



CITY OF TSHWANE METROPOLITAN MUNICIPALITY

TENDER NUMBER:
GPM 14 2021/22

TENDER DESCRIPTION:	TENDER INVITATION FOR THE LONG-TERM LEASE AND DEVELOPMENT OF MUNICIPAL PROPERTY: PORTION OF ERF 762 GEZINA
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NAME OF BIDDER:

CSD NUMBER:

VENDOR NUMBER (WHERE APPLICABLE)

Prepared by:
City of Tshwane Metropolitan Municipality
C de Wet Centre
175 Es'kia Mphahlele Drive
Pretoria West
0001
Tel: 012 358 9999

BID CLOSING DATE

1 March 2022

Only bidders registered on the Central Supplier Database and with CSD Number will be considered for this tender as it is a requirement from National Treasury.



CITY OF TSHWANE METROPOLITAN MUNICIPALITY

DEPARTMENT: GROUP PROPERTY MANAGEMENT

BIDS ARE HEREBY INVITED FROM SUPPLIERS FOR THE FOLLOWING BID:

Bid No	Description	Dept.	Contact Person	Compulsory Briefing Session	Closing date
GPM 14 2021/22	TENDER INVITATION FOR THE LONG-TERM LEASE AND DEVELOPMENT OF MUNICIPAL PROPERTY: PORTION OF ERF 762 GEZINA	Group Property	Johannah Maenetsa (012) 358 7389 or Johannahmae@tshwane.gov.za	N/A	1 March 2022

The document is downloadable from the National Treasury website (www.etenders.gov.za) and the City of Tshwane website (www.tshwane.gov.za).

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

Procurement Advice Centre
C de Wet Centre
175 Es'kia Mphahlele Drive
Pretoria West
0183

Documents must be deposited in the bid box not later than **10:00 on 1 March 2022** when bids will be opened in public.

Please note that briefing sessions will not be held for this tender. Bidders must contact the following officials for any enquiries:

- Technical enquiries: Johannah Maenetsa (johannahmae@tshwane.gov.za or 012 358 7389)
- Supply Chain enquiries: Relebogile Malatswane (relebogilem@tshwane.gov.za or 012 358 6282)

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

INDEX

No	Details	Document	Page
1.	Very important notice		
2.	Certificate of Authority for Signatory		
3.	Scope of Work		
4.	Pricing Schedule		
5.	Service Level Agreement		
6.	Invitation to Bids	MBD 1	
7.	Declaration of Interest	MBD 4	
8.	Declaration for procurement above R10million (all applicable taxes Included)	MBD 5	
9.	Preference points claimed form	MBD 6.1	
10.	Declaration of Past Supply Chain Management practice	MBD 8	
11.	Certificate of Independent Bid Determination	MBD 9	
12.	General Conditions of Contract		
LIST OF RETURNABLE DOCUMENTS THAT SHOULD FORM PART OF BID DOCUMENT			
13.	Company Registration Certificate		
14.	Rates and Taxes/ lease agreement Tax		
15.	Clearance Certificate or Unique Pin		
16.	BBBEE Certificate		
17.	CSD summary report		

VERY IMPORTANT NOTICE ON DISQUALIFICATIONS:

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

1. If any pages have been removed from the bid document, and have therefore not been submitted, or a copy of the original bid document has been submitted.
2. If the bid document is completed using a pencil. Only black ink must be used to complete the bid document.
3. The bidder attempts to influence, or has in fact influenced the evaluation and/or awarding of the contract.
4. The bid has been submitted after the relevant closing date and time.
5. If any bidder who during the last five years has failed to perform satisfactorily on a previous contract with the municipality, municipal entity or any other organ of state after written notice was given to that bidder that performance was unsatisfactory.
6. The accounting officer must ensure that irrespective of the procurement process followed, no award may be given to a person –
 - a) who is in the service of the state, or;
 - b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder, is a person in the service of the state; or;
 - c) Who is an advisor or consultant contracted with the municipality in respect of contract that would cause a conflict of Interest.
7. Bid offers will be rejected if the bidder or any of his directors is listed on the Register of Bid Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector
8. Bid offers will be rejected if the bidder has abused the CoT's Supply Chain Management System.
9. Failure to complete and sign the certificate of independent determination or disclosing of wrong information.

Failure to submit the above will lead to immediate disqualification

Bidder

CERTIFICATE OF AUTHORITY FOR SIGNATORY

Status of concern submitting tender (delete which ever is not applicable.) COMPANY /PARTNERSHIP /ONE-PERSON BUSINESS / CLOSE CORPORATION/ JOINT VENTURE

A. COMPANIES

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

An example is shown below:

By resolution of the board of Directors on20....., Mr. / Ms
.....has been duly authorized to sign all documents in
connection with BID NO.

SIGNED ON BEHALF OF THE COMPANY:

IN HIS CAPACITY AS:

DATE:

**SIGNATURE OF
SIGNATORY:**.....

WITNESSES: 1.

2.

B. PARTNERSHIP

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

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

We, the undersigned partners in the business trading as,

Hereby authorize to sign this bid as well s any contract resulting from the bid and any other documents and correspondence in connection with this bid / or contract on our behalf.

.....
Signature	Signature	Signature
.....
Date	Date	Date

C. ONE-PERSON BUSINESS

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

.....
Date	Signature

D. CLOSE CORPORATION

If the case of a close corporation submitting a bid, a certified copy of the founding Statement of such corporation shall be included with the Bid, together with a resolution by its members authorizing a member or other official of the corporation to sign the documents and correspondence in connection with this bid or contract on behalf of the company must be submitted with this Bid.

An example is shown below:

By resolution of the members at the meeting on the200.....at
.....Mr. / Mswhose signature
appear below, has been duly authorized to sign all documents in connection with BID NO.
.....

SIGNED ON BEHALF OF THE CLOSE CORPORATION:.....

IN HIS / HER CAPACITY AS:.....

DATE:

SIGNATURE OF SIGNATORY:.....

WITNESSES: 1.

2......

E. CERTIFICATE OF AUTHORITY FOR JOINT VENTURES

This Returnable Schedule is to be completed by joint ventures.

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

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



TENDER INVITATION FOR THE LONG-TERM LEASE AND DEVELOPMENT OF MUNICIPAL PROPERTY

The City of Tshwane Municipality (COT), hereby invites interested Persons/ Entities to submit Tender and proposal for the lease and development on the following Municipal Owned Property:

No.	PROPERTY DESCRIPTION	ZONING	EXTENT
1.	Portion of Erf 762 Gezina (Depicted as figure E1 V1 A1 B1 on the sketch plan)	Special	7797m ²

CONTENTS

SECTION	PAGE
1. Bid Specification	3 - 6
2. Evaluation of Proposals	6 - 7
3. Bid Evaluation Criteria	7 -10
4. Gezina Overview	10 -11
5. Property Information	11 - 14
Annexure 1: Bidders Details, Experience and Capabilities of Bidder	14 - 17
Annexure 2: Type of investment	17 - 19
Annexure 3: Access to Funding	19 - 20
Annexure 4: Pricing Schedule	21
Annexure 5: Standard Service Level Agreement	22 - 50

1. BID SPECIFICATIONS FOR DEVELOPMENT AND LEASE OF THE COUNCIL PROPERTY

The Council Properties are being made available in accordance with the Property Information Section of which Proposed Development Controls are subject to Council Approval.

