City of Johannesburg
Metrobus

BID NO: TSD 13/2020-2021

RE-ADVERT: PROVISION FOR LEASING DIAGNOSTIC MACHINE FOR MERCEDES BENZ BUSES FOR A PERIOD OF THIRTY SIX (36) MONTHS TO METROBUS AS AND WHEN REQUIRED.

METROBUS

BIDDER'S NAME:: _____

CSD NUMBER: _____

TELEPHONE NUMBER: _____

E-MAIL ADDRESS: _____

PHYSICAL ADDRESS: _____

POSTAL ADDRESS: _____

Total Tender Price: R_____

Tender Price in words: _____

_____

ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:

Department: Supply Chain Management: Bids@mbus.joburg.org.za

INVITATION FOR PROSPECTIVE BIDDERS

Metrobus hereby invites prospective bidders with proven track record to respond to the following request.

Bid No.	Service Description	Evaluation criteria	Closing Date	Technical Enquiries
TSD 13 /2020-2021	**Re-Advert:** Provision for Leasing Diagnostic Machines for Mercedes Benz Buses for a period of thirty six (36) months, as and when required.	functionality and 80 / 20 preferential points	Date: 19 January 2022 Time: 11:00am, Transportation house, corner Enoch Sontonga & Raikes road, Braamfontein	James Beukes (011) 403 4300 email:jbeukes@mbus.joburg.org.za or bids@mbus.joburg.org.za

The tender document can be downloaded for free of charge on the National Treasury website at www.etenders.gov.za as from the **10 December 2021**

Alternatively, Tender document can also be obtained at Metrobus Head Office, 1 Raikes Street, Braamfontein, for a non-refundable fee of R500 that is payable when collecting the document.

Sealed documents individually marked with the abovementioned Bid No. **TSD 13/2020-2021** and Service Description, must be placed in the Tender box situated at ground floor (left hand side of the entrance just before the security desk), Metrobus Main Building by the closing date and time as per Metrobus` s clock. All Suppliers are encouraged to make their submission before the closing time. It is the prospective bidders' responsibility to obtain documents in time to ensure responses reach Metrobus timorously.

No tenders will be accepted after the closing date and time. No tender per facsimile or e-mailed will be accepted. Office hours are from 08h00 to 16h00 weekdays for the collection of documents.
Bids will be publicly opened at Metrobus, No. 1 Raikes Road Braamfontein on the closing date and time as stipulated above.

All enquiries relating to the bidding procedure should be directed to Supply Chain Management Unit at the following email: bids@mbus.joburg.org.za

only written enquiries will be attended to

Metrobus is not obliged to appoint the cheapest tenderer and reserves the right appoint in parts not to accept any submission and to re-advertise if it so wishes. Service providers will be adjudicated according to the Supply Chain Management Policy using the point system mentioned above, based on the Preferential Procurement Policy Framework Act, Act 5 of 2005, preferential procurement regulations 2017, MFMA, Act 56 of 2003, as well as the Broad Based Black Economic Empowerment Act, Act 53 of 2003.

Furthermore, Metrobus reserve the right to appoint more than one bidder or to appoint a panel of service providers.

IMPORTANT NOTICE

1. Metrobus reserve the right to award to more than one bidder or to a panel of service providers and further reserve the right to not award the bid or only award the portion of the bid
2. Bidders are reminded that for any and all alterations in the bid document must be initialed / signed in full by the bidder's authorized signatory and or provide an accompanying letter on the bidder's official letterhead will indicate such alterations.
3. This bid, correctly endorsed, is to be addressed to the Supply Chain Management and must be deposited into the tender/ bid box at the Ground Floor: Main Entrance, Metrobus, No. 1 Raikes Road Braamfontein, at the time and date shown herein. Under no circumstance will late tenders be accepted.
4. Failure to attend the compulsory briefing session (if applicable to the bid) will result in disqualification of the bid.
5. Failure to submit samples, if requested will result in disqualification of the bid.
6. The bid document is to be completed in ink and in full.
7. The bid document is to be submitted in full in the same order as issued, with all the sections attached.
8. In bid where Consortiums and Joint Ventures are involved, an agreement endorsed with signatures of all parties involved, must be submitted, and further each party must submit a separate proof of TCS / PIN / CSD number.
9. B-BBEE status level verification certificate or sworn affidavit (for EME'S& QSE'S) must be submitted in order to qualify for preference points.
10. The Name(s) or Surname of a bidder on the returnable documents should be the same as those on the Identity Document (ID), in a situation where there is inconsistency on the name(s) or surname, the onus is on the bidder to clarify that inconsistency by submitting supporting documents and/or an affidavit together with his/her bid/proposal. Failure to do that might lead to his/her bid not being considered.
11. The bid shall be valid for a period of 120 days calculated from the closing date or such further extension period as may be requested by Metrobus.
12. Failure to price or quote according to the specification/scope of work may lead to the proposal/bid not being considered for further evaluation.
13. Should there be dispute or inconsistency in the pricing or bid offer, the amount indicated on MBD1, in words, shall supersede any other price offer indicated anywhere in the tender document.

FAILURE TO COMPLY WITH THE ABOVE REQUIREMENTS MAY DISQUALIFY THE BID

Bidder /s……

Physical Address…….....

Postal Address……
Telephone: …… Cell: ……

E-mail: ……

INDEX

No.	TABLE OF CONTENTS	SOURCE DOCUMENT	Page no.
1.	BID DOCUMENTS CHECK LIST:		5
2.	INVITATION TO BID	MBD 1	6-7
3.	TAX CLEARANCE CERTIFICATE REQUIREMENTS	MBD 2	8
4.	DECLARATION OF INTEREST	MBD 4	9-10
5.	DECLARATION FOR PROCUMENT ABOVE R10 MILLION	MBD 5	11-12
6.	PREFERENCE POINTS CLAIMS	MBD 6.1	13-17
7.	DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS	MBD 6.2	18-21
8.	DECLARATION OF BIDDERS PAST SCM PRACTICE	MBD 8	22-23
9.	CERTIFICATE OF INDEPENDENT BID DETERMINATION	MBD 9	24-26
10.	AUTHORITY OF SIGNATURE		27
11.	GENERAL CONDITIONS OF CONTRACT		28-45
12.	SCOPE OF WORK / SPECIFICATION / TERMS OF REFERENCE		46-47
13.	MANDATORY REQUIREMENTS		48
14.	EVALUATION CRITERIA		49
15.	REFERENCE		50
16.	PRICING SCHEDULE		51

1. BID DOCUMENTS CHECK LIST:

A completed and signed bid document should be submitted in a sealed envelope and it should be properly packaged or bound. The bidders are further advised to use dividers and properly number their documents in accordance with the numbering stated below.

Item	Description	Submitted – Indicate YES or NO
1.	Company registration documents.	
2.	Submissions of a valid Tax Clearance Certificate or alternatively supply the unique pin number to access the Tax compliance status	
3.	Completed and signed MBD 1,4,5,6.1,6.2 8, 9, NB: Failure to fully complete all sections may lead to a disqualification of the bid	
4.	General Condition of Contract (GCC) to be signed	
5.	Rates and taxes account not older than three months and not more than 90 days in arrears, or lease agreement for the company and ALL directors. In a case where the bidder does not lease or own property an affidavit should be attached.	
6.	ID copies of shareholders / directors	
7.	Signed JV agreement for Joint Venture companies. Separate National Treasury Central Supplier Database registration and consolidated BBBEE certificate(where applicable)	
8.	Initial / sign for all alterations in the tender document	
9.	Registration with on the National Treasury Supplier Database Registration and/or Registration with CIDB (only for construction related bids)	
10.	B-BBEE certificate in line with PPPFA requirements OR **SWORN AFFIDAVIT for EME/QSE**	
11.	For tenders above R10 million, if the company is required by law, a three (03) years set of audited financial statement should be attached or since their establishment if established during the past three years.	
12.	Bidders are required to submit an electronic copy of the tender document together with supporting documents on a compact disk/DVD clearly indicating the company name and the tender number on the container/cover.	

REQUEST FOR BID

YOU ARE HEREBY INVITED TO BID FOR THE FOLLOWING REQUIREMENTS OF METROBUS

BID NUMBER: TSD 13/2020-2021

Briefing session: None

Closing Date: 19 January 2022 **Closing Time: 11h00**

DESCRIPTION:

Re-Advert: Provision for Leasing Diagnostic Machine for Mercedes Benz Buses for a period of thirty six (36) months, as and when required

DEPOSITED IN THE BID BOX SITUATED AT GROUND FLOOR (left hand side of the entrance just after the security doors), **Metrobus Main Building by the closing date and time as per Metrobus's clock. All Suppliers are encouraged to make their submission before the closing time.**

No 1 Raikes Road

Braamfontein

Bidders should ensure that bids are delivered timeously to the correct address. If the bid is late, it will not be accepted for consideration.

