



**PSJLM-MM-2023/24 – 56 APPOINTMENTS OF A PANEL OF LEGAL EXPERTS FOR PSJ MUNICIPALITY FOR A PERIOD OF TWO YEARS**



## **PORT ST JOHN'S MUNICIPALITY**

**BID NO: PSJLM-MM-2022/23 – 56**

**DESCRIPTION: APPOINTMENT OF A PANEL OF LEGAL EXPERTS FOR PSJ MUNICIPALITY FOR A PERIOD OF TWO YEARS**

**CLOSING DATE: 16 JULY 2024**

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**Issued by:**  
**The Municipal Manager**  
**Port St Johns Local Municipality**  
**Port St Johns**  
**5120**  
**Tel.No: (047) 564 1207/8**

**Prepared by:**  
**Budget and Treasury Office**  
**Port St Johns Local Municipality**  
**Port St Johns**  
**5120**  
**Tel.No: (047) 564 1207/8**

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**NAME OF BIDDER**

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

**Contact Number:** \_\_\_\_\_

**CSD Number:** \_\_\_\_\_

**Amount:** \_\_\_\_\_



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<b>TENDER CHECKLIST</b>		
<b>PLEASE ENSURE THAT THE FOLLOWING FORMS HAVE BEEN DULY COMPLETED AND SIGNED AND THAT ALL DOCUMENTS AS REQUESTED, ARE ATTACHED TO THE TENDER DOCUMENT:</b>		
<b>PLEASE CHECK:</b>	<b>YES</b>	<b>NO</b>
That you have read all the pages of the tender document.		
That you have the <b>authority to Sign a Bid</b> and the resolution is attached.		
That you have completed ALL the forms required to be completed in <b>NON-ERASEABLE INK</b>		
That your arithmetic calculation in the pricing schedule is correct.		
That you have attached ALL necessary documentation relating to the composition of the tendering entity, i.e.		
<div style="padding-left: 40px;">(a) Company registration documents naming the shareholders and directors / members of the company, close corporation etc</div>		
<div style="padding-left: 40px;">(b) Joint venture agreement, if tendering entity is a joint venture</div>		
That all supporting schedules, documents, proof of experience and other information required (if functionality is applicable) are attached.		
That the <b>COMPLETE</b> tender document is submitted.		
That the <b>FORM OF OFFER</b> is completed in full and signed.		
That all the Municipal Bidding Documents are duly completed and signed.		
That <b>ALL</b> returnable documents are submitted.		
Ensure that your tender is submitted by <b>11H00PM</b> on the closing date of the tender		

**CERTIFICATION**

I, the undersigned (full name.....),  
certify that the information furnished on this checklist is true and correct.

Signed: ..... Date: .....

Name: ..... Position: .....

Tenderer: .....



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## **SECTION 1: TENDER NOTICE AND INVITATION TO TENDER**

Port St Johns Local Municipality hereby invites bids for the project listed below:

<b>Tender Number</b>	PSJLM-MM-2023/24-56
<b>Description</b>	Appointment of a panel of legal experts for Port St Johns Municipality for a period of Two years
<b>Briefing Session</b>	N/A
<b>Contract Period</b>	Two Years

Bid documents should be downloaded on the e-Tender website ([www.etenders.gov.za](http://www.etenders.gov.za)) alternatively on the Port St Johns Municipality's website ([www.psjmunicipality.gov.za](http://www.psjmunicipality.gov.za)).

Bids must be completed in black ink, enclosed in a sealed envelope clearly marked with the **“Tender number, tender name and description”**, and deposited in the Tender Box, Reception Area (Municipal Town Hall), ERF 257 Main Street, Port St Johns not later than **11H00pm on Tuesday, 16 July 2024**.

It must be expressly understood that the Municipality accepts no responsibility for ensuring that bid submissions sent by courier or post, or delivered in any other way, are deposited in the Tender Box. It is therefore preferable for the bidder to ensure that its bid submission is placed in the Tender Box by its own staff or representative(s).

### **RETURNABLE DOCUMENTS TO BE SUBMITTED WITH THE BID:**

- Copy of business registration documents, as issued by CIPC.
- Certified copy of identity documents of directors/ shareholders/ partners / members.
- Original Valid Tax Clearance Certificate or a Confirmation of Tax Validity with the pin issued by SARS

### **NON-SUBMISSION OF THE FOLLOWING WILL RESULT IN REJECTION OF YOUR BID**

- Proof of registration with Central Supplier Database.
- Joint Venture Agreement or Consortium Agreement signed and initialled on each page (if applicable).
- Audited annual financial statements of the bidding entity (for projects in excess of R10 million);



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- Unaudited annual financial statements for close corporations and companies if the public interest score is below 350 in line with the companies act of 2008;
- Attach valid Current Rates clearance statement of the company and each individual director which is not older than 90 days obtained from your respective Municipality or attach a valid signed lease agreement by both Lessor and Lessee. If exempted, please attach letter of exemption from your respective Municipality's revenue office as proof that the bidder or its directors as per the Municipality's valuation roll does not own any property that, letter must be signed by Budget and Treasury Office (BTO) department representative and have original stamp from BTO department.
- Letter of good standing from the Law Society of South Africa not older than 6 months.
- Certified copy of an Admission Certificate as an Attorney.
- Certified copy of an Admission Certificate as a Conveyancer (for only conveyancing work).
- Proof of Fidelity Certificate which is not older than 10 months.

**EVALUATION OF BIDS IN TERMS OF THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK REGULATIONS, 2022:**

Bids will be evaluated in three stages, namely:

- Stage 1- Mandatory Requirements
- Stage 2- Minimum conditions of tender
- Stage 3 - Price and specific goals

Bidders who fail to comply with the requirements in Stage 1 will not be evaluated further in Stages 2. Only Bidders who score a minimum of 60 points in Stage 2 will not proceed to be evaluated further in Stage 3.

