



**TENDER NO. 03/2024**

**INVITATION FOR SERVICE PROVIDERS TO FORM A PANEL OF LEGAL ADVISORS FOR uMGUNGUNDLOVU  
ECONOMIC DEVELOPMENT AGENCY**

**SUBMISSION OF PROPOSALS DEADLINE**

**Closing Date: 04 March 2024**

**Time: 12h00**

**Venue: uMgungundlovu Economic Development Offices  
UMEDA House, Royal Show Grounds  
Chief Albert Luthuli Street  
Town Hill  
Pietermaritzburg**

<b>Name of Organisation</b>	
<b>Physical Address</b>	Street Address
	Suburb
	City
	Province
	Postal Code
<b>Contact Person</b>	
<b>Telephone No.</b>	
<b>Fax No.</b>	
<b>E-Mail Address</b>	
<b>Tender Price</b>	N/A
<b>CSD Registration No.</b>	

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## TENDER ADVERT

### uMGUNGUNDLOVU ECONOMIC DEVELOPMENT AGENCY

#### INVITATION FOR SERVICE PROVIDERS TO FORM A PANEL OF LEGAL ADVISORS FOR uMGUNGUNDLOVU ECONOMIC DEVELOPMENT AGENCY

**ADVERT DATE: 14 FEBRUARY 2024**

**TENDER NO. 03/2024**

The uMgungundlovu Economic Development Agency seeks professional service providers with an office based in KwaZulu-Natal to be placed on the Panel of Legal Advisors to assist in legal matters for the Agency. The Legal Services will include the following: Contract Management; Civil Litigations; Compliance; Labour Relations; Property Law; Public Law; National Energy Law; Cannabis and Hemp Law. The contract will be for a period of three years. **A service provider must complete the table for Appendix 1, depending on the subcategories of related work or services he or she wants to apply for on page 43.**

Tender documents can be downloaded from the agency's website at [www.umedaco.co.za](http://www.umedaco.co.za) or on the e-tenders portal on <https://www.etenders.gov.za>. Any queries can be directed to Mr. Mpumelelo Hadebe via email [hadebem@umedaco.co.za](mailto:hadebem@umedaco.co.za). Written queries are to be sent in two weeks before the tender closing date for a timely written response.

Tender documents must be properly bound and placed in the tender box situated at the ground floor of the uMgungundlovu Economic Development Agency Offices, Royal Show Grounds, Chief Albert Luthuli Street, Town Hill, Pietermaritzburg, no later than **12h00 on 04 March 2024**, in a sealed envelope which is clearly marked with the Tender Number and Tender Description. Late, faxed, or emailed bids will under no circumstances be considered.

Tenderers will be evaluated in terms of functionality Test in accordance with the following Evaluation Criteria: -

Functionality Criteria	Weight
<b>Reputation in the industry - Track Record</b> List of similar projects successfully completed (i.e. Legal Service for Government Entity depending on the subcategories of related work or services he or she wants to apply for). Tenderers have demonstrated experience in working with municipalities and/or government entities and must submit a minimum of one written testimonial from clients to substantiate their ability to undertake the required services. Reference must indicate that the nature of works is similar to works required in this tender document as well as that the value of works completed exceeded R200,000.00.	50

<b>Human Resources - Personnel's Experience</b> Bidders should provide qualifications, skills, and experience of individuals to be assigned and committed to work on the project. Attach proof of CV's and Qualifications of Personnel with minimum of three years practicing.	30
<b>Experience of Tenderer</b> Bidders must attach a portfolio of evidence for their list of cases, with case numbers to validate the total number of cases the company/firm has completed for government entities.	20
<b>Total</b>	<b>100</b>

A bidder/s that scores less than 60 points out of 100 in respect of functionality will be regarded as submitting a non-responsive bid and will be disqualified. Thereafter the 80/20 Preference Points system will be applicable, with 80 points for price and 20 points for Specific Goals as prescribed in terms of the Preferential Procurement Regulations 2022.

The 80/20 preference point system in terms of the agency's SCM Policy will be applicable as follows:

POINTS	
<b>PRICE</b>	80
<b>SPECIFIC GOALS (20 Points)</b>	
- Race – More than 50% Black Owned (HDP)	10
- Locality – Office based in uMgungundlovu District	10
<b>Total points for Price and Specific Goals</b>	<b>100</b>

All service providers intending to submit a tender are required to be registered on the Central Supplier Database

Tenderers shall take note of the following Tender Conditions:

- uMgungundlovu Economic Development Agency's procurement policy will apply,
- uMgungundlovu Economic Development Agency does not bind itself to accept the lowest tender or any other tender and reserves the right to accept the whole or part of the tender,
- Tenders submitted are to be valid for a period of 90 days from the closing date for submissions of tenders.

**Mr. M.D. Newton**  
**Chief Executive Officer**  
**uMgungundlovu Economic Development Agency**

**INVITATION TO BID – MBD 1**  
**PART A**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE UMGUNGUNDLOVU DISTRICT MUNICIPALITY</b>					
BID NUMBER:	03/2024	CLOSING DATE:	04 MARCH 2024	CLOSING TIME:	12h00
DESCRIPTION	PANEL OF LEGAL ADVISORS FOR UMEDA				
<b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).</b>					

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT RCEPTION: UMEDA HOUSE, ROYAL SHOW GROUNDS, CHIEF ALBERT LUTHULI STREET, PIETERMARITZBURG 3201

<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		<b>OR</b>	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes  <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT  <input type="checkbox"/> Yes  <input type="checkbox"/> No		
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	Yes <input type="checkbox"/> No <input type="checkbox"/>  [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?  <input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES, ANSWER PART B:3 ]		
TOTAL NUMBER OF ITEMS OFFERED			TOTAL BID PRICE	<b>R    N/A</b>	
SIGNATURE OF BIDDER	.....		DATE		
CAPACITY UNDER WHICH THIS BID IS SIGNED					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>			<b>TECHNICAL INFORMATION MAY BE DIRECTED TO:</b>		
DEPARTMENT	FINANCE		DEPARTMENT	FINANCE	
CONTACT PERSON	MS. LETHIWE ZONDI		CONTACT PERSON	MR. MPUMELELO HADEBE	
TELEPHONE NUMBER	(033) 342 3396		TELEPHONE NUMBER	(033) 342 3396	
E-MAIL ADDRESS	<a href="mailto:Lethiwe.Zondi@umeda.co.za">Lethiwe.Zondi@umeda.co.za</a>		E-MAIL ADDRESS	<a href="mailto:hadebem@umdm.gov.za">hadebem@umdm.gov.za</a>	

## PART B

### TERMS AND CONDITIONS FOR BIDDING

#### 1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED– (NOT TO BE RE-TYPED) OR ONLINE**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.

