

GREATER KOKSTAD MUNICIPALITY



GREATER
KOKSTAD
MUNICIPALITY

PRO REGE LEGE ET GREGI

PROVINCE OF KWAZULU-NATAL

TENDER DOCUMENT

EXPRESSION OF INTEREST: CONDUCTING CUSTOMER SATISFACTION SURVEY

CLOSING DATE: 03 NOVEMBER 2023

CLOSING TIME: 12H00

NAME OF BIDDER:

POSTAL ADDRESS:

.....

.....

TELEPHONE NUMBER:

FAX NUMBER:

E- MAIL ADRESS:

TENDER SUM (ALL INCLUSIVE):

BID NUMBER AND DESCRIPTION

EXPRESSION OF INTEREST: CONDUCTING CUSTOMER SATISFACTION SURVEY

BID NUMBER: GKM 05-23/24

Bid documents must be deposited in the tender box marked “**EXPRESSION OF INTEREST: CONDUCTING CUSTOMER SATISFACTION SURVEY**” located at the reception area at

Adam Kok III Building, 75 Hope Street, Kokstad not later than **03 November 2023 at 12h00**.

Bidders must attach the following mandatory returnable documents to be considered for this bid and must note the applicable conditions:

- Price (s) quoted must be firm and must be inclusive of VAT
- Copy of CSD (Central Supplier Database) summary report (not older than 3 months)
- Copy of company registration documents (compulsory)
- For Joint Venture Agreements, attach the CK's of each of the joint venture members (if applicable)
- Certified ID(s) copies of company director(s)
- Copy of current municipal account for all Director/s and Company (must not be in arrears for a period longer than 90 days and not older than 90 days) or copy of lease agreement from the relevant authority if the director/s or company is leasing. If the business is operated from the residence of one of the Director/s, an original affidavit, certified, must be submitted stating the address of the premises. For any other arrangement that is not covered above, director/s must submit an original affidavit, certified clarifying the arrangement. All affidavits must be original affidavits, certified and must be from the SAPS. Affidavits must be signed by the company director/s.
- Printed copy of SARS Tax Pin for further verification.
- Completed and signed Municipal Bidding Document attached to the tender document.

The following conditions will apply:

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

NB: No quotations will be considered from persons in the service of the state or persons who owe rates, services, and taxes to any Municipality for a period NOT longer than 90 days

RE-ADVERTISEMENT

BID NO: GKM 05-23/24

EXPRESSION OF INTEREST: SERVICE PROVIDER TO CONDUCT CUSTOMER SATISFACTION SURVEY

The Greater Kokstad Municipality invites proposals from a reputable and experienced service provider(s) for the expression of interest: conducting customer satisfaction survey.

The scope of work and bid requirements is stipulated in the bid document.

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

Stage 1:

Assessment of Functionality. Only service providers who achieve a minimum threshold of 45 points on functionality will qualify to proceed to stage two of the Evaluation process. Functionality criteria is as follows:

Company Experience	(30 points)
Key Personnel	(30 points)
Bank Rating	(10 points)

Stage 2:

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

POINTS AWARDED SPECIFIC GOALS

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

GOAL 1 – Ownership- Maximum Points	10	Documents required for verification
Business owned more than 50% by black person	10	<ul style="list-style-type: none">▪ ID copy of director/Owner▪ Detailed CSD
Business owned less than 50% by black person	5	<ul style="list-style-type: none">▪ ID copy of director/Owner▪ Detailed CSD
GOAL 2 – RDP- Maximum Points	10	
Business falls under the SMME Category- QSE/EME	5	<ul style="list-style-type: none">▪ BBBEE Certificate/Sworn Affidavit
Promotion of business located within KZN province	5	<ul style="list-style-type: none">▪ Municipal accounts not older than 90 days/▪ Lease agreement▪ Affidavit if you are residing in rural areas
Promotion of business located in South Africa outside KZN province	2	<ul style="list-style-type: none">▪ Municipal accounts not older than 90 days/▪ Lease agreement▪ Affidavit if you are residing

		in rural areas
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The tender document **must** be downloaded on **E-tender Portal and on the Greater Kokstad Municipality website** at no cost. **The municipality will not be held responsible for any incomplete documents downloaded on the E-tender Portal or on the Greater Kokstad Municipality website.**