<b>MINIMUM CONDITIONS OF TENDER</b>	
<b>Stage 2</b>	<b>Weight</b>
• Experience of the law firm	30
• Capacity and capability of the project leader	30
• Experience of the proposed team	30
• Methodology	10
<b>Stage 3</b>	
• Price	80
• Specific goals	20
<b>TOTAL</b>	<b>100</b>



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Tenders may only be submitted on tender documentation issued. No alterations may be made to the tender documentation. No late, faxed, e-mailed, telephonic or other electronically transmitted submissions will be accepted. Should a bidder commit any corrupt or fraudulent act during the bidding process, its tender shall be disqualified.

The Municipality reserves the right to extend the tender advert period at its own discretion, by notice published in the Daily Dispatch Newspaper; the e-Tender Publication Portal, and by notice sent to all parties who attend the briefing session, if any.

Bids must remain valid for a period of 90 days after the closing date of the bid. Enquiries can be directed as follow:

Type of Enquiry	Contact Person	Contact Number	Email Address
Technical	Adv. Liwani	082 886 2370	<a href="mailto:Adv.tliwani@psjmunicipality.gov.za">Adv.tliwani@psjmunicipality.gov.za</a>
Supply Chain Management	Ms Z Jim	083 453 1584	<a href="mailto:zjim@psjmunicipality.gov.za">zjim@psjmunicipality.gov.za</a>

***Enquiries can be made from Monday to Friday between 08H00-13H00 and 13H30-16H30 and such enquiries will not be entertained five days before the tender closes.***

Tenders will be evaluated in terms of the Supply Chain Management policy of the Port St Johns Municipality. The lowest tender will not necessarily be accepted and the Municipality reserves the right to accept the whole or part of any tender or not to consider any tender not suitably endorsed. An 80/20-point system shall apply where 80 points is allocated for price and 20 points allocated for specific goals as follows:

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)
Promotion of Black Owned Enterprises	10	
Promotion of Youth Owned Enterprises	10	

**Tenderers must submit copies of all supporting documents necessary to prove conformance with Specific Goal criteria listed above in order to be eligible for Specific Goal points.**

**M Fihlani**  
**Municipal Manager**



## SECTION 2: STANDARD CONDITIONS OF TENDER

### **BIDDERS ARE REQUIRED TO FAMILIARIZE THEMSELVES WITH THE TENDERING CONDITIONS AND PROCEDURES DETAILED IN THIS SECTION.**

1. No tender will be considered unless it is submitted on this Port St Johns bid document. Under no circumstances whatsoever may this bid document be retyped or redrafted.
2. The whole, original bid document as issued by Port St Johns District Municipality must be completed. A tender will be considered invalid and will not be accepted, if any part of this bid document is not submitted.
3. The bidder is advised to check the number of pages and to satisfy him/herself that none are missing or duplicated.
4. Bids submitted must be complete in all respects.
5. Telephonic, telegraphic, telex, facsimile or emailed tender offers will not be accepted, unless stated otherwise in these tender conditions.
6. Bid submissions must be properly deposited, on or before the closing date and time of the tender, in the Tender **Box** located at ERF 257, Main Street, Port St Johns.
7. **Each bid shall be lodged in a separate sealed envelope, with the name and address of the bidder, the bid number and closing date indicated on the envelope. The envelope shall not contain documents relating to any bid other than that shown on the envelope. If this provision is not complied with, such bids may be rejected as being invalid.**
8. Port St Johns Municipality accepts no responsibility for ensuring that tenders are placed in the correct tender box, and should a tender be placed in the incorrect tender box, it will not be accepted.
9. No bid sent through the post will be considered if it is received after the closing date and time stipulated in the bid documentation, and proof of posting will not be accepted as proof of delivery.
10. Bids received after the closing time and/or date shall not be considered.
11. Bidders will be responsible for all costs associated with the preparation and submissions of their bids.
12. The bid must be signed by a person duly authorised to do so.
13. Any alterations made to the bid document must be initialed by the person or persons authorised to sign the bid document. The use of correcting fluid is prohibited.



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14. Bids will be opened in public, as soon as possible after the closing time of the bid. Where practical, bid prices will be read out at the time of opening bids.

### **15. National Treasury Central Supplier Database**

- 15.1 Bidders must be registered on the National Treasury Central Supplier Database ('CSD'), and must provide their CSD supplier number in their bid submission.
- 15.2 The municipality will verify on the CSD, the following information relating to bidders –
  - 15.2.1 business registration, including details of directorship and membership;
  - 15.2.2 bank account information;
  - 15.2.3 tax compliance status;
  - 15.2.4 identity documents of directors, members or trustees, as the case may be;
  - 15.2.5 tender defaulters and restrictions status;
  - 15.2.6 whether the bidder has any directors, managers, principal shareholders or stakeholders in the service of the state.
- 15.3 Bidders must ensure that their information on the CSD is up to date and correct.

### **16. Tax compliance status**

- 16.1 Bidders must ensure that their tax matters are in order. No award will be made to any bidder whose tax matters have been declared to be in order by the South African Revenue Services (SARS).
- 16.2 Each party to a joint venture, consortium or partnership must comply with the above requirement.

### **17. Bid validity period**

- 17.1 The validity period for the bid is ninety (90) days from the close of the bid.
- 17.2 All bids submitted shall remain valid, irrevocable and open for acceptance by the Municipality within the validity period, or such extended period as may be applicable.
- 17.3 If the bid validity period expires on a Saturday, Sunday or public holiday, the bid offer shall remain valid and open for acceptance until the closure of business on the following working day.
- 17.4 The bid offer may not be amended during the aforesaid bid validity period.
- 17.5 Where required, the Municipality may request all bidders to agree to the extension of the validity period on the same terms and conditions as the original bid, or such amended terms and conditions as may be allowed by the Municipality.
- 17.6 A request for a bid validity extension request will be done in writing, before the expiry of the original validity period.