- 1.1 The Property is made available by means of a long-term lease agreement in accordance with City of Tshwane's (CoT) standard agreement. The following terms of contract are non-negotiable:
- The Property shall be leased out to the lessee for a maximum period of Thirty (30) years only. Upon expiry or termination of the Development and Lease agreement, possession of the Property will revert to the CoT without any compensation.
 - That since the proposed lease agreement constitutes a long-term lease and is thereby due to be registered against the title deed of the Property at the instance and cost of the Lessee;
 - That a development Programme and/ or schedule must be provided to demonstrate when the development is expected to commence and the anticipated completion date; a development will be granted a maximum of 2 years (24 months) for construction to commence, unless Land Use Rights must be obtained for which an allowance of a further 2 years (24 months) of signature of the agreement is given. Consideration will be made on reasonable explanation and request for extension by the developer of which such consent and permission shall not be unreasonable withheld.
 - All existing services shall be protected by the lessee at all times during construction of any kind and should any services of the CoT be affected detrimentally or need to be upgraded, relocated and/or repaired as a result of this application, such services shall be upgraded, relocated and or repaired at the expense of the lessee and to the standards and satisfaction of the CoT.
- 1.2 That if a separate electrical connection (metering point) is required, an application has to be lodged at the relevant in which case a quota charge has to be paid.
- 1.3 Access to the Property and the disposal of storm water shall be to the satisfaction of the Group Head: Roads and Transport.
- 1.4 The Municipality is not liable for any defects, latent or patent, in or on the Property. The size of the Property as indicated is not guaranteed.
- 1.5 The lessee will be responsible for the removal of illegal structures/ occupants that may have occupied the land.
- 1.6. In demonstrate ability and capacity to deliver and manage the proposed development, a submission of the following documentation must accompany the proposal:
- Proposals must demonstrate workable business model and should demonstrate compliance with the Tshwane Spatial Development Framework requirement in terms of the zoning.
 - Site Development Plans in respect of buildings to be erected on the Property will be considered by the Municipality. The actual building of improvements on the Property is prohibited until such building plans and site development plans have been approved.
 - The approval of the site development plans must be obtained within 36 months, unless reasonable explanation and request for extension is provided by the developer of which such consent and permission shall not be unreasonable withheld.

- Should the successful bidder's proposal include land use rights over and above the allowable proposed land uses, costs of acquiring consents and/ or lodging a rezoning application for additional land uses will be for the bidder's account; where necessary all land ennoblement requirements will be handled in terms of the appropriate provision of the City of Tshwane Land Use Management By-Law, 2016 and in line with the Tshwane Town Planning Scheme, 2008 (Revised 2014).
- The successful bidder will be responsible to obtain all statutory approvals (Environmental, Water Use Licence, Site Development Plan/s, Building Plan/s, etc.) which are required for the development of the Property, the development shall be subject to all related legislation and Municipal By-Laws.
- In demonstrating ability and capacity to deliver and manage the proposed development, a submission of detailed profiles of the professional team and their successfully completed developments is required. They must further demonstrate their ability to secure funds required to carry out the project.
- The consideration and inclusion of green building elements (energy saving, use of natural resources etc.) in the development as a contribution to climate change adaptation in accordance with policies.

1.7 The following conditions set by the Group Head: Environmental Management will be complied with:

- The development must include a streetscape design on all the adjacent pavements.
- Where applicable permission must be received from the Department of Water Affairs for developing and changing the flood lines and the necessary written responses from the Department of Water Affairs must be provided to the CoT prior to the commencement of construction.

1.8 That positive comments must be received from Roads and Stormwater and submitted to the Open Space Management Section of the Department prior to construction.

1.9 That where possible, the existing indigenous vegetation must be retained and incorporated into the developments formal landscaping.

1.10 That all classified invader species in terms of the Conservation of Agricultural Resource Act, 1983 (Act 43 of 1983) must be eradicated and controlled on the development site (Tipuanau, Blue Gum, pine, Seringa, Black Wattle, Bugg Weed, Lantaa, Privet, etc.).

1.11 That the proposed development includes the development maintenance of an Open Space resource and may have no adverse impact on such resource during the planning (response, levels, communal erf boundary, and treatment) and construction (access, ablution, encroachment etc.) phases.

1.12 A Site and Landscape Development Plan drafted by a qualified Landscape Architect must be submitted to the Open Space Management section for approval such plan must include the following information.

1.13 That the interface treatment between the Open Space and the proposed business development will be responsive and not allow for structures to turn their back onto the Open Space).

1.14 That the Landscape Development Plans to form part of the Site Development Plans to be submitted must be prepared by a professional Landscape Architect and accompanied by a detailed Environmental Management Plan.

1.15 The lease cost implications are as follows:

- The rental offer must not be below the minimum upset rental as stipulated.
- The successful bidder shall provide proof of payments on the deposit made upon signing the Lease Agreement (a deposit is the direct equal amount of one month's rent), together with the proof of payment on the contract administrative fee of R500.00 including VAT per property, upon signing the Lease Agreement.
- The rental is exclusive of rates and taxes. The lessee will take responsibility for the payment of Municipal property rates and taxes. The rates and taxes will be levied by the City's Group Financial Services Department in accordance with approved tariffs and will become payable from the date the lessee takes possession of the site.
- Rent is payable upon signature of the lease agreement and at month end of the first commencement of operations, and thereafter on a month-to-month basis and is subject to an escalation of 9% per annum; and
- The lessee will be responsible for payment of the property rates as determined by Council and shall be liable for the payment of all bulk services contributions and pay the normal tariffs and fees to obtain connection to services.

1.16 The signing of Lease Agreement and Contract:

- The successful bidder shall sign a Lease Agreement within 30 Calendar Days after receiving the offer.
- Upon signature it becomes the responsibility of the Lessee/ Developer to secure and maintain the property; failure to do so shall be considered a material breach of agreement.
- The lessee shall not cede, sublet, transfer, pledge of in any way alienate any of his/ her rights in terms of this agreement; and
- In the event that the successful bidder fails to comply with the above-mentioned conditions, the property shall be offered to the second successful bidder.

2. EVALUATION OF PROPOSALS

2.1 The Municipality reserves the right to seek clarification or further information from Bidder(s) and

to appoint professionals to advise and verify information on aspects of the Proposals submitted in a manner that the COT or its agent deems appropriate.

- 2.2 The Municipality reserves the right to request that presentations to the Municipality be illustrated and expanded upon in any suitable manner.
- 2.3 The Bidder(s) shall be deemed to know and understand the content of the Request for Proposal document and a submission of all the required documentation and forms will be the Bidder(s) unconditional acceptance of all the terms and conditions contained in the Request for Proposal all document.
- 2.4 The Bidder(s) shall be deemed to have satisfied itself as to all of the conditions, procedures and performance and discharge of the obligations required in terms of the Request for Proposal document.
- 2.5 The non-acceptance or variation of any of the conditions, or the inclusion of any other conditions in the Request for Proposal all document by the Bidder(s) will be treated as a qualified bid and will be disqualified.
- 2.6 The Proposal(s) will be evaluated by the Municipality. COT may accept any Proposal in whole or in part and is not bound to accept any Proposal.
- 2.7 Proposals will be evaluated using the evaluation criteria stated in Page 7 – 10:
 - The Proposal(s) will be adjudicated by the COT's Bid Evaluation Committee and awarded in terms of the City's Supply Chain Management Policy.
 - The COT will not be held responsible or liable for any costs whatsoever and /or losses incurred or suffered by the Bidder(s) or any other party or parties for whatsoever reason as a result of the Proposal.
 - Any Proposal in the name of a partnership or joint venture or consortium will, on acceptance, be deemed as joint and several agreements with all parties.
 - In the event that the successful bidder fails to comply with the conditions and specifications of the bid, the CoT reserves the right to make an offer to the second successful bidder.
- 2.8 Bidders may bid for multiple Property through one bid document. Bidders are required to submit a covering letter indicating the Property for which the bids are being submitted.
- 2.9 The tender will not be awarded to the service provider scoring the highest points but the service provider with the best price offer and highest proposed value of development.
- 2.10 All proposals shall remain valid for a period of **90 (Ninety) days** after the closing date, provided that bidders may extend the validity of the proposal on request of COT specifically in the event that a contract with the preferred bidder fails.

3. BID EVALUATION CRITERIA

3.1 STAGES OF EVALUATION

The following tender will be evaluated according to the following stages:

- Stage 1: Administration Compliance
- Stage 2: Special Disqualification Criteria
- Stage 3: Functionality Criteria
- Stage 4: Preferential Point System

STAGE 1: ADMINISTRATIVE COMPLIANCE

All the bids will be evaluated against the administrative responsiveness requirements as set out in the list of returnable documents.

STAGE 2: SPECIAL DISQUALIFICATION CRITERIA

- ***BIDDERS MUST SUBMIT PROOF OF REGISTRATION OF PROFESSIONAL TEAM'S WITH PROFESSIONAL BODIES***

Proof qualifies as a copy of Qualifications and Registration with the mentioned Built Environment Bodies:

- Architect – Proof of Registration with The South African Council for the Architectural Profession, a professional Architect.
- Town Planner-Proof of Registration with the South African Association of Consulting Professional Planners.
- Civil Engineer - Proof of Registration as a Professional Engineer with the Engineering Council of South Africa
- Quantity Surveyor - Proof of Registration with South African Council for the Quantity Surveying Profession.