Sealed tenders, marked “**Bid No.: “GKM 05-23/24 EXPRESSION OF INTEREST: SERVICE PROVIDER TO CONDUCT CUSTOMER SATISFACTION SURVEY”** must be deposited in the **BOX** located at the Reception Area, 75 Hope Street, Kokstad, not later than **03 November 2023 at 12H00**, where after, bids will be opened in public. Late, telegraphic, e-mailed or faxed bids will not be considered.

Technical Enquiries: **Ms B. Mkulisi**, Tel. 039 797 6736 Email:bongekile.mkulisi@kokstad.gov.za
Supply Chain Management enquiries: Ms. A. Mahlaka Tel. 039 797 6600, or email:
andiswa.mahlaka@kokstad.gov.za

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

**MR S R ZWANE
MUNICIPAL MANAGER
NOTICE NO.: 55-2023/2024**

GREATER KOKSTAD MUNICIPALITY



TERMS OF REFERENCE

EXPRESSION OF INTEREST: SERVICE PROVIDER TO CONDUCT CUSTOMER SATISFACTION SURVEY

Issued and Prepared by:

Greater Kokstad Municipality

Adam Kok III Building

75 Hope Street

P.O. Box 8

Kokstad

4700

Municipal Manager: Mr S R Zwane

Contact Person: Miss Bongekile Mkulisi

Tel: 039 797 6636

Fax: 039 797 6701

E-mail: bongekile.mkulisi@kokstad.gov.za

EXPRESSION OF INTEREST: CONDUCTING CUSTOMER SATISFACTION SURVEY

1. INTRODUCTION OF THE PROJECT

1.1 The Greater Kokstad Municipality invites proposals from reputable and experienced service providers for the expression of interest: **conducting customer satisfaction survey**

2. PROJECT BACKGROUND

- 2.1 A healthy relationship between the municipality and external customers is essential as customer satisfaction is a yardstick for municipal performance.
- 2.2 Surveys on customer satisfaction need to be conducted as they form part of improving service delivery in the municipality and the Greater Koksad Municipality last conducted the comprehensive Customer satisfaction survey in **2017/18** financial year
- 2.3 The Greater Kokstad Municipality seeks to appoint a service provider to conduct a survey on customer satisfaction with the performance of the Municipality, and its on its community participation mandate.
- 2.4 This is done due to the reason that the Greater Kokstad Municipality need to have a clear picture on the effect of municipal performance on the communities that reside within the district, as well as the perceptions and expectations of the local communities on how they should be involved in the municipal planning and decision-making processes.
- 2.5 Effort, time and cost need to be considered for a reliable survey as this survey should ensure that the Greater Kokstad will be in a better position to improve community participation.
- 2.6 Consultation between the municipality and its external customers is beneficial as different views are better understood.

3. AIMS OF THE PROJECT

- 3.1 External customers consist of a range of people and organizations in the municipality. The largest constituent of external customers is members of the community receiving basic/ general services from municipalities. Other constituents may be business owners, safety institutions (police, health institutions and fire safety facilities)

government and non-government institutions. The study should address communities receiving services from the Greater Kokstad Municipality

4. SPECIFICATIONS / SCOPE OF WORK AND DELIVERABLES

The following outputs are expected:

- (1) A project proposal outlining the project milestones to be achieved during the project implementation process.

Deliverable: An accepted Project proposal prior to the commencement of the project.

- (2) The recruitment of people to administer the questionnaire. The Service Provider would need to involve councillors and ward committee members in the recruitment and selection of field workers to administer the questionnaire to the community.

