



**UMHL19/2024/2025**

**TENDER FOR THE PROVISION OF EMPLOYEE ASSISTANCE PROGRAM (EAP) FOR A PERIOD OF THIRTY-SIX (36) MONTHS AS PER SPECIFICATION TO THE UMHLABUYALINGANA LOCAL MUNICIPALITY**

**BIDDER:**

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**CSD REGISTRATION:**

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**CLOSING DATE: 09 MAY 2025**

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**CLOSING TIME: 12h00**

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**ENQUIRIES:**

SUPPLY CHAIN MANAGEMENT  
UMHLABUYALINGANA LOCAL MUNICIPALITY  
PRIVATE BAG X 901  
KWANGWANASE

**SCM SPECIFIC ENQUIRIES**

Enquires: Mr N.M. Mthembu  
Email Address: [BafanaM@mhlalbuyalingana.gov.za](mailto:BafanaM@mhlalbuyalingana.gov.za)  
Tel No: 035-592 0680

**TECHNICAL /PROJECT SPECIFIC ENQUIRIES**

Enquires: Mr TS Mkhabela  
Email Address: [ThulaniM@mhlalbuyalingana.gov.za](mailto:ThulaniM@mhlalbuyalingana.gov.za)  
Tel. No.: 035-592 0680

**PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE UMHLABUYALINGANA LOCAL MUNICIPALITY</b>					
BID NUMBER:	<b>UMHL19/2024/2025</b>	CLOSING DATE:	<b>09 MAY 2025</b>	CLOSING TIME:	<b>12h00</b>
DESCRIPTION	<b>EMPLOYEE ASSISTANCE PROGRAM (EAP) FOR A PERIOD OF THIRTY-SIX (36) MONTHS AS PER SPECIFICATION TO THE UMHLABUYALINGANA LOCAL MUNICIPALITY</b>				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT R22 MANGUZI MAIN ROAD</b>					
<b>R22 MANGUZI MAIN ROAD, KWANGWANASE, 3973</b>					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	Mr N.M. Mthembu		CONTACT PERSON	Mr T.S. Mkhabela	
TELEPHONE NUMBER	035-592 0680		TELEPHONE NUMBER	035-592 0680	
FACSIMILE NUMBER	035-592 0672		FACSIMILE NUMBER	035-592 0672	
E-MAIL ADDRESS	<a href="mailto:bafanam@mhlabyalingana.gov.za">bafanam@mhlabyalingana.gov.za</a>		E-MAIL ADDRESS	<a href="mailto:thulanim@mhlabyalingana.gov.za">thulanim@mhlabyalingana.gov.za</a>	
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]	
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?			<input type="checkbox"/> YES <input type="checkbox"/> NO		
DOES THE ENTITY HAVE A BRANCH IN THE RSA?			<input type="checkbox"/> YES <input type="checkbox"/> NO		
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?			<input type="checkbox"/> YES <input type="checkbox"/> NO		

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?

YES  NO

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?

YES  NO

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

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

<b>1. BID SUBMISSION:</b>
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</b></p> <p>1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.</p> <p>1.4. <b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</b></p>
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER’S PROFILE AND TAX STATUS.</p> <p>2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p> <p>2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE.”</p>

**TOTAL FOR BID PRICE**

.....

..... Rand (in words)

R ..... (in figures)

**NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.**

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....  
(Proof of authority must be submitted e.g. company resolution)

DATE: .....

TENDER NOTICE



**THE UMHLABUYALINGANA MUNICIPALITY**

hereby invites tenders for service providers for the following projects:

TENDER No	PROJECT NAME AND DESCRIPTION	CLOSING DATE & TIME
UMHL19/2024/2025	EMPLOYEE ASSTANCE PROGRAME (EAP)	09 MAY 2025 @12h00

**CALLS FOR PROPOSAL FOR THE SERVICE PROVIDERS FOR THE ABOVE PROJECTS FOR THE PERIOD OF THREE (3) YEARS.**

Umhlabuyalingana Local Municipality is looking for service providers of the above projects within Umhlabuyalingana Local Municipality as and when required.

The Bidders will further be required to ensure that ALL MBD forms are attached with their proposal and MBD forms will be obtained from the documents.

**There will be no briefing. Tender documents will be available free of charge from National Treasury's eTender Portal: (<http://www.etenders.gov.za/content/advertised-tenders>) or from Umhlabuyalingana Municipality Website; ([www.umhlabuyalingana.gov.za/](http://www.umhlabuyalingana.gov.za/))**

Queries relating to the issuing of these documents may be addressed in writing to Mr. NM Mthembu ([BafanaM@mhlbuyalingana.gov.za](mailto:BafanaM@mhlbuyalingana.gov.za)), responsible for issuing of tender documents and for more information enquiries may be addressed to Mr. TS Mkhabela([ThulaniM@mhlbuyalingana.gov.za](mailto:ThulaniM@mhlbuyalingana.gov.za)).