#### 2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
- 2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

#### 3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- |  |  |
|--|--|
| 3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA?                       | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?      | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?           | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?       | <input type="checkbox"/> YES <input type="checkbox"/> 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.**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Date

#### DECLARATION OF INTEREST – MBD 4

1. No bid will be accepted from persons in the service of the state\*.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make any 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 and/or take an oath declaring his/her interest.
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/ Representative	
3.2	Identity Number	
3.3	Position Held in Company E.g. Director	
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 so, furnish particulars		
3.9	Have you been in the service of the state for the past twelve months?	Yes	No
3.9.1	If so, 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 so, furnish particulars		

3.11	Are you aware of any relationship (family, friend, other) between 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 so, furnish particulars		
3.12	Are any of the company's director, managers, principal shareholders or stakeholders in service of the state:	Yes	No
3.12.1	If so, furnish particulars		
3.13	Are any spouse, child or parent of the company's director's trustees, managers, principle shareholders or stakeholders in service of the state?	Yes	No
3.13.1	If so, furnish particulars		
3.14	Do you or any of the directors, trustees, managers, principal 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 so, furnish particulars		

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

Full Name	Identity Number	State Employee Number

**\*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 N° 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

**5. DECLARATION**

I, the undersigned (name) \_\_\_\_\_

certify that the information furnished in paragraph 3 is correct.

I accept that the State may act against should this declaration prove to be false.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Position

\_\_\_\_\_  
Name of Bidder

## PREFERENCE POINTS CLAIM FORM – MBD 6.1

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, BIDDERS 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
<b>Total points for Price and Specific Goals</b>	<b>100</b>

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

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

## 2. DEFINITIONS

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

## 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

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

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

**80/20**

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

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

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

#### 3.2.1. POINTS AWARDED FOR PRICE

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

**80/20**

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

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

#### 4. POINTS AWARDED FOR SPECIFIC GOALS

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

4.2 In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

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

(b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system, then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

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

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

The specific goals allocated points in terms of this tender.  (Points are not cumulative.)	Number of points allocated	Number of points claimed (80/20 system)  (To be completed by the tenderer)
<b>RACE</b> <i>Proof: CSD/CIPC certificate/Certified ID copy</i>	<b>10</b>	
- Race – ≥ 50% Black Owned (HDP)	10	
- Race – < 50% Black Owned (HDP)	5	
<b>LOCALITY</b> <i>Proof: Municipal account/ Letter from councilor</i>	<b>10</b>	
- Office based in uMgungundlovu District	10	
- Office based in KwaZulu-Natal (outside uMDM)	5	

#### DECLARATION WITH REGARD TO COMPANY/FIRM

4.3 Name of company/firm.....

4.4 Company registration number: .....

4.5 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

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

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

\_\_\_\_\_  
SIGNATURE(S) OF TENDERER(S)

SURNAME AND NAME: \_\_\_\_\_

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

ADDRESS: \_\_\_\_\_

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

1. This Municipal Bidding Document must form part of the 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 an improper conduct in relation to such system;
  - (b) been convicted for fraud or corruption during the past five (5) years;
  - (c) wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five (5) 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	Response	
4.1	Is the bidder or any of its directors listed on the National Treasury's database as a company or person prohibited from doing business with the public sector?  <b>(Companies or persons who are listed on this database were informed in writing of this restriction by the National Treasury after the <i>audi alteram partem</i> rule was applied)</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <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 Corrupt Activities Act (No. 12 of 2004)?  <b>(To access this Register enter the National Treasury's website <a href="http://www.treasury.gov.za">www.treasury.gov.za</a>, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number 012-3265445)</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
4.2.1	If so, furnish particulars		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five (5) years?	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
4.3.1	If so, furnish particulars		

4.4	Does the bidder or any of its directors owe any municipal rates and taxed or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity that is in arrears for more than three (3) months?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
4.4.1	If so, furnish particulars		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of the State terminated during the past five (5) years on account of failure to perform on or comply with the contract?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
4.5.1	If so, furnish particulars		

### CERTIFICATION

I, THE UNDERSIGNED (Name) .....

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

I ACCEPT THAT THE STATE MAY ACT AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Date

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

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

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

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

## CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

<b>Bid Number and Description</b>	
<b>Municipal Entity</b>	uMgungundlovu Economic Development Agency

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

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

**(Name of Bidder)**

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

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

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

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

---

Signature

---

Date

---

Position

---

Name of Bidder

## PROOF OF GOOD STANDING WITH MUNICIPAL ACCOUNTS

The tenderer is to affix to this page either:

- Proof that they are not in arrears for more than 90 days (30 days if the tender price exceeds R10 Million) with municipal rates and taxes and municipal service charges. The latest municipal account is to be attached; or
- Signed copy of the lease agreement if the tenderer is currently leasing premises and not responsible paying municipal accounts **together with a letter from the landlord** stating that no levies are in arrears (*only if applicable*).
- In cases where the business resides in an area that does not pay for municipal rates and taxes and municipal service charges, a letter from the Ward Councillor must be submitted.

Note:

1. The tenderer hereby acknowledges that the Agency may reject the tender of the tenderer if any municipal rates and taxes or municipal service charges owed by the bidder or any of its directors/members/partners.
2. It is the responsibility of the service provider to ensure that the statement/proof of municipal good standing being submitted includes proof that the account is not more than 90 days (30 days if the tender price exceeds R10 Million) in arrears.
3. For service providers with more than one office branch, the proof of municipal account provided must reflect that of the nominated branch which will undertake the required works.
4. Failure to affix such documentation as prescribed to this page shall result in this tender not being further considered for the award of the contract.
5. Should this tender be considered for award of the contract, based on proof of submission and should proof of such submission be found to be invalid, erroneous or inaccurate, this tender will no longer be considered for the award of the contract.
6. Statements, letters, and affidavits **must not be older than three months** from the closing date of this tender.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Date

## AUTHORITY FOR SIGNATORY

Indicate the status of the tenderer by ticking the appropriate box hereunder. The tenderer must complete the certificate set out below for the relevant category.

A Company	B Partnership	C Joint Venture	D Sole Proprietor	E Close Corporation

### A. Certificate for Company

I, ....., chairperson

of the board of .....,

hereby confirm that by resolution of the board (copy attached) taken on

..... 20...., Mr/Ms .....

acting in the capacity of ....., was authorised to sign all documents in connection with this tender

for Contract No: 03/2024 and any contract resulting from it on behalf of the company.

#### As witnesses:

1. ....

Chairman: .....

2. ....

Date: .....

### B. Certificate for Partnership

We, the undersigned, being the key partners in the business trading as .....