Unemployed local youth (between the ages 18-35) and women would need to be recruited and trained by the Service Provider to administer the questionnaire.

Deliverable: Members from the community recruited and trained to administer the questionnaire.

- (3) The development of a questionnaire in consultation with the project management team on customer satisfaction. The questionnaire must be designed in order to determine satisfaction and dissatisfaction levels within the community and enable the service provider to undertake a GAP analysis of the expected / perceived participatory democracy vs current attempts taken by the municipality to enhance participatory democracy.

Members of the Greater Kokstad Municipality Project Management Team should influence the exact nature of questions in conjunction with the service provider.

Deliverable: The final approved Customer Satisfaction Questionnaire.

- (4) Administering the questionnaire through “face to face” interviews with the sample of the minimum of 200 community members per ward and completion of the survey. The survey shall be conducted on the resident community at ward level. The service provider is responsible for all liaisons and logistics between the municipality and communities as well as management of staff involved in the survey.

Deliverable: Completed Survey Questionnaires

- (5) An analysis of the results of the survey and prepare detailed reports based on the results of the collected Customer Satisfaction Questionnaires. The analysis should include the following:

- (a) The analysis of the questionnaires needs to be done per ward
- (b) The report must highlight the satisfaction/dissatisfaction levels per ward on municipal performance in issues of participatory democracy and perception of the interviewee.
- (c) An analysis of the satisfaction/dissatisfaction levels in 3(5)(b) above versus the expected / perceived municipal performance on participatory democracy.
- (d) Consultants should also advise the Project Management Team regarding the operational use that should be made of the survey findings.
- (e) The analysis is to be presented in graph format (bar, pie, etc), with a narrative explanation of the findings on each variable.
- (f) Consolidated Survey results and Analysis is to be presented in a map format (GIS) of the survey.
- (g) Consolidated report should touch on how the Municipality can improve on inter-municipal (vertically and horizontally) participatory democracy.

**Deliverable: An Analysis Report presented to and accepted by both the Project Management Team and Council Greater Kokstad Municipality.
(50 copies of a printed “in a booklet form) report)**

- (6) The preparation of a project Close Out report (projected project milestones and budget vs actual achievement).

Deliverable: An accepted close-out report.

5. **EXPECTED OUTCOMES**

- 5.1 Full participation of service provider according to plan / directive submitted to Assistant Manager: Council Support and Public Participation.

6. **KEY COMPETENCES**

- 6.1 Service Providers appointed to undertake these projects should demonstrate the following competences.
 - I. Knowledge and skills of the fields that they specialize in as they will be required to perform such for GKM Public Participation unit.
 - II. Previous or current proof of the performance in the similar field.
 - III. At least the Project Manager that will lead the project must have an experience and proper qualifications of the field applied for accompanied by proof of experience.

7. PROJECT MANAGEMENT

The Service Provider will work very closely with the Greater Kokstad Municipality particularly the Assistant Manager: Council support and Public Participation under the office of the Municipal Manager.

8. PROJECT TIME FRAME

- a. Project time frame is period of **3** months.

9. PROJECT BUDGET

- 9.1 Service providers are to submit proposals as per their specialty fields.

10. EVALUATION CRITERIA

10.1 FUNCTIONALITY (70)

With regards to functionality the following criteria will be applicable and the maximum score of each criterion are indicated in brackets.

CRITERIA	MEANS OF VERIFICATION	POINTS
Company Experience: bidders must have experience in the field of community satisfaction survey / research - 30 points <ul style="list-style-type: none">• 4 referral letters and above = 30 points• 2 – 3 referral letters =20 points• 1 referral letter = 10 points	A signed appointment letter/s or order and a reference letter with a traceable detail for further verification	30
Key personnel: 30 points Project Manager must possess a Diploma / Degree in project Management with the minimum of 3 years post grad experience in the field of Community Satisfaction survey /	Certified copy of qualifications and a copy of Curriculum Vitae with traceable references for verification	30

research and the CV must also be attached indicating the number of projects he / she has been involved in.		
Bank rating – 10 points Code D – 10 points Code E – 05 points No bank rating – 0 points	Bank rating letter from any of the recognized South African banks with the amount of R 150, 000. 00	10

A bidder that scores less than 45 points out of 70 in respect of “functionality” will be regarded as submitting a non-responsive quote and will be disqualified and will not be evaluated for price.

