



on the Go for Growth

BID NUMBER: WDM/2021/22-04

BID: PROVISION OF LEGAL SERVICES

ADVERT DATE: 27 FEBRUARY AND 1 MARCH 2022

CLOSING DATE: 11 APRIL 2022 AT 11H00AM

COMPULSORY BRIEFING SESSION DATE: NOT APPLICABLE

NAME OF TENDERER: _____

CONTACT PERSON: _____

TENDERED AMOUNT: _____

TENDERED AMOUNTS IN WORDS: _____

CELL NUMBER: _____

FAX NUMBER: _____

OFFICE NUMBER: _____

EMAIL ADDRESS: _____

POSTAL ADDRESS: _____

PHYSICAL ADDRESS: _____



CALL FOR TENDERS

Waterberg District Municipality (WDM) invites service providers to submit tenders for the projects:-

BID NUMBER	PROJECT DESCRIPTION	NAME/	BID AMOUNT	EVALUATION CRITERIA	CLOSING DATE	TECHNICAL PERSON	CONTACT
WDM/2021/22-02	INFORMAL SETTLEMENT STUDY		R250.00	80/20	18 MARCH 2022 AT 11H00 AM	Mr Phathu Siebe Tel:014718 3362 Email:psiebe@waterberg.gov.za	
WDM/2021/22-03	OPERATING LEASE FOR PHOTOCOPYING MACHINES		R250.00	80/20	11 APRIL 2022 AT 11H00 AM	Mr Tebogo Manaka Tel:014718 3380 Email:tmanaka@waterberg.gov.za	
WDM/2021/22-04	PROVISION OF LEGAL SERVICES		R250.00	80/20	11 APRIL 2022 AT 11H00 AM	Mr Tebogo Manaka Tel:014718 3380 Email:tmanaka@waterberg.gov.za	
WDM/2021/22-05	PROVISION OF SECURITY SERVICES		R250.00	80/20	11 APRIL 2022 AT 11H00 AM	Mr Tebogo Manaka Tel:014718 3380 Email:tmanaka@waterberg.gov.za	
WDM/2021/22-06	REPAIRS AND MAINTENANCE OF WDM FLEET AND EQUIPMENT		R250.00	80/20	11 APRIL 2022 AT 11H00 AM	Mrs M Ngoepe Tel:014718 3314 Email:mngoeppe@waterberg.gov.za	

Tender documents are available and can be downloaded free of charge from the e-Tender portal (www.etenders.gov.za) or can be obtained at non-refundable amount as indicated above from the Municipality's offices from 07h45 to 15h30 (Monday to Friday) as from the 28 FEBRUARY 2022. All proposals must be in a sealed envelope and marked "Project name, Project number and the closing date" and be deposited in the tender box of WDM Council Building, Harry Gwala Street, Modimolle. Tender Box is accessible 24 hours/7 days per week at WDM Building.

Proposals will be evaluated on the basis of the PPPEA 80/20 preferential point system, and WDM Supply Chain Management Policy. No fax or email proposals will be accepted. Interested Service Providers should submit proposals to the following address, Municipal Manager, Waterberg District Municipality, Harry Gwala Street, Modimolle, 0510. Administrative queries relating to the tender may be addressed to SCM on 014 718 3352 / 014 718 3300 or Email: gmatlou@waterberg.gov.za and technical queries as per contact person above.

P RAPUTSOA
MUNICIPAL MANAGER

A. INTRODUCTION

1. Invitation to submit proposals:

Waterberg District Municipality (WDM) invites service providers to submit proposals for the **Provision of Legal Services** as described in the Specification document. Proposals received will be the basis for the contract negotiations and ultimately appointment of the suitable service provider. It is therefore important that service providers familiarise themselves with the municipality's processes and WDM supply chain management policy and to take them into account in preparing their proposal.

2. Service Providers must note that the costs of preparing the proposal and of negotiating the contract are not reimbursable and Waterberg District Municipality is not bound to accept any of the proposals submitted.