Duly completed tender documents sealed in an envelope marked with the tender number and the closing date are to be deposited into the tender box at Umhlabuyalingana Municipality, Main Road, KwaNgwanase 3973, by no later **than 12h00 on the closing date** where they will be opened in public. Telegraphic, telefaxed or posted tenders will not be accepted. Tenders will be evaluated on 80/20 PPPFA and Umhlabuyalingana SCM policy will apply. Elimination criteria required must be certified copies of the following documents: Company registration certificate, ID Copy of director, SACSSP or HPCSA, tax compliant, and rates clearance certificate/ letter or copy of signed lease agreement. Successful bidders will be evaluated for functionality, which is detailed in tender document, where bidders will require to score 60% or more to proceed to Pricing.

The UMhlabuyalingana Local Municipality reserves the right to accept any Bid or part of any Bid and is not bound to accept the lowest Bid or any other Bid.

Mr NPE Myeni  
Municipal Manager.

**This tender will be evaluated in two (2) stages**

- Phase 1: Evaluation for compliance to bid rules and conditions
- Phase 2: Bidders passing the above will be evaluated on PPPFA

**PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT (PPPFA) POINTS WILL BE AWARDED AS FOLLOWS:**

Maximum points on price	-	<b>80 points</b>
Maximum points for Specified Goals (Preference points)	-	<b>20 points</b>
<b>TOTAL</b>	-	<b>100 points</b>

1. **BIDDERS SHALL TAKE NOTE OF THE FOLLOWING BID CONDITIONS:**

The minimum specifications, bid evaluation criteria, bid rules and special conditions of tender are detailed in the bid document.

2. **ENQUIRIES WITH REGARD TO THIS ADVERT MAY BE DIRECTED to**

<b>SCM SPECIFIC ENQUIRIES</b> Enquires: Mr N.M. Mthembu Email Address: <a href="mailto:BafanaM@mhlabuyalingana.gov.za">BafanaM@mhlabuyalingana.gov.za</a> Tel No: 035-592 0680	<b>TECHNICAL /PROJECT SPECIFIC ENQUIRIES</b> Enquires: Mr T.S. Mkhabela Email Address: <a href="mailto:ThulaniM@mhlabuyalingana.gov.za">ThulaniM@mhlabuyalingana.gov.za</a> Tel. No.: 035-592 0680
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## **SPECIAL CONDITIONS OF BID**

### **1. INTERPRETATION**

The word "Bidder" in these conditions shall mean and include any firm of Contractors or any company or body incorporated or unincorporated.

The word "Municipality" in these conditions shall mean the Umhlabuyalingana Local Municipality.

For the purpose of this document, the word "bid" is used interchangeable with the word "tender" or "purchaser".

### **3. EXTENT OF BID**

This contract is for the Employee Assistance Program (EAP) For A Period of Thirty-Six (36) Months as Per Specification to The UMhlabuyalingana Local Municipality

### **3. CONTRACT TO BE BINDING**

The formal acceptance of this Bid by the Municipality constitutes a contract binding on both parties, and the Municipality may require sureties to its satisfaction from the contractor, for the due fulfilment of this contract.

### **4. MODE OF BID**

All Bids shall be completed and signed: All forms, annexures, addendums and specifications shall be signed and returned with the Bid document as a whole. ***The lowest or any bid will not necessarily be accepted.***

The Municipality wishes to deal on a prime contractual basis with the successful Bidder being responsible and accountable for all aspects of the entire solution or service offered.

### **5. QUALITY**

Should the specifications and / or descriptions not address any aspects of quality as specified, this should be clarified with the Municipality prior to the submission of a Bid.

### **6. INSURANCE CLAIMS, ETC.**

The Municipality shall not be liable in any manner in respect of any claims, damages, accidents and injuries to persons, property or rights or any other courses of civil or criminal action that may arise from the carrying out of this contract.

The contractor shall insure his / her / their personnel and any plant, machinery or other mechanical or electronic equipment involved in the fulfilment of this contract and shall indemnify The Municipality against all risks or claims which may arise.

### **7. PERIOD OF VALIDITY FOR BIDS AND WITHDRAWAL OF BID AFTER CLOSING DATE**

All Bids must remain valid for a period of **90 days** from the closing date as stipulated in the bid document.

### **8. PENALTY PROVISION**

#### **8.1** Should the successful Bidder:

- [a] Withdraw the Bid during the afore-mentioned period of validity; or
- [b] Advise the Municipality of his / her / their inability to fulfil the contract; or
- [c] Fail or refuse to fulfil the contract; or

[d] Fail or refuse to sign the agreement or provide any surety if required to do so;

Then, the Bidder will be held responsible for and is obligated to pay to the Municipality:

[a] All expenses incurred by the Municipality to advertise for or invite and deliberate upon new Bids, should this be necessary.

[b] The difference between the original accepted Bid price (inclusive of escalation) and:

[i] A less favourable (for the Municipality) Bid price (inclusive of escalation) accepted as an alternative by the Municipality from the Bids originally submitted; or

[ii] A new Bid price (inclusive of escalation).