POINTS AWARDED FOR PRICE AND SPECIFIC GOAL POINTS

The following preference point systems are applicable to this bids:

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

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

Points for this bid shall be awarded for:

Price and Preferential Procurement Framework Act

The points allocated for price will calculated as follows:

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

Where

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

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

Pt = Comparative price of bid or offer under consideration

Pmin = Comparative price of lowest acceptable bid or offer.

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

Step 2: Calculation of points for specific goals

The following preference point systems are applicable to this bids:

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

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

Points for this bid shall be awarded for:

Price and Preferential Procurement Framework Act

The points allocated for price will calculated as follows:

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

Where

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

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

Pt = Comparative price of bid or offer under consideration

Pmin = Comparative price of lowest acceptable bid or offer.

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

Step 2: Calculation of points for specific goal points

Points will be awarded to a bidder for attaining the required goals and submitting the required documentation as requested below:

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

GOAL 1 – Ownership- Maximum Points	10	Documents required for verification
Business owned more than 50% by black person	10	<ul style="list-style-type: none">▪ ID copy of director/Owner▪ Detailed CSD
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		in rural areas
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A bidders will not be disqualified from the bidding process if they did not submit the required documentation for specific goals; no point will be allocated to the bidder

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

A bid will not be disqualified from the bidding process if the bidder has not submitted the required documentation for specific goals but no specific goal points will be allocated to such bidder.

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

Total points for the price and Specific Goals contribution must not exceed 100

VERY IMPORTANT:

IF ANY OF THE ABOVEMENTIONED DOCUMENTS ARE NOT SUBMITTED OR COMPLETED IN THEIR ENTIRETY, THE BIDDER WILL BE DEEMED TO BE NON-RESPONSIVE AND DISQUALIFIED

In evaluating and adjudicating the bid the following criteria will be considered:

- a. Compliance with bid requirement
- b. Evaluation of functionality
- c. Value for money
- d. PPPFA and associated regulations

PART A

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE GREATER KOKSTAD MUNICIPALITY					
BID NUMBER:	GKM 05-23/24	CLOSING DATE:	03 NOVEMBER 2023	CLOSING TIME:	12H00
DESCRIPTION EXPRESSION OF INTEREST: CONDUCTING CUSTOMER SATISFACTION SURVEY					
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
75 HOPE STREET KOKSTAD 4700					
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	<input type="checkbox"/> Yes <input type="checkbox"/> No	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSURE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]	
TOTAL NUMBER OF ITEMS OFFERED				TOTAL BID PRICE	R
SIGNATURE OF BIDDER				DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:			TECHNICAL INFORMATION MAY BE DIRECTED TO:		
DEPARTMENT	Budget and Treasury Office		CONTACT PERSON	Bongekile Mkulisi	
CONTACT PERSON	Andiswa Mahlaka		TELEPHONE NUMBER	039 797 6636	
TELEPHONE NUMBER	039 797 6600		FACSIMILE NUMBER	039 727 3676	
FACSIMILE NUMBER	039 727 3676		E-MAIL ADDRESS	bongekile.mkulisi@kokstad.gov.za	
E-MAIL ADDRESS	andiswa.mahlaka@Kokstad.gov.za				

MBD1

**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED—(NOT TO BE RE-TYPED)**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.

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 NO
- 3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA? YES
 NO
- 3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?
 YES NO
- 3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?
 YES NO
- 3.5. 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 ABOVE.