The bid box is open 24 hours a day, 7 days a week.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS (NOT TO BE RE-TYPED or TAMPERED WITH)

METROBUS RESERVES THE RIGHT TO APPOINT THE TENDER IN PARTS OR TO AWARD TO MORE THAN ONE SERVICE PROVIDER

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

THE FOLLOWING PARTICULARS MUST BE FURNISHED
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

NAME OF BIDDING ENTITY .....

.....

POSTAL ADDRESS .....

.....

STREET ADDRESS .....

TELEPHONE NUMBER CODE ..... NUMBER .....

CELLPHONE NUMBER .....

FACSIMILE NUMBER CODE..... NUMBER .....

E-MAIL ADDRESS ....

VAT REGISTRATION NUMBER .....

HAS AN ORIGINAL VAT CERTIFICATE BEEN ATTACHED? Please tick appropriate box

YES	NO	N/A

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS/SERVICES? OFFERED BY YOU? Please tick appropriate box IF YES ENCLOSE PROOF

YES	NO	N/A

CENTRAL SUPPIER DATABASE NUMBER.....

SIGNATURE OF BIDDER .....

DATE .....

CAPACITY UNDER WHICH THIS BID IS SIGNED.....

TOTAL BID PRICE (incl. VAT) R _____

TOTAL BID PRICE (incl. VAT) in words: _____

_____

ALL QUERIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO THE SUPPLY CHAIN MANAGEMENT DEPARTMEN AT bids@mbus.joburg.org.za

***only written enquiries will be attended to.**

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 these requirement bidders are required to submit the valid Tax Clearance Certificate

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 valid Tax Clearance Certificate must be submitted together with the bid. Failure to submit the valid Tax Clearance Certificate will result in the invalidation of the bid.

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 e-filing. In order to use this provision, taxpayers will need to register with SARS as e-filing through the website www.sars.gov.za.

DECLARATION OF INTEREST

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

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

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

3.2. Identity Number…….

3.3. Position occupied in the Company (director, trustee, shareholder) ……...

3.4. Company Registration Number……

3.5. Tax Reference Number……

3.6.VAT Registration Number: ……

3.7. The names of all directors / trustees / shareholder's 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. ….……

[1]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.

[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 spouses, child or parent of the company's director's trustees, managers, principle shareholders or stakeholders in service of the state?

YES	NO

3.13.1. If 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?

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?

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.

……

…….

……...

……..

* Delete if not applicable

3 Has any contract been awarded to you by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract?

3.1 If yes, furnish particulars

……

……

*YES / NO

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?

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 not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable;

1.3 Points for this bid shall be awarded for:

(a) Price; and

(b) B-BBEE Status Level of Contributor.

1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	**80**
B-BBEE STATUS LEVEL OF CONTRIBUTOR	**20**
Total points for Price and B-BBEE must not exceed	**100**

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor 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) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

(b) "**B-BBEE status level of contributor"** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

(c) **"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 goods or services, through price quotations, advertised competitive bidding processes or proposals;

(d) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(e) "EME" means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;

(f) **"functionality"** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.

(g) **"prices"** includes all applicable taxes less all unconditional discounts;

(h) **"proof of B-BBEE status level of contributor"** means:

1) B-BBEE Status level certificate issued by an authorized body or person;

2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;

3) Any other requirement prescribed in terms of the B-BBEE Act;

(i) **"QSE"** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;

(j) **"rand value"** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

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

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

$$Ps = 80 / 90 \left[\frac{Pt - Pmin}{Pmin} \right]$$

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

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

4.1 In terms of Regulation 6 (2) and 7 (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

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 CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

6.1 B-BBEE Status Level of Contributor: = ……(maximum of 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

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 or QSE ……...

Subcontracting as condition of tender in terms of Preferential Procurement Regulations 2017.

If feasible to subcontract for a contract above R30 million, an organ of state must apply subcontracting to advance designated groups.

If an organ of state applies subcontracting as contemplated in, the organ of state must advertise the tender with a specific tendering condition that the successful renderer must subcontract a minimum of 30% of the value of the contract to(a) an EME or QSE

The below table sets appropriate designated sectors as a condition in subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

Designated Group: An EME or QSE which is at last 51% owned by:	**EME**	**QSE**
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		

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]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

……
……
……

8.6 COMPANY CLASSIFICATION

Manufacturer
Supplier
Professional service provider
Other service providers, e.g. transporter, etc.
[*TICK APPLICABLE*]

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 authorized to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 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 paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof the satisfaction of the purchaser that the claims are correct;

iv) If the B-BBEE status level of contributor 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 favorable arrangements due to such cancellation;

(d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury 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.

WITNESSES 1. …….. 2. ……	…… SIGNATURE(S) OF BIDDERS(S) DATE: …….. ADDRESS …….. …….. ……..

DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Municipal Bidding Document (MBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2011 and the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

1. General Conditions

1.1. Preferential Procurement Regulations, 2011 (Regulation 9) makes provision for the promotion of local production and content.

1.2. Regulation 9. (1) Prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the specific bidding condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.

1.3. Where necessary, for bids referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.

1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1- x / y] *100$$

Where
x is the imported content in Rand
y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as required in paragraph 4.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on http://www.thedti.gov.za/industrial development/ip.jsp at no cost.

1.6. A bid may be disqualified if –

(a) this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation; and

(b) The bidder fails to declare that the Local Content Declaration Templates (Annex C, D and E) have been audited and certified as correct.

2. Definitions

2.1. **"bid"** includes written price quotations, advertised competitive bids or proposals;

2.2. **"bid price"** price offered by the bidder, excluding value added tax (VAT);

2.3. **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;

2.4. **"designated sector"** means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content;

2.5. **"duly sign"** means a Declaration Certificate for Local Content that has been signed by the Chief Financial Officer or other legally responsible person nominated in writing by the Chief Executive, or senior member / person with management responsibility (close corporation, partnership or individual).

2.6. **"imported content"** means that portion of the bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad (this includes labour and intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;

2.7. **"local content"** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;

2.8. **"stipulated minimum threshold"** means that portion of local production and content as determined by the Department of Trade and Industry; and

2.9. **"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.

3. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are 100% Local Production and content

Not applicable

Description of services, works or goods	Stipulated minimum threshold
_____	_____%
_____	_____%
_____	_____%

4. Does any portion of the services, works or goods offered?
have any imported content?
(***Tick applicable box***)

YES		NO	

4.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by the SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information are accessible on **www.reservebank.co.za.**

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

Currency	**Rates of exchange**
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

5. Were the Local Content Declaration Templates (Annex C, D and E) audited and certified as correct? (***Tick applicable box***)

YES		NO	

5.1. If yes, provide the following particulars:
(a) Full name of auditor: ……
(b) Practice number: …….
(c) Telephone and cell number: …….
(d) Email address: …….

<u>(Documentary proof regarding the declaration will, when required, be submitted to the satisfaction of the Accounting Officer / Accounting Authority)</u>

6. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the DTI must be informed accordingly in order for the DTI to verify and in consultation with the Accounting Officer / Accounting Authority provide directives in this regard.

<u>LOCAL CONTENT DECLARATION</u>
<u>(REFER TO ANNEX B OF SATS 1286:2011)</u>

LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)

IN RESPECT OF BID NO. .....

ISSUED BY: (Procurement Authority / Name of Municipality / Municipal Entity): .....

NB

1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.

2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on http://www.thedti.gov.za/industrial_development/ip.jsp. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, ……..... (full names),
do hereby declare, in my capacity as …… ……..
of .....(name of bidder entity), the following:

(a) The facts contained herein are within my own personal knowledge.

(b) I have satisfied myself that

(i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
(ii) the declaration templates have been audited and certified to be correct.

(c)The local content percentages (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C;

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above. The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.

(d) I accept that the Procurement Authority / Municipality /Municipal Entity has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.

(e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Municipal / Municipal Entity imposing any or all of the remedies as provided for in Regulation 13 of the Preferential Procurement Regulations, 2011 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

SIGNATURE: _____ **DATE:** _____

WITNESS No. 1 _____ **DATE:** _____

WITNESS No. 2 _____ **DATE:** _____

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 as a company or person 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 National Treasury after the *audi alteram partem* rule was applied).**	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)? **(To access this Register enter the National Treasury's website, www.treasury.gov.za, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445).**	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?	Yes ☐	No ☐
4.4.1	If so, furnish particulars:		
4.5	**Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?**	Yes ☐	No ☐
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.