....., hereby authorise

Mr/Ms ....., acting in the capacity of .....

....., to sign all documents in connection with this tender for

Contract No: 03/2024 and any contract resulting from it on our behalf.

Name	Address	Signature	Date

*Note: This certificate is to be completed and signed by all key partners upon whom rests the direction of the affairs of the Partnership as a whole.*

### C. Certificate for Joint Venture

We, the undersigned, are submitting this tender offer in Joint Venture and hereby authorise Mr/Ms ....., authorised signatory of the company....., acting in the capacity of lead partner, to sign all documents in connection with this tender for Contract No: 03/2024 and any contract resulting from it on our behalf.

This authorisation is evidenced by the attached power of attorney signed by legally authorised signatories of all the partners to the Joint Venture.

Name of Firm	Address	Authorising Name and Capacity	Authorising Signature
Lead Partner:			

### D. Certificate for Sole Proprietor

I, ....., hereby confirm that I am

the sole owner of the business trading as .....

As witnesses:

1. ....

Sole Owner: .....

2. ....

Date: .....

### E. Certificate for Close Corporation

We, the undersigned, being the key members in the business trading as .....

....., hereby authorise Mr/Ms .....

acting in the capacity of ....., to sign all to sign all documents in connection with this tender for Contract No: 03/2024 and any contract resulting from it on our behalf.

Name	Address	Signature	Date

*Note: This certificate is to be completed and signed by all key partners upon whom rests the direction of the affairs of the Partnership as a whole*

## BANKING DETAILS

It is the policy of the uMgungundlovu Economic Development Agency to pay all creditors by means of direct bank transfers. Please complete this information and acquire your banker's confirmation.

ACCOUNT HOLDER	
NAME OF BANK	
ACCOUNT NUMBER	
ACCOUNT TYPE	
BRANCH NAME	
BRANCH CODE	
BRANCH CONTACT PERSON	
PHONE NUMBER	
FAX NUMBER	

I/we hereby request and authorise the uMgungundlovu Economic Development Agency to pay any amounts that may accrue to me/us to the credit of my/our bank account.

I/we further undertake to inform the uMgungundlovu Economic Development Agency in advance of any change in my/our bank details and accept that this authority may only be cancelled by me/us by giving thirty days' notice by prepaid registered post.

**Alternatively, the tenderer may submit a letter/declaration from his bank worded as above, providing the required details and signed by an appropriate Bank Official (attached behind this page).**

**FOR BANK USE ONLY**

<p>I/we hereby certify that the details of our clients bank account as indicated above is correct:</p> <p>.....</p> <p>AUTHORISED SIGNATURE(S)</p>	<p>OFFICIAL DATE STAMP</p>
--	----------------------------

## JOINT VENTURE AGREEMENT

This returnable schedule is to be completed by joint ventures.

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

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

### Note:

A copy of the Joint Venture Agreement showing clearly the percentage contribution of each partner to the Joint Venture shall be appended to this schedule.

Service providers intending to tender in the form of Joint Ventures/Consortiums must submit the following documentation together with the tender:

- Original and valid tax clearance certificate of all parties of the Joint Venture/Consortium;
- An undertaking duly signed by all parties of the Joint Venture/Consortium indicating their intention to enter into an agreement for the purposes of the contract and;
- A consolidated valid and original or certified copy of their B-BBEE Status level verification certificate obtainable from a verification agency accredited by SANAS or a registered auditor approved by the Independent Regulatory Board of Auditors (IRBA);
- Bank rating of all parties of the Joint Venture/Consortium or the bank rating of the joint venture bank account– if applicable;
- Letter of “Good standing” from the Entity’s Financial Institution (Bank) of all parties of the Joint Venture/Consortium– if applicable;
- Proof of good standing with municipal accounts of all parties of the Joint Venture/Consortium;

- Declaration of interest of all parties of the Joint Venture/Consortium;
- Declaration of bidder's past supply chain management practices of all parties of the Joint Venture/Consortium;
- Certificate of independent bid determination of all parties of the Joint Venture/Consortium.

Further to the above, the name of the Joint Venture/Consortium must appear on the relevant pages of the document. Failure to comply with these requirements shall lead to disqualification.

---

**Name**

---

**Signature**

---

**Capacity**

---

**Date**

**SCHEDULE OF PROPOSED SUB-CONTRACTORS**

The Tenderer shall list below any Sub-Contractors he wishes to employ to carry out part(s) of the Work.

The acceptance of his tender shall not be construed as approval of all or any of the listed Sub-Contractors. Should any or all of the Sub-Contractors not be approved subsequent to acceptance of the tender, this shall in no way invalidate this tender. Furthermore, the tendered unit rates for the various items of work shall remain final and binding.

No.	PROPOSED SUB- CONTRACTORS	PART OR TYPE OF WORK	ADDRESS OF PROPOSED SUBCONTRACTOR	CONTACT DETAILS	VALUE OF WORK (R)
1					
2					
3					
4					
5					
6					
7					
TOTAL VALUE OF WORKS TO BE SUB-CONTRACTED					R

Bidders are requested to furnish certified copies of the proposed subcontractor’s CK Certificate, copy of latest municipal statement as well as certified copies of the owners’ Identity Documents along with this tender.

SIGNED ON BEHALF OF TENDERER: .....

**EXPERIENCE OF TENDERER**

A service provider must complete the table for Appendix 1, depending on the sub categories of related work or services he or she wants to apply for on page 48, and in doing so must submit references of experience that are applicable to such selected sub categories.

The following is a statement of work of a similar nature (E.g. Legal Service for Government Entity) successfully executed by myself / ourselves within the past 5 years with a minimum value of R 200,000.00:

EMPLOYER: CONTACT PERSON AND TELEPHONE NUMBER	DESCRIPTION OF WORK	VALUE OF WORK (inclusive of VAT)	COMPLETION DATE
(Client)			
(Contact Person)			
(tel.)			
(email)			
(Client)			
(Contact Person)			
(tel.)			
(email)			
(Client)			
(Contact Person)			
(tel.)			
(email)			
(Client)			
(Contact Person)			
(tel.)			
(email)			

Bidders must have specific experience and submit references letters (in a form of written proof/(s) on organization’s letterhead including relevant contact person, nature of service, contract amount, commencement date, telephone number, fax number and email addresses) of similar work undertaken.

SIGNATURE: .....  
(of person authorized to sign on behalf of the Tenderer.)

DATE: .....

**EXPERIENCE OF TENDERER (Cont.)**

A service provider must complete the table for Appendix 1, depending on the subcategories of related work or services he or she wants to apply for on page 48, and in doing so must submit references of experience that are applicable to such selected sub categories.

