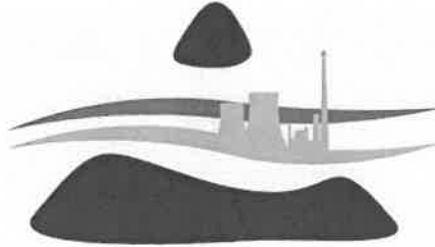


**FEZILE DABI
DISTRICT MUNICIPALITY**



BID DOCUMENT

SCM/BID NO: 014/2024-25

**PROCUREMENT OF A PANEL OF 10 LAW FIRMS TO RENDER PROFESSIONAL LEGAL
SERVICES FOR A PERIOD OF (36) MONTHS.**

CLOSING DATE 10 MARCH 2025 @ 12:00PM

PREPARED FOR/BY:

FEZILE DABI DISTRICT MUNICIPALITY
P.O.BOX 10
SASOLBURG
1947

TEL: (016) 970 8600
FAX: (016) 970 8762

ENQUIRIES: SCM UNIT
(016) 970 8600 OR

BIDDER: _____

BID AMOUNT (VAT INCL.): _____



Fezile Dabi

District Municipality

REQUEST FOR PROPOSALS/WRITE QUOTATIONS

Fezile Dabi District Municipality hereby invites services providers to submit proposal/bids for the below mention project.

Bid Number	Bid Description	Points System	Functionality	Document Price	Closing date	Compulsory Site Briefing	Contact Person
014/2024-25	Advert: Procurement of a panel of 10 law firms to render professional legal services for a period of (36) months	80/20 Preferential points system	Experience: 20 points capacity 20 points Good standing with LPC: 5 points Administrative support staff: 5 points Fidelity Fund Certificate: 20 points Law Firm registered with LPC 15 points Hourly tariff 15 points The minimum points for further evaluation is 80 points	R250.00 (Cash or direct deposit with a proof of deposit). Alternatively, @www.etender.gov.za for free on etender portal.	Monday, 10th March 2025 at 12:00pm Fezile Dabi District Municipality Main Building Sasolburg	There will be a site briefing on Wednesday the 26th February 2025 at the Fezile Dabi District Municipality Main Building Sasolburg	SCM Unit (016) 970 8600/Technical person Adv. Kiki Rabie Khonkhe 082 040 1371

Requirements: - Valid company tax clearance certificate must be attached or pin supplied. Certified ID copy. - Certified copy of the company registration certificate/founding certificate must be attached. - Copy of CSD registration report must be attached. - Municipal rates and taxes statement or your landlord stamp with municipal rates and taxes of the landlord or lease agreement with landlord municipality rates and taxes or affidavit with landlord municipality rates and taxes.- All compulsory/supplementary forms contained in the bid documents must be completed and signed (MBD 1,4, 6.1, 8 &9 amongst others) - Company profile.

Please note: - Bidders should take note that there will be site briefing on **Wednesday the 26th February 2025** Sealed bid should clearly indicate the bid in which you bid for.-Bid document will be obtainable as from **Monday, 17th February 2025, from Supply Chain Management Unit, Fezile Dabi District Municipality offices in Sasolburg.**-No bids will be accepted from persons in the service of the state. No telegraphic, telefax and late bids will be accepted.- Municipality is not bound to accept the lowest bid.- Failure to comply with the above mentioned conditions may invalidate your bid.- Bids will remain valid for 90 days. -All quotations will be evaluated in terms of preferential points system as prescribed in the preferential procurement policy regulation of 2022.