_____ _____

Name of the bidder **Position**

_____ _____

Signature **Date**

CERTIFICATE OF INDEPENDENT BID DETERMINATION

1 This Municipal Bidding Document (MBD) must form part of all bids[1] invited.

2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).[2] Collusive bidding is a *per se* prohibition meaning that it cannot be justified under any grounds.

3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:

a. take all reasonable steps to prevent such abuse;
b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.

4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.

5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

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

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

[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.

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 consortium[3] 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.
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.

Name of the bidder	**Position**
Signature	**Date**

AUTHORITY FOR SIGNATORY

Signatories for close corporations and companies shall confirm their authority by singing or attaching to the form a duly signed and dated copy of the relevant resolution of their members or their board of directors, as the case may be.

"By resolution of the board of directors passed on (**date**): _____

Mr. / Ms.(**initial and surname**): _____ has been duly authorized to sign all documents in connection with the Tender for Contract, (description of the tender):

_____

Tender No: _____ and any Contract, which may arise there from on behalf

of (**Company name**): _____

Signed on behalf of the Company: _____

Date: _____

Signature of authorized signatory: _____

I/we, the undersigned, who warrants that he/she is duly authorized to do so on behalf of the firm certify that points claimed, based on the equity ownership, indicated in paragraph 8 of the foregoing certificate, qualifies the firm for the preference(s) shown and I / we acknowledge that:

(i) The information furnished is true and correct.

(ii) The Equity ownership claimed is in accordance with the General Conditions as indicated in paragraph 1 of this form.

- In the event of a contract being awarded as a result of points claimed as shown in paragraph 8, the contractor may be required to furnish documentary proof to the Satisfaction of the purchaser that the claims are correct.

(iii) If the claims are found to be incorrect, the purchaser may, in addition to any Other remedy it may have -

a) recover costs, losses or damages it has incurred or suffered as a result of points claimed that person's conduct; and

b) cancel the contract and claim any damages which it has suffered as a result of having to make less favorable arrangements due to such cancellation

Signature of the bidder: ---------- **Date: ----------** **Place:** _____	**Witnesses Signatures:** _____ **1.** _____ **2.** _____

10. GENERAL CONDITIONS OF CONTRACT

LEGISLATIVE FRAMEWORK.....

1. Principal Framework .....
   Municipal Entity .....
   Organ of State .....
   Municipal Finance Management Act .....
   Consumer Protection .....
   Tender Defaulters .....
   Corrupt Activities.....

.

INTERPRETATION AND DEFINITIONS .....

2. Interpretation .....
3. Definitions.....

TERMS AND CONDITIONS OF SUPPLY AND/OR SERVICE.....

4.Relationship between the Parties.....
5. Good Faith and Commitment to Ethical Conduct .....
6. Commencement, Duration and Renewal .....
7. Product Scope / Scope of Work .....
   Incidental Product / Services .....
8. Product Guarantee .....
9. Contractor Personnel.....
   Personnel Schedule.....
10. Payment and Pricing.....
    Increases.....
    Taxes and Duties.....
    Withholding and Set-Off.....
11. Performance Security .....
12. Performance Review and Contractual Penalties .....
13. Inspections, Tests and Analyses.....
14. Limited Exclusivity .....
15. Intellectual and Property Rights .....
16. Confidentiality, Non-Disclosure and Use of Contract Documents.....
17. Restraint .....
18. Cession and Assignment .....
19. National Industrial Participation (NIP) Programme .....
20. Indemnity and Insurance.....
21. Impossibility of Performance .....
22. Breach and Early Termination.....
23. Dispute Resolution.....

Mediation .....,……

Prescription..... .....

Arbitrator.....

Arbitration.....

24. Notices and *Domicilia*.....
25. Counterparts.....

26. Legal Advice and Costs .....
27. General.....

1. LEGISLATIVE FRAMEWORK

1.1 Principal Framework

The information contained under this heading summarizes certain of the principal statutory provisions applicable to the transaction concluded between the Parties. It is included for information purposes only and should not be regarded as legal advice, it being incumbent upon the Contractor to familiarize itself with the legislative framework. These provisions apply at law and the Parties are not competent to exclude the operation thereof by mutual agreement. As such, no agreement, transaction or series of transactions concluded outside of or in contravention of the legislative framework and the procedures provided for therein shall be binding on the Parties notwithstanding the capacity or office held or undertakings given, in writing or otherwise, by the persons contracting on behalf of either Party.

1.2 Municipal Entity

Metrobus is a municipal entity contemplated in section 1, read with sections 86B(1)(a)(i) and 86D(1)(a), of the Municipal Systems Act (32 of 2000), ("MSA"). It was established as such by the Greater Johannesburg Metropolitan Council (predecessor to the City of Johannesburg Metropolitan Municipality or "COJ") who procured, by virtue of the provisions of section 17D of the Promotion of Local Government Affairs Act (91 of 1983) the formation, registration and incorporation of its fresh produce market as the Metrobus (SOC) Limited in terms of the Companies Act, with the COJ as its sole shareholder. Upon the foregoing and as required by the MSA, Metrobus entered into a Service Delivery Agreement with the COJ in terms of which Metrobus was appointed as an external mechanism for the delivery of a municipal service with the mandate to manage and operate the business of the fresh produce market and its assets.

1.3 Organ of State

As a municipal entity Metrobus is an "organ of state" as defined in section 239 of the Constitution of South Africa (108 of 1996) read with section 1 of the Institution of Legal Proceedings Against Organs of State Act (40 of 2002).

1.4 Municipal Finance Management Act

Contracting with Metrobus is subject, amongst others, to the Municipal Finance Management Act (56 of 2003) ("MFMA"), the MFMA Supply Chain Management Regulations (GN 868 in GG 27636 of 30 May 2005) ("SCM Regulations") and, specifically, Metrobus's Supply Chain Management Policy made in terms of section 111 of the MFMA and regulation 2 of the SCM Regulations (collectively referred to as the "SCM Regulatory Framework"). In terms of the irregular expenditure provisions of the SCM Regulatory Framework, Metrobus is prohibited from making any payment in relation to goods or services unlawfully or irregularly procured and/or rendered, notwithstanding that value might have been received.

1.5 Consumer Protection

The Consumer Protection Act (68 of 2008) does not, in terms of section 5(2)(a), apply to any transaction in terms of which goods or services are supplied to the State. However, section 5(5) stipulates that notwithstanding the foregoing exemption, those goods, and the importer or producer, distributor and retailer of those goods are nevertheless subject to, amongst others, the provisions of section 61. Section 61 sets out the liability of the producer and/or supplier for any harm caused wholly or partly as a consequence of a product failure, defect or hazard in any goods, irrespective of whether the harm resulted from any

negligence on the part of the producer, importer, distributor or retailer, as the case may be. In terms of subsections 61(5)(c) and (d), harm for which the Contractor may be held liable includes any loss of, or physical damage to, any property of Metrobus irrespective of whether it is movable or immovable including economic loss occasioned by such harm.

1.6 Competitive Behaviour

In terms of section 4(1)(b)(iii) of the Competition Act (89 of 1998) 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 bidders was involved in collusive bidding (or bid rigging). If bidders, based on reasonable grounds or evidence obtained by Metrobus, have engaged such restrictive practices, Metrobus may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties. If a bidders are found guilty by the Competition Commission Metrobus may, in addition and without prejudice to any other remedy provided for in this Agreement or at law, invalidate the bid and/or terminate this Agreement in whole or part, and/or restrict the bidders from conducting business with the public sector for a period not exceeding ten (10) years.

1.7 Tender Defaulters

Where Metrobus terminates this Agreement in whole or in part, it may decide to impose a restriction penalty on the Contractor by prohibiting the Contractor from doing business with the public sector for a period not exceeding 10 years. If Metrobus intends imposing a restriction on a Contractor or any person associated with the Contractor, the Contractor will be allowed a period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the Contractor fail to respond within the stipulated fourteen (14) days, Metrobus might regard the intended penalty as not objected against and may impose it. Any restriction imposed on any person by the Accounting Officer of Metrobus will, at the discretion of the Accounting Officer, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises, exercised or may exercise control over the enterprise of the first-mentioned person.

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

- the name and address of the Contractor and/or person restricted by Metrobus;
- the date of commencement of the restriction;
- the period of restriction; and
- the reasons for the restriction.

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

Corrupt Activities

1.10 If a court of law convicts a person of an offence under sections 12 or 13 of the Prevention and

Combating of Corrupt Activities Act (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.