The following is a statement of work of a similar nature (E.g. Legal Service for Government Entity) successfully executed by myself / ourselves within the past 5 years with a minimum value of R 200,000.00:

EMPLOYER: CONTACT PERSON AND TELEPHONE NUMBER	DESCRIPTION OF WORK	VALUE OF WORK (inclusive of VAT)	COMPLETION DATE
(Client)			
(Contact Person)			
(tel.)			
(email)			
(Client)			
(Contact Person)			
(tel.)			
(email)			
(Client)			
(Contact Person)			
(tel.)			
(email)			
(Client)			
(Contact Person)			
(tel.)			
(email)			

Bidders must have specific experience and submit references letters (in a form of written proof/(s) on organization’s letterhead including relevant contact person, nature of service, contract amount, commencement date, telephone number, fax number and email addresses) of similar work undertaken.

## REFERENCE LETTERS

**Note: A service provider must complete the table for Appendix 1, depending on the subcategories of related work or services he or she wants to apply for on page 48, and in doing so must submit references of experience that are applicable to such selected sub categories.**

Bidders must have **specific experience** (E.g. Legal Service for Government Entity) and submit recent references (in a form of written proof/(s) on organization's letterhead including relevant contact person, nature of service, contract amount, commencement date, telephone number, fax number and email addresses) of similar work undertaken.

Reference Letters must make reference to the nature of the works or services undertaken as well as the total value of the works executed by the bidder.

Reference Letters are to be signed by the referee (either the Director/Manager of the firm/entity or their delegated official) and dated.

**Bidders are to note that appointment letters/purchase orders will not be accepted in lieu of reference letters.**

Clients may further include on such written references their rating of the Bidder according to any of the following criteria:

- i. Turn-around times
- ii. Quality of feedback
- iii. Accessibility and availability
- iv. Reliability
- v. Customer satisfaction

Attach Letters of Reference to this page.

---

Name

---

Signature

---

Capacity

---

Date

## RECORD OF ADDENDA

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

Communications regarding the revision of this tender document can be also be viewed on the following websites: [www.etenders.treasury.gov.za](http://www.etenders.treasury.gov.za) or [www.umedacoza.co.za](http://www.umedacoza.co.za) under SCM > Tender.

	Date	Title or Details
1.		
2.		
3.		
4.		
5.		

*Attach additional pages if more space is required.*

**Failure to acknowledge any addendum released by uMgungundlovu Economic Development Agency may result in your tender submission being declared non-responsive.**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Date

## ELIGIBILITY CRITERIA

Tender offers will only be accepted if:

1. The tenderer must be compliant in their tax matters with the South African Revenue Services (SARS);
2. The tenderer or any of its directors/shareholders is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 person prohibited from doing business with the public sector;
3. The tenderer has not:
  - i. abused the Employer's Supply Chain Management System; or
  - ii. failed to perform on any previous contract and has been given a written notice to this effect;
4. The tenderer is registered on the Central Supplier Database;
5. The tenderer is not in arrears for more than 90 days (30 days if the tender price exceeds R10 Million) with municipal rates and taxes and municipal service charges. The latest municipal account is to be attached. The statement must not be older than three months from the closing date of this tender. Alternatively, if the tenderer is currently leasing premises and is not responsible for the payment of municipal services, a copy of the Lease Agreement must be attached;
6. A Joint-Venture Agreement, if applicable, is submitted with tender; The tender has an office based in KwaZulu-Natal;
7. Tenderers have demonstrated experience in working with municipalities and/or government entities and must submit a minimum of one written testimonials from clients to substantiate their ability to undertake the required services. Reference must indicate that the nature of works is similar to works required in this tender document as well as that the value of works completed exceeded R200,000.00.
8. Fidelity fund certificate issued in terms of section 85 of the Legal Practice Act, no. 28 of 2014 for both the legal firm and legal practitioners. A certified copy of a valid Fidelity Fund Certificate must be provided.
9. Tenderers must be registered with the Legal Practice Council. Proof of registration from the relevant Legal Practice Council must be provided. Note: Bidders must submit a valid letter of good standing issued by the Legal Practice Council prior to work being allocated.
10. For bidders applying for the category of conveyancing a certificate of admission as a conveyancer of the individual conveyancer employed on a full-time basis by the law firm must be provided.
11. The following schedules are fully completed and signed:

- i. Invitation to bid – MBD 1
- ii. Declaration of interest – MBD 4
- iii. Declaration of bidder's past supply chain management practices
- iv. Certificate of independent bid determination – MBD 9
- v. Proof of good standing with municipal accounts
- vi. Authority for signatory
- vii. Joint venture agreement (if applicable)
- viii. Record of addenda

## FUNCTIONALITY/TECHNICAL TEST

### **FUNCTIONALITY TEST**

Service Providers will be evaluated in terms of functionality as part of the minimum requirements before evaluated on price as follows:

<b>Evaluation Criteria</b>	<b>Weight</b>
<b>Reputation in the industry - Track Record</b> List of similar projects successfully completed (i.e. Legal Service for Government Entity depending on the sub categories of related work or services he or she wants to apply for). Tenderers have demonstrated experience in working with municipalities and/or government entities and must submit a minimum of one written testimonials from clients to substantiate their ability to undertake the required services. Reference must indicate that the nature of works is similar to works required in this tender document as well as that the value of works completed exceeded R200,000.00.	50
<b>Human Resources - Personnel's Experience</b> Bidders should provide qualifications, skills, and experience of individuals to be assigned and committed to work on the project. Attach proof of CV's and Qualifications of Personnel with minimum of three years practicing.	30
<b>Experience of Tenderer</b> Bidders must attach a portfolio of evidence for their list of cases, with case numbers to validate the total number of cases the company/firm has completed for government entities.	20
<b>Total</b>	<b>100</b>

Service Providers that qualified pre-evaluation in terms of the functionality cut-off points of 60 points will then be evaluated in terms 80/20 preference point system.