Mr S Thomas

Municipal Manager

LIST OF RETURNABLE DOCUMENTS THAT SHOULD FORM PART OF BID DOCUMENT

NUMBER	DETAILS	DOCUMENT: YES/NO	MAKE REFERENC E TO PAGE
1	Company registration certificate		
2	Municipal services, rates and taxes of the service provider		
2.1	Stamp/lease agreement including municipal service, rates and taxes of the landlord		
3	Tax compliance status		
4	MBD 6.1 Claiming Specific goals		
5	CSD registration report		
6	All compulsory/supplementary forms contained in the bid documents must be completed and signed (MBD:4.6.1,8 & 9 amongst others)		
7	Letter of Joint Ventures/Consortium JV agreement (If applicable)		
8	All certified documents should only be certified by <u>South African Policy Services (SAPS)</u>		
9	Certified ID copies of the Directors (SAPS Certified)		
10	Detailed CV of the <u>Director(s) or Partner(s)</u> certified qualification and affiliations, admission orders, reference letters reflecting experience in local government (SAPS Certified)		
11	Number of <u>Admitted Attorneys</u> of bidder with more than 5 years' experience in Private and Public Sector Law – admission orders of admitted attorneys, detailed CV's		
12	A valid and certified copy of good standing issued by the Legal Practice Council of the Directors(s) or Partner(s) (SAPS Certified)		
13	Two Administrative Staff Members (excluding Candidate Attorneys) CV's and sworn affidavit by the designated Director/Partner – (SAPS Certified)		
14	Valid and certified Attorneys Fidelity Fund Certificate of the Law Firm, Correspondent Attorneys/Partners to the firm issued by the Legal Practice Council, (LPC) – (SAPS Certified)		
15	Valid and certified copy of registration with the Legal Practice Council (SAPS Certified)		
16	Signed Declaration of Acceptance of the hourly tariff structure of the municipality (SAPS Certified)		
17	ANNEXURES – THE FOLLOWING ANNEXURES MUST FORM PART OF THE PROPOSAL BY BIDDERS.		
17.1	Organogram of the Firm setting out the Professional Staff reflecting capacity of each, dates of admission, area(s) of specialty, right of appearance per legal professional, the		

	individual experience of all professional individual and collectively - "Annexures A"		
17.2	CV's of at least two Administrative Staff – "Annexure B"		
17.3	Sworn Affidavit of assigned Director setting out names, positions and appointment dates of Administrative Staff – "Annexure C"		
17.4	Outline Communication Plan "Annexure D"		
17.5	Outline Litigation Strategy "Annexure E"		
17.6	Outline the Project Management Plan "Annexure F"		
17.7	Conflict of Interest Declaration "Annexure G"		
17.8	Declaration of acceptance of hourly tariffs of municipality "Annexure H"		
17.9	Disclosure of complaints/findings by the Legal Practice Council (LPC) "Annexure I"		

.....
Director's Signature

VERY IMPORTANT NOTICE ON DISQUALIFICATIONS

A bid that does not comply with the peremptory requirements stated hereunder will be regarded as not being an "acceptable bid", and such a bid will be rejected. An "acceptable bid" means any bid which, in all respects, complies with the conditions of the bid and the specifications as set out in the bid documents, including the conditions as specified in the Preferential Procurement Regulations, 2000 (Act 5 of 2000) and related legislation as published in *Government Gazette* 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 if 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;
 - (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 to the municipality in respect of a contract that would cause a conflict of interest.
7. Bid offers will be rejected if the bidder or any of his/her directors are listed on the Register of Bid Defaulters in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 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 District of Fezile Dabi District Municipality supply chain management system.
9. Failure to complete and sign the certificate of independent determination or disclosure of wrong information.

Failure to comply with the above will lead to immediate disqualification.

Bidder

CERTIFICATE OF AUTHORITY FOR SIGNATORY

Status of concern submitting tender (delete whichever is not applicable):

COMPANY/PARTNERSHIP/ONE-PERSON BUSINESS/CLOSE CORPORATION/JOINT VENTURE

A. COMPANY

If the bidder is a company, a certified copy of the resolution of the board of directors that is personally signed by the chairperson of the board, authorising the person who signs this bid to do so and 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 on 20....., Mr/Ms
..... has been duly authorised to
sign all documents in connection with Bid Number
.....

SIGNED ON BEHALF OF THE COMPANY:

IN HIS/HER 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 authorise to sign this bid as well as 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 undersigned,, hereby confirm that I am the sole owner of the business trading as

.....	
Signature	Date

D. CLOSE CORPORATION

In 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 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.