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### **18. Withdrawal or modification of a tender prior to closing time**

18.1 Tenderers may withdraw their tender before the tender closes.

18.2 Insofar as a modification will affect the information that will be made available at the public opening, the Municipality shall have the authority to make such information from the submissions available to the other tenderers.

### **19. Withdrawal of a tender after the closing time**

Tenderers may withdraw their tender submission before the tender is awarded provided that they do so in writing, and ensure that such withdrawal reaches the Municipality and the Municipality confirms receipt in writing before the tender is awarded. The tender as modified will be considered as the tenderer's offer.

### **20. Prequalification criteria**

20.1 Prequalification criteria may be applied to the tender to advance designated groups.

20.2 Should prequalification criteria be applicable to this tender, the basis of such criteria will be detailed in Section 4 of this document.

### **21. Tender evaluation**

21.1 Tenders will be evaluated in accordance with the tender evaluation criteria stipulated in this document.

21.2 Tenders will be evaluated for price and preference using the 80/20 preference points system.

21.3 Unless otherwise stated in this document, a contract will be concluded with the bidder who complies with the tender evaluation criteria, and scores the highest total price and preferences.

### **22. Test for tender responsiveness**

#### **22.1 Invalid tenders**

Tenders shall be invalid if –

- (a) The tender document is completed in non-erasable ink;
- (b) The form of offer is not completed and signed by the bidder;
- (c) In a two-envelope system, a bidder fails to submit both a technical proposal and a separate, sealed financial offer;
- (d) The bidder has been listed on the National Treasury's Register for Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, or has been listed on the National Treasury's List of Restricted Suppliers and who is therefore prohibited from doing business with the public sector;
- (e) The bidder is /has been restricted from doing business with the Municipality.



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### **22.2 Non-responsive tenders**

Tenders will be held to be non-responsive and eliminated from further consideration in the following circumstances –

- (a) The tender does not comply with the tendering procedures, where such procedures have been indicated as mandatory.
- (b) The tender does not comply with the prequalification criteria for the tender, if any, or the tender evaluation criteria, including any minimum conditions of tender criteria.
- (c) Where there are material deviations from, or qualifications to the tender, which in the Municipality's opinion would –
  - (i) detrimentally affect the scope, quality or performance of the services or supply identified in the scope of services;
  - (ii) significantly change the Municipality's or the bidder's risks and responsibilities under the contract, or
  - (iii) affect the competitive position of the bidder, or other bidders presenting responsive tenders, if it were to be rectified.
- (d) The bid will be declared non-responsive in the event that the bidder's tax matters, as verified on the government Central Supplier Database, are shown not be in order, and the bidder fails to ensure that its tax matters are in order within such timeframe as may be required by Port St Johns Municipality in writing.

### **23. Clarification of the tender offer after submission**

The bidder must provide clarification of its tender offer in response to a request to do so from the Municipality during the bid evaluation or adjudication stages. This may include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the competitive position of bidders or substance of the tender offer may be sought, offered, or permitted.

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

The bidder shall, at the request of the Municipality, provide access during working hours to its business premises, or any other specified premises, for any inspections, tests and analyses as required in this document.

### **25. Samples**

Where applicable, samples shall be provided strictly in accordance with the instructions stipulated in this bid document.

### **26. Pricing the tender offer**

Bidders must –



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- 26.1 Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes (including Value Added Tax (VAT), and other levies applicable.
- 26.2 Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as specified in this tender document.
- 26.3 State the rates and prices in Rand unless instructed otherwise.

### **27. Imbalance in tendered rates or prices**

If the Municipality declares any rate or price to be unacceptably high or low, the tenderer shall be requested to provide evidence to support the tendered rate or price. If the Municipality remains unsatisfied with the rate or price, it may propose to the tenderer an amended rate or price together with counterbalancing change(s) elsewhere in the Pricing Schedule such that the tender sum remains unchanged. Should the tenderer refuse to amend his / her tender as proposed by the Municipality, his / her tender may be regarded as non-responsive.

### **28. Inducements, gifts, rewards and other abuses of the supply chain management system**

- 28.1 No bidder may directly or indirectly commit any fraudulent act during the tender process or abuse the supply chain management system of the Municipality.
- 28.2 Should a bidder be found to have committed fraud or abused the supply chain management system, its bid will be rejected, any existing contract between it and the Municipality will be cancelled, and any other remedies available to the Municipality as provided for in the Supply Chain Management Regulations or other relevant legislation shall be imposed, including blacklisting.

### **29. Alternative offers**

Alternative offers may be considered, provided that a bid free of qualifications and strictly in accordance with the tender document is also submitted. The Municipality shall not be bound to consider alternative bid offers.

### **30. Objections, complaints, queries and disputes / Appeals in terms of Section 62 of the Municipal Systems Act**

#### **30.1 Objections, complaints, queries and disputes**

Persons aggrieved by decisions or actions taken by the Municipality in the implementation of the supply chain management system, or any matter arising from a contract awarded in terms of the supply chain management system may, within 14 days of the decision or action, lodge a written objection or complaint or query or dispute against the decision or action.

#### **30.2 Section 62 appeals**

- (a) In terms of section 62 of the Systems Act, a person whose rights are affected by a decision taken by a political structure, political office bearer, councilor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority, may appeal against that decision by giving written notice of the appeal and reasons to the Accounting Officer within 21 days of the date of notification of the decision.
- (b) An appeal shall contain the following:
  - (i) The reasons and/or grounds for the appeal;



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- (ii) The manner in which the appellant's rights have been affected;
- (iii) The remedy sought by the appellant.