- ***DEVELOPMENT CONCEPT***

The development concept must demonstrate the following design requirements:

Good
Supports City's Smart City Objectives
Sitting of buildings
Indication of vehicular access and egress points, and an indication of pedestrian points
Provision of adequate parking for end-users and visitors
Landscape Component
Inclusion of Green Building elements (energy saving; natural resources) – in order to qualify for a Star Rated facility

- **PROJECT IMPLEMENTATION PLAN**

Bids must provide the chronological order and time frames events and activities are due to transpire at land preparation, implementation and completion of the development.

Good	Average	Poor
Construction Commences within 24 Months of Signature of the Agreement	Construction Commences Between 36 – 48 Months of Signature of the Agreement	Construction Commences over 48 Months of Signature of the Agreement

- **BIDDERS MUST PROVIDE PROOF OF FUNDING FOR THE PROPOSED DEVELOPMENT**

Proof of the availability of funding qualifies as a letter from the Bank or a recognized Financial Institution ((specify name of the broker), on an official letter head, confirming the bidders' ability to access the funding required, and amount they are eligible for as per the estimated development cost stipulated in the table hereunder. The developer must indicate the FSP Number.

* The funding required on the estimated development cost will be based on a **6 months'** incremental value at the time of award and signature of the agreement.

*Submission to the relevant department every three months, proof by your company the availability of funding letter from the Bank or recognised Financial Institution.

No.	PROPERTY DESCRIPTION	EXTENT	ESTIMATED DEVELOPMENT COST	ANTICIPATED DEVELOPMENT COST
1.	Portion of Erf 762 Gezina (Depicted as figure E1 V1 A1 B1 on the sketch plan)	7797m ²	R 94 000 000	

STAGE 3: FUNCTIONALITY CRITERIA

Bids will be evaluated to establish whether they meet a minimum threshold of 70 points out of 100 for Functionality, based on the following criteria:

CRITERIA	SUB-CRITERIA	SCALE	WEIGHT	SCORE
1. ENTITY EXPERIENCE AND CAPABILITY	<p>DEVELOPERS' EXPERIENCE:</p> <p><i>*Demonstrate experience in property development.</i></p> <ul style="list-style-type: none"> • 5 completion certificates • 3 to 4 completion certificates • 1 to 2 Completion certificates • 0 Completion Certificate <p><i>*Proof will be a completion certificates received from building contractor for each of the completed developments.</i></p>	45 35 20 0	1	45

2. ENTITY'S CAPABILITY	<p>DEVELOPERS' CAPABILITY: <i>*Demonstrate capability by proven experience measured by way of investment value of work to completed equal to at least the value of the proposed development (which may be held by the bidder acting as Developer or Development Agent, or in the bidder's Professional team)</i></p> <ul style="list-style-type: none"> <i>R94 million and above</i> <i>R70 million to R93 million</i> <i>R30 million to R69 million</i> <i>R10 million and less</i> <p><i>*Proof will be completion certificates reflecting the project value for each of the completed developments</i></p>	<p>20</p> <p>10</p> <p>5</p> <p>2</p>	2	40
3. LOCAL ECONOMIC PARTICIPATION	<p>THE UTILITY BILL OR LEASE AGREEMENT OF BUSINESS MUST BE SUPPLIED AS PROOF OF THE BUSINESS LOCATION:</p> <ul style="list-style-type: none"> <i>Operating within the City of Tshwane</i> <i>Operating around Gauteng</i> <i>Operating outside of Gauteng</i> 	<p>3</p> <p>2</p> <p>1</p>	5	15
<u>TOTAL</u>				100

***Bids which do not meet the minimum threshold of 70 points will not be considered further.**

STAGE 4: PRERENTIAL POINT SYSTEM

The preferential points to be used will be the 90/10 points system in terms of the Preference Procurement Policy Framework Act, 2000 (Act 5 of 2000) Regulations 2017.

- 90 points for price
- 10 points for B-BBEE Status (service provider to submit the certified copy of B-BBEE level rating certificate).

****DUE TO THE ABOVE TENDER BEING A REVENUE GENERATING TENDER BIDDERS ARE ADVISED TO USE THE FOLLOWING**

The following formula will be applied for purposes of evaluation:

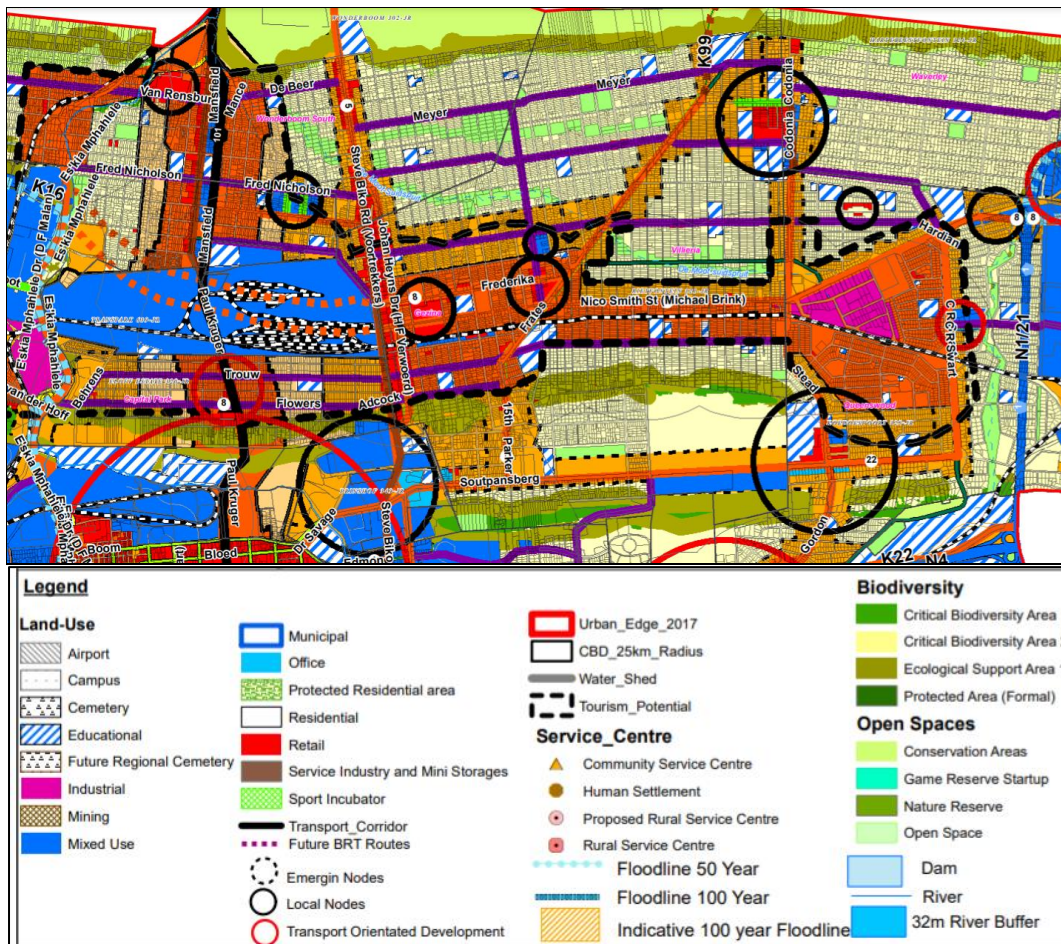
$$P_s = 90 \left(1 + \frac{P_t - P_{max}}{P_{max}} \right)$$

Where

- P_s = Points scored for price of tender under consideration;
 P_t = Price of tender under consideration; and
 P_{max} = Price of highest acceptable tender.

ALLOCATION OF B-BBEE POINTS REMAIN THE SAME AS THOSE PROVIDED IN REG 7(2) OF 2017.

4. GEZINA OVERVIEW



CITY'S VISION FOR THE GEZINA AREA IN REGION 3

Gezina is identified as one of the important retail and office nodes of the city. It is important to support the economically active sectors to maintain and ensure sustainability within the region through the improvement of mobile linkage and the provision of improved public transport facilities.