INTERPRETATION AND DEFINITIONS

2. Interpretation

This Agreement shall be governed and interpreted in accordance with the laws of the RSA; and

2.1 headings shall be read for the purpose of reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement.

2.2 words importing any gender include the others; the singular include the plural and vice versa and natural persons include created entities, other legal *personae* (corporate or un-incorporate) and the state and vice versa.

2.3 all provisions of this Agreement are severable from each other and any provision which is or may become unenforceable shall be ineffective to the extent of such unenforceability and shall be treated as if not written and severed without invalidating the remaining provisions of this Agreement (or affecting the validity or enforceability of such provision in any other jurisdiction); the Parties who declare their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof and that this Agreement should be implemented or continue to be implemented, having regard to each Party's rationale and purpose in entering into this Agreement.

2.4 when any number of days is prescribed, these shall business days (unless days are described as calendar days in which event Saturdays, Sundays and public holiday's shall be included) reckoned exclusively of the first and inclusively of the last day.

2.5 any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Signature Date, and as amended or substituted from time to time thereafter.

2.6 the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words.

2.7 the rule of construction that a contract shall be interpreted against the Party principally responsible for the drafting or preparation of the contract, shall not apply.

2.8 any annexures, schedules, and/or documents ("appendices") referred to in this Agreement shall be deemed to be incorporated in and form an integral part hereof; in the event of a conflict between any appendices and this Agreement, the provisions of this Agreement shall prevail.

2.9 the termination of this Agreement shall not affect those of the provisions which provide that they shall operate after termination or which of necessity must continue to have effect thereafter notwithstanding that specific clauses do not expressly provide for such continuation.

2.10 any substantive provision imposing rights or obligations on a Party, notwithstanding that it is only in a definition clause, shall have effect as if it were a substantive provision in the body of this Agreement.

2.11 information supplied in the bidding documents shall be construed as material representations made by the Contractor, which induced Metrobus to enter into this agreement.

3. Definitions

Unless clearly inconsistent with or otherwise indicated by the context, the following expressions shall bear the meanings assigned to them and cognate expressions shall bear corresponding meanings in this Agreement:

3.1 "Agreement" means this Agreement entered into between Metrobus and the Contractor including the appendices and all documents included therein by reference.

3.2 "Annexure A" means the Contractor's tender to supply the Product or render the Services or works to Metrobus in terms of the scope of work and on the terms and conditions, pricing and payment terms set out therein.

3.3 "Annexure B" means a copy of Metrobus Supply Chain Management Policy in terms of which this Agreement and the bid was specified, evaluated, adjudicated and awarded.

3.4 "Annexure C" means, if applicable to the subject matter of this Agreement and the Contractor's obligations in terms thereof, the Contractor's Personnel Schedule.

3.5 "Annexure D" means, if applicable to services rendered at Metrobus's premises by the Contractor, the Occupational Health and Safety Act Agreement entered into between the Parties in terms of section 37(2) of that Act.

3.6 "Annexure E" means, if applicable in terms of the scope of work, the Contractor's Project Plan delivered to Metrobus within the time specified therefore.

3.7 "Annexure F" means, if applicable to the Product or the subject matter of this Agreement and read conjunctively with the Contractor's obligations in terms of the Consumer Protection Act, the express warranties provided by the Contractor in relation to the Product.

3.8 "Annexure G" means a copy of the regulation 36 deviation approved by the Accounting Officer (Chief Executive Officer) of Metrobus in the event that in the procurement of this Agreement the official procurement processes was dispensed with based on an exceptional circumstance allowed by the SCM Regulatory Framework.

3.9 "Closing Time" means the date and hour specified in the bidding documents for the receipt of bids.

3.10 "Commencement Date" means, notwithstanding the Signature Date, the date specified in the Contract Schedule.

3.11 "Confidential Information" means including this Agreement, Metrobus's trade secrets, processes, techniques, methods, designs, products and organisational and other structures employed in its business, the contractual and financial arrangements with its suppliers, customers, employees, clients and other business associates, its financial details including its results, details of the prospective and existing clients, customers and employees, its business strategies, general modus operandi, client information including its customer lists and customer contact details, price lists, employee remuneration and salary packages, medical and/or patient information, computer programs and information systems, policies and procedures, diagnostic tools, data, diagrams, reports including incidents, incident reports, electronic and other visual and audio recordings, related statistics, specifications, charts, studies and Intellectual Property, know-how, trade and any other similar information all of which is, by its nature, confidential and/or proprietary to Metrobus and its business.

3.12 "Contractor" means the incorporated entity, consortium, and partnership or individual who is the service provider, supplier or seller in terms of this Agreement, identified as such in the Contract Schedule; howsoever the Contractor may be legally constituted or formed.

3.13 "Contract Period" means the period set out in the Contract Schedule.

3.14 "Contract Price" means the price payable to the Contractor under this Agreement for the full and proper performance of its contractual obligations specified in the Contract Schedule.

3.15 "Corrupt Practice" means the offering, giving, receiving, or soliciting of a thing of value to

influence the action of a public official in the procurement process or in the execution of this Agreement.

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

3.16 "Country of Origin" means the place where the Product was mined, grown or produced or from which the services are supplied.

3.17 "CPI" means the headline consumer price index (for all urban areas) annual inflation rate, or such amended or replacement index, as published monthly by Statistics South Africa in Statistical Release P0141, available from <http://www.statssa.gov.za>.

3.18 "Default Interest" means interest chargeable in terms of this Agreement to unpaid amounts or outstanding obligations which interest shall be calculated, from the due date until date of payment, on a daily balance and compounded monthly in arrear at an annual rate of two percent (2%) above the prevailing, variable prime rate publicly quoted by ABSA Bank Limited from time to time.

3.19 "Delivery" means delivery of the Product (and a reference to the rendering any service or executing any works) inclusive of necessary clearing, documentation, carriage (through whatsoever mode), insurance, licensing, unloading, installation and commissioning in operational working order at the store, site or premises of Metrobus (which shall, unless the contrary is agreed in writing, be performed, conducted and/or delivered in accordance with Metrobus' s usual policies and procedures), the Contractor bearing all the risks and charges in the Product until completion of delivery is confirmed in writing by Metrobus.

3.20 "Delivery Period" means that period agreed in writing between the Parties in relation to Delivery of the Product or parts thereof by the Contractor, any delay in which shall be deemed a breach of this Agreement and entitle Metrobus to exercise its remedies in terms of this Agreement or at law.

3.21 "Dumping" means a private enterprise resident outside of the RSA 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.

3.22 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of this Agreement to the detriment of any bidder or Metrobus, 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.

3.23 "Intellectual Property" means collectively, patents, copyright, trademarks, logos, style names, slogans, designs, models, methodologies, inventions, software object code or programme interface and/or structure, and any other type of intellectual property (whether registered or unregistered including applications for and rights to obtain, use or for their protection) which are used or held, whether or not currently, in connection with Metrobus' s business and includes the Confidential Information and, "know-how" being ideas, designs, documents, diagrams, information, devices, technical data, scientific data, secret and other processes and methods used in connection with Metrobus' s business, and, all available information regarding marketing and promotion of the goods and services of Metrobus, and, all and any modifications or improvements to any of them.

3.24 "Metrobus" means Metrobus (SOC) Limited (trading as Metrobus), a corporatized municipal entity incorporated in terms of the laws of the RSA under registration number 2000/023383/07 and with VAT registration number 4840195038, with its domicilium citandi et executandi situated at The Office of the CEO, 3rd Floor, Main Building, Metrobus, No 1 Raikes Road Braamfomtein , Johannesburg.

3.25 “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 Contractor or its 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 RSA place of entry as well as transportation and handling charges to the factory in the RSA where the Product covered by the bid will be manufactured.

3.26 “Local Content” means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.

3.27 “Order” means an official written order or requisition issued for the supply of the Product.

3.28 “Parties” mean the Contractor and Metrobus and “Party” shall mean that one of them be indicated by the context.

3.29 “Product” means, depending on the subject matter of this Agreement, either or both of:

- “Goods” e.g. plant, equipment, machinery, manufactured items and/or other materials or combined works that the Contractor is required to supply to Metrobus including (where usually, logically or of right or common practice) ancillary services such as installation, commissioning, provision of technical assistance, after sales support, warranty services etc. and/or
- “Services” e.g. those functional, consulting and/or professional services or combined works the Contractor as service provider is required to render to Metrobus including (where usually, logically or of right or common practice) ancillary goods such as spare parts, packing, documents, manuals, reports etc.).