<b>Criteria</b>	<b>Applicable values/points</b>	<b>Weight</b>	<b>Verification Method</b>
<b>Reputation in the industry - Track Record. (For similar works completed. This must be supported by the submission of Reference letters from current/previous clients.)</b> Points are cumulative; only highest applicable points will be awarded			
<b>1. Track Record</b> ➤ Bidders must have specific experience (e.g. Legal Service for Government Entity depending on the sub categories of related work or services he or she wants to apply for on page 40)	<b>1..1. Category: Contract Management</b> <ul style="list-style-type: none"> <li>▪ 8 or more (6 Points)</li> <li>▪ 5 to 7 References (5 points)</li> <li>▪ 3 to 4 References (4 points)</li> <li>▪ 1 to 2 Reference (3 points)</li> <li>▪ 0 references (0 points)</li> </ul>	6	Reference Letter from previous clients

	<b>1.2. Category: Civil Litigations</b> <ul style="list-style-type: none"> <li>▪ 8 or more (6 Points)</li> <li>▪ 5 to 7 References (5 points)</li> <li>▪ 3 to 4 References (4 points)</li> <li>▪ 1 to 2 Reference (3 points)</li> <li>▪ 0 references (0 points)</li> </ul>	6	Reference Letter from previous clients
	<b>1.3. Category: Compliance</b> <ul style="list-style-type: none"> <li>▪ 8 or more (6 Points)</li> <li>▪ 5 to 7 References (5 points)</li> <li>▪ 3 to 4 References (4 points)</li> <li>▪ 1 to 2 Reference (3 points)</li> <li>▪ 0 references (0 points)</li> </ul>	6	Reference Letter from previous clients
	<b>1.4. Category: Labour Relations</b> <ul style="list-style-type: none"> <li>▪ 8 or more (8 Points)</li> <li>▪ 5 to 7 References (7 points)</li> <li>▪ 3 to 4 References (6 points)</li> <li>▪ 1 to 2 Reference (5 points)</li> <li>▪ 0 references (0 points - disqualified)</li> </ul>	8	Reference Letter from previous clients
	<b>1.5. Category: Public Law</b> <ul style="list-style-type: none"> <li>▪ 8 or more (6 Points)</li> <li>▪ 5 to 7 References (5 points)</li> <li>▪ 3 to 4 References (4 points)</li> <li>▪ 1 to 2 Reference (3 points)</li> <li>▪ 0 references (0 points)</li> </ul>	6	Reference Letter from previous clients
	<b>1.6. Category : National Energy Law</b> <ul style="list-style-type: none"> <li>• 8 or more (6 Points)</li> <li>• 5 to 7 References (5 points)</li> <li>• 3 to 4 References (4 points)</li> <li>• 1 to 2 Reference (3 points)</li> <li>• 0 references (0 points)</li> </ul>	6	Reference Letter from previous clients
	<b>1.7. Category : Cannabis and Hemp Law</b> <ul style="list-style-type: none"> <li>• 8 or more (6 Points)</li> <li>• 5 to 7 References (5 points)</li> <li>• 3 to 4 References (4 points)</li> <li>• 1 to 2 Reference (3 points)</li> <li>• 0 references (0 points)</li> </ul>	6	Reference Letter from previous clients
	<b>1.8. Category: Property Law</b> <ul style="list-style-type: none"> <li>• 8 or more (6 Points)</li> <li>• 5 to 7 References (5 points)</li> <li>• 3 to 4 References (4 points)</li> <li>• 1 to 2 Reference (3 points)</li> <li>• 0 references (0 points)</li> </ul>	6	Reference Letter from previous clients

<b>Human Resources - Bidders should provide qualifications, skills, and experience of individuals to be assigned and committed to work on the project. Attach proof of CV's and Qualifications of Personnel with minimum of three years practicing.</b> Points are <b>not</b> cumulative; only highest applicable points will be awarded			
<b>2. Personnel's Experience</b> ➤ Bidders should provide qualifications, skills, and experience of individuals to be assigned and committed to work on the project.	<b>The number of Legal Resources, with three or more years' experience, post admission with the Legal Practice Council, allocated to this project dealing with the Agency.</b>	<b>30</b>	CVs of legal resources (certified copies of qualifications and work experience)
	▪ 6 and more CVs (30 Points)		
	▪ 3 - 5CVs (20 points)		
	▪ 1 - 2 CVs (10 points)		
<b>Experience of Tenderer (Bidders must attach a portfolio of evidence for their list of cases, with case numbers to validate the total number of cases the company/firm has completed for government entities.)</b> Points are not cumulative; only highest applicable points will be awarded			
<b>3. Experience</b> ➤ This tests the tendering entity's capacity to execute the contract and deliver within time frame	Company's experience in dealing with legal Matters. <ul style="list-style-type: none"> <li>10 cases and more (20 points)</li> <li>7 cases to 10 cases (15 points)</li> <li>4 cases to 6 cases (10 points)</li> <li>Less than 4 cases (5 points)</li> <li>If not indicated (0 points)</li> </ul>	<b>20</b>	Portfolio of evidence - List of Cases with case numbers that were completed for government entities.

- Only bidders who score 60 points or above will be considered for appointment on the Agency's Panel of Legal Practitioners.

**Note: A bidder/s that scores less than 60 points out of 100 in respect of functionality will be regarded as submitting a non-responsive bid and will be disqualified.**

Should the relevant bidder/s meet the minimum required percentage or minimum points, they will be evaluated in terms of price and preference as per the Preferential Procurement Regulation, 2022 and its associated Regulations issued by the National Treasury.

## COMPANY PROFILE

Bidders are required to submit a Company Profile that records evidence of previous work which substantiates their ability to undertake specific tasks.

The Company Profile must include the following items:

- Company Registration Documents
- VAT Registration Certificate (if applicable)
- Proof of Experience in the Industry
- Proof of Locality of Registered Offices
- Letter of Good Standing (COIDA) and proof of good standing with the Unemployment Insurance Fund (UIF) – if applicable
- Attach proof of valid Fidelity Fund Certificate
- Attach proof of registration with the Legal Practice Council
- Attach proof of admission as a Conveyancer of the individual conveyancer employed on a full time basis by the law firm must be provided.
- Attach proof of list of cases, with case numbers to validate the total number of cases the company/firm has completed for government entities.
- Bidders should provide qualifications, skills, and experience of individuals to be assigned and committed to work on the project. Attach proof of CV's and Qualifications of Personnel (CVs of partner/s or Director/s or Sole Proprietor with certified copies of qualifications and work experience)

**NB: Please note that all copies of qualifications must be certified. Copies of certified documents will not be accepted.**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Date

## CENTRAL SUPPLIER DATABASE REGISTRATION

Name of Tenderer	
Supplier Number	

**No awards will be made to a tenderer who is not registered on the Central Supplier Database (CSD).**

The establishment of a Central Supplier Database (CSD) will result in one single database to serve as the source of all supplier information for all spheres of government. The purpose of centralising the government's supplier database is to reduce duplication of effort and cost for both supplier and government while enabling electronic procurement processes.

Registration on the Central Supplier Database must be done online via the website:

<https://secure.csd.gov.za/>

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Date

## SCOPE OF WORKS

### 1. INTRODUCTION

The Agency invites written Proposals from suitably qualified attorneys to be placed on the Panel of Legal Experts to assist the Agency as follows:

- (a) Contract Management;
- (b) Civil Litigations;
- (c) Compliance;
- (d) Labour Relations;
- (e) Property Law;
- (f) Public Law;
- (g) National Energy Law;
- (h) Cannabis and Hemp Law.