**8.2** Should the successful Bidder failed to deliver, provisions of the General Conditions of Contract will apply.

**83** Disputes between the Municipality and a bidder (if any) will be dealt with in the form of litigation.

**9. BRAND NAMES**

Wherever a brand name is specified in this BID document (i.e. in the specifications, pricing schedule or bill of quantities or anywhere in this document), the municipality's requirement is not limited to the specified brand name, but requires an item similar/equivalent or better than specified.

**10. VALUE ADDED TAX**

In calculating the cost of the supply and delivery of services and / or material, the supplier will issue a "Tax Invoice" for all services rendered and / or materials supplied, which will reflect the exclusive cost of such services, goods or materials with the relevant Value Added Tax being added to the total.

**11. PRICE ESCALATION**

No escalation of prices will be considered.

**12. AUTHORITY TO SIGN BID DOCUMENTS**

1. In the event that a resolution to sign is not completed by all directors (in terms of the Companies Act 2008) /partners/members (in terms of Close Corporation Act 1984) of the enterprise, the signature of any one of the directors /partners/members to this bid/quotation will bind all the directors /partners/members of the enterprise and will therefore render the bid valid.
2. In the event that a non-directors /non-partners/non-members to the enterprise sign this declaration, and no authority is granted, it will automatically invalidate the bid.
3. In the case of a joint venture or consortium, at least one director /partner/member of each of the parties need to sign the joint venture or consortium agreement.
4. Furthermore, in the case of a joint venture or consortium at least one director /partner/member of each party to the joint venture or consortium must give consent to give authorisation for signatory to this bid

**13. DELIVERY PERIODS**

Delivery periods, where indicated must be adhered to. Notwithstanding the termination date of the assignment the bidder will be required to submit progress reports to the Municipality the contract, form and frequency and dates thereof to be stipulated and agreed upon by the parties upon the awarding of the Bid.

**14. DISPUTES**

In the event that disputes cannot be resolved by internal systems, the disputes will be settled by litigation.

**15. CLOSING DATE / SUBMITTING OF BIDS**

**15.1 Bids must be submitted in sealed envelopes clearly marked: **UMHL19/2024/2025 -EMPLOYEE ASSISTANCE PROGRAM (EAP) FOR A PERIOD OF THIRTY-SIX (36) MONTHS AS PER SPECIFICATION TO THE UMHLABUYALINGANA LOCAL MUNICIPALITY****

Completed bid documents in a sealed envelope endorsed with the relevant bid number, bid description and the closing, must be deposited in the bid box, Foyer, UMhlabuyalingana Local Municipality, KwaNgwanase, 3973, Manguzi, not later than **12h00** on **09 MAY 2025** when bids will be opened in public.

Bidders must ensure that bids submitted via courier services are deposited by the courier service in the Municipality bid box prior to the closing date and that it is not delivered to Municipal officials. The Municipality will not accept responsibility if bids received by officials are not timely deposited in the Bid Box.

## **TERMS OF REFERENCE / SPECIFICATIONS**

### **EMPLOYEE ASSISTANCE PROGRAM (EAP) FOR A PERIOD OF THIRTY-SIX (36) MONTHS AS PER SPECIFICATION TO THE UMHLABUYALINGANA LOCAL MUNICIPALITY**

#### **1. BACKGROUND:**

UMhlabuyalingana Local Municipality recognizes that its employees are its most important and valuable resource and holds the view that this resource should be well cared for and well developed. The Employee Assistance Programme will enable the Umhlabuyalingana Local Municipality to provide a professional helping service to those employees who have or may develop social or psychological problems for whatever reason. The organisation invites a suitably qualified and experienced service providers to submit quotations for the provision of an Employee Assistance Program (EAP) for a period of 36 months.

UMhlabuyalingana Local Municipality currently has 207 staff member excluding councilors and ward committees, those staff members are located at different sites:

- UMhlabuyalingana main office 103 employees
- Traffic station 24 employees
- Disaster section 13 employees
- Manguze library 11 employees
- Mseleni library 02 employees
- Skhemelele library 05 employees
- Mbazwana town 20 employees
- Manguze town 28 employees
- Skhemelele town 18 employees
- Mseleni town 03 employees
- Thandizwe landfill site 32 employees
- Boader site 03 employees

This number of employees may grow each year over the period of 3 years.

#### **2. PURPOSE**

The objective of this bid is to appoint a suitably qualified and experienced service provider to submit quotations for the provision of an Employee Wellness Programme for a period of 3 years.

### 3. **SCOPE OF WORK**

#### a. **Counselling services**

- i. Provide all counselling services to employees related to, stress related problems leading to poor performances, marital and family problems, addiction to substance abuse, personal adjustment, server phycological disorder, sexual harassment or abuse or rape, gambling, trauma, and HIV and AIDS.
- ii. Psychological and clinical counselling and awareness talks aligned to themes by professionals within the related area of discussion (e.g., breast cancer, women's month, mental wellness month, men's health month etc) (this should be done any time when the needs arise)
- iii. Provide counselling and support services to staff and managers for the management of absenteeism, declining job performance, career counselling / coaching.
- iv. Stress, trauma management and counselling for essential services i.e. disaster and traffic officials at least once a quarter or any time when the need arise
- v. Provide information sessions as well as support and personal coaching to line managers in effectively managing employees so that they can identify and respond to employees who might be in need.
- vi. Provide support for chronic illnesses and counsel.
- vii. 2.1.7 Provide on-site clinic when needed.