3. At any time before submission of the proposals, Waterberg District Municipality may, for any reason, whether at its own initiative or in response to a clarification requested by an invited firm, modify these Specifications by amendments. The amendment will be sent in writing by facsimile or electronic mail to all registered consultants and will be binding on them. Waterberg District Municipality may at its discretion extend the deadline for the submission of proposals.

B. FINANCIAL PROPOSAL

In preparing the financial proposal, service providers are expected to take into account the requirements and the conditions of these Specifications. The financial proposal should list all costs associated with the project and relevant taxes. The proposal must be fixed cost and remain valid for **90 days** after the closing date of the tender submissions. The rate of exchange of this bid is not subject to any foreign currency and the prize must be firm.

C. NEGOTIATIONS

Negotiations to reach agreement on all points and sign a contract will be held at a time and place to be determined by the Waterberg District Municipality. Negotiations will include a discussion of the technical proposal, the proposed work plan and any suggestions made by the appointed service provider to improve the Terms of Reference. The agreed work plan, service level agreement and final Terms of Reference will then be incorporated into the "Description of Services" and form part of the contract.

WDM reserves the right to increase or reduce the scope of work depending on the availability of financial resources.

D. SUBMISSION, RECEIPTING AND OPENING OF TENDER PROPOSAL

The proposal tender document shall be placed in a sealed envelope clearly marked “project name, project number and the closing date”. The envelope shall be deposited in the tender box at the municipality’s offices situated at:

HARRY GWALA STREET, MODIMOLLE

Note that any proposal received after the closing date and time for submission, will not be considered. :

Technical Enquiries regarding the bid may be directed to:

Mr Tebogo Manaka (DM Legal and Administration)

Contact details: Tel: 014 718 3300/3380

Email: tmanaka@waterberg.gov.za

AND

Administrative Enquiries to Supply Chain Unit: - George Matlou

Telephone number:-014 718 3352

E Mail :gmatlou@waterberg.gov.za

The proposal will be opened immediately after the closing time for submission. No bid outside the box will be accepted. At the proposal opening all service providers proposal will be read aloud and the proposal amount shall be made public and recorded.

WDM will take ownership of the outcomes and deliverables, thereby reserving the right to reproduce information from, copy and / or distribute such outcomes and deliverables without the prior consent of and / or reference to the service provider.

WATERBERG DISTRICT MUNICIPALITY

TERMS OF REFERENCE FOR: LEGAL SERVICES

It is the intention of the Waterberg District Municipality to enter into a service agreement with a service provider that will carry out the services described hereunder. These Terms of Reference and the service provider’s proposal will form the basis of the contract.

SECTION 1: DETAILS

Province	Limpopo
Municipality	Waterberg District Municipality
Project Name	Provision of Legal Services
Location	Modimolle

SECTION 2: SUMMARY OF BRIEF

Proposals are requested from service providers who have the necessary Stature, member with good standing, extensive experience, and qualifications for the provision of legal Service to the Waterberg District Municipality.

SECTION 3: PROJECT DESCRIPTION

INTRODUCTION / BACKGROUND

Waterberg District Municipality is a juristic person as such can sue or be sued in its personal capacity therefore its seeks to appoint a service provider for the provision of legal services relating to Local Government (Conveyancing and Notary, Civil Proceedings and Litigations, Labour, Matters, Special Planning and Land Use Management Act 16 of 2013, Debt Collection and General Legal Advisory Services).

PURPOSE / OBJECTIVES OF THE PROJECT

To render Legal Services relating to Local Government to Waterberg District Municipality in the form of legal advice, opinions, matters relating to Spatial Planning and Land Use Management, representation in litigation matters and debt recovery.