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

### 2. REQUESTED SERVICES

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

- (a) Commercial and Contract Law;
- (b) Civil Litigation;
- (c) Labour and Employment Law;
- (d) Constitutional Law;
- (e) Administrative Law;
- (f) Construction Law;
- (g) Insurance Law;
- (h) Corporate Governance;
- (i) Property law;
- (j) National Energy law;
- (k) Cannabis and Hemp law;

(l) Environmental Law; and

(m) Any other specialised field of law that the firm of attorney has expertise in and that is relevant to the working environment of the Agency.

### **3. CONDITIONS OF TENDER**

#### **3.1 Appointment of Panel**

Only firms of attorneys established in accordance with the provisions of the Attorneys Act, 1979 (Act No. 53 of 1979 as amended) and duly registered with the Law Society and Legal Practice Council will be considered for this tender.

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

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

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

The Agency does not guarantee that any work or assignment will be given to any firm of attorneys on the panel. The Agency may in its sole discretion award any assignment or part thereof to more than one firm of attorneys. The services of appointed firm of attorneys will be utilised by the Agency as and when the need arises. The Agency reserves the right to categorize the tenderers into the different expertise.

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

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

The Agency reserves the right to cancel the appointment of firm of attorneys and remove such firms from its panel if such firms do not meet the standards agreed upon and/or expected from such firms.

The appointment of a panel of attorneys for the Agency will not preclude it from utilising the services of any other firm of attorneys that is not appointed on the panel.

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

### **3.2 Required attributes**

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

- (a) knowledge and application of the Municipal regulatory framework;
- (b) conformance to exceptional quality and standard of work, and meticulous attention to detail;and
- (c) a 24-hour turnaround time and ability to adapt quickly.

### **3.3 Process of selection from the panel**

- Terms of reference shall be sent to the elected panel/work stream within a panel. Appointments from the panel will be determined through invitations. Invitations will only be accepted from qualifying members on the panel on a rotational basis.
- 
- Rotation will be based on:
- The response received for each procurement case shall be evaluated in accordance with the criteria that would have been determined independently for that procurement case as per the requirements of the Regulation 5 of the Preferential Procurement Regulations 2022.
- Any deviation from the above should take into account both the magnitude and complexity of the project and must be approved by the accounting officer.
- Thereafter firms will be ranked on the value of allocations. (lowest to highest)

## **4. SUBMISSION INSTRUCTIONS**

The following must also be included in the proposal:

- (n) a proven track record in the provision of required services (three reference letters to be submitted);
- (o) relevant experience;
- (p) necessary acumen and logistics to provide services;
- (q) Black economic empowerment initiatives;
- (r) Names, ranks and experience of personnel – detailed CV's to be provided;
- (s) Hourly fees in providing the services and administration charges (if applicable) (All fees subject totariffs such as the Magistrates Court and High Court tariffs shall be billed in accordance with those tariffs);
- (t) Company profile

## **5. COMPANY PROFILE**

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

### 5.1 History

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

### 5.2 Client Base

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

### 5.3 Field of Expertise

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

### 5.4 Your Team

CV's of your core service team that will be attending to the Agency's work with specific reference to their educational/ professional background and their relevant experience. Certified copies of qualifications are to be submitted.

### 5.5 Fees

Set tariffs such as the Magistrates Court and High Court tariff shall apply whenever applicable. **The proposal must expressly confirm the acceptances of this condition.** It must further provide details of hourly rates for all levels of staff and stating fees for disbursements (e.g. photocopies and traveling per kilometre). **Bidders may negotiate fees distinction to be made between fees for junior and senior attorneys and/or advocates.**

Note: The municipality's Legal services unit to determine benchmark rates. As well as the Legal services unit to monitor escalating legal costs in accordance with the cost containment measures issued by Treasury.

## 6. QUERIES

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

**Responses must be neatly bound and presentable, concise and be accompanied by the following documents and must be in the following sequence:**

1. **Company profile:** (See paragraph/section 5 above for the specific headings)
2. **Annexure "A":** Returnable Documents Schedule
3. **Annexure "B":** Completed and signed Declaration of Interest form
4. **Annexure "C":** Valid and Original tax clearance certificate
5. **Annexure "E":** Firm's Fidelity Fund Certificate issued by the Attorneys

Set tariffs such as the Magistrates Court and High Court tariff shall apply whenever applicable. **The proposal must expressly confirm the acceptances of this condition.** It must further provide details of hourly rates for all levels of staff and stating fees for disbursements (e.g. photocopies and traveling per kilometer). **Bidders may negotiate fees distinction to be made between fees for junior and senior attorneys and/or advocates.**

Note: The municipality's Legal services unit to determine benchmarks rates. As well as the Legal services unit to monitor escalating legal costs in accordance with the cost containment measures issued by Treasury.

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**Annexure "B":** Completed and signed Declaration of Interest form

**Annexure "C":** Valid and Original tax clearance certificate

**Annexure "D":** Firm's Fidelity Fund Certificate issued by the Attorneys

## **8. CONTRACT AND FRAMEWORK FOR ROTATION**

This contract is for the pre-qualification of Contractors and shall be in effect for period of three (3) years from the date of engagement. The pre-qualified Contractors will be engaged to participate in a closed tender process on an "as and when" required basis.

Process of selection from the panel

Terms of reference shall be sent to the elected panel/work stream within a panel. Appointments from the panel will be determined through invitations. Invitations will only be accepted from qualifying members on the panel on a rotational basis.

Rotation will be based on:

- (a) The response received for each procurement case shall be evaluated in accordance with the criteria that would have been determined independently for that procurement case as per the requirements of the Regulation 5 of the Preferential Procurement Regulations 2022.
- (b) Any deviation from the above should take into account both the magnitude and complexity of the project and must be approved by the accounting officer.
- (c) Thereafter firms will be ranked on the value of allocations. (lowest to highest)

**CANCELLATION OF CONTRACT**

UMEDA reserves the right to cancel the contract in the event of one or more of the following circumstances:

- Serious discrepancy in the provision of the required services by the bidder.
- Breach by the vendors of any of the terms and conditions of the tender.
- Any action by the bidder which is in breach of law or accepted practices in the commercial transactions.
- If the Vendor goes into liquidation voluntarily or otherwise.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Date

# **APPENDIX 1**

A service provider must complete the table for Appendix 1, depending on the subcategories of related work or services he or she wants to apply for, indicating with a ✓ mark.