#### **Assessment**

- viii. Health related assessments (HRA) e.g. Professional Doctor/Practitioner referrals, medical board recommendations or permanent & temporary disability.
- ix. Temporary incapacity assessments
- x. Financial planning and health coaching (work-life service)

#### b. **Reporting**

- i. The service provider shall report at least once a month at UMhlabuyalingana Municipality to the relevant office.
- ii. The service provider shall provide a signed monthly report to management with a comprehensive, accurate analysis and interpretations of trends and problem profiles and possible interventions within 7 working days from the end of the month, with summarised quarter reports and an annual report that clearly indicates UMhlabuyalingana Municipality employee wellness trends for the

## **RETURNABLES**

1. Company registration
2. CSD (Central Supply Database)
3. Tax Pin
4. Qualification of key personnel CV and Qualification
5. SACSSP (South African council for professional services or must be a member of HPCSA)
6. Company profile
7. Rates and municipal services clearance letter/ certificate or valid lease agreement

## **ELIMINATION (Certified Copies)**

1. Company Registration,
2. SACSSP (South African Counsel for professional services or must be a member of HPCSA)
3. Tax Compliance Status pin,
4. Rates and municipal service clearance letter/ certificate or valid lease agreement,
5. ID Copies of director(s).

## EVALUATION CRITERIA

Criteria	Scoring	Weighted score
<p>The Bidder must demonstrate that they have the capacity to render the required service. The bidder must provide references where a similar service was rendered. This must be provided on the letterhead of the previously serviced client and should reflect at least name of the client, description of the relevant service rendered, year completed, contactable reference name and contact details and whether the quality of work was satisfactory or not. It should be signed by a duly authorized person or their representative. The reference should not be more than 3 years old.</p>	<p>3 or more reference letters attached = <b>30 points</b></p> <p>2 reference letters attached = <b>20 points</b></p> <p>1 reference letter attached = <b>10 points</b></p> <p>No reference letters attached = <b>0 points</b></p>	<b>30</b>
<p><b>Methodology and Approach</b></p> <p>The service provider must provide a detailed proposal of the methodology/ approach to be used to carry out the scope of work</p> <p>The service provider must demonstrate their knowledge and how they will deliver this project in line with the scope of work which must address all area required under counselling services (8 areas) assessment (3 areas) and reporting (2 areas)</p>	<p>Bidders project methodology outlines the below listed requirements:</p> <p>Methodology and approach is aligned to the counseling services requirement = <b>up to 10 points</b></p> <p>Methodology and approach is aligned to the assessment requirement = <b>up to 10 points</b></p> <p>Methodology and approached is aligned to the reporting requirement = <b>up to 10 points</b></p> <p>No methodology and approach provide or does not meet the requiment = <b>0 points</b></p>	<b>30</b>
<p><b>Company Profile</b></p> <p>Bidder must submit the company profile indicating company years of experience in providing employee assistance programme as per the scope above.</p>	<p>5 and more years of relevant experience = <b>20 points</b></p> <p>3 to 4 years of relevant experience = <b>10 points</b></p> <p>2 years of relevant experience = <b>05 points</b></p>	<b>20</b>

	Less than 02 year / no company profile provided = <b>0 points</b>	
Project Manager Experience  Bidders must provide detailed CV of project manager clearly indicating relevant experience in similar projects	5 and more years of relevant experience = <b>20 points</b>  3 to 4 years of relevant experience = <b>10 points</b>  2 years of relevant experience = <b>05 points</b>  Less than 02 year / no cv provided = <b>0 points</b>	<b>20</b>
	<b>Total</b>	<b>100</b>

Bidders will be required to score 60 points from table above to proceed to pricing which is 80/20. 80 being price, 20 being specific goals.

# **EMPLOYEE ASSISTANCE PROGRAM (EAP) FOR A PERIOD OF THIRTY-SIX (36) MONTHS AS PER SPECIFICATION TO THE UMHLABUYALINGANA LOCAL MUNICIPALITY**

## **THE EVALUATION CRITERIA**

**This tender will be evaluated in two (2) phases as follows:**

Phase 1: Compliance, responsiveness to the bid rules and conditions, thereafter

Phase 2: Bidders passing stage above will thereafter be evaluated on PPPFA

### **1. EVALUATION CRITERIA**

#### **PHASE 1 – COMPLIANCE, RESPONSIVENESS AND CONDITIONS**

The purpose of this pre-qualification evaluation is to determine which bid responses are complaint and non-complaint with the bid specifications issued by the municipality as part of the bid process

**A. Bidders' proposals must meet the following minimum requirements and the required supporting documents must be submitted with the completed quotation document in a sealed envelope in the bid box at the closing date and time. Failure to comply will automatically eliminate the bid for further consideration:**

1. Bids must be submitted on the original documents and bids which are late, incomplete, unsigned or submitted by facsimile or electronically, will not be accepted.
2. The following Declarations must be completed and signed: **(MBD4, MBD6.1, MBD 8 and MBD 9)**.
3. Bidder's proposals that do not meet the specifications will be eliminated.
4. If the offer is "Vat Inclusive", the VAT registration number of service provider must be indicated.
5. Only one offer per item per bidder is allowed and alternative offers will not be considered. If more than one offer per item is received, none of the offers will be considered. Bidders are also not allowed to submit a bid/ quotation whilst they are in agreements with other bidders in the form of joint ventures or consortiums.