An example is shown below:

By resolution of the members at the meeting on 20at
....., Mr/Ms, whose
signature appears below, has been duly authorized to sign all documents in
connection with Bid Number

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 the 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 AUTHORISED SIGNATORY
Leading partner:		Signature: Name: Designation:
		Signature: Name: Designation:
		Signature: Name: Designation:
		Signature: Name: Designation:

TERMS OF REFERENCES:

TENDERS ARE INVITED FOR THE PROVISION OF PROFESSIONAL LEGAL SERVICES FOR FEZILE DABI DISTRICT MUNICIPALITY FOR A PERIOD OF THREE (03) YEARS: PANEL OF 10 (TEN) REPUTABLE LAW FIRMS- REQUEST FOR PROPOSALS AND FEE STRUCTURE

1. BUSINESS UNIT - LEGAL SERVICES (CORPORATE SUPPORT SERVICES DIRECTORATE):

1.1 Firms of attorneys will be required to render professional services to the Municipality on a wide range of legal matters, **Public and**

Private Law relating to, amongst others, the following fields of law:

- (a) Commercial Law;
- (b) Law of Contract;
- (c) All forms of Civil Law;
- (d) All forms of Criminal Law;
- (e) Constitutional and Human Rights Law;
- (f) Administrative Law;
- (g) Construction Law;
- (h) Insurance Law;
- (i) Corporate Law and Corporate Governance;
- (j) Environmental Law;
- (k) Intellectual Property Law;
- (l) General Litigation on all fields of law;
- (m) Public Procurement Law;
- (n) Labour Law and Alternative Dispute Resolution;
- (o) Legal Opinions;
- (p) Public Sector Law.
- (q) Banking Law.

- (r) Estate Law.
- (s) Taxation Laws.
- (t) Health Law.
- (u) Civil Rights Law.
- (v) Laws governing Municipal Demarcations,
- (w) Laws governing Pensions;
- (x) Laws governing Health and Safety as well as the COIDA;
- (y) Experience in Bids Authority Appeals;
- (z) Property Law (including conveyancing matters);
- (aa) Debt Collection;

NB. A COMPULSORY BRIEFING SESSION WILL BE HELD AT THE PREMISES OF THE MUNICIPALITY

An invitation to provide detailed proposals by reputable law firms. The proposals must clearly set out the capacity of each legal professional within the law firm. The law firm's organizational structure, which must be attached, must reflect the legal experience pre and post admission into the legal profession of each legal professional as well as reflecting the right of appearance with the relevant tribunal(s), a project management plan, a signed letter by the lead/managing director/partner accepting the tariff structure of the municipality as determined by the municipality and a communication management plan. The proposal must furthermore set out the firm's associations which must include its Association Agreement (if any) as well as the Law Firm's litigation strategy.

All law firms are required to set out a well-coordinated proposal with a clear methodology with corresponding annexures setting forth the following:

- A. Organogram of the Firm setting out the Professional Staff reflecting the names and capacity of each, dates of admission, area(s) of specialty, right of appearance per legal professional, the individual experience of all professionals individually and collectively on "Annexure A"
- B. CV's of at least two (02) Administrative Staff Members "Annexure B".
- C. The assigned director/shareholder of the firm must additionally attach a sworn affidavit setting out the names, positions and dates of appointment of the Administrative Staff Members as outlined in this tender on "Annexure C".

- D. Describe the Communication Plan or Strategy to be utilized with the municipality for the duration of the appointment on "Annexure D".
 - E. Describe the Litigation Strategy to be utilized with the municipality for the duration of the appointment on "Annexure E".
 - F. Outline the Project Management Plan to be utilized with the municipality for both litigious and non-litigious matters on "Annexure F".
 - G. A Conflict of interest undertaking by the assigned director/shareholder on "Annexure G".
 - H. A duly signed declaration of acceptance of the hourly tariff structure of the municipality that contains flat rates of fees for business hours, after hours, weekends and public holidays as outlined in the tender document by a duly authorized representative of the law firm on "Annexure H".
 - I. A duly signed disclosure under oath indicating all complaints and findings made against any of the directors/shareholders of the firm by the LPC, courts or any other relevant body as at date of application for the tender on "Annexure I".
- 1.1 The services required include telephonic and/or short consultations and/or advice on a *pro bono* basis in relation to the first 30 minutes to a specific matter that a firm is appointed to whenever such consultation is made.
 - 1.2 In responding to the tender, all law firms shall be deemed to have accepted that in submission of the proposals to the tender, all such proposals and related documentations shall form part of the ownership of the municipality.
 - 1.3 All Law Firms including their Correspondent Attorneys or Associates to the firms if there is more than one (01) Director, must be in possession of a valid and certified (not older than 3 months) Attorneys Fidelity Fund Certificate (AFFC) issued by the Legal Practice Council of South Africa (LPC) and shall be bound to annually provide the municipality with the (AFFC) renewal under the same conditions no later than the 30th of January each year until expiration of the term of the panel.
 - 1.4 All Sole Directors as well as Partnerships in Law firms must each reflect their detailed technical expertise, skills, experience and qualifications, ID's on their CV's and reflect same in their proposals in relation to the expertise sought as appearing on the tender. A disqualification will be made where there is non-compliance to this request and information
 - 1.5 Only law firms registered with the Legal Practice Council of South Africa (LPC) shall be considered for appointed onto the panel if they further meet all terms and conditions set out in the specifications. Duly certified proof of registration with the LPC (not longer than 03 months old) must be attached (Attach registration letter) reflecting whether the legal practitioner is a