The site is located within a Linear Zone which are high intensity activity areas located along major routes that usually carry high volumes of traffic connecting the nodal areas within the city with one another.

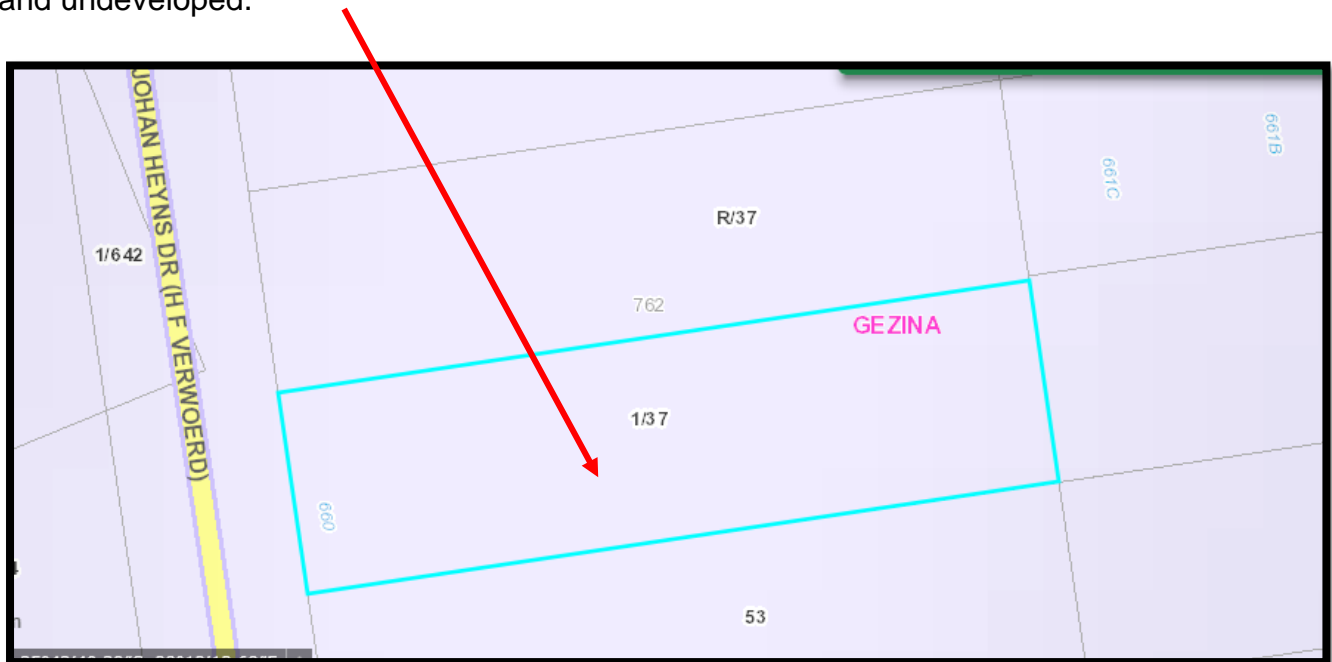
The main aim of the Linear Zones is to encourage the use of public transport by allowing the compaction and densification of the area as prescribed by the strategy through the development of various housing typologies ranging from medium rise apartment buildings, walk-ups and duplex residential developments.

5. PROPERTY INFORMATION

REGION 3 -WARD 53

5.1 PORTION OF ERF 762 GEZINA

Erf 762 Gezina measures 8 629m² in extent. The lease portion of the Erf measures 7797m² in extent indicated as figure E1 V1 A1 B1 on the sketch plan. The property is located at No. 660 Johan Heyns Drive (HF Verwoerd). The property is to be used in line with the Tshwane Spatial Development Framework. And shall be used only for a motor showroom, car sales mart, car wash, motor workshop for the sale, repair and installation of batteries, shock absorbers, motor exhausts, tow-bars and a mini gold course with ancillary club house. The property is vacant and undeveloped.





DESCRIPTION	PORTION OF ERF 762 GEZINA (Depicted as Figure E1 V1 A1 B1 on the sketch plan)
Structures and physical features	The site is vacant and undeveloped
Size (approximate)	7797m ²
Zoning	<p>“Special”</p> <p><u>Permitted Land Use:</u></p> <p>Motor showroom, car sales mart, car wash, motor workshop for the sale, repair and installation of batteries, shock absorbers, motor exhausts, tow-bars and a mini gold course with ancillary club house</p>
ACCESS/ PARKING REQUIREMENTS	<p>Demarcated parking spaces, with a permanent dust-free surface, together with the necessary maneuvering space, shall be provided and maintained on the property to the satisfaction of the City Council as follows according to Table H1 of the Town Planning Scheme.</p> <p>Car sales mare: 1 parking space per 200m² display area.</p> <p>All parts of the property upon which motor vehicles are allowed to move or park, shall be provided with a permanent dust-free surface, which shall be paved, drained and maintained to the satisfaction of the City Council</p> <p>Entrances to and exits from the property shall be sited, constructed and maintained to the satisfaction of the City Council</p>

Bulk Service Contribution	<p>The water lines need to be upgraded/extended to the Water/Sewer system to support the rights of the erf at the cost of the lessee.</p> <p>All resulting costs to provide a sewer connection point/water upgrade as well as all costs incurred as a result of the protection by servitude/moving/provision of a private or municipal sewer/water necessitated by such application shall be for the account of the lessee. Such sewer/water and connection must be installed by a suitably qualified private plumbing contractor under Council supervision. Information and specifications are available from any of the One-Stop-Service-Desk for water and sanitation services.</p> <p>There is no supply electrical supply point to the portion. The total connection fee will be payable when an application is made for a supply to the portion.</p> <p>Should an electricity supply be required at any future stage which is capacity wise in excess of the allotment or the existing connection, a bulk service contribution and connection fee will be payable.</p> <p>Any removal, moving, and/or change to the existing electrical network that may be come necessary due to this application, will be for the applicants' costs.</p> <p>All costs incurred for the provision or relocation of any services as a result of this application will be borne by the applicant.</p>
Other Requirements	<p>The applicant has to comply with any additional requirements or conditions as stipulated in any Act or Regulations or By-Laws applicable. This include any future developments or extensions of any structures, land use or any other situation that may arise on the said portion of land.</p> <p>The lessee will protect the existing municipal services, namely existing bulk sewer lines, water pipes and electricity services, on the property, by not doing construction over the municipal services or allowing vegetation to harm the municipal services.</p> <p>No building structures shall be erected in the 1-in-50 years flood line area.</p>
Health Department Requirements	<p>According to the zoning certificate, the lessee in title, shall be responsible for the maintenance of the whole development on the Erf. If the City Council is of the opinion that the site or any part of the development is not to the satisfactory maintained, the City Council shall be entitled to undertake such maintenance at the cost of the lessee.</p>
Minimum Upset Rental	<p>R48 700 per month at an escalation of 9% annually</p>

ANNEXURE 1: BIDDERS DETAILS, EXPERIENCE AND CAPABILITIES OF BIDDER

PARTICULARS OF BIDDER (INDIVIDUAL/COMPANY/ORGANIZATION)				
1.1	Surname			Title:
1.2	First Names			
1.3	Identity Number / Passport Number			
1.4	Registered Names of Company represented			
1.5	Registration Number			
1.6	Type of Business/ Organization			
1.7	Residential Address			
1.8	Postal Address			
1.9	Telephone Numbers	Cell	Bus ()	Home ()
1.10	E-mail address			

Experience of bidder, bidder's principals and professional team to be stated below and supporting information to be supplied in tables below.

Summary of Developer and Team	
Value of Developments completed <u>by bidder, acting as</u> <u>"Developer"</u>	R

Value of Developments completed <u>by bidder's principals</u> , acting as project manager / development manager.	R
<i>NOTE: Any experience as "Contractor" to be duplicated here</i>	
Total combined value of FEEs earned to date by all key members of bidders proposed professional team.	R

Details of construction experience completed by bidder, acting as contractor OR by bidder's principals, acting as project manager / development manager but not under the name of the bidder.