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

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

DATE:

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

MBD 3.1

DESCRIPTION	QUANTITY	AMOUNT
COMPANY STAMP		
	SUB-TOTAL	
	VAT (15%)	
	TOTAL	

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

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

CONDITIONS OF TENDER

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

ANNEXURE C

MBD 4

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favoritism, 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 authorized representative declare their position in relation to the evaluating/adjudicating authority.

3 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.....
.....

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

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

- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or (f) an employee of Parliament or a provincial legislature.

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

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

3.9.1 If yes, furnish particulars.....
.....

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

3.10.1 If yes, furnish particulars.....
.....

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

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

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

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

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

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

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

3.14.1 If yes, furnish particulars:

.....

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

Full Name	Identity Number	State 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
 - 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.
 - b) The applicable preference point system for this tender is the **80/20** preference point system.
 - c) Either the **90/10** or **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	
SPECIFIC GOALS	
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:

80/20 or

90/10

$$Ps = 80 \left(1 - \frac{Pt - P_{min}}{P_{min}}\right) \text{ or } Ps = 90 \left(1 - \frac{Pt - P_{min}}{P_{min}}\right)$$

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:

80/20

or

90/10

$$P_S = 80 \left(1 + \frac{Pt - P_{max}}{P_{max}}\right) \text{ or } P_S = 90 \left(1 + \frac{Pt - P_{max}}{P_{max}}\right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10

preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
- (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

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

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

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

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
GOAL 1 – Ownership-	Maximum Points 10	
Business owned more than 50% by black person	10	
Business owned less than 50% by black person	5	
GOAL 2 – RDP- Maximum Points	10	
Business falls under the SMME Category- QSE/EME	5	
Promotion of business located within KZN province	5	
Promotion of business located in South Africa outside KZN province	2	

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 proprietor
- Close corporation
- Public Company
- Personal Liability Company
- (Pty) Limited
- Non-Profit Company
- State Owned Company

[TICK APPLICABLE BOX]

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has

suffered as a result of having to make less favourable arrangements due to such cancellation;

- (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution, if deemed necessary.

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

SURNAME AND NAME:

DATE:

ADDRESS:

.....

.....

.....

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

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

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p>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.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		

4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
Item	Question	Yes	No
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

CERTIFICATION

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

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

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

MBD 9
CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

MBD 9**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Municipality / Municipal Entity)

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

I certify, on behalf of:

that:

(Name of Bidder)

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

However, communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.

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

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

INSTRUCTIONS TO BIDDERS PUBLICATION REFERENCE:

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

SUBMISSION REQUIREMENTS AND SELECTION CRITERIA

Bidders are required to submit the following documents:

- Copy of CSD (Central Supplier Database) summary report
- Copy of company registration documents (compulsory) – for Joint Ventures / Consortiums bidders must attach the CK's of each of the Joint Venture/ Consortium members
- Certified ID copies of company director(s)
- Copy of SARS Tax Pin for further verification.
- Copy of current municipal account for all Director/s and Company (must not be in arrears for a period longer than 90 days and not older than 90 days) or copy of lease agreement from the relevant authority if the director/s or company is leasing. If the business is operated from the residence of one of the Director/s, an original affidavit, certified, must be submitted stating the address of the premises. For any other arrangement that is not covered above, director/s must submit an original affidavit, certified clarifying the arrangement. All affidavits must be original affidavits, certified and must be from the SAPS. Affidavits must be signed by the company director/s.
- Completed and signed Municipal Bidding Document attached in the tender document, Bidders must take note of MBD 1 and ensure that they put their total bid prices including vat.

1. Services to be provided

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

2. Participating and sub-contracting

- 2.1 Participation in this bid is open to everyone.**
- 2.2 Bids should be submitted by the same service provider or consortium, which has submitted the proposal based on the above. **No change whatsoever in the identity or composition of the bidder is permitted;****
- 2.3 Short-listed service provider or consortia are allowed to form alliances with any other firms or to sub-contract to each other for the purpose of this contract;**
- 2.4 Sub-contracting will be allowed, only in so far as it was stated in the initial bid.**
- 2.5 Duplication of bid document is prohibited.**

3. Contents of Bids

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

4. Financial offer

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

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

5. Submission of samples

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

6. Variant solutions

Any variant solutions will not be taken into consideration.