SCOPE OF WORK

Potential service providers are required to submit bids that indicate expertise with regard to the typical services required for one or more of the above areas, as set out below:

a) Conveyancing and Notary :

- i. Transfer and registration of immovable property;
- ii. Preparation and registration of servitudes and other limited real rights ;
- iii. Obtaining copies of title deeds and Notary Documents ;

b) Spatial Planning and Land Use Management Act 16 of 2013

- i. Provide legal opinion on land use Applications
- ii. Litigation matters relating to Spatial Planning and Land Use Management Tribunal(SPLUMA)

c) Debt recovery:

- i. Institution of civil proceedings;

- ii. Execution of judgments ;
- iii. Conducting section 65 procedures;

d) Labour Litigation in Local Government :

- i. Represent the Municipality at the Labour Court .

e) General legal advisory services in Local Government :

- i. Drafting of legal opinions, by-laws and policies;
- ii. Civil Proceedings
- iii. Contract Management
- iv. General advice and assistance with regard to public administration and local government

SECTION 4: PROJECT OUTCOMES/ OUTPUTS/ DELIVERABLES

Provision of legal services relating to Local Government within the set timeframes in line with Waterberg District Municipality scope of work.

COMPLIANT STATEMENT

It is compulsory that these technical specifications above must be responded to point by point in compliance statement. Any deviations shall be clearly indicated together with reasons explaining the cause of the deviation.

SECTION 5: PROJECT PLAN/WORKS PROGRAM

Service providers shall act in line with the client's instructions, an action taken including the consultations or briefings to the Advocates in executing the client's instruction must be by the approval or instruction of client. Any deviations to the instructions without the client's approval shall be at the costs of the service provider.

The Service Provider must submit the Annual close up reports for all services rendered. The below table is serving as an example and service providers are urged to attach the detailed project plan with all the relevant milestones.

SECTION 6: PROJECT COSTS / PRICING SCHEDULE AND PAYMENT MILESTONE

Service providers are expected to provide an estimate of disbursements in their proposal and indicate payment at specific milestones successfully completed. The project cost must be inclusive of all chargeable costs to the municipality. The municipality will not pay any amount outside the projected/quoted amount.

The successful service provider will be remunerated in accordance with previously agreed upon milestones being achieved, within 30 days after presentation of an approved invoice.

The proposal must be fixed cost and remain valid for **90 days** after the closing date of the tender submissions. The rate of exchange of this bid is not subject to any foreign currency and the prize must be firm.

COMPULSORY PRICING SCHEDULE TO BE COMPLETED BY ALL BIDDERS:

SERVICES	BASE	RATES						
		MAGISTRATE COURT			HIGH COURT			
		Y1	Y2	Y3	Y1	Y2	Y3	TOTAL
Attendance at court Labour Matter Civil Matter	Per hour							
Written Legal Opinion Research	Per Folio							
Consultation	Per hour							
Preparing for court	Per hour							
Drafting of letters	Per Folio							
Travelling cost	Per Km							
Debt Recovery	% of recovered funds (multiply the % by R100 000.00)							
Criminal or civil litigation (taking instructions)	Per hour							
Conveyance and Notary	% of property value to be transferred (multiply the % by R100 000.00)							

General advice	Per hour							
Telephone	Per minute							
Copies	Per folio							
Sub-Total excluding VAT								
VAT								
TOTAL including VAT								
GRAND TOTAL =Y1+Y2+Y3								

Pricing Schedule Notes:

Prices should be quoted Vat exclusive.

Rand amounts should be rounded off to 2 decimal points.

Where there is a percentage rate to be charged, it must also be converted into a Rand value and R100 000 must be used as baseline for calculation of the Rand value.

Note: Completion of the above pricing schedule table is compulsory. Attachment will not serve as a substitute for completing this table. Service providers must still attach the detailed pricing schedule as part of their proposal.

SECTION 7: SKILLS ,EXPERTISE AND QUALIFICATION REQUIREMENTS

The successful service provider's project team members must have the relevant experience for the project and also expertise in legal matters as practicing attorneys or advocates and good relationship with referees.

1. Key Project team members should have legal qualifications.
2. The skill and expertise in legal services of the team members.
3. The CV's must include qualifications, years of experience in related projects, including project names and contactable reference list (CVs and copies of qualifications must be attached).

The municipality has the right to request a presentation or submission of relevant information if deemed necessary after closing the tender.