(PLEASE EXPAND TABLE IF REQUIRED)

NB: DO NOT ATTACH A SEPARATE TABLE

Name of Development	Year completed	Value of Development	Bidder / Bidders' Principals	Client & contact Numbers

Total value of developments	
-----------------------------	--

ANNEXURE 2: TYPE OF INVESTMENT

2.1 Development Summary – Demonstrating the concept and operation of the business

Use	Total Floor area (m2)
TOTALS	

The bidder must illustrate an understanding of delivering a development plan for the Property, outline the EIA processes and required licenses how these will integrate with the Local Authority's approvals.

2.2 Operational Plan

Economic benefits: <ul style="list-style-type: none">○ Temporary and permanent job creation	
Social benefits: <ul style="list-style-type: none">○ Occupant's comfort and health○ Minimize strain on local infrastructure	

2.3 Estimated development time frames

Estimated time, in months, from date of signature of development agreement to date of start of construction.	Months
Estimated time, in months, from start of construction to completion of construction.	Months

2.4 Estimated Cost of Development

A breakdown of all costs to be incurred by the bidder in the preparation of the site must be provided. The cost provided in this section will form a critical part of the evaluation of

<i>proposals and will be a contractual condition of the development agreement awarded.</i>		
No.	Item Description	Estimated cost (Including vat)
1	Civil and Electrical Services	R
2	Civil Works	R
3	Top Structure (Building) Costs	R
4	Professional Fees	R
5	Sundry Development Costs	R
6	External/Bulk Services Contributions	R
7.	Other	R
	Total	R

ANNEXURE 3: ACCESS TO FUNDING

The bidder must submit proof of the availability of finance to fund the development cost through equity funding

Please note that the following definitions will be used in assessing the proof of availability of finance:

Proof of available funds qualifies as a letter from the Bank or a recognised Financial Institution or Sponsor, on an official letter head confirming the bidder's ability to access the funding required for the proposed development.

Provide funding model to incorporate how and where the funding will be sourced/raised, and it must include collateral to be pledged against such funding if required.

Total Development Cost	R
Debt Finance	R
Equity Investments (if any)	R

ANNEXURE 4: PRICING SCHEDULE

CORRECTION OF ENTRIES MADE BY TENDERER

Any entry made by the Tenderer in the Price Schedule, forms, etc., which the tenderer desires to change, shall not be erased or painted out. A line shall be drawn through the incorrect entry and the correct entry shall be written above in black ink and the full signature of the Tenderer shall be placed next to the correction.

RENTAL OFFER

No.	PROPERTY DESCRIPTION	EXTENT	MINIMUM UPSET RENTAL PER MONTH (EXCL. VAT)	VAT.	MINIMUM UPSET RENTAL (INCL. VAT)	INDICATE RENTAL OFFER (EXCL.VAT))	INDICATE RENTAL (INCL.VAT)
1.	Portion of Erf 762 Gezina (Depicted as figure E1 V1 A1 B1 on the sketch plan)	7 797m ²	R 48 700pm 9% escalation per annum	R 7 305	R 56 005		

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

Person Authorized to sign Tender:

FULL NAME (IN BLOCK LETTERS):

SIGNATURE:

DATE:

ANNEXURE 5: STANDARD SERVICE LEVEL AGREEMENT

SERVICE LEVEL AGREEMENT

entered into between

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

(Hereafter referred to as the “City”)

Herein Represented by: _____

In his capacity as: _____

(Duly authorised hereto)

AND

Registration Number: _____

(Hereafter referred to as the “Service Provider”)

Herein Represented by: _____

In his/her capacity as: _____

(Duly authorised hereto)

SERVICE LEVEL AGREEMENT

entered into between

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

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

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

AND

Registration Number: _____

Herein represented by GM Mmulutsi, in his/her capacity as Director duly authorised thereto under and by virtue of a resolution of the Board passed on 06 August 2020, a copy of which is annexed as Annexure “**B**”, and who by his/her signature hereto warrants that he/she is properly authorised to sign this Agreement

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

CONTENT

<u>1</u>	<u>DEFINITIONS</u>	35
<u>2</u>	<u>INTERPRETATION</u>	36
<u>3</u>	<u>APPOINTMENT</u>	38
<u>4</u>	<u>PURPOSE OF THE AGREEMENT</u>	38
<u>5</u>	<u>RELATIONSHIP</u>	38
<u>6</u>	<u>DURATION</u>	38
<u>7</u>	<u>CONTACT PERSON</u>	38
<u>8</u>	<u>SCOPE OF GENERAL SERVICES</u>	39
<u>9</u>	<u>PRICE AND PAYMENT</u>	40
<u>11</u>	<u>SERVICE LEVELS</u>	41
<u>12</u>	<u>WITHHOLDING OF PERFORMANCE</u>	41
<u>13</u>	<u>PENALTY</u>	42
<u>14</u>	<u>ACCESS</u>	42
<u>15</u>	<u>ORDERS OF GOODS</u>	ERROR! BOOKMARK NOT DEFINED.
<u>16</u>	<u>DELIVERY OF GOODS</u>	ERROR! BOOKMARK NOT DEFINED.
<u>17</u>	<u>DEFECTIVE GOODS / LATENT PRODUCTS</u>	ERROR! BOOKMARK NOT DEFINED.
<u>18</u>	<u>AMENDMENT OR CANCELLATION OF PURCHASE ORDER</u>	ERROR! BOOKMARK NOT DEFINED.
<u>19</u>	<u>INSPECTION</u>	ERROR! BOOKMARK NOT DEFINED.

<u>20</u>	<u>MAINTENANCE AND SUPPORT</u>	..... ERROR! BOOKMARK NOT DEFINED.
<u>21</u>	<u>TRAINING</u>	..... ERROR! BOOKMARK NOT DEFINED.
<u>22</u>	<u>SERVICE PROVIDER'S WARRANTIES AND INDEMNITIES</u>	.....43
<u>23</u>	<u>SERVICE PROVIDER'S PERSONNEL</u>	.....45
<u>24</u>	<u>STATUTORY AND EMPLOYMENT ISSUES</u>	.....45
<u>25</u>	<u>SUB-CONTRACTING</u>	.....46
<u>26</u>	<u>CONFIDENTIALITY</u>	.....47
<u>27</u>	<u>INTELLECTUAL PROPERTY RIGHTS</u>	.....48
<u>28</u>	<u>FORCE MAJEURE</u>	.....49
<u>29</u>	<u>CESSION</u>	.....50
<u>30</u>	<u>CHANGE OF CONTROL / CIRCUMSTANCE</u>	.....50
<u>31</u>	<u>BREACH</u>	.....51
<u>32</u>	<u>EARLY TERMINATION</u>	.....51
<u>33</u>	<u>DISPUTES</u>	.....51
<u>34</u>	<u>LAWS AND JURISDICTION</u>	.....54
<u>35</u>	<u>NOTICES AND COMMUNICATIONS</u>	.....54
<u>36</u>	<u>GENERAL AND MISCELLANEOUS</u>	.....56
<u>37</u>	<u>EXECUTION</u>	.....57

ANNEXURE "A" APPOINTMENT LETTER

ANNEXURE "B" BOARD RESOLUTION

ANNEXURE "C" SCOPE OF WORKS

ANNEXURE "D" PAYMENT SCHEDULE

RECORDAL:

WHEREAS the City requires the Service Provider to render _____ to the City of Tshwane for the extension of the Tshwane House;

AND WHEREAS the City wishes to appoint _____ as a Service Provider;

AND WHEREAS the Service Provider wishes to provide such Services;

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

NOW THEREFORE the Parties have agreed to enter into this Agreement, in terms of which _____ shall provide the Services in the Service Areas, to the City in accordance with the terms and subject to the conditions of this Agreement:

DEFINITIONS

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

“Agreement” means this Service Level Agreement and shall include any annexures and/or schedules and/or attachments and/or appendices and/or any addenda hereto or incorporated herein by reference, as amended from time to time;

“Business Day” means any day from Monday to Friday excluding Public Holidays as defined in the Public Holidays Act 36 of 1994 (“Public Holidays Act”) as amended from time to time;

“Business Week” means five consecutive Business Days, excluding Public Holidays as defined in the Public Holidays Act;

“City” means the City of Tshwane Metropolitan Municipality, a metropolitan municipality established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998;

“Contact Persons” means persons identified by the Parties as persons who are responsible for the execution of the Agreement and whose names are set out in clause 28 below and who can be substituted in writing from time to time;

“Contract Price” shall mean the amount reflected as the contract price in clause 0 below;

“Contract Period” means the period of 3 (three) years as reflected in the Appointment Letter marked as Annexure **“A”**;

“Effective Date” means notwithstanding the Signature Date,
_____.