Sub-categories of related work to be undertaken by the panel of legal advisors, listed below:	✓
1.1 Contract Management	
1.2 Civil Litigations	
1.3 Compliance	
1.4 Labour Relations	
1.5 Public Law	
1.6 National Energy Law	
1.7 Cannabis and Hemp Law	
1.8 Property Law	

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Date

## GENERAL CONDITIONS OF TENDER

### 1. General Conditions of Contract

This Bid is subject to the General Conditions of Contract (GCC) 2015 and, if applicable, any other Special Conditions of Contract.

### 2. Submission of Tenders

Sealed tenders, with the "Tender Number and Title" clearly endorsed on the envelope, must be deposited in the tender box indicated at the reception of uMgungundlovu Economic Development Agency, UMEDA House, Royal Show Grounds, Pietermaritzburg.

All literature must be securely attached to the tender. The board shall not be held liable for any loss or damages sustained due to the service provider's failure to comply with this condition.

If a courier service company is being used for delivery of the tender document, the tender description must be endorsed on the delivery note/courier packaging and the courier must ensure that documents are placed / deposited into the tender box. UMEDA will not be held responsible for any tender document which is not timeously delivered, mislaid or incorrectly delivered due to the negligence of the courier company or any other party involved in the delivery of the tender document.

Please note:

- Tenders that are deposited in the incorrect box will not be considered.
- Telegraphic or faxed tenders will not be accepted.
- The use of correction fluid/tape on the bid documents is not allowed. If there is an error, draw a line through it, initial next to it and make the correction directly above /below/next to it.
- All bids must be submitted in writing on the official forms supplied (not to be re-typed).
- All prices shall be quoted in South African currency.

### 3. Quality Assurance

Any defects, patent or latent, which are attributable to poor workmanship, will be rectified by the bidder at own cost and time and all costs relating to the correction of defects will be expressly and separately noted on billing documentation.

### 4. Brand Name

- i. Special brands, where named, are used to indicate the standard of quality desired. Tenderer's equal/similar item will be considered, provided that the Tenderer specifies brand name(s) and submits full specifications. If the full set of specifications of the alternative item is not submitted, the item will not be evaluated and will not be considered for award.
- ii. In the event the Agency elects to accept an alternative item purported to be equal/similar by the Tenderer, the Agency may request the tenderer to provide samples of the alternative offer for testing and inspection. Acceptance of the item(s) will be conditional on such inspection and testing after receipt.
- iii. If, in the sole judgment of the Agency, the item is determined not to be equal/similar, the item

shall be collected by the Bidder and not be considered for award.

- iv. The samples must be within 30 days of notification. The samples will be discarded if not collected within 30 days and the Agency will not be accountable for any loss suffered by the bidder due to the discarding of the samples.
- v. If a tenderer wishes to have an equal/similar item considered, they must declare it first.

## **5. Validity Period**

Bids shall remain valid for ninety (90) days after the tender closure date.

## **6. Renewal of Contract**

The Agency may exercise its option to renew this agreement, with a financial escalation clause, in line with the latest CPI statistics, which will commence at the end of the contract period, and the terms thereof for a further period not exceeding 6 (six) months at a time, upon giving 30 days' notice to the Service Provider of its intention to exercise that option.

## **7. Quantities of Specific Items**

If tenders are called for a specific number of items, the Agency reserves the right to change the number of such items to be higher or lower. The successful bidder will then be given an opportunity to evaluate the new scenario and inform the Agency if it is acceptable. If the successful bidder does not accept the new scenario, it will be offered to the second-placed bidder. The process will be continued to the Agency's satisfaction.

## **8. Intellectual Property Rights**

Copyright, patent rights and other similar rights in any works or products created as a result of the performance of this proposal and its assignments will vest in and are hereby transferred to uMgungundlovu Economic Development Agency (UMEDA) unless specifically agreed otherwise, in the form of individual written Agreement signed by both parties.

For this purpose only, all works created in terms of this proposal and the assignments thereof will be deemed to have been created under the control and direction of UMEDA.

## **9. Disbursements, Travel And Subsistence**

No bidder will be refunded any cost or disbursements incurred in respect of the project, save where the prior written approval of UMEDA has been obtained in respect of such expenditure.

Any authorized disbursements will be refunded at the reasonable and actual cost determined by UMEDA. Any expenditure incurred by the successful bidder in respect of authorized travel for the project will be refunded in accordance with the UMEDA travel policy as applicable from time to time. The rates payable for the use of private vehicles will be the prevailing rates quoted by the Automobile Association of South Africa.

All claims in respect of authorized disbursements (travel and subsistence costs) must be substantiated by documentary evidence such as receipts and logs of kilometres travelled.

All expenses incurred by the bidder for the proposal and presentations are the responsibility of the bidder and will not be reimbursed by UMEDA.

## **10. Certified Copies**

The tenderer shall, where required in terms of the tender document submit with the proposal, certified copies of all certificates specified. Failure to do so may render the proposal liable to rejection on the grounds of being incomplete. Copies of certified documents will not be accepted.

## **11. Bids Exceeding R10 Million**

If the tendered value exceeds R10 million (VAT included), bidders are required to furnish:

- i. if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements:
  - for the past three years; or
  - since their establishment if established during the past three years;
- ii. a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
- iii. particulars of any contracts awarded to the bidder 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.
- iv. a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- v. Disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

## **12. Acceptance or Rejection of a Tender**

The Agency reserves the right to withdraw any invitation to tender and/or to re-advertise or to reject any tender or to accept a part of it. The Agency does not bind itself to accepting the lowest tender.

## **13. Completion of Tender Documents**

The original tender document must be completed fully in black ink and signed by the authorised signatory to validate the tender.

Tender documents may not be retyped. Retyped documents will result in the disqualification of the tender.

The complete original tender document must be returned. Missing pages will result in the disqualification of the tender.

No unauthorised alteration of this set of tender documents will be allowed. Any unauthorised alteration will disqualify the tender automatically. Any ambiguity has to be cleared with contact person for the tender before the tender closure.

## **14. Site / Information Meetings**

Site or information meetings, if specified, are compulsory. Bids will not be accepted from bidders who have not attended compulsory site or information meetings. Bidders that arrive 15 minutes or more after the advertised time the meeting starts will not be allowed to attend the meeting or to sign the attendance register. If a bidder is delayed, he must inform the contact person before the meeting commences and will

only be allowed to attend the meeting if the chairperson of the meeting as well as all the other bidders attending the meeting, give permission to do so.

#### **15. Contact with the Agency after Tender Closure Date**

Bidders shall not contact the uMgungundlovu Economic Development Agency on any matter relating to their bid from the time of the opening of the bid to the time the contract is awarded. If a bidder wishes to bring additional information to the notice of the uMgungundlovu Economic Development Agency, it should do so in writing to the uMgungundlovu Economic Agency. Any effort by the firm to influence the uMgungundlovu Economic Development Agency in the bid evaluation, bid comparison or contract award decisions may result in the rejection of the bid.