#### **B. Other Conditions of bid**

1. The bidder must be registered on Central Supplier Database (CSD) prior award
2. All bidders' tax matters must be in order prior award. Bidders' tax matters will be verified through CSD.
3. The form **MBD 1** must be properly completed and signed.
4. For bidders to qualify for points for Specific, the bidders are required to be submit with the quotation:
  - a) Complete the Preference Points Claim Form in full, sign the declaration and date it;
  - b) Attach an MAAA number for purposes of verifying Claimed points in the preference schedule.
  - c) Failure to submit any of the above (a or b) will result in zero points scored for Specified Goals.

5. The Preference Points Claim Form must be properly completed. Failure to do so, will result in the non awarding of points.
6. The Municipality will contract with the successful bidder with an official order.

## **2. PHASE 2 - EVALUATION ON NEW PPPFA**

**THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT WILL BE APPLIED AND 80/20 POINTS SYSTEM WILL BE APPLICABLE**

<b>POINTS FOR PRICE</b>	<b>80 POINTS</b>
<b>MAXIMUM POINTS FOR SPECIFIED GOALS</b>	<b>20 POINTS*</b>
<b>TOTAL POINTS</b>	<b>100 POINTS</b>

**\* NOTE:**

<b>Objective criteria</b>	<b>Number of points (80/20 system)</b>
Locality (Within uMhlabuyalingana)	5
Director/ owner with disability	5
Director/ owner black women	5
Director/ owner black youth	5
Non-compliant contributor	0

**The tenderer must submit a CSD full report, CIPC documents indicating share ownership or directorship of the company or a comprehensive CSD report which must indicate the names of the owners, their gender, race, age, whether there is a person living with disability or not and the address of a company (first address on CSD), to claim the preferential procurement points.**

## **3. CANCELLATION AND RE-INVITATION OF TENDERS**

The municipality may, prior to the award of the tender, cancel the tender if-

- (a) due to changed circumstances, there is no longer a need for the services, works or goods requested; or
- (b) funds are no longer available to cover the total envisaged expenditure; or
- (c) no acceptable tenders are received; or
- (d) Tender validity period has expired; or
- (e) Gross irregularities in the tender processes and/or tender documents; or
- (f) No market related offer received (after attempts of negotiation processes)

**Where applicable, the decision to cancel the tender will be published in the municipality website and in the Tender Bulletin or the media in which the original tender invitation as advertised.**

## **LIST OF RETURNABLE DOCUMENTS**

### **A Returnable Schedules required for tender evaluation purposes**

The tenderer must complete the following returnable schedules as relevant:

1. MBD 1 – Invitation to Bid
2. Record of Addenda to Tender Documents
3. Proposed Amendments and Qualifications
4. MBD 3.3 - Price Schedule
5. MBD 4 - Declaration on Interest
6. MBD 6.1 - Preference Points claim form
7. MBD 8 – Declaration of Bidder's Past SCM Practices
8. MBD 9 – Certificate of Independent Bid Determination
9. Resolution for Signatory
10. Certificate of Joint Ventures
11. General Conditions of Contract

MBD 3.3

**PRICING SCHEDULE**  
(Professional Services)

Name of Bidder: .....	Bid Number: .....
Closing Time: <u>12H00 PM</u>	Closing Date: .....

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

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

1. The accompanying information must be used for the formulation of proposals.
2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.
3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)

4. PERSON AND POSITION	HOURLY RATE	DAILY RATE
-----	R-----	-----

5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT

-----	R-----	---- days

5.1 Travel expenses (specify, for example rate/km and total km, class of air travel, etc.). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
-----	.....	.....	R.....
-----	.....	.....	R.....
-----	.....	.....	R.....

..... R.....

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

5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
TOTAL: R.....			

6. Period required for commencement with project after acceptance of bid.....

7. Estimated man-days for completion of project.....

8. Are the rates quoted firm for the full period of contract?.....\*YES/ NO.

9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index  
.....  
.....  
.....

\*Delete if not applicable

### Record of Addenda to Tender Documents

We confirm that the following communications received from the Employer before the submission of this tender offer, amending the tender documents, have been taken into account in this tender offer:

	Date	Title or Details
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Attach additional pages if more space is required.

Signed

Date

Name

Position

Tenderer

## 2. Proposed amendments and qualifications

The Tenderer should record any deviations or qualifications he may wish to make to the tender documents in this Returnable Schedule. Alternatively, a tenderer may state such deviations and qualifications in a covering letter to his tender and reference such letter in this schedule.

The Tenderer's attention is drawn to clause 5.8 of SANS 10845-3 regarding the employer's handling of material deviations and qualifications.