3.30 “RSA” means the Republic of South Africa as defined in section 1 of the Constitution of the Republic of South Africa (108 of 1996).

3.31 “Signature Date” means the date of the on which this Agreement, or any other document in relation thereto, is signed by the Party signing it last in time on the last date in time.

3.32 “VAT” means Value-Added Tax defined and levied in terms of the Value-Added Tax Act (89 of 1991) and unless stated to the contrary, all amounts quoted in this Agreement are quoted exclusive of VAT.

TERMS AND CONDITIONS OF SUPPLY AND/OR SERVICE

1. Relationship between the Parties

1.1 The Contractor shall fulfill its obligations in terms of this Agreement as an independent contractor to Metrobus and not as an employee, labour broker, agent, partner (whether in consortium or joint venture) of Metrobus; and, neither it nor any of its employees shall hold itself/themselves out as being the same.

1.2 In addition, save as set out herein, neither Party shall be entitled to bind the other Party to any representation, obligation or promise of any nature whatsoever, pledge the credit of the other or incur any liability on behalf of the other Party or purport to do so.

2. Good Faith and Commitment to Ethical Conduct

2.1 The Parties commit to ethical business conduct and undertake to exercise and display the utmost good faith to one another in giving effect to the terms of this Agreement.

2.2 Without limiting the generality of the foregoing the Parties undertake not to accept, offer, induce, permit or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as a bribe or an attempt to otherwise exert undue

influence over the recipient.

2.3 The Parties will use their best endeavours to prevent their officers, employees, agents and contractors from doing any of the foregoing; or, to otherwise act in a manner which a reasonable and informed person would regard as unethical or do anything which could reasonably be expected to damage or diminish the reputation or business image of the other.

3. Commencement, Duration and Renewal

3.1 This Agreement shall commence on the Commencement Date and endure for the Contract Period, delimited in terms of time and/or the expenditure of a particular amount, as set out in the Contract Schedule.

3.2 In the event that the Contractor's obligations are to be performed in terms of a project plan or in phased or other manner, the same shall be set out in a separate annexure.

3.3 Unless provision is made for renewal in the Contract Schedule, this Agreement shall terminate on the expiry of the Contract Period unless terminated earlier in terms of this Agreement or at law. Any renewal shall be conditional upon the subject matter of this Agreement being susceptible for renewal and, the proper performance by the Contractor of its obligations during the initial Contract Period.

3.4 However, notwithstanding anything to the contrary contained in this Agreement or any terms contained in any document produced whether in relation to this Agreement of otherwise by Metrobus or the Contractor, any renewal of this Agreement shall at all times:

- remain within the discretion and at the option of Metrobus,
- be express and in writing, and
- executed no sooner than three (3) months before and no later than the termination date.

4. Product Scope / Scope of Work

The relevant part of Annexure A shall apply in relation to the description, quality and quantity of the Product (goods, services, works or any combination thereof) to be delivered to Metrobus in terms of this Agreement.

4.1 The Product shall conform to the standards, specifications and/or scope of work set out in the bidding documents and, where applicable, be packed in a manner designed to prevent damage or deterioration during transit to its final destination / Metrobus, which packing, marking, case size, weights and documentation both inside and outside the packaging shall:

- be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage.
- take into consideration, where appropriate, the location of the Product's final destination and the absence of heavy handling facilities at all points in transit.
- comply strictly with such special requirements expressly provided for in the bidding documents and in any subsequent instructions ordered by Metrobus.

Incidental Product / Services

4.2 The bid documents may require that the Contractor provide any or all of the following incidental Product (services, goods or works including materials, notifications, and

information pertaining to spare parts manufactured or distributed by the Contractor or its principal):

- performance or supervision of on-site assembly and/or commissioning of the Product.
- furnishing of tools required for assembly and/or maintenance of the Product.

- furnishing of a detailed operations and maintenance manual for each appropriate unit of the Product.
- performance or supervision or maintenance and/or repair of the Product, for a period agreed by the Parties, provided that this shall not relieve the Contractor of any warranty obligations under this Agreement.
- Training of Metrobus's personnel, at the Contractor's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the Product.
- such spare parts as Metrobus may elect to purchase from the Contractor, provided that this election shall not relieve the Contractor of any warranty obligations under this Agreement and advance notification to the discontinuation of any particular model of Product, spare parts etc. in sufficient time to permit Metrobus to procure needed requirements.

4.3 Prices charged by the Contractor for incidental Product and/or services, if not included in the Contract Price, 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.

5. Product Guarantee

5.1 The Contractor warrants that the Product shall be fit for the intended purpose of use and free of defect, arising from design, materials, or workmanship (except when the design and/or material is required by Metrobus's specifications) or from any act or omission of the Contractor and that it is new, unused, of the most recent or current model, and incorporates all recent improvements in design and materials unless provided otherwise in the bid documents.

5.2 Unless a more favourable Product warranty is offered by the Contractor or warranty terms are expressly agreed between the Parties (refer annexures and Contract Schedule), this warranty shall remain valid for twelve (12) months after the Product have been delivered to Metrobus 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.

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

6. Contractor Personnel

The Contractor shall employ and provide all qualified and experienced personnel required to perform the Services and shall take all measures necessary and shall provide all materials and

equipment necessary to enable personnel to perform their duties in an efficient, workmanlike and professional manner.

Personnel Schedule

6.1 If required in terms of this Agreement, the Contractor shall provide key persons or named personnel listed (including titles, job descriptions, qualifications and estimated periods of engagement) in a Personnel Schedule who will perform specific duties for periods of time indicated therein in the delivery of the Product; and shall forward same to Metrobus for approval within ten (10) days of the Signature Date or the Commencement Date (whichever is the earlier).

6.2 If at any time, a key person cannot be made available, the Contractor may engage a replacement who is equally or better qualified to perform the stated duty. Where the fees for the Product are time-based, the fee payable for a person provided as a replacement to a named key person shall not exceed that which would have been payable to the person replaced and the Contractor shall bear all additional costs arising out of or incidental to replacement of personnel.

6.3 Where the Contractor proposes to utilise a person not listed in the Personnel Schedule, it shall submit the name, relevant qualifications and experience of the proposed replacement person to Metrobus for approval. Should Metrobus not object in writing within ten (10) days of receipt of such notification, the replacement shall be deemed to have been approved by Metrobus.

7. Payment and Pricing

The Contract Price shall be fixed and not vary from the Contractor's tendered prices with the exception of variations allowed in the tender document.

7.1 The method and conditions of payment (in South African Rand) to be made to the Contractor under this Agreement shall be specified in relevant part of Annexure A. Unless specified to the contrary in Annexure A, payment shall be made thirty (30) days from the end of the month in which the relevant invoice is received.

7.2 Notwithstanding the foregoing, payment shall at all times remain subject to such deductions / penalties as may be allowed in terms of this Agreement and the Contractor upon fulfilment of its obligations furnishing Metrobus with an valid tax invoice accompanied by a copy of the delivery note, completion certificate or such other document as may be prescribed or customary given the subject matter of the Product delivered.

Increases

7.3 The Contractor shall not be entitled to increase its rates or prices to Metrobus; however, in the event of an annual of multi-year agreement, the Contractor shall be entitled, on the anniversary of the Commencement Date, to increase its rate and/or prices to Metrobus by an amount not exceeding CPI.

Taxes and Duties

7.4 The Contractor shall be entirely liable for all taxes, stamp duties, license fees, and other such levies imposed in relation to the Product / this Agreement, whether levied in the RSA or abroad, until the Product is delivered to Metrobus.

Withholding and Set-Off

7.5 The Contractor shall not be entitled because of any (improvement) lien, set-off, counter-claim, abatement or other similar deduction to withhold delivery or hand-over of any of the Product under any circumstances including when same is disputed.

Performance Security

If specified in the bid documents, Metrobus may within thirty (30) days of the Signature Date, require the Contractor to furnish Metrobus with performance security in the amount specified in the bid documents (refer Contract Schedule), the furnishing of which shall be a resolutive condition to the continued operation of this Agreement.

7.6 The performance security shall be denominated in South African Rand and shall be a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the RSA.

7.7 The bank guarantee shall be payable to Metrobus on demand, in whole or in part, as either contractual penalties or, as compensation for any loss resulting from the Contractor's failure to comply with its obligations under this Agreement.

7.8 The performance security will be discharged by Metrobus and returned to the Contractor not later than thirty (30) days following the date of completion of the Contractor's obligations under this Agreement, including any warranty obligations, unless otherwise specified.