### **30.3 Lodging of appeals, objections, complaints, queries and disputes relating to this tender**

Appeals, objections, complaints, requests for information, queries and disputes must be submitted in writing to the Office of the Municipal Manager, ERF 257, Main Street, Port St Johns Municipality



### SECTION 3: REGISTRATION ON CENTRAL SUPPLIER DATABASE

1. In terms of National Treasury MFMA Circular No. 81, Accounting Officers of Municipalities are required to encourage their prospective suppliers to register on the Central Supplier Database ('CSD').
2. Bidders may apply for online registration, using the following website link: [www.csd.gov.za](http://www.csd.gov.za).
3. Bidders must register on CSD. **FAILURE TO REGISTER BEFORE THE CLOSE OF THIS TENDER WILL RESULT IN THE DISQUALIFICATION OF THE BIDDER'S TENDER.**



## **SECTION 4: TENDER EVALUATION CRITERIA**

**Bids will be evaluated in three stages, namely:**

- Stage 1- Mandatory requirements.
- Stage 2 – Minimum Conditions of Tender
- Stage 3 - Price and Specific Goals

### **STAGE 1- MANDATORY REQUIREMENTS**

- Attach proof of registration with CSD.
- Attach joint Venture Agreement or Consortium Agreement signed and initialled on each page (if applicable).
- Attach audited annual financial statements of the bidding entity (for projects in excess of R10 million);
- Attach unaudited annual financial statements for close corporations and companies if the public interest score is below 350 in line with the companies act of 2008;
- Attach valid Current Rates clearance statement of the company and each individual director which is not older than 90 days obtained from your respective Municipality or attach a valid signed lease agreement by both Lessor and Lessee. If exempted, please attach letter of exemption from your respective Municipality's revenue office as proof that the bidder or its directors as per the Municipality's valuation roll does not own any property that, letter must be signed by Budget and Treasury Office (BTO) department representative and have original stamp from BTO department.
- Letter of good standing from the Law Society of South Africa not older than 6 months.
- Certified copy of an Admission Certificate as an Attorney.
- Certified copy of an Admission Certificate as a Conveyancer (for only conveyancing work).
- Proof of Fidelity Certificate which is not older than 10 months.

**Only bidders who meet all the requirements of stage 1 will proceed to be evaluated further in stage 2**



**STAGE 2 – MINIMUM CONDITIONS OF TENDER**

Only bidders who score a minimum of 60 points on minimum conditions of tender will be evaluated further on Price and Specific Goals. The maximum score for minimum conditions of tender shall be 100, distributed as follows:

	<b>Minimum Conditions of tender</b>	<b>Points Allocation</b>
<b>1.</b>	<b>EXPERIENCE OF THE LAW FIRM</b>	<b>30</b>
	<p><b>The law firm must prove that it has experience in the following:</b></p> <p><b>Work Aspects</b></p> <p><b>Category A: CORPORATE/COMMERCIAL LAW SERVICES</b></p> <p><b>Category B: LABOUR LAW/EMPLOYMENT SERVICES</b></p> <p><b>Category C: FORENSIC INVESTIGATIONS, GOVERNANCE AND COMPLIANCE SERVICES</b></p> <p><b>Category D: CONVEYANCING</b></p> <p><b>Category E: GENERAL LEGAL SERVICE</b></p> <p>Submit reference letters signed by authorized persons and dated. Reference letters must be aligned to work done in respect of the relevant category listed above which has been concluded successfully. The letter must clearly state the scope of work and must be in company's letter head.</p> <p>3 letters of Reference from previous / current client(s) = 30 points</p> <p>2 letters of Reference from previous / current client(s) = 20 points</p> <p>1 letter of Reference from previous /current client = 10 points</p> <p>No letter of Reference = 0 points</p>	30
<b>2.</b>	<b>CAPACITY AND CAPABILITY OF THE PROJECT LEADER</b>	<b>30</b>
	<p>Requirements of the project leader are as follows:</p> <p><b>Qualification:</b> LLB degree, B. juris or equivalent (Submit certified proof of qualification) (05 points)</p> <p><b>Capacity and capability:</b></p> <ul style="list-style-type: none"><li>○ Submit a certified copy of right of appearance in the high court. (05 points)</li><li>○ Letter of good standing from law society (not older than 6 months). (05 points)</li></ul>	



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	<ul style="list-style-type: none"> <li>○ Certified copy of Admission certificate as an Attorney. (05 points)</li> <li>○ Certified copy of Admission certificate as the Conveyancer. (05 points)</li> <li>○ At least 3 years' post qualification experience in leading similar projects in a government environment (Submit a comprehensive CV with contactable references) (05 points)</li> </ul>	
3.	<b>Experience of the proposed team</b>	<b>30</b>
	<p>Years of experience pertains to the experience of the project team only: Submit a company profile with employee skills matrix.</p> <ul style="list-style-type: none"> <li>○ All resources have more than 5 years = 30 points</li> <li>○ Three resources have 3-5 years = 20 points</li> <li>○ Two resources have 1-3 years = 10 points</li> <li>○ No resource = 00 points</li> </ul>	
4.	<b>Methodology</b>	<b>10</b>
	<p>Bidders should submit a detailed methodology with the following points amongst others:</p> <ul style="list-style-type: none"> <li>▪ Appropriateness of the tools used by the organization such as human capital availability for the project.</li> <li>▪ Time frame from the time of receiving instructions to finalization of the matter.</li> <li>▪ How reporting will be done for progress report in respect of pending matters.</li> <li>▪ How effective Alternative Dispute Resolution (ADR) would be utilized to ensure that the matter is speedily resolved &amp; without compromising its merits and a clear understanding of terms of reference.</li> </ul>	
	<b>TOTAL</b>	<b>100</b>

**STAGE 3– PRICE AND SPECIFIC GOALS**

The procedure for Stage 3 of evaluation will be as follows:

- a) PRICE: ..... 80**  
**b) SPECIFIC GOALS: ..... 20**

**Points Awarded for Price (Ps)**

A total of 80 points will be awarded to the Tenderer on the following basis:



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

Where

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

**Points awarded for specific goals**

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 the table below as may be supported by proof/ documentation stated in the conditions of this tender. Specific goals for the tender and points claimed are indicated per the table below:

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)
Promotion of Black Owned Enterprises	10	
Promotion of Youth Owned Enterprises	10	

**Tenderers must submit copies of all supporting documents necessary to prove conformance with Specific Goal criteria listed above in order to be eligible for Specific Goal points.**



## **SECTION 5: RETURNABLE DOCUMENTS AND SCHEDULES**

### **RETURNABLE DOCUMENTS**

Bidders must submit the following documentation with their tenders:

<b>No.</b>	<b>Returnable document</b>	<b>Compulsory (Yes /No)</b>	<b>Non-submission will render Tender non-responsive (Yes / No)</b>
1.	Business registration documents	<b>YES</b>	<b>YES</b> (if proof of its business status and registration cannot be verified on CSD), non-submission will forfeit specific goals points
2.	Current Rates clearance statement of the company and each individual director which is not older than 90 days	<b>YES</b>	<b>YES</b>
3.	Certified copy of identity documents of directors / shareholders / partners / members, as the case may be	<b>YES</b>	<b>YES</b> (if cannot be verified on CSD),
4.	Signed joint venture or consortium agreement	<b>YES</b> (if applicable)	<b>YES</b> (if applicable)
5.	A company profile with employee skills matrix	<b>YES</b>	<b>NO</b> (However non-submission will affect minimum conditions of tender)
6.	Certified copy of an Admission Certificate as an Attorney	<b>YES</b>	<b>YES</b>
7.	Certified copy of an Admission Certificate as a Conveyancer (for only conveyancing work)	<b>YES</b>	<b>YES</b>
8.	Proof of Fidelity Certificate which is not older than 10 months	<b>YES</b>	<b>YES</b>



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**RETURNABLE SCHEDULES**

All returnable schedules below must be completed by the bidding entity, save for those schedules which are not applicable to it in which case the bidding entity must indicate which schedules are not applicable.

Bidders must complete the following returnable schedules:

No.	Returnable schedule	Compulsory (Yes /No)	Non-submission will render Tender non-responsive (Yes / No)
1.	Confirmation of registration on the National Treasury Central Supplier Database <b>(Schedule A)</b>	<b>YES</b>	<b>YES</b>
2.	Authority of bid signatory <b>(Schedule B)</b>	<b>YES</b>	<b>YES</b>
3.	Briefing session / site inspection certificate <b>(Schedule C)</b>	<b>YES</b> (if applicable)	<b>YES</b> (if applicable)
4.	Municipal Bidding Documents <b>(Schedule D)</b>		
4.1	MBD 1 – Invitation to bid	<b>YES</b>	<b>NO</b>
4.2	MBD 4 - Declaration form confirming the bidder is not in the service of the state	<b>YES</b>	<b>YES</b>
4.3	MBD 5 - Declaration for procurement above R10 million	<b>YES</b> (if applicable)	<b>YES</b> (if applicable)
4.4	MBD 6.1 - Preference points claim form	<b>YES</b>	<b>YES</b>
4.5	MBD 7.2- Contract form - rendering of services	<b>YES</b>	<b>YES</b>
4.6	MBD 8 - Declaration of bidders' past supply chain management practices	<b>YES</b>	<b>YES</b>
4.7	MBD 9 - Declaration of independent bid determination	<b>YES</b>	<b>YES</b>
5.	Form of offer <b>(The Contract: Section 3)</b>	<b>YES</b>	<b>YES</b>



**SCHEDULE A – CONFIRMATION OF REGISTRATION OF BIDDER ON CENTRAL SUPPLIER DATABASE (CSD)**

<b>BIDDER NAME</b>	<b>REGISTERED ON CSD? (YES/NO)</b>	<b>CSD SUPPLIER NUMBER</b>

Bidders are required to register as suppliers on the National Treasury Central Supplier Database (CSD) prior to submission of this bid, and provide their CSD supplier number in the table above.

It is the responsibility of bidders to ensure that this requirement is complied with. In the case of Joint Ventures and Consortia, this requirement will apply to each party to the Joint Venture or Consortium.

**BIDDER’S SIGNATURE:** .....



## SCHEDULE B: AUTHORITY OF BID 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 or on company letter head.

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:

DIRECTOR (NAMES)		SIGNATURE	
DIRECTOR (NAMES)		SIGNATURE	
DIRECTOR (NAMES)		SIGNATURE	
DIRECTOR (NAMES)		SIGNATURE	
DIRECTOR (NAMES)		SIGNATURE	
DIRECTOR (NAMES)		SIGNATURE	

If you cannot complete this form, attach a separate sheet (in a company letter head, project specific and signed by all directors):



**SCHEDULE C: TENDER BRIEFING / SITE INSPECTION CERTIFICATE**

Note: This certificate is only to be completed if applicable to the tender.

**CERTIFICATE OF ATTENDANCE**

THIS IS TO CERTIFY THAT ..... (NAME) ON BEHALF OF .....  
..... (BIDDING ENTITY), ATTENDED THE OFFICIAL TENDER  
BRIEFING SESSION AND / OR SITE INSPECTION ON ..... (DATE) AT .....  
.....  
..... (VENUE).

I FURTHER CERTIFY THAT I AM SATISFIED WITH THE DESCRIPTION OF THE SERVICES TO BE PERFORMED AND THE EXPLANATIONS (IF ANY) GIVEN TO ME BY THE MUNICIPALITY'S REPRESENTATIVES. I AM ALSO FAMILIAR WITH THE MANNER IN WHICH THE SERVICES ARE TO BE PERFORMED UNDER THE INTENDED CONTRACT.