practicing or non-practicing practitioner, this requirement will be applicable to all correspondent attorneys, affiliating firms. A disqualification will be made in the absence of the proof of registration with the LPC.

1.6 Only Law Firms with a valid and certified (not older than 3 months) letter of good standing from the Legal Practice Council of South Africa (LPC) will be considered for appointment if they additionally meet all terms and conditions set forth in the specifications. A disqualification will be made in the absence of the letter of good standing.

1.7 Description of the Management and Personnel Structure of the firm, detailing the number, functions and identity of partners, associates, professional assistants and law clerks (Candidate Attorneys and their duration of clerkship at the firm) and support staff will be required.

2. SPECIAL CONDITIONS OF THE CONTRACT

2.1 The services of the appointed firms will be utilized as and when required until completion of a matter assigned or any of the parties commit breach of contract which would lead to termination of the contract.

2.2 The Municipality reserves the right to appoint a maximum of (10) ten qualifying law firms to the panel for a period of 36 months

2.3 Where appointments are made for the period of 36 months onto the panel of attorneys as per the tender specifications, the municipality does not guarantee that it will assign matters to the appointed firms and indemnifies itself against any liability towards a legitimate expectation of work by attorneys to be appointed.

2.4 The Municipality shall request quotations from the appointed panel, where a need arises subjected to the conditions as set out in clause 2.3 and 80/20 preference points system

2.5 All Law Firms must disclose their affiliation (membership numbers) to the Legal Practice Council with the membership number of the Sole Director individually and of the Firm and/or all Directors/Partners of the Firm individually and as a collective of the firm and furthermore the status of each Partner (still practicing, consultant, trust account or non-trust account practitioner).

2.6 As part of the internal legal services governance within the municipality, the appointed firms shall be required to strictly comply with the reporting of their performance on cases assigned to them on a monthly basis which must be submitted to the municipality by the 10th of each month for the duration of the case. This will include all reporting inclusive of correspondent attorneys and legal counsel.

2.7 State the names of the partners and associates who would be assigned to the municipality's account in each practice area, describe the expected services to be provided by each.

2.8 Identify the nature of any potential conflict of interest that the firm may have in providing services to Fezile Dabi District Municipality in that:

- ❖ Indicate fully any conflict of interests, actual or potential, which might arise in connection with the firm's involvement with the municipality and if it is believed by the firm that a conflict might arise, describe how such conflict can be resolved. **(Provide confirmation in writing additional to the proposal).**

- ❖ Identify any past, pending or threatened litigation or proceedings to which the Law Firm or any of its partners are a party to and which may affect its reputation and/or could either materially impair the ability to perform the services envisaged herein and for which this Request for Proposals was issued or will and/or might materially adversely affect the financial condition of the firm. **(Provide confirmation in writing).**

2.9 Law Firms are expected to fully disclose additionally to the proposal whether they have previously been in business with the municipality and whether or not their mandate had been terminated for poor performance or any other reason(s). Provide full details of the reason(s) for termination and this is applicable to a single Director individually or the entire firm of Directors collectively.

2.10 Where transcripts are required, only the services of qualified transcribers shall be utilized, failure thereto will render the legal practitioner liable for any loss and/or damages suffered by deviation hereof.