8. Performance Review and Contractual Penalties

The Contractor's performance of its obligations in terms of this Agreement may be monitored and evaluated by Metrobus in terms of its performance measurement criteria and contract management systems from time to time against the requirements of this Agreement. In the event that the Contractor's performance is at any time, in Metrobus's reasonable opinion:

8.1 not carried out in accordance with this Agreement and/or any instruction to rectify any performance shortcoming, whether or not the obligation arose as a result of a breach of this Agreement or a performance evaluation, or

8.2 of a quality not in conformance with the specifications that places the objectives of this Agreement or Metrobus' s public service delivery mandate at undue risk, or

8.3 represents a performance shortcoming or delay or a series or trend of such shortcomings or delays which is likely to continue or recur,

Metrobus shall at its discretion and with reservation of Metrobus's rights in terms of this Agreement and its remedies at law to:

8.4 suspend the Contractor and at the Contractor's cost take or cause corrective action and/or take over the rendering of the services / supply of the goods in whole or in part (itself or through another party) to the extent and for the time deemed necessary to remedy or rectify the performance shortcomings or delays, or

without prejudice to claim damages in lieu of the following and/or Metrobus's right to terminate this Agreement, to deduct from any payments due and payable to the Contractor:

8.5 a contractual penalty, calculated on the delivered price or Contract Price of the delayed goods or underperformed services, per instance, in an amount equal to the Default Interest pro-rated per day of delay or as a percentage of underperformance, and/or

8.6 Calculated as the reasonable cost of repair or replacement, any damage to Metrobus's property, plant, equipment and/or infrastructure attributable to the willful or negligent actions and/or omissions of the Contractor.

9. Inspections, Tests and Analyses

9.1 All pre-bidding testing will be for the account of the bidder / Contractor. If it is a bid condition that Product to be produced or 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 or nominee of Metrobus.

9.2 If there are no inspection requirements indicated in the bidding documents but during the Contract Period Metrobus in its discretion decide that inspections shall be carried out, the Contractor shall make the necessary arrangements, including payment arrangements with the testing and/or certification authority concerned. If the results of the foregoing inspections, tests and/or analyses reflects that the Product is:

- in good order and/or complies with the bid requirements, the cost of the inspections, tests and analyses shall be defrayed by Metrobus, or
- defective and/or does not comply with the bid requirements, tests and analyses shall be defrayed by the Contractor.

9.3 Metrobus shall, irrespective of whether defective and/or non-compliant Product was previously accepted by it, be entitled to reject the same based on the inspections, tests and/or analyses result.

9.4 Any Product may on or after (subject to the Product guarantee) Delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of this Agreement. Such rejected Product shall be held at the cost and risk of the Contractor who shall, when called upon, remove them immediately at its own cost and forthwith substitute them with Product which do comply with the requirements of this Agreement. Failing such removal, the rejected Product shall be returned at the Contractor's cost and risk. Should the Contractor fail to provide the substitute supplies forthwith, Metrobus may, without giving the Contractor further opportunity to substitute the rejected Product, purchase such Product as may be necessary at the expense of the Contractor.

9.5 Metrobus' s right (whether personally or through a third party) to test, inspect, analyses or certify the Product and the remedies set out above, shall be without prejudice to Metrobus' s right to terminate this Agreement for breach, impose contractual penalties or to claim damages in lieu of the penalty.

10. Limited Exclusivity

The appointment of the Contractor by Metrobus is on an exclusive basis and Metrobus shall for the duration of this Agreement obtain all of the Product listed in the scope of work from the Contractor, subject thereto that:

10.1 the Contractor is not in default of its obligations in terms of this Agreement, failing which the exclusivity afforded to the Contractor shall end and Metrobus shall be free to conclude contractual arrangements with third parties.

10.2 no provision in this Agreement shall prohibit the procurement of similar Product from a national department, provincial department, or a local authority; or, outside of this Agreement in small quantities or to have minor essential Product executed if an

emergency arises which in Metrobus sole discretion cannot timeously be delivered / rendered by the Contractor.

11. Intellectual and Property Rights

11.1 In respect of the Product any of the same that are either transferred or rendered to Metrobus under this Agreement, including without limitation the items listed in the scope of work (if any) or any part of them, the Contractor warrants, to the best of its knowledge, that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Metrobus it will have full and unrestricted rights to sell and transfer the Product. For the avoidance of doubt, it is recorded that any Intellectual Property Rights created prior to the Commencement Date or the Signature Date (whichever is the earlier), shall vest exclusively with the Party who created same and this Agreement does not transfer to the receiving Party title to any Intellectual Property Rights so vested.

11.2 The Contractor hereby indemnifies Metrobus against losses arising directly out of any claim brought by a third party that operation, possession or use of the Product in accordance with the terms of this Agreement infringes an RSA patent or copyright or is subject to claims of misappropriation of trade secrets protected by RSA law. Where any Product become the subject of any such claims, the Contractor may, in consultation with Metrobus, choose to either at the Contractor 's cost to:

- obtain the right of use of the Product if commercially practicable, or
- replace or modify the Product to avoid the claim of infringement, or
- require that Metrobus cease use of the item of Product and return it to the Contractor / supplier, in which case the Contractor shall refund Metrobus the consideration paid by Metrobus for that item of Product and any additional costs incurred by Metrobus in relation to such return including the costs of obtaining reasonably similar replacement Product.

11.3 This indemnity shall not apply if such claim is made by a parent, subsidiary or affiliate of Metrobus or Metrobus's holding company, or results from any modification, alteration, repair or addition made by Metrobus to the Product to the extent that if it were removed, the infringement or violation would cease, or arises out of the use by Metrobus of the Product in combination with any other product, service or materials.

12. Confidentiality, Non-Disclosure and Use of Contract Documents

12.1 All of Metrobus's Confidential Information, Intellectual Property and know-how received by or exchanged with the Contractor, shall be kept confidential and not disclosed by the Contractor to any person other than a person employed by the Contractor in the performance of this Agreement. Disclosure to employed persons shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance and the Contractor shall take all reasonable steps to minimize the risk of disclosure.

12.2 Notwithstanding the foregoing, the Contractor may disclose Confidential Information to its own professional advisers and, if required to do so by law or any applicable regulatory requirement or requested to do so by any regulatory body to whose jurisdiction the Contractor is subject or with whose instruction it is customary to comply.

12.3 All documents produced in the course of this Agreement or in relation thereto, shall remain or become, as the case may be, the property of Metrobus and Metrobus shall be entitled to

require the return (all copies) to Metrobus on completion of the Contractor's performance

12.4 The Contractor's confidentiality and non-disclosure obligations shall endure indefinitely beyond the termination of this Agreement until such Confidential Information enters the public domain.

13. Restraint

13.1 The Contractor undertakes in favour of Metrobus that it shall not during the currency of this Agreement nor for a period of one year after its termination (for whatsoever reason) in any manner entice away, offer employment to or employ whether directly or indirectly, alone or jointly any of Metrobus' s employees in any capacity including that of advisor, agent, consultant, director, employee, financier, manager, member of a close corporation, member of a voluntary association, partner, proprietor, or trustee unless the express, prior written consent of Metrobus is obtained thereto.

14. Cession and Assignment

14.1 The Contractor shall not without Metrobus' s prior written consent being obtained, which consent shall not unreasonably be withheld, be entitled to cede, assign, transfer, and make over or otherwise part with or encumber its rights and/or obligations under this Agreement. When requesting such consent, or at any time thereafter, the Contractor shall notify Metrobus in writing of all subcontracts awarded under this Agreement. Such notification shall not relieve the Contractor from its liability or obligation under this Agreement.

15. National Industrial Participation (NIP) Programme

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

16. Indemnity and Insurance

16.1 The Contractor hereby indemnifies Metrobus and agrees to keep it indemnified and hold it harmless against any loss or claim, including claims for damage to equipment or property or, personal injury resultant disability or, loss of profit, income or opportunity, howsoever caused and whether general or special, direct or consequential (collectively "any loss"), either on or about the premises of Metrobus, including by or in relation to third parties arising out of this Agreement or the Product delivered, rendered or manufactured pursuant thereto.

16.2 The Contractor shall maintain a paid up policy of public liability insurance suited to the risks inherent to its business and the possible exposures it may encounter in the execution of this Agreement. The Contractor shall be obliged to notify Metrobus of any claims made against the said policy.

17. Impossibility of Performance

17.1 No Party shall be responsible to the other for its failure to perform or any delay in performing any obligation under this Agreement in the event and to the extent that such failure or delay is caused by impossibility of performance ("Force Majeure"). For the purposes of this Agreement, Force Majeure shall mean any circumstance which is beyond the reasonable control of the Party giving notice of Force Majeure ("the affected Party"), which may include but will not be limited to war (whether declared or not), revolution, invasion, insurrection, riot, civil commotion, mob violence, sabotage, blockage, embargo, Boycott, the exercise of military of usurped power, fire, explosion, theft, storm ,flood, drought, wind, lightening or other

adverse weather condition, epidemic, quarantine, accident, acts or restraints of government imposition, or restriction of or embargoes in imports or exports.