Page	Clause or item	Proposal

Signed \_\_\_\_\_

Date \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

*Tenderer* \_\_\_\_\_

**ANNEXURE C**

**MBD 4**

**DECLARATION OF INTEREST**

1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
- 3 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

3.1 Full Name of bidder or his or her representative:.....

3.2 Identity Number: .....

3.3 Position occupied in the Company (director, trustee, hareholder<sup>2</sup>):.....

3.4 Company Registration Number: .....

3.5 Tax Reference Number:.....

3.6 VAT Registration Number: .....

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

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

3.8.1 If yes, furnish particulars. ....

.....

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

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

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

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

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

3.9.1 If yes, furnish particulars.....

.....

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

3.10.1 If yes, furnish particulars.

.....

.....

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

3.11.1 If yes, furnish particulars  
 .....  
 .....

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

3.12.1 If yes, furnish particulars.  
 .....  
 .....

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

3.13.1 If yes, furnish particulars.  
 .....  
 .....

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

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

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

Full Name	Identity Number	State Employee Number

.....  
**Signature**

.....  
**Date**

.....  
**Capacity**

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

## MBD 6.1

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

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

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

#### 1. GENERAL CONDITIONS

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

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

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

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

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

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

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

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS	20
<b>Total points for Price and SPECIFIC GOALS</b>	<b>100</b>

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

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

## 2. DEFINITIONS

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

## 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

#### 3.1.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

#### 80/20

$$Ps = 80 \left( 1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

## 4. POINTS AWARDED FOR SPECIFIC GOALS

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

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

***(80/20 preference point system is applicable, corresponding points must also be indicated as such.***

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

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Evidence Required	Number of points allocated (80/20 system) (To be completed by the Bidder)
Locality (Within uMhlabuyalingana)	5	<b>Municipal account</b> – must be in the name of the Enterprise/ Bidder <b>NB: Municipal account must not be older than 3 months</b> Physical address on Company Registration document will be considered	
Director/ owner with disability	5	Certificate from Medical practitioner	
Director/ owner black women	5	CSD Full report/ Certified ID Copy	
Director/ owner black youth	5	CSD Full report/ Certified ID Copy	
Non-compliant contributor	0		

**DECLARATION WITH REGARD TO COMPANY/FIRM**

4.2 Name of company/firm.....

4.3 Company registration number: .....

4.4 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]

4.5 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.

..... <b>SIGNATURE(S) OF TENDERER(S)</b>	
<b>SURNAME AND NAME:</b>	.....
<b>DATE:</b>	.....
<b>ADDRESS:</b>	.....
	.....
	.....
	.....

## MBD 8 - DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions 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 disregarded if that bidder, or any of its directors have-
  - a. abused the institution's supply chain management system;
  - b. committed fraud or any other improper conduct in relation to such system; or
  - c. failed to perform on any previous contract.
- 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 as companies or persons prohibited from doing business with the public sector?  <b>(Companies or persons who are listed on this database were informed in writing of this restriction by the National Treasury after the <i>audi alteram partem</i> rule was applied).</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?  <b>To access this Register enter the National Treasury's website, <a href="http://www.treasury.gov.za">www.treasury.gov.za</a>, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445.</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of 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	Was any contract between the bidder and any 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"/>
4.4.1	If so, furnish particulars:		

**CERTIFICATION**

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

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

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

.....

**Signature**

.....

**Date**

.....

**Position**

.....

**Name of Bidder**

## **MBD 9 - CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Municipal Bidding Document (MBD) must form part of all bids<sup>1</sup> invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *per se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
  - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
  - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that 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 (SBD 9) must be completed and submitted with the bid:

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

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

## CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

**UMHL19/2024/2025 – EMPLOYEE ASSISTANCE PROGRAM (EAP) FOR A PERIOD OF THIRTY-SIX (36) MONTHS**

in response to the invitation for the bid made by:

**UMHLABUYALINGANA LOCAL MUNICIPALITY**

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

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

(Name of Bidder)

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

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

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

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

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

**8. PROOF OF REGISTRATION ON THE NATIONAL TREASURY CENTRAL  
SUPPLIER DATABASE (CSD REPORT)**

(ATTACH HERE)

**RESOLUTION FOR SIGNATORY**

**A: CERTIFICATE OF AUTHORITY FOR SIGNATORY**

Signatory for companies shall confirm their authority hereto by attaching a duly signed and dated copy of the relevant resolution of the board of directors to this form.

An example is given below:

"By resolution of the board of directors passed at a meeting held on \_\_\_\_\_

Mr/Ms \_\_\_\_\_, whose signature appears below, has been duly authorised to sign all documents in connection with the tender for

Contract No. \_\_\_\_\_

and any Contract which may arise there from on behalf of (Block Capitals) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

SIGNED ON BEHALF OF THE COMPANY: \_\_\_\_\_

IN HIS/HER CAPACITY AS: \_\_\_\_\_

DATE: \_\_\_\_\_

SIGNATURE OF SIGNATORY: \_\_\_\_\_

WITNESSES:

1. \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

**IMPORTANT NOTICE: RESOLUTION TO SIGN**

1. In the event that a resolution to sign is not completed by all directors /partners/member directors/ shareholders of the enterprise, the signature of any one of the director or shareholder to this quotation will bind all the directors /partners/member of the enterprise and will therefore render the quotation valid.
2. In the event that a non-shareholder/ non-director/non-partner/ non-member to the enterprise sign this declaration, and no authority is granted, it will automatically invalidate the quotation.