Name	Qualification	Years on experience	Reference name and Contact Details

COMPANY EXPERIENCE (COMPULSORY)

EXPERIENCE OR REFERENCE LIST OF SIMILAR WORK SUCCESSFULLY COMPLETED:

INSTITUTION NAME	PROJECT NAME /DESCRIPTION	VALUE OF PROJECT	PROJECT START & COMPLETION DATE	CONTACT PERSON & NUMBER	SUPPORTING DOCUMENT (appointment letter/order/etc)	COURT ORDER PER CASE

Note: complete the table above on company experience (Compulsory table). Attachments will not serve as a substitute for completing the table.

NB: It is compulsory that the service provider attach the proof of similar projects executed from institutions e.g Appointment letters/Official Purchase Order/Letter from the institution indicating that the work was indeed executed successfully.

Name	Position occupied in Enterprise	ID Number	Date RSA Citizenship obtained	* HDI Status			% of business / enterprise owned
				No franchise prior to elections	Women	Disabled	

PARTICULARS OF CONSULTANCY SERVICES PROVIDED TO AN ORGAN OF STATE IN THE LAST FIVE YEARS

[illegible]

ANY SIMILAR CONSULTANCY SERVICES PROVIDED TO AN ORGAN OF STATE IN THE LAST FIVE YEARS

INSTITUTION NAME	PROJECT NAME /DESCRIPTION	VALUE OF PROJECT	PROJECT START & COMPLETION DATE	CONTACT PERSON & NUMBER

SECTION 8: DELIVERY TIMEFRAME

The Project is expected to be completed within 36 months from the date of signing of the service level agreement.

The Service Provider will be required to commence with the assignment immediately upon appointment.

SECTION 9: REPORTING

The service provider must submit the monthly reports on or before the 07th of each month to the Waterberg District Municipality on progress made.

SECTION 10: PROJECT TEAM

CV's of the project team must be included in the proposal. Project team must be available for the whole implementation of the project. In case of resignation of the member, the service provider must inform the municipality in writing. The resigned member must be replaced by a team member of the same stature in qualifications and experience

SECTION 11:- EVALUATION CRITERIA

Proposal will be evaluated on the basis of the PPPFA 80/20 point system as follows:

FUNCTIONALITTY	Maximum Scores
Company Experience	50
Qualification of key staff	20
Key staff Experience	30
Total	100

Functionality Assessment

Firstly Service Provider will be evaluated in terms of functionality as part of the minimum requirements before

Evaluated on price as follows:

FUNCTIONALITY	Maximum Scores
Company Experience	50
Qualification of key staff	20
Key staff Experience	30
Total	100

NB: The minimum cut of points for the functionality is 60 of 100 points and any bidder scoring less than 60 points will not be considered for further evaluation. Bidder that qualified pre-evaluation in terms of the functionality cut-off points of 60 points will then be evaluated in terms of 80 points(NB: Points for functionality and price will not be combined.)

FUNCTIONALITY BREAKDOWN

- 1. Company Experience –on any legal matters relating to Local Government.**
- 2. Points will be allocated to court orders per finalized matter.**

COMPLETED AND ONGOING PROJECTS	SCORE
Completed 5 or more projects related to Local Government	50
Completed 4 projects related to Local Government	40
Completed 3 projects related to Local Government	30
Completed 2 Projects related to Local Government	20
Completed less than 1 project related to Local Government	0

- 2. Key Staff Experience on any legal projects relating to Local Government.**

Key Staff Experience	Score
5 or more years of experience as a Practicing Attorney	30
3-4 years of experience as a Practicing Attorney	20
1-2 year of experience as a Practicing Attorney	10
0 years of experience as Practicing Attorney	0

The number of years of experience of two key staff members will be used and averaged.

3 .Key Staff Qualifications

The scoring of the Qualifications of key staff will be as follows:

Key Staff Qualifications	Score
LLM and more plus admission as practicing Attorney	20
LLB or B-Proc plus Admission as Practicing Attorney	10
Key staff has no relevant qualification	0

NB: The highest qualification will be used.