.....  
**BIDDER / AUTHORISED REPRESENTATIVE**  
**(PRINT NAME)**

.....  
**SIGNATURE**

.....  
**DATE**

.....  
**MUNICIPAL REPRESENTATIVE**  
**(PRINT NAME)**

.....  
**SIGNATURE**

.....  
**DATE**



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SCHEDULE D: MUNICIPAL BIDDING DOCUMENTS (MBDs)

PART A  
INVITATION TO BID

MBD 1

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF O.R. TAMBO DISTRICT MUNICIPALITY					
BID NUMBER:	PSJLM-MM-2023/24-56	CLOSING DATE:	16 JULY 2024	CLOSING TIME:	11:00PM
DESCRIPTION:	Appointment of a panel of Legal Experts for PSJ Municipality for a period of Two years				

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT:					
RECEPTION AREAS (MUNICIPAL TOWN HALL)					
PORT ST JOHNS MUNICIPALITY					
ERF 257, MAIN STREET					
PORT ST JOHNS					
5120					

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:		CSD No:		
BUSINESS REGISTRATION DOCUMENTS	Yes	STATEMENT OF RATES AND TAXES		Yes	
	No			No	

[BUSINESS REGISTRATION DOCUMENTS AND STATEMENT OF RATES AND TAXES) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS]

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	Yes No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	Yes No [IF YES, ANSWER PART B:3]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER	.....	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			

BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT	Supply Chain Management	CONTACT PERSON	ADV. LIWANI
CONTACT PERSON	Zimasa Jim	TELEPHONE NUMBER	082 886 2370
TELEPHONE NUMBER	083 453 1584	FACSIMILE NUMBER	N/A
FACSIMILE NUMBER	N/A	E-MAIL ADDRESS	<a href="mailto:Adv.tliwani@psjmunicipality.gov.za">Adv.tliwani@psjmunicipality.gov.za</a>
EMAIL ADDRESS	<a href="mailto:zjim@psjmunicipality.gov.za">zjim@psjmunicipality.gov.za</a>		



**PART B**

**TERMS AND CONDITIONS FOR BIDDING**

**MBD1**

**1. BID SUBMISSION:**

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR ONLINE**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 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 MAY RENDER THE BID INVALID.  
NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE.**

SIGNATURE OF BIDDER: \_\_\_\_\_

CAPACITY UNDER WHICH THIS BID IS SIGNED: \_\_\_\_\_

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



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**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, shareholder<sup>2</sup>):  
.....
  - 3.4 Company Registration Number: .....
  - 3.5 Tax Reference Number: .....
  - 3.6 VAT Registration Number: .....
  - 3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.
  - 3.8 Are you presently in the service of the state? ..... **YES / NO**
    - 3.8.1 If yes, furnish particulars.....  
.....

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

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

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



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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 .....

.....



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

Full name	Identity number	State employee number

.....  
**Signature**

.....  
**Date**

.....  
**Capacity**

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



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**MBD 5**

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

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

NO.	QUESTION	ANSWER (TICK WHICH RESPONSE IS APPLICABLE)	
		YES	NO
1.	Are you by law required to prepare annual financial statements?		
1.1	If yes, submit audited annual financial statements for the past three years or since the date of establishment if established during the last 3 years.		

NO.	QUESTION	ANSWER (TICK WHICH RESPONSE IS APPLICABLE)	
		YES	NO
2.	Do you have any outstanding undisputed commitments for municipal services towards any municipality for more than 3 months or any other service provider in respect of which payment is overdue for more than 30 days?		
2.1	If no, this serves to certify that the bidder has no undisputed commitments for municipal services towards any municipality for more than 3 months or other service provider in respect of which payment is overdue for more than 30 days.		
2.2	If yes, provide details: ..... ..... .....		

NO.	QUESTION	ANSWER (TICK WHICH RESPONSE IS APPLICABLE)	
		YES	NO
3.	Has any contract been awarded to you by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract?		
3.1	If yes, provide details: ..... ..... .....		



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NO.	QUESTION	ANSWER (TICK WHICH RESPONSE IS APPLICABLE)	
		YES	NO
4.	Will any portion of the goods of services be sourced from outside the Republic, and if so, what portion, and whether any portion of payment from the municipality is expected to be transferred outside of the Republic?		
4.1	If yes, provide details: ..... ..... .....		

**CERTIFICATION**

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

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



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

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

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

### 1. GENERAL CONDITIONS

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

- the 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

- 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 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
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.



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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:

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

Where

$P_s$  = Points scored for price of tender under consideration

$P_t$  = Price of tender under consideration

$P_{min}$  = Price of lowest acceptable tender

#### 3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT POINTS AWARDED FOR PRICE

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

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



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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)
Promotion of Black Owned Enterprises	10	
Promotion of Youth Owned Enterprise	10	

**DECLARATION WITH REGARD TO COMPANY/FIRM**

- 4.3. Name of company/firm.....
- 4.4. Company registration number: .....
- 4.5. TYPE OF COMPANY/ FIRM



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

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

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

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

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

**DATE:** .....

**ADDRESS:** .....

.....

.....

.....



CONTRACT FORM - RENDERING OF SERVICES

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

PART 1 (TO BE FILLED IN BY THE BIDDER)

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

NAME (PRINT) .....  
CAPACITY .....  
SIGNATURE .....  
NAME OF FIRM .....  
DATE .....

WITNESSES	
1	.....
2.	.....
- - -	



CONTRACT FORM - RENDERING OF SERVICES

PART 2 (TO BE FILLED IN BY THE PURCHASER)

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

4.

ITEM NO.	PRICE (ALL APPLICABLE TAXES INCLUDED)	BRAND	DELIVERY PERIOD	TOTAL PREFERENCE POINTS CLAIMED	POINTS CLAIMED FOR EACH SPECIFIC GOAL

confirm that I am duly authorized to sign this contract.

SIGNED AT .....ON.....

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

WITNESSES

1. ....

....

2. ....



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



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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	No
4.3.1	If so, furnish particulars:		
<b>Item</b>	<b>Question</b>	<b>Yes</b>	<b>No</b>
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	No
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?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4.7.1	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**



**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

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

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

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



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**MBD 9**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

**PSJLM-MM-2023/24-56**

in response to the invitation for the bid made by:

**Port St Johns 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 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



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### MBD 9

6. The bidder has arrived at the accompanying quotation 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 this invitation; or
  - (f) submitting a bid 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 bid.