17.2 Notwithstanding the foregoing, the following shall in no circumstances be treated as an event of Force Majeure:

- a labour dispute, strike or lockout that could have been averted had the Contractor reasonably acceded to the demands made of it.
- economic distress and/or inability to meet a payment because of a lack of funds or exchange rate fluctuation.
- breakdown or damage to Contractor equipment and/or other machinery.

17.3 The affected Party shall give notice to the Party not so affected ("the other Party") immediately upon the occurrence of an event of Force Majeure. If the event that the Force Majeure is of such a nature that it will:

- Result in impossibility of performance of an obligation going to the root of the agreement, the other Party shall be entitled on receipt of notice of the Force Majeure event to terminate this Agreement upon notice to the Affected Party but shall not be entitled to recover any damages, which it may suffer as a result of premature termination.

- not result in impossibility of performance of the obligation in question but will delay its performance, the affected Party shall be entitled to such extension of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interests of both Parties, provided that if any Force Majeure event persists for a period in excess of three Months the other Party shall be entitled to terminate this Agreement forthwith but shall not be entitled to recover any damages which it may suffer as a result of such premature termination.

18. Breach and Early Termination

18.1 Should a Party breach any of its obligations in terms of this Agreement and fail to remedy such breach within ten (10) days from receipt of a written notification calling upon such Party to do so, the aggrieved Party shall, without prejudice to any other right or remedies which it may have, be entitled to cancel this Agreement without further notice being required.

18.2 Notwithstanding the foregoing and in addition to any other recourse Metrobus may have, Metrobus shall be entitled (without prior notice to remedy any particular breach having been given or being required) to cancel this Agreement forthwith on written notice should any of the following events occur:

- The Contractor and/or its officials, employees and/or representatives commit any crime of which dishonesty is an element against Metrobus or maliciously destroys the property of Metrobus or take any violent, abusive, coercive or threatening action against any person whilst on the Property or in relation to customers, Contractors or suppliers of Metrobus or collude in such conduct.

- The Contractor repudiates this Agreement by acting, or omitting to act, in a manner that reasonably demonstrates to Metrobus the Contractor's intention not to be bound by this Agreement.

18.3 Any composition, compromise or arrangement with the creditors of the Contractor and/or procedure taken in relation to the suspension of payments, moratorium of any

indebtedness, winding-up, dissolution, administration or re-organization by way of arrangement or otherwise of the Contractor including the appointment of a liquidator, administrator, judicial manager other than where such action is dismissed, withdrawn or discharged within ten (10) days of being brought or, if demonstrated to the satisfaction of Metrobus, within that ten-day period, that such action is frivolous or vexatious and is being contested by the Contractor.

18.4 The Contractor suspends or ceases to carry on, or threatens to suspend or cease to carry on, all or a material part of its business activities or, whether or not it has acted as aforesaid, abandons any works at Metrobus' s premises or the particular site of work.

19. Dispute Resolution

19.1 Save in respect of those provisions of this Agreement which provide for their own remedies or disputes which would be incompatible with arbitration, any dispute which arises and cannot be resolved by the operational personnel of the Parties shall be resolved through a process of alternative dispute resolution in accordance with the procedure set out below:

20. Mediation

20.1 In the event that the operational personnel of the Parties, acting within the scope of their (delegated) authority, are unable to resolve a dispute, that dispute shall be referred to a joint committee comprising of the Chief Executive Officer of each of the Parties (or their suitably authorised alternate or nominee) who will use their reasonable commercial endeavours to resolve the dispute within twenty (20) days of the dispute having been referred to them; however, should the joint committee be unable to resolve a dispute within that time period, any Party shall have the right to demand that the dispute be referred for determination by an arbitrator agreed on by the Parties.

21. Prescription

21.1 The Parties agree that upon the failure to reach a mediated resolution that a written demand given by either Party to submit such a dispute in terms of this clause to arbitration is to be deemed a legal process for interrupting extinctive prescription in terms of the Prescription Act (68 of 1969).

22. Arbitrator

22.1 The arbitrator shall be, if the matter in dispute is principally:

- an accounting matter - independent auditors agreed between the Parties or, failing such agreement within five (5) business days after the arbitration has been demanded, at the request of either of the Parties shall be nominated by the president for the time being of the South African Institute of Chartered Accountants (or its successor body), whereupon the Parties shall forthwith appoint such person as the arbitrator,
- any other matter - an impartial attorney or advocate of not less than ten (10) years' standing agreed between the Parties or, failing such agreement within five (5) business days after the arbitration has been demanded, at the request of either of the Parties shall be nominated by the president for the time being of the Law Society of the Northern Provinces (or its successor body), whereupon the Parties shall forthwith appoint such person as the arbitrator,

22.2 Should the Parties to the dispute fail to agree whether the dispute is principally an accounting or any other matter within five (5) business days after the arbitration was demanded, the matter shall be deemed to be any other matter and the provisions in

relation to “any other matter” shall apply.

22.3 Should any person appointed to do so fail or refuse to nominate an arbitrator, either Party may approach any court having jurisdiction to make such appointment and, to the extent necessary, such court is expressly empowered to do so.

22.4 The arbitrator shall:

- have power to open up, and review any certificate, opinion, decision, requisition or notice relating to all matters in dispute submitted to him and to determine all such matters in the same manner as if no such certificate, opinion, decision or notice had been issued.
- be obliged to give his award in writing fully supported by reasons and shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration

23. Arbitration

23.1 The arbitration shall be conducted in accordance with, save as set out herein, the Commercial Rules of the Arbitration Foundation of Southern Africa:

- held with only the Parties and their representatives present thereat at Johannesburg unless mutual agreement on an alternative place is reached between the Parties; and
- Where possible, be concluded in twenty (20) days after it has been demanded and the Parties shall use their reasonable commercial endeavours to procure the expeditious completion of the arbitration.

23.2 The evidence, representations, transcript and information generally made available during the course of the arbitration and/or arbitrator’s award constitute Confidential Information and shall be treated as such.

23.3 The costs of the arbitrator and the incidental costs of the arbitration shall be borne equally by the Parties to the dispute subject thereto that the arbitrator shall be competent to make any interim and/or final order as to the costs, or parts thereof, as he deems appropriate.

23.4 The award of the arbitrator shall be final and binding on the Parties and any Party shall be entitled to apply to a competent court to have the award made an order of court.

23.5 Nothing under this heading shall prevent any Party from seeking urgent relief in the High Court of South Africa.

24. Notices and Domicilia

24.1 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing. The addresses of the Parties set out in the Contract Schedule shall be the Parties’ chosen as its *domicilium citandi et executandi.*

24.2 A Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address provided that the change shall become effective on the tenth day from the deemed receipt of the notice by the other Party.

24.3 Any notice to a Party, and it shall be competent to give notice by fax and email, unless the contrary is proved, deemed to have been received if delivered by:

- registered post to the Party’s postal address, on the tenth (10th) Day after posting;
- hand to a responsible person during ordinary business hours at the Party’s physical address, on the date of delivery; or
- fax to its usual fax number, on the date of dispatch.
- email to its usual email address, on the date of dispatch.

24.4 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi* or its usual fax number or email address.

25. Counterpart

25.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute the same agreement as at the Signature Date of the Party last signing one of the counterparts.

26. Legal Advice and Costs

26.1 The Parties acknowledge that the provisions of this Agreement are fair and reasonable in the circumstances and in accordance with the Party's intentions and they had been free to secure legal and professional advice as to the nature and effect of the provisions of this Agreement and that it had either taken such advice or dispensed with the necessity of doing so and, each Party will bear its own costs incidental to the negotiation and preparation of this Agreement

26.2 In the event of a dispute arising between the Parties, the guilty Party shall be liable to the innocent Party for any costs, including attorney and client costs, the cost of expert witnesses, advocates costs as on brief and any other professional costs incurred by a Party arising out of the breach by a guilty Party of any of the provisions of this Agreement.

27. General

27.1 This Agreement constitutes the whole agreement between the Parties and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof. To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

27.2 No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement or other document executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties.