3. In the case of a joint venture or consortium, at least one director/partner/member/ shareholder of each of the parties need to sign the joint venture or consortium agreement.
4. Furthermore, in the case of a joint venture or consortium at least one director/ partner/member/ shareholder of each party to the joint venture or consortium must give consent to give authorisation for signatory to this bid.

**DECLARATION**

I, THE UNDERSIGNED NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2.1 TO 2.3.1 ABOVE IS CORRECT.

I ACCEPT THAT THE PRINCIPAL MAY ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

Until such time that a formal agreement is compiled and accepted, the proposal will be in conjunction with your acceptance or the persons acting on your behalf and will be a binding contract between both parties.

Value Added Tax (VAT) is excluded in the prices. The price be valid for 90 (ninety) days after being awarded.

I/we understand that the Council is not bound to accept the lowest or any proposal received.

The proposer, identified in the offer signature below, has examined the documents listed in the data and addenda (if applicable) and by submitting this offer has accepted the Conditions of the Proposal.

By the representative of the Proposer, deemed to be duly authorised, signing this part of this form of offer and acceptance, the proposer offers to perform all of the obligations and liabilities of the Contractor under the Contract including compliance with all its terms and conditions according to their true intent and meaning for an amount determined in accordance with the conditions of contract identified in the contract data.

Yours faithfully,

\_\_\_\_\_

For : \_\_\_\_\_

Address : \_\_\_\_\_

\_\_\_\_\_

Upon the terms set out in the conditions of proposal, I/we hereby acknowledge:-

1. That I/we have read and acquainted myself/ourselves with the terms and conditions of proposal and understand the purpose thereof and agree that all such conditions shall form part of this proposal;
2. That this offer is irrecoverable for a period of 90 (ninety) days from the date fixed for the opening of proposals and may be accepted in writing by the uMhlabuyalingana Municipality, at any time during that period, together with this proposal shall constitute a binding agreement of purchase and sale between the uMhlabuyalingana Municipality and myself/ourselves.

I/we understand that the council is not bound to accept the lowest or any proposal it may receive

**FAILURE OF THE PROPOSER TO SIGN AND COMPLETE THIS FORM IN FULL WILL  
INVALIDATE THE PROPOSAL**

**THE CONDITIONS OF PROPOSAL I/WE READ AND ACCEPT**

**Signature: (of person authorised to sign the proposal)**

\_\_\_\_\_

**Name (of signatory in capitals)** : \_\_\_\_\_

**Name of proposer (organisation)** : \_\_\_\_\_

**Address** : \_\_\_\_\_

\_\_\_\_\_

**Telephone** : \_\_\_\_\_

**Fax Number** : \_\_\_\_\_

**Witness signature** : \_\_\_\_\_

**Witness Name (in capitals)** : \_\_\_\_\_

**Date** : \_\_\_\_\_

## **ACCEPTANCE**

By signing this part of the form of offer and acceptance, the employer identified below accepts the proposers offer. In consideration thereof, the employer shall pay the contractor the amount due in accordance with the conditions of Contract identified in the contract data. Acceptance of the proposer's offer shall form an agreement between the employer and the proposer upon the terms and conditions contained in the agreement in the contract that is the subject of this agreement.

**Signature** : \_\_\_\_\_

**Name (in capitals)** : **MR NPE MYENI**

**Capacity** : **MUNICIPAL MANAGER**

**Name of Employer** : **UMHLABUYALINGANA MUNICIPALITY (KZN 271)**

**Address** : **PRIVATE BAG X901, KWANGWANASE, 3973**

**Witness signature** : \_\_\_\_\_

**Name (in capitals)** : \_\_\_\_\_

**Date** : \_\_\_\_\_

## **GENERAL CONDITIONS OF CONTRACT**

### **A. 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 provider's performance
22. Penalties
23. Termination for defaults
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

## **GENERAL CONDITIONS OF CONTRACT**

### **1. Definitions**

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 provider, 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 provider under the contract for the full and proper performance of his contractual obligations.
- 1.4 “**Corrupt practice**” means the offering, giving, receiving, or soliciting of any thing of the 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 provider 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 provider and not involving the provider’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 provider 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 provider or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as land 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 provider covered under the contract.
- 1.25 **“Written”** or **“in writing”** means hand-written in ink or any form of electronic or mechanical writing.

## **2. Application**

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services (excluding professional services related to the building and construction industry), sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise 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 Invitations to bid are usually published in locally distributed news media and in the institution’s website.

## **4. Standards**

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

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

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

## **6. Patent rights**

- 6.1 The provider shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of goods or any part thereof by the purchaser.
- 6.2 When a provider developed documentation/projects for the municipality, department or Provincial entity, the intellectual, copy and patent rights or ownership or such documents or projects will vest in the municipality, department or PROVINCIAL entity.