“Intellectual Property ” means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world, introduced and required by either Party to give effect to their obligations under this Agreement, owned in whole or in part by, or licensed to either Party prior to the Commencement Date or developed after the Commencement Date, and includes all further additions and improvements to the Intellectual Property , otherwise pursuant

to this Agreement;

“Month” means a calendar month;

“Parties” means City and Service Provider and **“Party”** means either of them as the context requires;

“Services” means services to be provided by the Service Provider to the City as detailed in clause 0 below;

“Service Provider” means _____, a company duly incorporated in accordance with the company laws of the Republic of South Africa with company registration number 2016/030059/07;

“Signature Date” means the date of signature of this Agreement by the Party signing last;

“Subcontract” means any contract or agreement or proposed contract between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;

“Subcontractor” means the third party with whom the Service Provider enters into a Subcontract;

“Tax Invoice” means the document as required by section 20 of the Value Added Tax Act 89 of 1991, as amended from time to time; and

“VAT” means Value Added Tax as defined in terms of the Value Added Tax Act of 1991.

INTERPRETATION

Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.

Unless the context clearly indicates a contrary intention, any word connoting:

any singular shall be deemed to include a reference to the plural and vice versa;

any one gender shall be deemed to include a reference to the other two genders;
and

a natural person shall be deemed to include a reference to a legal or juristic person.

The expiry or termination of this Agreement shall not affect provisions of this Agreement which expressly provide that they will operate after any such expiry or termination of this Agreement. Provisions of necessity shall continue to have been effective after such expiry or termination of this Agreement, notwithstanding that the clauses themselves do not expressly provide for this.

The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that Agreement shall not apply.

Where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail.

Any reference to any legislation is a reference to such legislation as at the Signature Date and as amended or re-enacted, from time to time.

If any provision in a definition is a substantive provision conferring any rights or imposing any obligations on any party, then notwithstanding that, it is only in this interpretation clause, effect shall be given to it as if it were a substantive provision in this Agreement.

APPOINTMENT

The City hereby appoints the Service Provider, who accepts such appointment, to provide the Services in terms of the Appointment Letter and the Scope of works attached herewith and marked as Annexure “A” and “B” respectively, and in accordance with the terms and subject to the conditions of this Agreement.

PURPOSE OF THE AGREEMENT

The Purpose of this Agreement is to:

formalise and regulate the working relationship between the Parties;

set out the roles and responsibilities of the Parties; and

define process and procedures to be followed by the Parties.

RELATIONSHIP

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

DURATION

This Agreement shall commence on the Effective Date and shall subsist for _____, unless terminated earlier pursuant to clause 0 below.

CONTACT PERSON

The work to be performed by the Service Provider hereunder will be supervised by City's Contact Person.

The Parties shall notify each other, in writing from time to time, of the details of their nominated Contact Person.

The Contact Persons shall liaise and update each other on the progress of the Services rendered and shall endeavour to resolve and remedy any problems or disputes that may arise in relation to the Services.

Either Party may substitute a Contact Person at its discretion provided that each Party shall give the other Party reasonable notice of such substitution and will provide replacement employees of equivalent ability.

Without derogating from the afore-going, should either Party replace a Contact Person for any reason whatsoever, it shall ensure, to the greatest extent possible in the circumstances, that the suitable period of hand-over and overlap takes place, at its cost, between the new and the encumbered Contact Person.

SCOPE OF GENERAL SERVICES

The Service Provider shall, for the duration of this Agreement, provide the Services set out below, including but not limited to:

Stage 1: Inception (Confirmation of payment of administration fee and deposit, and hand over of the Property)

Stage 2: Concept Design and Submission of Statutory Applications to the Approving Authority

Stage 3: Commencement of Development

8.1.4 Stage 4: Commencement of Operations

COMMENCEMENT OF RENTAL PAYMENT

The City shall pay to the Service Provider a Contract Price in the sum of R _____ (_____) exclusive of VAT.

It is envisaged that the project will run for a duration of _____ **Months.**

Deliverable	Milestone	Rental (excl. Vat)

All payments under this Agreement shall be made by electronic fund transfer or other forms of payment as the Parties may agree from time to time.

All amounts and other sums payable in terms of this Agreement and Schedules hereto will be stipulated exclusive of VAT, unless expressly stated otherwise.

All payments shall be made to the City by the Service Provider electronically into the City's bank account, the details of which are set out below:

Bank: _____

Account Holder: _____

Account type: _____

Account No: _____

Branch No: _____

The City shall not be liable for any costs or damage suffered by the Service Provider as a result of such late payment, there shall be no exceptions to the payment of the monthly rental amount.

SERVICE LEVELS

The Service Provider recognises that the City has entered into this Agreement relying specifically on the Service Provider's representations regarding service levels including, *inter alia*:

capacity allocations in accordance with the Service to be provided;

all work to be performed and Services rendered under this Agreement shall comply with industry norms and best practice acceptable within the Services industry and shall be executed by the Service Provider to the total satisfaction of the City.

The Service Provider shall provide suitably qualified and trained employees to provide the Services to the City in terms of this Agreement, and shall allocate, in its discretion employee resources in accordance with the technical skill and knowledge required, provided that any exercise of such discretion by the Service Provider shall not negatively impact on the provision of the Services by the Service Provider to the City, and shall allocate employees with the technical skill and knowledge onsite at the City at all times during normal working hours, if the City so requires.

Amongst others, the Service Provider shall comply with and provide the Services as set out in clause 0 above.

WITHHOLDING OF PERFORMANCE

The Service Provider may not under any circumstances, withhold any Services from The City during the currency of this Agreement, unless it validly terminates this Agreement in terms of clause 0 below.

PENALTY

Should the Service Provider fail to comply with its obligations in terms of this Agreement, the City may:

exercise its rights in terms of clause 0 below; alternatively

impose a penalty on the Service Provider.

An election of any of the above by the City shall not mean that the City has waived any other rights which the City might have in law.

Should the City elect to impose a penalty on the Service Provider, the City shall provide the Service Provider with a written notice requiring the Service Provider to remedy the default within 7 (seven) days from the date of delivery of the notice.

Should the Service Provider fail to remedy the default within 24 (twenty) months as per the specification requirements of the Request for Proposal Tender document on the commencement of payment of rent, then the City shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the City and without further notice, impose a cancellation of the Contract.

Should there be a dispute as to whether the failure to deliver was caused by the City or was the Service Provider's fault such dispute shall be dealt with in accordance to clause 0 below.

ACCESS

The City shall allow the Service Provider reasonable access to its premises, provided that:

access is related to the Services to be provided by the Service Provider; and

the Service Provider adheres to all rules, regulations and instructions applicable at City's premises.

The Service Provider is required to notify City monthly on the job creation numbers on commencement of the construction of the development and at commencement of the operating of the scheme.

The City shall grant the Service Provider and/or its employees, referred in clause 0 above,

access to its premises to perform its obligations in terms of this Agreement.

The Service Provider and its employees shall at all time when entering the premises and/or Service Areas of the City comply with all rules, laws, regulations and policies of the City.

SERVICE PROVIDER'S WARRANTIES AND INDEMNITIES

Service Warranties

The Service Provider warrants that in relation to each Service provided in terms of this Agreement:

it has full capacity and authority to enter into and perform this Agreement, and that this Agreement is executed by duly authorised representatives of the Service Provider;

it possesses or has access to the requisite knowledge, skill and experience to provide the Services in an expert manner;

it will discharge its obligations under this Agreement and any annexure, appendix or Schedule hereto with all due skill, care and diligence;

that all work performed and Services rendered under this Agreement shall comply with prevailing practice, standards and specifications within the industry;

it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;

that the use or possession by the City of any Materials will not subject the City to any claim for infringement of any Intellectual Property Rights of any third party;

with promptness and diligence and in a skilful manner and in accordance with the practices and professional standards of operations while performing Services and/or similar to the Services;

that the Services will in all aspects comply with industry norms and best practice to the satisfaction of the City with regard to materials and workmanship;

it will use and adopt any standards, processes and procedures required under this Agreement;

it will warrant that it shall employ suitably qualified and trained employees to provide the Services to the City and it shall allocate employees in accordance with the technical skill and knowledge required;

that it is free from any defects in material and workmanship;

that it will maintain and cause to be maintained the highest standard of workmanship and care in undertaking the Services;

that it ensure that all applicable laws are observed;

Indemnity

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

SERVICE PROVIDER'S PERSONNEL

Liability for Criminal Acts of Employees

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

Character of Employees

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

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

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

STATUTORY AND EMPLOYMENT ISSUES

The Service Provider shall comply with all employment legislation

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

The Service Provider warrants further that it is not and will not in future be in contravention of any of the provisions of any such legislation and in the event of such contravention, the Service Provider shall immediately take

all steps to remedy such contravention. If the City advises the Service Provider of any contravention of such legislation in writing, the Service Provider shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep the City informed regarding the steps taken and the implementation and the result thereof.