27.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

27.4 The Parties are in express agreement that it is not the intention of any Party to violate any public policy, statutory or common law, and that if any sentence, paragraph, clause or combination of the same is in violation of the law of the RSA, such sentence, paragraph, clause or combination of the same alone shall be void in the jurisdiction where it is unlawful, and the remainder of such clause and this Agreement shall remain binding upon the Parties hereto.

I_____ (full name) the undersigned hereby certify that I've read the content of the general conditions of contract and accept the conditions herein.

_____ _____

Signature Date

11. SCOPE OF WORK / SPECIFICATION / TERMS OF REFERENCES

TENDER REQUEST

Provision for Leasing Diagnostic Machine for Mercedes Benz Buses for a period of thirty six (36) months as and when required.

BACKGROUND INFORMATION

Metrobus was incorporated in 2000 and is a wholly owned Municipal Entity of the City of Joburg. The City appointed Metrobus in terms of the Service Delivery Agreement to provide bus transport services to the residents of Johannesburg.

The entity operates in furtherance of the City of Joburg's legislative mandate concerning public transport and is guided periodically by the strategic direction of the City of Joburg as derived from the Integrated Development Plan and the Provincial Growth and Development Strategy. The Corridors of Freedom and Integrated Transport Plan are amongst some of the key strategic objectives of the City, where Metrobus has a pivotal role to play as a provider of public transport.

Metrobus has a variety of buses ranging from double deck, single deck, buses equipped with hydraulic lifts for wheelchairs, open deck and luxury coaches. Metrobus covers 330 scheduled routes and 128 school routes. Metrobus transport thousands of passengers daily fulfilling its primary task.

Metrobus has a fleet of 418 buses; Metrobus transports about 90 000 passengers daily fulfilling its primary task - transporting commuters and scholars using a scheduled bus service.

Metrobus seeks to appoint a service provider, which will lease diagnostic machines for the fault find of Mercedes Benz buses.

Technical Workshops utilizes the machines in order to service and maintain the new DDF (Diesel Duel Fuel) Euro 5 buses that requires diagnostics to ensure that Safe and Reliable buses are available for the Operations department to provide a service to the commuters.

In addition to the above, these diagnostic machines are required to be in the workshop in order to attain accreditation from Mercedes Benz South Africa.

SCOPE OF WORK/TERMS OF REFERENCE:

The successful bidder will be required to supply three (03) x Diagnostic Machines to three (3) x Workshops as follows:

- Diagnostic machine should be suitable for 1725/906 Mercedes Benz Engines as well Euro 5 duel fuel Mercedes Benz buses
- Mercedes Benz diagnostic machines must be able to read & diagnose fault codes for Actros breakdown trucks & Mercedes Benz lux liner
- Software license Upgrade and upkeep of the diagnostic machines is the responsibility of the Successful bidder.
- Training of Technical staff on all diagnostic machines to be provided by the successful bidder

Turnaround time

- Recommended turnaround time per machine will be as per Service Level Agreement.
- Replacement time for broken or faulty machines & equipment must be within 24 hours
- 24 hours technical assistance from OEM or partners (Provide proof of Memorandum of Agreement (MOU) of OEM in order to assist with onsite problems

Quantities

- These quantities are given in good faith and without commitment to Metrobus.
- The quantities that are provided are for evaluating the price offer.

Presentation

Shortlisted bidders may be required to come and do presentation to Metrobus Bid Evaluation Committee to demonstrate the readiness and capacity to deliver as soon as possible. The copy of the presentation should be made available to Metrobus, should it be required.

Locations of service and delivery

- Milpark Park Depot, 5 Raikes Road, Braamfontein
- Village Main Depot, Corner of Von Weilligh and Wemmer Jubilee, Selby
- Roodepoort Depot, 15 President Street, Princes, Roodepoort

NB: Bidders are required to submit at least two (02) copies of the Tender Document to Metrobus: One (01) Original and one (01) copy and a soft copy of all the tender documents in a Disk or USB clearly indicating the company name and the tender number on the container/cover. More than two hard copies will be welcomed and appreciated.

12. MANDATORY REQUIREMENTS

Please note that failure to meet the requirements or to submit the following documentation and/or proof thereof may lead to an immediate disqualification:

Mandatory requirements: Pre-evaluation

On the pre-evaluation stage, bidders will be evaluated on the following:

- Registration with CSD,
- Checking if the company is in business,
- Checking if the company/ any director is not restricted to do business with government,
- Checking if there any director who is a government employee.

NB: The bidders who would be non-compliant with the above requirements will be disqualified and not be considered for further evaluation.

Mandatory requirements: Administrative responsiveness

- Completion and signing of all municipal bidding documents (MBD)
- ID copy
- Any administrative errors.
- Proof of liability insurance (Certificate should be attached)
- For tenders exceeding R10 million, if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial for the past three years; or since their establishment if established during the past three years, should be submitted.

NB: Bidders will not automatically be disqualified for failing to fully complete and sign the MBD forms or submit indicted documents/information. However, they will be afforded an opportunity to come and correct any administrative error/ omission or submit outstanding documents within reasonable period between 1 to 7 days of which Metrobus will determine such reasonable period.

Mandatory Requirements: Prior award

- Tax compliant,
- Municipal rates and taxes account for the company and all directors not older than three months and not over 90 days in arrears (or proof of payment/ arrangement made with the municipality to settle arrears), or signed lease agreement in a case where bidders do not own or rent a property then an affidavit should be provided.
- Provide proof of Memorandum of Agreement (MOU) of OEM

NB: Bidders will be alerted during the evaluation of any non-compliant status for the above-mentioned mandatory requirements. They would then be required to sort out their tax matters/ municipal accounts / accreditation/ registration within a reasonable period of not less than 7 days' prior the recommendation to award.

Note: Joint Ventures need submit a consolidated BBBEE certificate

NB: Other information/documents not listed in a tender document or advert may be requested as and when required, and failure to submit those documents within the stipulated period may lead to disqualification of a bid.

Furthermore, Metrobus reserve the right to appoint more than one bidder or a panel of service providers.

13. EVALUATION CRITERIA

NOTE: For purpose of comparison and in order to ensure a meaningful evaluation, bidders must submit detailed information in substantiation of compliance to the evaluation criteria mentioned (e.g. details of relevant previous work undertaken, letters from previous /current clients, proof of ownership of manufacturing facility, etc.)
Minimum Required Score for functionality is: 60 points out of 100 points and any bidder scoring less than 60 points will not be considered for further evaluation on price and preference points.

No	**Criteria for Quality and Experience Evaluation**	**Weight Allocation**
1.	Company experience in the Leasing of Diagnostic Mercedes Benz in the bus or trucking industry. Provide Appointment Letters / Service Level Agreement (SLA) indicating the duration of the project.	**30**
	• 5 or more years = 5points • 4 years = 4 points • 3 years = 3 points • 2 years = 2 points • 1 year = 1 point. • Less than 1 year = 0	
2.	**Company References** Bidders are required to provide signed contactable reference letters for Leasing of Diagnostic Mercedes Benz Machines/computers within the last seven (07) years. Only reference letters from the client's letterhead or with an official stamp will be accepted. Purchase orders, appointment letters etc. will not be accepted. Reference letters that are not signed and dated will not be considered.	**30**
	• 5 or more references = 5points • 4 references = 4 points • 3 references = 3 points • 2 references = 2 points • 1 reference = 1 point • No reference = 0 point	
3.	**Technicians (Artisan) with Experience** CV 's of Artisan and Diagnostic certification to be attached (Failure to attach the above will result in the bidder not scoring the points	**40**
	• An Artisan with more than 5 years and more experience =5 Points • An Artisan with 3>4 years' experience =4 Points • An Artisan with 2>3 years' experience =3 Points • An Artisan with 1>2 years' experience =2 Points • Artisan with less than 1year experience =1 Point	
	TOTAL	100
	MINIMUM SCORE REQUIRED TO PROCCEED	60

14. Please indicate experience

Name of the client	Description of the service rendered / goods delivered	Value of the contract	Dates of contract commencement and expiry date (Duration of the contract)	Contact person (reference) and contact details

15. PRICING SCHEDULE

15.1 FORM OF TENDER

Any alterations to the tender documents should be signed in full by the tenderer's authorised signatory. Failure to observe this might disqualify the tenderer. Any completion of the tender document in pencil or erasable ink will not be accepted and might lead disqualification.

Pricing for Leasing Equipment.

All prices should be inclusive of 15% VAT

Description	Quantity	Price per unit per month.	Total	Total x 36 months
Diagnostic Machine	**3**			
Training	**1**	**Once Off**		
Vat 15% incl.				
Grand Total:				

TENDER PRICE (Inc. Vat) (Total Tender price for thirty-six (36) months to be carried over to MBD 1).	R