<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.



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**MBD 9**

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



**SCHEDULE F – SCHEDULE OF PREVIOUS EXPERIENCE**

Provide the following information on relevant previous experience (indicate specifically projects of similar or larger size and/or which is similar with regard to type of work).

Description	Value (R) VAT excluded	Year(s) work executed	Reference		
			Name	Organisation	Tel no

Name of Tenderer..... Date: .....

Signature: .....

Full name of signatory: .....



SCHEDULE G – SCHEDULE OF CURRENT PROJECTS

Provide the following information on current projects. This information is material to the award of the Contract.

Description	Value (R) VAT excluded	Date Appointed	Reference		
			Name	Organisation	Tel no

Name of Tenderer: ..... Date: .....

Signature: .....

Full name of signatory: .....



# THE CONTRACT



## **SECTION 1 : SCOPE OF WORK**

### **Introduction**

To acquire services of a suitable, qualified and competent panel of attorneys to provide legal services to the Port St John's Local Municipality as and when required to do so.

### **Aim of the project**

To provide an effective and efficient litigation and contract management to the Port St John's Local Municipality.

### **Specification**

1. The successful firms of attorneys constituting the panel will be required to render legal services to the Port St John's Local Municipality, but not limited to the following areas:
  - Commercial and Contract Law.
  - Civil Litigation.
  - Labour and Employment Law.
  - Constitutional Law.
  - Administrative Law.
  - Construction Law.
  - Insurance Law.
  - Corporate Governance.
  - Criminal Law.
  - Environmental Law.
  - Property Law/ Conveyancer.
  - By-Laws or Local Government Policies.
  - Any other specialized field of law that the firm of attorneys has expertise in and that is relevant to the working environment of the Municipality.
  - Land and Environmental law.

### **Key deliverables**

- a) Signing of Contract with the Municipality.
- b) High Court, Magistrate Court and Non-Litigious Tariff Bills.
- c) Timeous response on new instructions.
- d) Effective and efficient litigation management.
- e) Monthly progress report on pending and ongoing matters must be furnished.
- f) Cost effective and quality of panel of advocates engaged, must be appointed with consultation



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between the attorney and the PSJ Local Municipality the Municipal Manager reserves the right not to accept an appointment of Advocate, Senior Counsel, the Municipal Manager if not content may use his discretions in appointing one.

- g) Indication of fees in an hourly rate (inclusive of vat) and differentiation between candidate, junior, senior attorneys, associates, partner's professional assistants and other staff.
- h) Prices and fees must be in South African Rand and inclusive of vat.

### **Reporting mechanism**

It is expected that regular progress reports will be submitted to Manager Legal Services. The service provider will be expected to provide confirmation of cases each and every time when the financial year is coming to an end and without any charges.

### **Key competencies**

- Sound track record of delivery of professional legal services.
- They must have right of appearance at High Court, South Africa.
- They must have a letter of good standing from the Law Society of South Africa not older than 6 months.
- They must have proof of Fidelity Certificate which is not older than 10 months.
- Certified copy of an Admission Certificate as an Attorney.
- Certified copy of an Admission Certificate as a Conveyancer (for only conveyancing work).
- Dedicated staff to be always available for Port St John's Local Municipality cases or queries related to cases.
- They must have ability to settle cases out of court or effectiveness of use of arbitration processes or Alternative Dispute Resolution.
- Ability to effectively listen, take and execute instruction or mandate given by client.
- Ability to effectively communicate with the officer responsible with legal services on issues such as identity of counsel to be briefed on individual matters and time frames on submission of invoices for work done.
- Ability to account and take responsibility on individual matters.
- A certificate or certificate of attendance on building and construction would be an added advantage.

### **Project management**

The successful bidder will work very close with officer responsible for legal services at Port St John's Local Municipality.

### **Time frame**

- The Service Provider to provide timeframes when given new instructions up to the finalization of the



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individual matter.

- Provide a proper work plan on turnaround time when dealing with complex matters or matters that have been pending for more than 5 years.
- The service provider should also provide information regarding the service center

### **Project budget**

Service providers must present a proposal driven by cost saving methods and prices which are equal to the specified scope of work.



## SECTION 2: PRICING SCHEDULE

The Bidder is required to specify the rates to be charged per position per area of specialization that will also be used for pricing evaluation purposes. The rates indicated should be inclusive of VAT. In the event that personnel hold a position different to the stipulated ones, the Bidder is required to allocate those personnel to an existing position and indicate the actual position in brackets next to their name.

AREA OF SPECIALISATION	POSITION	NAMES OF EXISTING PERSONNEL IN POSITION	HOURLY & DAILY FEE (Including VAT)										
Tick relevant categories: <table><tr><td>A</td><td></td></tr><tr><td>B</td><td></td></tr><tr><td>C</td><td></td></tr><tr><td>D</td><td></td></tr><tr><td>E</td><td></td></tr></table>	A		B		C		D		E		Director/Partner		Hourly Rate: Daily Rate:
	A												
	B												
	C												
	D												
	E												
	Associate		Hourly Rate: Daily Rate:										
	Professional assistant		Hourly Rate: Daily Rate:										
	Candidate Attorney		Hourly Rate: Daily Rate:										

### Pricing instructions:

- The bidder's price offer shall be valid for 90 days from the closing date of this tender, or for such extended period as may be requested by the municipality and accepted by the bidder.
- The rates and prices submitted by the bidder must be entered into the pricing schedule above.
- No deviations from the pricing schedule will be permitted, except where indicated separately in the Schedule of Variations from Goods and Services.
- The bid price must be inclusive of VAT, where the bidder is a registered VAT vendor.
- VAT must be calculated at 15% in line with statutory amendments to the VAT rate.
- Escalation will be allowed per annum from the date of commencement of the contract. The escalation in year 2 will be based on inflation in accordance with the prevailing CPIX index.
- Should there be a discrepancy between the total bid amount in the pricing schedule, and that in the form of offer; the price in the form of offer will take precedence. Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.