No employment

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

Occupational Health and Safety Act, 1993

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

SUB-CONTRACTING

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

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

In its application, the Service Provider shall give the name of the Subcontractor, the Subcontractor's obligations, the proposed date of commencement of the Subcontract which shall include the fees payable to the Subcontractor, and a report

of the background security check on the Subcontractor's suitability, financial and otherwise.

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

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

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

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

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

CONFIDENTIALITY

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

The information provided by the City in the context of this Agreement is Confidential

Information and the Service Provider shall take all reasonable measures to keep the information confidential and will only use the information for the purpose for which it was provided.

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

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

the information was already known to the receiving Party (as evidenced by its written records) prior to its receipt under this or any previous agreement between the Parties or their affiliates; or

The information was received from a third Party not in breach of an obligation of confidentiality.

INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights of the Service Provider and/or third party vest in the Service Provider and/or third party, as appropriate.

All rights in the City name and logo remain the absolute Property of the City.

The Service Provider warrants that no aspect of the Services provided in terms thereof will infringe any Patent, Design, Copyright, Trade Mark or trade secret or other proprietary right of any third party.

The Service Provider shall promptly notify the City, in writing, of any infringement or apparent or threatened infringement or any circumstances which may potentially give rise to an infringement, or any actions, claims or demands in relation to any Intellectual Property Rights.

In the event the City becomes aware of any such infringement, the Service Provider shall, at its cost, defend the City against any claim that the Services infringe any such third party Intellectual Property Rights, provided that the City gives notice to the Service Provider of such claim and the Service Provider controls the defence thereof. The Service Provider further indemnifies the City against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the City in any

action which is attributable to such claim and will reimburse the City with all costs reasonably incurred by the City in connection with any such action.

Should any claim be made against the City by any third party in terms of clause 0 above, the City shall give the Service Provider written notice thereof within 3 (three) days of becoming aware of such claim to enable the Service Provider to take steps to contest it.

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

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

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

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

withdraw the subject of infringement.

FORCE MAJEURE

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

If Force Majeure causes delays in or failure or partial failure of performance by a Party of all or any of its obligations hereunder, this Agreement shall be suspended for the period agreed in writing between the Parties.

In the event of circumstances arising which the other Party believes that it constitutes a Force Majeure ("the Affected Party") then such Affected Party shall send, within 5 (five) days from the interrupting circumstances, a written notice of the interrupting

circumstances specifying the nature and date of commencement of the interrupting event to the other Party. The Parties shall agree, in writing, to suspend the implementation of this Agreement for a specific period ("Agreed Period").

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

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

CESSION

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

CHANGE OF CONTROL / CIRCUMSTANCE

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

The Parties agree that should there be a change as envisaged in clause 0 above, the Service Provider will no longer exist and a new third party/entity shall have been constituted. In this regard, such third party shall not be entitled to inherit any of the Service Provider's rights and obligations in terms of this Agreement, which will only be transferred to the new entity in writing by the City following the City's satisfaction and approval in writing of such new entity.

The Service Provider shall further notify the City of any material changes or circumstance which might have led the City to appoint the Service Provider to Provide the Goods and/or Services. In the event that any material change or circumstance occurs and the Service Provider fails to inform the City of such a change or circumstance, the

Service Provider shall be deemed to have breached a material term of this Agreement and the City shall be entitled to cancel the Agreement on 1 (one) month's prior notice.

BREACH

Subject to clause 0 above, should either Party commit a breach of any term of this Agreement ("the Defaulting Party") then the affected party ("Aggrieved Party") shall be entitled to inform the Defaulting Party in writing to remedy such failure or default within 5 (five) Business Days and should the Defaulting Party fail to remedy the breach within 5 (five) Business Days after receipt of the notice the so Aggrieved Party shall be entitled, without prejudice to any of its rights under this Agreement or law to:

immediately terminate this Agreement without giving written notice and claim damages (which shall include legal costs on an attorney/client scale); or

request specific performance and claim damages (which shall include legal costs on an attorney/client scale); or

impose penalties as provided for in clause 0 above.

EARLY TERMINATION

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

DISPUTES

Save for clause 0 above or any other clause in this Agreement which provides for its own remedy, should any dispute arise between the Parties in respect of or pursuant to this Agreement, including, without limiting the generality of the foregoing, any dispute relating to:

the interpretation of the Agreement;

the performance of any of the terms of the Agreement;

any of the parties' rights and obligations;

any procedure to be followed;

the termination or cancellation or breach of this Agreement; or

the rectification or repudiation of this Agreement; then any Party may give the other Party written notice of such dispute, in which event the provisions below shall apply.

Within 7 (seven) days of the declaration of such dispute, the Parties representatives or their nominated persons shall meet in the spirit of goodwill and endeavour to resolve the dispute, failing which (and without prejudice to any other alternative dispute resolution to which the Parties may agree, either prior to or concurrently with arbitration) the provisions of this clause 0 above shall apply.

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

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

at any place which the Parties agree, in writing, to be mutually convenient.

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

If the arbitration is:

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

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

any other matter, then the arbitrator shall be any independent person agreed upon

between the parties.

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

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

The arbitrator may:

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

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

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

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

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

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

Notwithstanding the provisions of clauses 0, 0, 0, 0, 0, 0, and 0, in the event of either Party having a claim against the other Party for a liquidated amount or an amount which arises from a liquid document, or for an interdict or other urgent relief, then the other Party having such a claim shall be entitled to institute action therefore in a court of

law rather than in terms of the above clauses, notwithstanding the fact that the other Party may dispute the claim.

The provisions of this clause 25 are severable from the rest of this Agreement and shall remain in effect even where this Agreement is terminated or cancelled for any reason.

LAWS AND JURISDICTION

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

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

NOTICES AND COMMUNICATIONS

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

THE CITY:

Office of the City Manager
Tshwane House
2nd Floor, Block D
320 Madiba Street
Pretoria, 0001
P O Box 440
Pretoria, 0001
Fax: 086 214 9544

Attention: _____
Telephone: _____
Email: _____

THE SERVICE PROVIDER:

Telephone: _____
Fax: _____
Email: _____

Each Party shall be entitled from time to time, by written notice to the other Party, to vary its *domicilium* to any other address which is not a Post Office Box or a Poste Restante.

Any notice given and any payment made by any Party to another Party (hereinafter referred to as “the addressee”) which:

is delivered by hand during normal business hours of the addressee at the addressee’s *domicilium*, shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

is posted by prepaid registered post to the addressee at the addressee’s *domicilium* shall be deemed, until the contrary is proved by the addressee, to have been received on the 7th (seventh) day after the date of posting.

is sent by email or facsimile machine shall be deemed, until the contrary is proven by the addressee, to have been received within 1 (one) hour of transmission where it is transmitted during business hours of the receiving instrument and at noon on the following business day (excluding Saturdays) where it is transmitted outside such business hours.

Any notice or communication required or permitted in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by facsimile.

Notwithstanding anything to the contrary in this Agreement a notice or communication actually received by one Party shall be an adequate notice or communication notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi*.

GENERAL AND MISCELLANEOUS

SOLE RECORD OF AGREEMENT

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

NO AMENDMENT EXCEPT IN WRITING

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

WAIVERS

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

SURVIVAL OF OBLIGATIONS

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

APPROVALS AND CONSENTS

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

EXECUTION

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

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

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Duly represented by: _____

In his capacity as: _____

Signed at _____ on this _____ day of _____ 2020.