NB: Any proposal that does not include all of the required information will be deemed non-responsive and subjected to rejection.

3. SCOPE OF PROFESSIONAL LEGAL SERVICES

3.1 The municipality shall from time to time require legal advice, assistance and representation in a number of areas of law as and when a need arise relevant to a given matter and/or instruction. While the municipality has a competent in house Legal Department with experience in many of these areas, we seek to augment our existing capabilities by being able to draw upon the resources of external legal expertise when needed. The municipality shall expect a transparent business relationship and appointed firms shall be expected to disclose through this relationship, their intellectual property which shall not be withheld on all matters assigned to them.

3.2 Involvement of the assigned Official from the internal Legal Department of the municipality during all stages or processes from the date of assignment of a case until finalization with supporting documentation.

3.3 Provision of advice, representation at courts and other tribunals, discussion of legal issues, case law and research on appointed cases.

3.4 Where applicable and in line with the municipality's cost containment measures, to conduct consultations and case preparations at the offices of the legal representatives unless agreed otherwise by both parties in writing.

4. TARIFF/FEE STRUCTURE

Additional to the hourly tariff structure of the municipality, Law firm's fees must adhere to the tariffs as determined from time to time in terms of the Rules Board for Courts of Law Act, 1985 (Act. No. 107 of 1985) on statutory fees, and must for purpose of the proposal, include the fee breakdown estimates in terms of the magistrates court, high court, supreme court of appeal, labor court and constitutional court [statutory fees] in respect of all other billable activities set forth therein.

4.1 The Municipality may at any time in its own discretion refer an account, invoice or bill of costs for taxation with a qualified taxing master.

4.2 Tariffs in respect of kilometers charged and travelled shall strictly be in-line with SARS Rates as amended from time to time and no alternative rates shall be accepted.

4.3 Tariffs on travelling time must clearly be reflected in the tariff structure of the proposal. (must be a flat rate).

4.4 The bill of costs submitted for work shall strictly be in an itemized form clearly indicating the actual work done, charges for each item together with supporting documentation of each transaction billed for.

4.5 Law firms shall not bill the municipality for confirmation of representation to any of the stakeholder aligned to the municipality that may be requested from time to time for accounting and accountability purposes.

4.6 Close-out reports on all cases shall be provided to the municipality at no costs and on the deadlines provided by the municipality.

5. FUNCTIONALITY OR EVALUATION CRITERIA

- *Only bidders scoring a minimum of 80 points in respect of the following criteria will be eligible for further evaluation.*
- *No points to be allocated where required documents are not certified as requested.*
- *No points to be allocated where supporting documentation is not provided.*

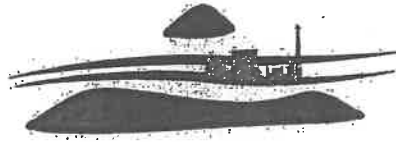
QUALITY CRITERIA	WEIGHTS	MAX NUMBER OF POINTS	DOCUMENTS TO BE SUBMITTED AS PROOF OF SCORING
1. Experience in Local Government work (The experience of the Director(s)/Partner(s) with the most experience will be taken into account) 0-1 year More than 1 year up to 3 years More than 3 years up to 5 years More than 5 years up to 7 years More than 7 years	4 8 12 16 20	20	<i>Provide the following documentation certified with the South African Police Services (SAPS):</i> 1. A certified copy (not older than 03 months) of the admission order of the Director/Partner. 2. A detailed CV of the Director/Partner, certified qualifications and affiliations (if any) (not older than 03 months). 3. Reference letters reflecting the experience in Local Government.
2. Capacity Number of Admitted Attorneys of bidder with more than 5 years' experience in Private and Public Sector Law 1 Attorney 2 Attorneys 3 Attorneys 4 Attorneys More than 4 Attorneys	4 8 12 16 20	20	<i>Provide the following documentation certified with the South African Police Services (SAPS):</i> 1. A certified copy (not older than 03 months) of the admission order of the Admitted Attorney(s). 2. A detailed CV of the Director/Partner, certified qualifications and affiliations (if any) (not older than 03 months).
3. Proof of good standing with the Legal Practice Council of South Africa of the Director(s)/Partners		5	<i>Provide the following documentation certified with the South African Police Services (SAPS):</i>