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**Negotiations with successful bidders**

- Where the bid price submitted by a bidder is not market related, the municipality may not award the contract to that bidder, but may negotiate a market related price.
- If a market related price cannot be negotiated with the bidder scoring the highest points, a market related price may be negotiated with the bidder scoring the second highest points, or the negotiation team may opt to cancel the tender.
- If a market related price cannot be reached with the bidder scoring the second highest points, a market related price may be negotiated with the bidder scoring the third highest points, or the negotiation team may opt to cancel the tender.
- If a market related price cannot be reached with the bidder scoring the third highest points, the tender must be cancelled.

.....  
Name of bidder

.....  
Signature

.....  
Bidder's stamp

.....  
Date



SECTION 3: FORM OF OFFER AND ACCEPTANCE

PART 1 (OFFER TO BE COMPLETED BY THE BIDDER)

Port St Johns Municipality, has solicited offers to enter into a contract for the procurement of:

***Appointment of a Panel of Legal Experts for PSJ Municipality for a period of Two years***

I, the bidder, has examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of tender.

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

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

words);

R.....  
.... (in figures) (or other suitable wording)  
.....  
.....  
.....  
.....  
.....Rand (in words)

By signing this part of the form of offer and acceptance, the Municipality accepts the bidder's offer. In consideration thereof, the Municipality shall pay the appointed supplier the amount due in accordance with PART 1 of this offer and acceptance. Acceptance of the bidder's offer shall form an agreement between Port St Johns Municipality and the bidder upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Name \_\_\_\_\_

Capacity \_\_\_\_\_

For the tenderer:

(Insert name and address of organisation)

Name & signature of witness \_\_\_\_\_ Date \_\_\_\_\_



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### ACCEPTANCE

By signing this part of this Form of Offer and Acceptance, Port St Johns Municipality accepts the tenderer's Offer. In consideration thereof, the *Employer* shall pay the bidder the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer as it only relates to **rates**, shall form an agreement between the *Employer* and the tenderer upon the terms and conditions contained in this project and any contract signed is the subject to the conditions of the project.

The terms of the contract, are contained in:

Agreements and Contract Data, (which includes this Form of Offer and Acceptance)

Pricing Data

Scope of Work

Site information and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the *Employer* during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the *Employer's* agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

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

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

Name(s): Mr M Fihlani

Capacity: Municipal Manager

For the Employer: Port St Johns Municipality

Name and Address of the employer: ERF 257, Main Street, Port St Johns



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## SECTION 4: SCHEDULE OF VARIATIONS TO THE BID

Should the Bidder wish to make any departure from or modification to the conditions of contract, specifications, pricing schedule, quantities, drawings or to qualify the bid in any way, he/she shall indicate the proposals clearly hereunder.

[illegible]

**SIGNATURE OF THE BIDDER:.....**

**DATE:**.....



## SECTION 5: GENERAL CONDITIONS OF CONTRACT

The contract between the Municipality and the appointed bidder will be administered in terms of the **General Conditions of Contract 2010 (National Treasury)**.

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

#### NOTES

The purpose of this document is to:

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

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

#### 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 supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3 **"Contract price"** means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4 **"Corrupt practice"** means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 **"Countervailing duties"** are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6 **"Country of origin"** means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7 **"Day"** means calendar day.
- 1.8 **"Delivery"** means delivery in compliance of the conditions of the contract or order.
- 1.9 **"Delivery ex stock"** means immediate delivery directly from stock actually on hand.
- 1.10 **"Delivery into consignees store or to his site"** means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- 1.11 **"Dumping"** occurs when a private enterprise abroad market its goods on own initiative in the RSA



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at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

- 1.12 **"Force majeure"** means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 **"Fraudulent practice"** means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 **"GCC"** means the General Conditions of Contract.
- 1.15 **"Goods"** means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 **"Imported content"** means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 **"Local content"** means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 **"Manufacture"** means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 **"Order"** means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 **"Project site,"** where applicable, means the place indicated in bidding documents.
- 1.21 **"Purchaser"** means the organization purchasing the goods.
- 1.22 **"Republic"** means the Republic of South Africa.
- 1.23 **"SCC"** means the Special Conditions of Contract.
- 1.24 **"Services"** means those functional services ancillaries to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 **"Written"** or **"in writing"** means handwritten in ink or any form of electronic or mechanical writing.

### 2. Application

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

### 3. General

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)



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### **4. Standards**

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

### **5. Use of Contract Documents and information; inspection.**

- 5.1 The supplier shall not, without the purchaser's prior written consent disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

### **6. Patent rights**

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

### **7. Performance Security**

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
  - (b) a cashier's or certified cheque.
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

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

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder



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or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

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

### **9. Packing**

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

### **10. Delivery and documents**

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

### **11. Insurance**

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



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### **12. Transportation**

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

### **13. Incidental Services**

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

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

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

### **14. Spare parts**

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

- (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 in SCC



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- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

### **16. Payment**

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

### **17. Prices**

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

### **18. Contract Amendments**

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

### **19. Assignment**

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

### **20. Subcontracts**

- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

### **21. Delays in the supplier's performance**

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.



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- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

### **22. Penalties**

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

### **23. Termination for default**

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
  - (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
  - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may



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impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion



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

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

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

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

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

### **24. Anti-dumping and countervailing duties and rights**

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

### **25. Force Majeure**

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the 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 purchase



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### **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.
- 30.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 30.5 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

### **28. Limitation of liability**

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
  - (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

### **29. Governing Language**

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

### **30. Applicable Law**

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

### **31. Notices**

- 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has



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been given, shall be reckoned from the date of posting of such notice.



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

- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

### **33. National Industrial Participation (NIP) Programme**

- 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

### **34 Prohibition of Restrictive practices**

- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

**-End-**