THE SERVICE PROVIDER

Duly represented by: _____

In his/her capacity as: _____

Signed at _____ on this _____ day of _____ 2020.

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CITY OF TSHWANE MUNICIPALITY					
BID NUMBER:	GPM 14 2021/22	CLOSING DATE:	1 March 2022	CLOSING TIME:	10:00
DESCRIPTION	TENDER INVITATION FOR THE LONG-TERM LEASE AND DEVELOPMENT OF MUNICIPAL PROPERTY: PORTION OF ERF 762 GEZINA				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Procurement Advice Centre at the entrance of C de Wet Centre					
Supply Chain Management					
175 Es'kia Mphahlele Drive,					
Pretoria West					
GPS coordinates: 25.750151°S, 28.173666°E					
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	<input type="checkbox"/> Yes <input type="checkbox"/> No	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]	
TOTAL NUMBER OF ITEMS OFFERED			TOTAL BID PRICE	R	
SIGNATURE OF BIDDER	.....		DATE		
CAPACITY UNDER WHICH THIS BID IS SIGNED					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:			TECHNICAL INFORMATION MAY BE DIRECTED TO:		
DEPARTMENT	Supply Chain Management		CONTACT PERSON	Johanna Maenetsa	
CONTACT PERSON	Relebogile Malatswane		TELEPHONE NUMBER	(012) 358 7389	
E-MAIL ADDRESS	Relebogilem@Tshwane.gov.za		E-MAIL ADDRESS	Johannahmae@tshwane.gov.za	

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR ONLINE</p> <p>1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.</p>
2. TAX COMPLIANCE REQUIREMENTS
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.</p> <p>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.</p> <p>2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.</p> <p>2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p>
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS
<p>3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.</p>

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

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

DATE:

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
3. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

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

3.2 Identity Number:

3.3 Position occupied in the Company (director, trustee, shareholder²):.....

3.4 Company Registration Number:

3.5 Tax Reference Number:.....

3.6 VAT Registration Number:

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

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

3.8.1 If yes, furnish particulars.

.....

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

(a) a member of –

- (i) any municipal council;
- (ii) any provincial legislature; or
- (iii) the national Assembly or the national Council of provinces;

(b) a member of the board of directors of any municipal entity;

(c) an official of any municipality or municipal entity;

(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);

(e) a member of the accounting authority of any national or provincial public entity; or

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

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

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

3.9.1 If yes, furnish particulars.....

.....

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

3.10.1 If yes, furnish particulars.

.....

.....

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

3.11.1 If yes, furnish particulars

.....

.....

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

3.12.1 If yes, furnish particulars.

.....

.....

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

3.13.1 If yes, furnish particulars.

.....

.....

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

3.14.1 If yes, furnish particulars:

.....

.....

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

Full Name	Identity Number	State Employee Number

.....
Signature

.....
Date

.....
Capacity

.....
Name of Bidder

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

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

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

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

.....

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

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

2.2 If yes, provide particulars.

.....

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

3.1 If yes, furnish particulars

.....

.....

4. Will any portion of goods or services be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality / municipal entity is expected to be transferred out of the Republic?

***YES / NO**

4.1 If yes, furnish particulars

.....

.....

CERTIFICATION

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

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to all bids:
- 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 The value of this bid is estimated **to exceed** R50 000 000 (all applicable taxes included) and therefore the **90/10** preference point system shall be applicable.
- 1.3 Preference points for this bid shall be awarded for:
- (a) Price; and
 - (b) B-BBEE Status Level of Contribution.
- 1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	90
B-BBEE STATUS LEVEL OF CONTRIBUTION	10
Total points for Price and B-BBEE must not exceed	100

- 1.5 Failure on the part of a bidder to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS), or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or a sworn affidavit confirming annual turnover and level of black ownership in case of an EME and QSE together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the

Broad-Based Black Economic Empowerment Act;

- (d) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended by Act No 46 of 2013;
- (f) **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- (g) **“consortium or joint venture”** 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;
- (h) **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- (i) **“EME”** means an Exempted Micro Enterprise as defines by Codes of Good Practice issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (j) **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- (k) **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- (l) **“non-firm prices”** means all prices other than “firm” prices;
- (m) **“person”** includes a juristic person;
- (n) **“QSE”** means a Qualifying Small Enterprise as defines by Codes of Good Practice issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (o) **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- (p) **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (q) **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- (r) **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (s) **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

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

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

****DUE TO THE ABOVE TENDER BEING A REVENUE GENERATING TENDER BIDDERS ARE ADVISED TO USE THE FOLLOWING FORMULA WILL BE APPLIED FOR PURPOSES OF EVALUATION.**

$$Ps = 90 \left(1 + \frac{Pt - Pmax}{Pmax} \right)$$

Where

- Ps = Points scored for price of tender under consideration;
- Pt = Price of tender under consideration; and
- Pmax = Price of highest acceptable tender.

POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

- 4.2 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6

7	2	4
8	1	2
Non-compliant contributor	0	0

- 4.3 A bidder who qualifies as an EME in terms of the B-BBEE Act must submit a sworn affidavit confirming Annual Total Revenue and Level of Black Ownership.
- 4.4 A Bidder other than EME or QSE must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 4.5 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 4.6 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 4.7 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 4.8 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 4.9 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

5. BID DECLARATION

- 5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

6. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 5.1

- 6.1 B-BBEE Status Level of Contribution: = (maximum of 10 or 20 points)
- (Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or a sworn affidavit.

7. SUB-CONTRACTING

- 7.1 Will any portion of the contract be sub-contracted?
(*Tick applicable box*)

YES		NO	
-----	--	----	--

7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME.

(Tick applicable box)

YES		NO	
-----	--	----	--

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
- ☐ One person business/sole propriety
- ☐ Close corporation
- ☐ Company
- ☐ (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

.....

8.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
- ☐ Supplier
- ☐ Professional service provider
- ☐ Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

8.7 MUNICIPAL INFORMATION

Municipality where business is situated:

Registered Account Number:

Stand Number:.....

8.8 Total number of years the company/firm has been in business:.....

8.9 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we 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 paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding 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) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, 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.

<p>WITNESSES</p> <p>1.</p> <p>2.</p>
--

<p>.....</p> <p>SIGNATURE(S) OF BIDDERS(S)</p>
<p>DATE:</p> <p>ADDRESS</p> <p>.....</p> <p>.....</p>

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

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

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

CERTIFICATION

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

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

.....
Signature

.....
Date

CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid: **GPM 14 2020/21**

TENDER INVITATION FOR THE LONG-TERM LEASE AND DEVELOPMENT OF MUNICIPAL PROPERTY: PORTION OF ERF 762 GEZINA FOR A PERIOD OF 30 YEARS in response to the invitation for the bid made by **CITY OF TSHWANE MUNICIPALITY**

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

I certify, on behalf of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:

(a) has been requested to submit a bid in response to this bid invitation;

(b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and

(c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
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.

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

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

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT:

GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

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

- 33. National Industrial Participation Programme (NIPP)
- 34. Prohibition of restrictive practices

General Conditions of Contract

1. Definitions

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

- 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.

1.22 “Republic” means the Republic of South Africa.

1.23 “SCC” means the Special Conditions of Contract.

1.24 “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

1. Application

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding

immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

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

5. Use of contract documents and information inspection.

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

- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

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

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

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

9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

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

**10. Delivery
and documents**

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

10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

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

12. Transportation

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

**13. Incidental
services**

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

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

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

14. Spare parts

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

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

15. Warranty

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

16. Payment

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

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

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

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

17. Prices

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

**18. Contract
amendments**

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

19. Assignment

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

20. Subcontracts

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

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

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

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

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's

point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

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

23. Termination for default

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

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

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

- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.
- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
 - (ii) the date of commencement of the restriction
 - (iii) the period of restriction; and
 - (iv) the reasons for the restriction.

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

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

24. Anti-dumping and countervailing duties and rights

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

25. Force Majeure

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

26. Termination for insolvency

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

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

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

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

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

- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

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

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

29. Governing language

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

30. Applicable law

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

31. Notices

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

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

32. Taxes and duties

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

33. National Industrial Participation (NIP) Programme

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

34. Prohibition of Restrictive practices

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