No Yes	0 5		1. a valid and certified copy (not older than 3 months) of each Director/Partner of the Law Firm
4. Does your firm have at least 2 administrative supporting staff member (excluding candidate attorneys) with more than 3 years' service in your firm? No/Yes No Yes	5 0 5	5	<i>Provide the following documentation certified with the South African Police Services (SAPS):</i> - CV's of at least two administrative staff members must be attached. - Provide the Organizational Structure of the Law Firm. - The assigned director/shareholder of the firm must additionally attach a sworn affidavit setting out the names, positions and dates of appointment of the support staff.
5. Does the Law Firm have a valid and certified (not older than 03 months) Attorneys Fidelity Fund Certificate issued by the Legal Practice Council of South Africa (LPC). No Yes	20 0 20	20	<i>Provide the following documentation certified with the South African Police Services (SAPS):</i> Provide a valid certified copy (not older than 03 months) of the Attorneys Fidelity Fund Certificate of the Law Firm, Correspondence Attorney or Partners to the firm)
6. Is the Law Firm registered with the Legal Practice Council of South Africa (LPC)? No Yes	15 0 15	15	<i>Provide the following documentation certified with the South African Police Services (SAPS):</i> Provide certified copy (not older than 03 months) of registration with the Legal Practice Council of South Africa (LPC).

7. Is the declaration of acceptance of the <u>hourly tariff structure of the municipality</u> as outlined in the tender document completed and the tariffs as determined from time to time in terms of the Rules Board for Courts of Law Act, 1985 (Act. No. 107 of 1985), <u>fee breakdown estimates in terms of the magistrates court, high court, supreme court of appeal, labor court and constitutional court</u> as per the rules board for courts of law in respect of all other billable activities set forth therein. No Yes	0 15	15	1. Provide a signed declaration of the acceptance of the hourly tariff structure of the municipality as provided in the tender document. 2. Provide the fees breakdown of all billable activities in terms of the magistrates court, high court, labour court and labour appeal court, supreme court of appeal and constitutional court.
MAX POSSIBLE SCORE		100	

DURATION OF THE CONTRACT
Three (3) Years.

FEZILE DABI



DISTRICT MUNICIPALITY

John Voster Road
SASOLBURG

1947

P O Box 10
SASOLBURG
1947

Tel: 016 970 8600
Fax: 016 970 8762

Enquiries: Supply Chain Management Unit

MUNICIPAL SERVICES, RATES AND TAXES CLEARANCE CERTIFICATE FOR SUPPLY CHAIN MANAGEMENT PURPOSE

The purpose of this form is to obtain prove that municipal services, rates and taxes of the service provider are not more than three months in arrears with the relevant municipality / landlord in the municipal area where the service provider conduct his / her business. **This form is to be completed only if the service provider's rates and taxes are not in arrears for more than three months.**

PART A – to be completed by the relevant municipality in the case where the service provider is the registered owner of the site / owner pays for municipal services / tenant pays for municipal services

OR

PART B – to be completed by the landlord in the case where the service provider is renting the premises / rental paid by tenant include municipal services.

PART A (TO BE COMPLETED BY THE RELEVANT MUNICIPALITY)

Name of the Municipality: _____

Property Physical Address: _____

Registered Name: _____

Official's Name: _____

Signature : _____

Date: _____

Municipality Stamp Here

Please tick whether in arrears or up-to-date

Rates and taxes : Up-to-date / in arrears for more than 3 months

Water: Up-to-date / in arrears for more than 3 months

Electricity: Up-to-date / in arrears for more than 3 months

Refuse : Up-to-date / in arrears for more than 3 months
Other services: Up-to-date / in arrears for more than 3 months

PART B (TO BE COMPLETED BY THE LANDLORD)

Name of the Landlord:

Property Physical Address:

Landlord Signature:

Date: _____

Landlord's business stamp here
Or an Affidavit from SAPS
(in the event the landlord does not have
a business stamp)

Please tick whether up-to-date or in arrears

Rental: Up-to-date / in arrears for more than 3 months
Municipal services: Up-to-date / in arrears for more than 3 months

