Africa.
- 34.2 Each party submits to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with this agreement, including its termination. Each party further consents to the jurisdiction of the High Court of South Africa (North Gauteng High Court (in Pretoria)).

35. NOTICES AND COMMUNICATION

- 35.1 The Parties choose, as their respective *domicilium citandi et executandi* (hereinafter referred to as the "*domicilium*") and for the delivery of any notices arising out of the agreement or its termination or cancellation, whether in respect of court process, notices or other documents or communication of whatsoever nature (including the exercise of any option), the address, as set out below.

35.1.1 The City:

2nd Floor, Block D
Tshwane House
320 Madiba Street
Pretoria CBD
0001

Attention: _____
Telephone: _____
Fax: 086 214 9544
Email: _____

35.1.2 The service provider:

Attention: _____
Telephone: _____
Fax: _____
Email: _____

- 35.2 Each party shall be entitled, from time to time, by written notice to the other party, to vary its *domicilium* to any other address, which is not a post office box or *poste restante*.

- 35.3 Any notice given and any payment made by any party to another party (hereinafter referred to as “the addressee”) which –
- 35.3.1 is delivered by hand during normal business hours of the addressee at the addressee’s *domicilium*, shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
 - 35.3.2 is posted by prepaid registered post to the addressee at the addressee’s *domicilium* shall be deemed, until the contrary is proved by the addressee, to have been received on the 7th (seventh) day after the date of posting; or
 - 35.3.3 is sent by email or facsimile machine shall be deemed, until the contrary is proven by the addressee, to have been received within 1 (one) hour of transmission where it is transmitted during business hours of the receiving instrument and at noon on the following business day (excluding Saturdays) where it is transmitted outside such business hours.
- 35.4 Any notice or communication required or permitted in terms of this agreement shall be valid and effective only if in writing, but it shall be competent to give notice by facsimile.
- 35.5 Notwithstanding anything to the contrary in this agreement, a notice or communication actually received by one party shall be an adequate notice or communication notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi*.

36. GENERAL AND MISCELLANEOUS

36.1 Sole record of agreement

This agreement constitutes the sole record of the agreement between the parties with regard to the subject matter hereof. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

36.2 No amendment except in writing

No addition to, variation of or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties. Any alleged waiver of this requirement must itself be reduced to writing and signed by the relevant party to be of any effect.

36.3 Waivers

No relaxation or indulgence which any party may grant to any other shall constitute a waiver of the rights of that party and shall not preclude that party from exercising any rights which may have arisen in the past or which might arise in future.

36.4 **Survival of obligations**

Any provision of this agreement which contemplates performance or observance subsequent to any termination or expiration of this agreement shall survive any termination or expiration of this agreement and continue in full force and effect.

36.5 **Approvals and consents**

An approval or consent given by a party under this agreement shall only be valid if in writing and shall not relieve the other party from the responsibility of complying with the requirements of this agreement nor shall it be construed as a waiver of any rights under this agreement, except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this agreement. Any alleged waiver of the requirement that the approval or consent must be in writing must itself be reduced to writing and signed by the relevant party to be of any effect.

37. **EXECUTION**

37.1 This agreement may be executed in several counterparts, which shall each be deemed an original, but all of which shall constitute one and the same instrument. A facsimile shall constitute a valid counterpart for all purposes hereunder.

37.2 The signatories to this agreement, by their signature, warrant their authority to enter into this agreement and the capacity of their principal, if signing in a representative capacity, to enter into this agreement.

Signed at on this day of 20.....

Witnesses:

1.

2.

For and on behalf of **the City of
Tshwane Metropolitan
Municipality**
(duly represented by Mr Johann
Mettler)

Signed at on this day of 20.....

Witnesses:

1.
2.

For and on behalf of

(duly represented by

_____)

ANNEXURE A

RESOLUTION OF THE BOARD

Resolution by the board of directors of _____
(the “company”) made at a meeting held at _____ on
_____ 20__.

NOTED: THAT _____ intends to enter into an agreement with the City of Tshwane Metropolitan Municipality in terms of which the company shall provide various services (the “agreement”) on the terms and subject to the conditions of the agreement to which this resolution is attached as Annexure A.

RESOLVED:

THAT the company approves and enters into the agreement on the terms and subject to the conditions of the agreement to which this resolution is attached.

THAT _____ in his/her capacity as a _____ of the company, be and is hereby authorised to negotiate, settle and sign the agreement attached hereto, and to sign all documentation and do all things necessary to give effect to the aforesaid resolutions on behalf of the company.

Read and confirmed

CHAIRPERSON/COMPANY SECRETARY