Period during which Bid are binding

Bidders are bound by their bids for 120 days after the deadline for the submission of bids. In exceptional cases, before the period of validity expires, the Contracting Authority may ask bidders to extend the period for a specific number of days, which may not exceed 40.

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

7. Additional information before the deadline for submission of bidders

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

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

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

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

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

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

8. Submission of Bids

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

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

The envelope should carry the following information:

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

9. Alterations or Withdrawal of Bids

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

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

10. Costs for preparing Bids

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

11. Ownership of Bids

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

12. Confidentiality

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

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

13. Ethics clauses / Corruptive practices

- a) Any attempt by a bidder to obtain confidential information, enter into unlawful agreements with competitors or influence the Evaluation / Adjudication Committee or the Contracting Authority during the process of examining, clarifying, evaluating, comparing and adjudication bid will lead to the rejection of its bid and may result in administrative penalties.
- b) The bidder must not be affected by any potential conflict of interest.
- c) The Greater Kokstad Municipality reserves the right to suspend or cancel funding to this project if corrupt practices of any kind are discovered at any stage of the aFward process or during the implementation of a contract, if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the Contracting Authority.
- d) Bids will be rejected, or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions paid to a payee who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

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

14. Documentary evidence required from the successful Bidder

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

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

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

15. Signature of contract(s)

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

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

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

16. Cancellation of the Bids procedure

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

Cancellation may occur when:

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

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

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

THE NATIONAL TREASURY
Republic of South Africa



GOVERNMENT PROCUREMENT:
GENERAL CONDITIONS OF CONTRACT

July 2010

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General Conditions of Contract

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 any thing of value to influence the action of a public official in the procurement process or in contract execution.

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

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

1.7 "Day" means calendar day.

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

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

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

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

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

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

1.14 "GCC" means the General Conditions of Contract.

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

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

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

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

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

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

1.21 "Purchaser" means the organization purchasing the goods.

1.22 "Republic" means the Republic of South Africa.

1.23 "SCC" means the Special Conditions of Contract.

1.24 "Services" means those functional services ancillary to the

supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

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

1.26 "Tort" means in breach of contract.

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

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

2. Application

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

3. General

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.

4. Standards

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

5. Use of contract documents and information inspection

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

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

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

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

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

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

7 Performance security

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

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

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

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

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

8 *Inspections, tests and analyses*

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

9 Packing

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

weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

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

10 Delivery and documents

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

11 Insurance

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

12 Transportation

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

13 Incidental Services

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

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

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

prevailing rates charged to other parties by the supplier for similar services.

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

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

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

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

- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise.
- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16 Payment

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

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

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

16.4 Payment will be made in Rand unless otherwise stipulated.

17 Prices

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

18 Variations on orders

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

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

20 Subcontracts

20.1. The supplier shall notify the purchaser in writing of all subcontracts awarded under this 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 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the
- 21.4 goods are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a goods contract, the purchaser shall, without cancelling the contract, be entitled to purchase goods of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

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

23 Termination for default

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

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

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

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

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

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

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

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

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

23.7

23.8 . If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector

for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website

24 Anti-dumping and countervailing duties and rights

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

25 Force Majeure

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

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

26 Termination for insolvency

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

27 Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

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

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

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

28. Limitation of

Liability

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

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

28 Governing language

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

29 Applicable law

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

30 Notices

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

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

31 Taxes and duties

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

- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid SARS must have certified that the tax matters of the preferred bidder are in order.
- 32.4 No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.

**32 *Transfer
of
contracts***

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

**33 *Amendm
ent of
contracts***

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

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

- 35.2 If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 Of 1998.
- 35.3 If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.