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE FEZILE DABI DISTRICT MUNICIPALITY				
BID NUMBER:	014/2024-25	CLOSING DATE:	10 th March 2025	CLOSING TIME: 12:00pm
DESCRIPTION	Procurement of a panel of 10 law firm to render professional legal service for the a period of (36) months			
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				

JOHN VORSTER ROAD

SASOLBURG

1947

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:

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES, ANSWER PART B:3]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER		DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT		CONTACT PERSON	
CONTACT PERSON		TELEPHONE NUMBER	
TELEPHONE NUMBER		FACSIMILE NUMBER	
FACSIMILE NUMBER		E-MAIL ADDRESS	
E-MAIL ADDRESS			

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:										
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION. 1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.										
2. TAX COMPLIANCE REQUIREMENTS										
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS. 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS. 2.3 APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA. 2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3. 2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID. 2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER. 2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.										
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS										
<table style="width: 100%; border: none;"> <tr> <td style="width: 70%;">3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?</td> <td style="text-align: right;">☐ YES ☐ NO</td> </tr> <tr> <td>3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA?</td> <td style="text-align: right;">☐ YES ☐ NO</td> </tr> <tr> <td>3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?</td> <td style="text-align: right;">☐ YES ☐ NO</td> </tr> <tr> <td>3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?</td> <td style="text-align: right;">☐ YES ☐ NO</td> </tr> <tr> <td>3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?</td> <td style="text-align: right;">☐ YES ☐ NO</td> </tr> </table> 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.	3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	☐ YES ☐ NO	3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA?	☐ YES ☐ NO	3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	☐ YES ☐ NO	3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	☐ YES ☐ NO	3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	☐ YES ☐ NO
3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	☐ YES ☐ NO									
3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA?	☐ YES ☐ NO									
3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	☐ YES ☐ NO									
3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	☐ YES ☐ NO									
3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	☐ YES ☐ NO									

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:

TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

- 1 In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
- 2 SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
- 3 The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
- 4 In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
- 5 Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website www.sars.gov.za.
- 6 Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sars.gov.za.

YES / NO

3.8 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?

3.8.1 If so, furnish particulars.

.....

3.9 Are you, aware of any relationship (family, friend, other) between a 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

3.9.1 If so, furnish particulars

.....

3.10 Are any of the company's directors, managers, principal shareholders or stakeholders in service of the state?

YES / NO

3.10.1 If so, furnish particulars.

.....

3.11 Are any spouse, child or parent of the company's directors, managers, principal shareholders or stakeholders in service of the state?

YES / NO

3.11.1 If so, furnish particulars.

.....

CERTIFICATION

I, THE UNDERSIGNED (NAME)

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state*.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make 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 and/or take an oath declaring his/her interest.

3 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

3.1 Full Name:

3.2 Identity Number:

3.3 Company Registration Number:

3.4 Tax Reference Number:

3.5 VAT Registration Number:

3.6 Are you presently in the service of the state*

YES / NO

3.6.1 If so, furnish particulars.

.....

3.7 Have you been in the service of the state for the past twelve months?

YES / NO

3.7.1 If so, furnish particulars.

.....

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

(a) a member of –

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

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

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

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

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

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

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

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

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

1. GENERAL CONDITIONS

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

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

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

(delete whichever is not applicable for this tender).

- a) The applicable preference point system for this tender is the 90/10 preference point system.
- b) The applicable preference point system for this tender is the 80/20 preference point system.
- c) Either the 90/10 or 80/20 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

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

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

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

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	
SPECIFIC GOALS	
Total points for Price and SPECIFIC GOALS	100

- 1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

2. DEFINITIONS

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

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

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

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

80/20	or	90/10	
$Ps = 80 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right) \text{ or } Ps = 90 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right)$			

Where

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

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

3.2.1. POINTS AWARDED FOR PRICE

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

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

Where

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

4. POINTS AWARDED FOR SPECIFIC GOALS

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

4.1.1. Locality

Youth Ownership of the company/enterprise, if a portion of the 20/10 points is allocated to promote this goal, the following ownership percentage categories should be used. **The points per percentage category will be determined in the tender specification document**

Locality of supplier (Provide proof of address)	Number of Points for preference 80/20
Within the boundaries of Fezile Dabi District Municipality	10
Within the boundaries of Free State	5
Outside of the boundaries of Free State	0