#### **16. Opening, Recording and Publications of Tenders Received**

Tenders will be opened on the closing date immediately after the closing time specified in the tender documents. If requested by any bidder present, the names of the bidders, and if practical, the total amount of each bid and of any alternative bids will be read out aloud.

Details of tenders received in time will be recorded in a register which is open to public inspection. Faxed, e-mailed and late tenders will not be accepted.

#### **17. Procurement Policy**

Bids will be awarded in accordance with the Preferential Procurement Regulations, 2022 pertaining to the Preferential Procurement Policy Framework Act, No 5 of 2022 and its amendments as well as the Agency's Supply Chain Management Policy.

#### **18. Wrong Information Furnished**

Where a contract has been awarded on the strength of the information furnished by the bidder which, after the conclusion of the relevant agreement, is proved to have been incorrect, the Agency may, in addition to any other legal remedy it may have, recover from the contractor all costs, losses or damages incurred or sustained by the Agency as a result of the award of the contract.

#### **19. Cost of Materials**

The Agency shall bear the cost of all materials required and supplied by the successful bidder unless it has already been included as part of the price tendered. In this instance, a minimum of 3 quotations for these materials must be produced when submitting a claim. A maximum mark up of 10% is allowed on materials supplied.

#### **20. Value-Added Tax**

Tax invoices are to comply with the requirements as contained in the Value Added Tax Act, Act 89 of 1991. The content of the invoice must contain sufficient information for audit purposes.

It is a requirement of this contract that the amount of value-added tax (VAT) must be shown clearly on each invoice.

The amended Value-Added Tax Act requires that a Tax Invoice for supplies in excess of R3, 000 should, in addition to the other required information, also disclose the VAT registration number of the recipient, with

effect from 1 March 2005.

The VAT registration number of the Agency is 4490292184.

## **21. Poor Performance**

Where the supplier fails to render the services within the stipulated period, or should services rendered be deemed not to the satisfaction of the uMgungundlovu Economic Development Agency, the tenderer will receive written notice of poor performance. Failure to address performance issues could result in the entire contract being reviewed or cancelled.

## **22. Central Supplier Database**

No awards will be made to a tenderer who is not registered on the Central Supplier Database.

## **23. Inducements, rewards, gifts and other abuses of the Supply Chain Management System**

No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed of or to be disposed of, may directly or indirectly:

- i. Influence or interfere with the work of any UMEDA officials involved in the tender process in order to inter alia:
  - a. influence the process and/or outcome of a tender;
  - b. incite breach of confidentiality and/or the offering of bribes;
  - c. cause over- or under-invoicing;
  - d. influence the choice of procurement method or technical standards;
  - e. Influence any UMEDA official in any way which may secure an unfair advantage during or at any stage of the procurement process.
- ii. Abuse of the supply chain management system is not permitted and may result in the tender being rejected, cancellation of the contract, “blacklisting” and/or any such remedies as set out in the UMEDAs SCM Policy.

## GENERAL CONDITIONS OF CONTRACT 2015

### 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 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.
- 1.13. 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.
- 1.14. "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.
- 1.15. "GCC" means the General Conditions of Contract.
- 1.16. "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.17. "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.

- 1.18. "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.19. "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.20. "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.21. "Project site" where applicable, means the place indicated in bidding documents.
- 1.22. "Purchaser" means the organization purchasing the goods.
- 1.23. "Republic" means the Republic of South Africa.
- 1.24. "SCC" means the Special Conditions of Contract.
- 1.25. "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.26. "Supplier" means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.
- 1.27. "Tort" means in breach of contract.
- 1.28. "Turnkey" means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.
- 1.29. "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. Invitations to bid are usually published in locally distributed news media and on the municipality / municipal entity website.

## **4. Standards**

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

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

- 5.1. The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the

performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.

- 5.2. The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 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.
- 6.2. When a supplier developed documentation / projects for the municipality / municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the municipality / municipal entity.

## **7. Performance Security**

- 7.1. Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2. The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3. The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
  - 7.3.1. 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
  - 7.3.2. a cashier's or certified cheque
- 7.4. The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

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

- 8.1. All pre-bidding testing will be for the account of the bidder.
- 8.2. If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspections tests and analysis, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or an organization acting on behalf of the purchaser.
- 8.3. If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4. If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

- 8.5. Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6. 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 goods may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.
- 8.8. The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.

## **9. Packing**

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

## **10. Delivery**

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

## **11. Insurance**

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

## **12. Transportation**

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

## **13. Incidental**

- 13.1. The supplier may be required to provide any or all of the following services, including additional services, if any:
  - 13.1.1. performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - 13.1.2. furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - 13.1.3. furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

- 13.1.4. performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- 13.1.5. training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2. Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

#### **14. Spare Parts**

- 14.1. As specified, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
  - 14.1.1. 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;
  - 14.1.2. in the event of termination of production of the spare parts:
    - 14.1.2.1. advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
    - 14.1.2.2. following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

#### **15. Warranty**

- 15.1. The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2. This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 15.3. The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4. Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5. If the supplier, having been notified, fails to remedy the defect(s) within the period specified, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

#### **16. Payment**

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

16.4. Payment will be made in Rand unless otherwise stipulated.

## **17. Prices**

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

## **18. Variation Orders**

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

## **19. Assignment**

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**

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

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

- 21.1. Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2. If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3. The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.4. Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 22 without the application of penalties.
- 21.5. Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling 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

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:
  - 23.1.1. 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;
  - 23.1.2. if the Supplier fails to perform any other obligation(s) under the contract; or
  - 23.1.3. 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 supplier as having no objection and proceed with the restriction.
- 23.5. Any restriction imposed on any person by the purchaser will, at the discretion of the purchaser, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the purchase 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:
  - 23.6.1. the name and address of the supplier and / or person restricted by the purchaser;
  - 23.6.2. the date of commencement of the restriction
  - 23.6.3. the period of restriction; and
  - 23.6.4. 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**

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

#### **25. Force Majeure**

- 25.1. Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2. If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

#### **26. Termination for Insolvency**

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

#### **27. Settlement of Disputes**

- 27.1. If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2. If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3. Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4. Notwithstanding any reference to mediation and/or court proceedings herein,

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

## **28. Limitation of liability**

- 28.1. Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
  - 28.1.1. 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
  - 28.1.2. 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**

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**

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

## **31. Notices**

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

## **32. Taxes and duties**

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

### **33. Transfer of contracts**

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

### **34. Amendment of contracts**

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

### **35. Prohibition of restrictive practices.**

- 35.1. In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding.
- 35.2. If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 Of 1998.
- 35.3. If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concern.