## **7. Performance security**

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the success 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 provider's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
  - (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
  - (b) a cashier's or certified cheque.

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

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

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

8.2 If it is a bid condition that 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 purchaser or an organization acting on behalf of the purchaser.

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

8.4 If the inspections, tests and analyses referred to in clause 8.2 & 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 provider.

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 analysed 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 provider who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do not comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the providers cost and risk. Should the provider fail to provide the substitute supplies forthwith, the purchaser may, without giving the provider further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the provider.

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. Packaging**

9.1 The provider shall provide such packaging of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packaging shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packaging, case size and weights shall take into

consideration, where appropriate, the remoteness of the good's final destination and the absence of heavy handling facilities at all points in transit.

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

## **10. Delivery and documents**

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

## **11. Insurance**

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

## **12. Transportation**

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

## **13. Incidental services**

- 13.1 The provider may be required to provide any or all of the following services, including additional services, if any:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the provider of any warranty obligations under this contract; and
  - (e) training of the purchaser's personnel, at the provider'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 provider 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 provider for similar services.

## **14. Spare parts**

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

- 1) such spare parts as the purchaser may elect to purchase from the provider, provided that this election shall not relieve the provider of any warranty obligations under the contract, and
- 2) in the event of termination of production of the spare parts:
  - a) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  - b) 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 provider 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 provider 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 provider, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise.
- 15.3 The purchaser shall promptly notify the provider in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the provider shall, within the period specified and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the provider, having been notified, fails to remedy the defect(s) within the period specified, the purchaser may proceed to take such remedial action as may be necessary, at the provider's risk and expense and without prejudice to any other rights which the purchaser may have against the provider under the contract.

## **16. Payment**

- 16.1 The method and conditions of payment to be made to the provider under this contract shall be specified
- 16.2 The provider shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the provider.
- 16.4 Payment will be made in Rand unless otherwise stipulated.

## **17. Prices**

- 17.1 Prices charged by the provider for goods delivered and services performed under the contract shall not vary from the prices quoted by the provider in his bid, with the

exception of any price adjustments authorized or in the purchaser's request for bid validity extension, as the case may be.

## **18. Increase/decrease of quantities**

- 18.1 In cases where the estimated value of the envisaged changes in purchase does not exceed 15% of the total value of the original contract, the contractor may be instructed to deliver the revised quantities. The contractor may be approached to reduce the unit price, and such offers may be accepted provided that there is no escalation in price.

## **19. Contract amendments**

- 19.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

## **20. Assignment**

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

## **21. Subcontracts**

- 21.1 The provider 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 provider from any liability or obligation under the contract.

## **22. Delays in the provider's performance**

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

- 22.2 If at any time during performance of the contract, the provider or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the provider 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 provider's notice, the purchaser shall evaluate the situation and may at his discretion extend the provider'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.

- 22.3 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if any emergency arises, the provider's point of supply is not situated at or near the place where the supplies are required, or the provider's services are not readily available.

- 22.4 Except as provided under GCC Clause 25, a delay by the provider in the performance of its delivery obligations shall render the provider 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.

- 22.5 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 provider'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 provider.

### **23. Penalties**

- 23.1 Subject to GCC Clause 25, if the provider 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 good 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.

### **24. Termination For Default**

- 24.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the provider, may terminate this contract in whole or in part:
- (a) if the provider 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 provider fails to perform any other obligation(s) under the contract; or
  - (c) if the provider, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 24.2 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 provider shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the provider shall continue performance of the contract to the extent not terminated.

### **25. Anti-Dumping And Counter-Vailing Duties And Rights**

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

### **26. Force Majeure**

- 26.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the provider 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.

26.2 If a force majeure situation arises, the provider shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the provider 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.

## **27. Termination For Insolvency**

27.1 The purchaser may at any time terminate the contract by giving written notice to the provider if the provider becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the provider, 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,

## **28. Settlement Of Disputes**

28.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the provider 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.

28.2 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 provider 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.

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

28.4 Notwithstanding any reference to mediation and / or court proceedings herein,  
(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and  
(b) the purchaser shall pay the provider any monies due to the provider for goods delivered and / or services rendered according to the prescripts of the contract.

## **29. Limitation Of Liability**

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

- (a) the provider 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 provider to pay penalties and / or damages to the purchaser; and
- (b) the aggregate liability of the provider 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.

## **30. Governing Language**

30.1 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.

### **31. Applicable Law**

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

### **32. Notices**

- 32.1 Every written acceptance of a bid shall be posted to the provider 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.
- 32.2 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.

### **33. TAXES AND DUTIES**

- 33.1 A foreign provider shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 33.2 A local provider shall be entirely responsible for all taxes, duties, license fees, etc, incurred until delivery of the contracted goods to the purchaser.
- 33.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid SARS must have certified that the tax matters of the preferred bidder are in order.

### **34. Transfer Of Contracts**

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

### **35. Amendment Of Contracts**

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