N.B! The minimum cut-off point for functionality is 60 points out of 100 points and any bidder scoring less than 60 points will not be considered for further evaluation.

Service Providers that qualified pre-evaluation in terms of the functionality cut-off points of 60 points will then be evaluated in terms of price with 80points. (Note points for functionality and price will not be combined).

Proposal will be evaluated on the basis of PPPFA 80/20 point system. The 80/20 point system will be as follows:

Price Assessment	80
TOTAL	80

The formulae to be utilized in calculating points scored for price are as follows:

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

Where

P_s = Points scored for comparative price of bid or offer under consideration

P_t = Comparative price of bid or offer under consideration

$P_{\min}$ = Comparative price of lowest acceptable bid or offer.

Points scored must be rounded off to the nearest 2 decimal places

Points for B-BBEE status level of contributor

Preferential Elements = 20

Final Proposal will be evaluated on the basis of PPPFA 80/20 point system. The 80/20 point system will be as follows:

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

The points scored for price must be added to the points scored for B-BBEE status level of contribution to obtain the bidder's total points scored out of 100.

The B-BBEE Status Level Verification Certificates submitted must be issued by the following agencies:

Bidders other than EME's and QSE's

- (a) Verification agencies accredited by SANAS; or
- (b) Registered auditors approved by IRBA.

Bidders who are EME's and QSE's

Must submit sworn affidavits or Certificate issued by Companies and Intellectual Property Commission (CIPC) confirming their annual turnover of R10 000 000.00 or less and level of black ownership to claims points. **Attached hereto as follows:**

Annexure A- Sworn Affidavit – B-BBEE Exempt Micro Enterprise.

Annexure B - Sworn Affidavit – B-BBEE Qualifying Small Enterprise.

A bid will not be disqualified from the bidding process if the bidder did not submit a certificate substantiating the B-BBEE status level of contribution or is a non-compliant contributor. Such a bidder will score zero (0) out of a maximum of 20 points for B-BBEE.

N.B! A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid.

1.3 Calculation of total points scored for price and B-BBEE status level of contribution

1.3.1 The points scored for price must be added to the points scored for B-BBEE status level of contribution to obtain the bidder's total points scored out of 100.

2 EVALUATION OF BIDS THAT SCORED EQUAL POINTS

2.1 In the event that two or more bids have scored equal total points, the successful bid must be the one that scored the highest points for B-BBEE.

2.2 If two or more bids have equal points, including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.

2.3 In the event that two or more bids are equal in all respects, the award must be decided by the drawing of lots.

SELECTION CRITERIA

The following criteria in conjunction with accepted procurement criteria will be applied during the evaluation of the proposals to the Waterberg Municipality:

- A demonstrated understanding of the requirements of the brief;
- The strength of the company's ability to complete the job successfully.
- The strength of the creative material in meeting the objectives;
- Relevant and related experience of the team of people who will work on the project;
- The ability to deliver within the time frame set;
-

SERVICE LEVEL AGREEMENT

Once your Company has been selected, you will need to sign a contract which outlines the agreed duties of each party, as well as the required deliverables, remuneration, mutual delegations and terms and conditions of the appointment. The contract will be for the duration of the project including the liability period. The following considerations should be noted when contractual negotiations begin:

- Intellectual property
- Privacy of information
- Terms and conditions

REQUIRED BIDDER PROFILE:

A company profile should be submitted, while interested parties should also indicate in their proposals their expertise and capacity to undertake the project in question. Previous experience reference list with recent contacts telephone numbers must be attached.

PAYMENT:

Payment will be done against a fixed term contract according to Supply Chain Policy of Waterberg District Municipality, which must be inclusive of travelling and accommodation. All payments shall be made on the presentation of quality controlled; accepted, agreed deliverables and as per quotation. No variable cost not quantified will be allowed, all cost must be quantified unless the tender is of nature that cannot be quantified and it is stated as such in the financial proposal.