4.1.2. Women Ownership

Women Owned of the company/enterprise, if a portion of the 20/10 points is allocated to promote this goal, the following ownership percentage categories should be used. **The points per percentage category will be determined in the tender specification document**

Women Ownership of the company (Provide shareholder certificate with ID copy)	Number of Points for preference 80/20
81-100% Women owned	5
61-80% Women owned	4
41-60% Women owned	3
21-40% Women owned	2
1-20% Women owned	1
0%- Women owned	0

4.1.3. Disability

Women Owned of the company/enterprise, if a portion of the 20/10 points is allocated to promote this goal, the following ownership percentage categories should be used. **The points per percentage category will be determined in the tender specification document**

People living with disability Ownership of the company (Provide shareholder certificate with ID copy)	Number of Points for preference 80/20
51-100%	5
0-50%	0

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

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

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

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

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

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

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Locality: (Provide proof of address)	-	10	-	
Within the boundaries of Fezile Dabi District Municipality	-	10	-	
Within the boundaries of Free State	-	5	-	
Outside of the boundaries of Free State	-	0	-	
Women ownership: (Provide shareholder certificate with ID copy)	-	5	-	
81-100% Women owned	-	5	-	
61-80% Women owned	-	4	-	
41-60% Women owned	-	3	-	
21-40% Women owned	-	2	-	
1-20% Women owned	-	1	-	
0%- Women owned	-	0	-	
Disability ownership: (Provide shareholder certificate with ID copy)	-	5	-	
51-100%	-	5	-	
0-50%	-	0	-	

DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM:

Partnership/Joint Venture / Consortium

One-person business/sole propriety

Close corporation

Public Company

Personal Liability Company

(Pty) Limited

Non-Profit Company

State Owned Company

[TICK APPLICABLE BOX]

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

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

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

SURNAME AND NAME:

DATE:

ADDRESS:

.....

.....

.....

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). 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.	Yes ☐	No ☐
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes ☐	No ☐

4.3.1	If so, furnish particulars:		
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?	☐	☐
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?	☐	☐
4.7.1	If so, furnish particulars:		

CERTIFICATION

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js367bW

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:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Municipality / Municipal Entity)

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

I certify, on behalf of: _____ that:
(Name of Bidder)

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

- (a) has been requested to submit a bid in response to this bid invitation;
- (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
- (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

.....
Position

.....
Date

.....
Name of Bidder

Js9141w 4

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

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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 any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 "Day" means calendar day.
 - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
 - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
 - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad markets 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.

THE NATIONAL TREASURY: Republic of South Africa

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

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

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

1.26 "Tort" means in breach of contract.

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

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

2. Application

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services (excluding professional services related to the building and construction industry), sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

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

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

3. General

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

3.2 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.

4. Standards

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

5. Use of contract documents and information inspection

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

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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.

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

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

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

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

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

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

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8. Inspections, tests and analyses

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

9. Packing

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

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

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

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental Services

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

- (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, 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:

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

15. Warranty

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

16. Payment

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

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

16.4 Payment will be made in Rand unless otherwise stipulated.

17. Prices

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

18. Variation orders

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

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

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

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

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21.4 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of penalties.

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

22. Penalties

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

23. Termination for default

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

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

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

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

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- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.
- 23.5 Any restriction imposed on any person by the purchaser will, at the discretion of the purchaser, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the purchaser actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
 - (ii) the date of commencement of the restriction
 - (iii) the period of restriction; and
 - (iv) the reasons for the restriction.

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

- 23.7 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

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24. Anti-dumping and countervailing duties and rights

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

25. Force Majeure

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

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

26. Termination for insolvency

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

27. Settlement of Disputes

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

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

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

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

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

28. Limitation of Liability

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

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

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.

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.

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- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid SARS must have certified that the tax matters of the preferred bidder are in order.
- 32.4 No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.
- 33. Transfer of contracts**
- 33.1 The contractor shall not abandon, transfer, cede assign or sublet a contract or part thereof without the written permission of the purchaser
- 34. Amendment of contracts**
- 34.1 No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.
- 35. Prohibition of restrictive practices**
- 35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) / are or a contractor(s) was / were involved in collusive bidding.
- 35.2 If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 Of 1998.
- 35.3 If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

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