REFERENCES:

The proposal should include a client reference list with contact details and a brief description of projects successfully completed with clear indication of project awarded amounts, time frame and description of the relevant project.

Similar references of other district and local municipalities or provincial governments will be an added recommendation and/or advantage.

BID PROPOSAL:

The submission of bid proposals will close on as per the advert.

Note that all bid proposals are to be deposited into the bid box at Waterberg District Municipality, Harry Gwala Street, Modimolle, 0510.

No fax or email will be considered for the submission of the proposals.

ENQUIRIES:

General Enquiries regarding this request for proposals should be directed as follows:

- E-mail address: gmatlou@waterberg.gov.za
- Tel. Number: (014) 718-3300/52

Technical Enquiries should be directed to Mr Tebogo Manaka

Email address: tmanaka@waterberg.gov.za

Telephone : 014 718 3300/3380

N.B! Enquiries must be **forwarded in writing through e-mail address** above. No enquiries will be entertained **48 hours (2 days) before closing of the tender.**

COMPLIANCE STATEMENT

It is compulsory that these technical specifications above be responded to point by point in compliance statement. Any deviations shall be clearly indicated together with reasons explaining the cause of the deviation.

THE FOLLOWING BIDDING CONDITIONS WILL APPLY:

A.MANDATORY REQUIREMENTS

- Price(s) quoted must be valid for at least ninety (90) days from the closing date of the tender;
- Price(s) quoted must be firm and inclusive of VAT (if VAT registered) and detailed price schedule must be attached;
- Municipal accounts for the physical address of the business and residential addresses of each of its shareholders. The municipal accounts submitted may not be older than 2 months from the closing date of tender.
 - If the proof submitted is not in the name of the company or shareholder, written explanations and evidence must be attached indicating how the proof submitted relates to the said business or shareholder;
 - In cases where the address of the business or shareholder is not through ownership but through a lease agreement, a copy of municipal account for the owner of the building must be attached as well as a copy of the lease agreement with the said business or shareholder;
 - Evidence of the Physical addresses of business and shareholders must be attached if not evident from the municipal account;
- This should provide clear evidence that the municipal accounts of the business' address and the residential addresses of every individual shareholder are not in arrears for more than 90 days;
- Proof of Residential e.g. lease agreement, municipality water & lights statement, or affidavit of proof of residential must be attached; and
- Copy of Tax Compliant Status Pin (Bids received with a non-compliant tax status may be disqualified with failure to update the Tax Status within 7 working days)
- Tender proposal will be evaluated on PPPFA 80/20 points system;
- Exclusion of other items will cause a disqualification, all quotes must be prepared according to the scope of work;
- No pricing options will be allowed, only one price must be submitted by the tendering service provider;
- Form must be signed in black ink (no pencil is allowed or other colour);
- All MBD Forms must be completed and signed in black ink;
- Any alterations on the proposals or the tender document must be initialed.
- Proof of registration of Central Supplier Database
- Certified Copy of right of Appearance Certificate (Admission as a practicing Attorney or Advocate)for key staff members
- Certified Copy of the Fidelity Fund Certificate for the Company.
- Certified Copy of the letter of good standing for the Company.
- Certified Copy of the letter of good standing for the key staff members.
- Initial each page of NT Conditions of Contract
- In case of a Joint Venture, Association or Consortium a formal contract agreement must be signed.

Failure to comply with any of the above-mentioned conditions will be an automatic disqualification.

B. POINTS WILL BE ALLOCATED ON A SPECIFIC CRITERION AS PER TENDER REQUIREMENTS UPON SUBMISSION OF SUPPORTING DOCUMENTS

- Contactable Reference list of previous **completed** projects must be attached. Contactable reference list must comprise of the following information: - **project name, scope / description of appointment, company tendered for, tendered amount, appointment date, contactable references with telephone numbers and completion date.**
 - The most relevant and recent projects should be summarized on the tender document template and additional projects and explanations may be included as a separate attachment to the tender document;
 - A letter or other evidence (appointment letter/ purchase order) from the reference institution indicating that the project was successfully completed should be submitted as evidence. If not submitted, WDM reserve the right to not consider the project during evaluation of experience;
 - The scope description should be an exact, but very short description of the specific goods or services provided, not vague or in general. E.g. not just “equipment” / “vehicle” / “study”, but what type of “__ equipment” / “__ vehicle” / “__ study”.
- Copy of Court Orders on completed cases relating to Local Government
- At least 2 (two) Curriculum Vitae (CV's) of the Team members with certified copies of qualifications, ID's, years of relevant experience as a Practicing Attorney
- Certified Copy of BBBEE certificate /sworn affidavit (If applicable)
- Company Profile (Indicating Shareholding, core business, experience, etc.)

The shortlisted companies and the directors or shareholders will be subjected to clearance or verification tests that the institution might deem necessary. Also note that the reference list attached might be contacted for verification process on the municipality's discretion.

RECOMMENDED:-

ALL INTERESTED SERVICE PROVIDERS ARE ADVISED TO NUMBER THEIR PROPOSALS NEATLY, ATTACH ALL NECESSARY DOCUMENTS, INCLUDE A CONTENT PAGE OF THE PROPOSAL AND BIND THEM INCLUDING THE MUNICIPALITY TENDER DOCUMENT.

CHECKLIST ON MINIMUM REQUIREMENTS

No.	MINIMUM REQUIREMENTS	TICK	COMMENT IF NOT ATTACHED
MANDATORY			
1.	Price(s) quoted is valid for at least ninety (90) days from the closing date of tender		
2.	Price(s) quoted must be firm and inclusive of VAT (if VAT registered) and detailed price schedule must be attached;		
3.	Municipal account of the company and shareholders which is not in arrears for more than 90 days (see detailed explanation under "Conditions").		
4.	Copy of Tax Compliant Status Pin (Bids received with a non-compliant tax status may be disqualified with failure to update the Tax Status within 7 working days)		
5.	Exclusion of other items will cause a disqualification, all quotes must be prepared according to the scope of work;		
6.	No pricing options will be allowed, only one price must be submitted by the tendering service provider;		
7.	Form must be signed in black ink (no pencil is allowed)		
8.	All MBD Forms must be completed and signed		
9.	Any alterations must be initialed		
10.	Proof of registration on Central Supplier Database		
11.	Initial each page of NT Conditions of Contract		
12.	Certified Copy of right of Appearance Certificate (Admission as a practicing Attorney or Advocate)for key staff members		
13.	Certified Copy of the Fidelity Fund Certificate for the Company.		
14.	Certified Copy of the letter of good standing for the Company.		
15.	Certified Copy of the letter of good standing for the key staff members.		
ZERO SCORE IF NOT SUBMITTED			
1.	Contactable Reference, List of previous completed projects (see detailed explanation under "Conditions").		
2.	Certified Valid BBBEE Certificate or Certified sworn affidavit with the status level verification for EME's.		

	Refer to paragraph 1.2 of the specifications		
3.	At least 2 (two) Curriculum Vitae (CV's) of the Team members with certified copies of qualifications, ID's, years of relevant experience on similar projects and projects names.		
4.	Copy of Court Orders on completed cases relating to Local Government		
5.	Company Profile (Indicating Shareholding, core business, experience, etc.)		

Note: Failure to comply with any of the conditions will be an automatic disqualification

Service provider / representative

Signature

ANNEXURE 'A'

SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE – GENERAL

I, the undersigned,

Full Name & Surname	
Identity number	

Hereby declare under oath as follows:

1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I am a Member / Director / Owner of the following enterprise and am duly authorised to act on its behalf:

Enterprise Name:	
Trading Name (If Applicable):	
Registration Number:	
Enterprise Physical Address:	
Type of Entity (CC, (Pty) Ltd, Sole Prop etc.):	
Nature of Business:	
Definition of "Black People"	As per the Broad-Based Black Economic Empowerment Act 53 of 2003 as Amended by Act No 46 of 2013 "Black People" is a generic term which means Africans, Coloureds and Indians – (a) who are citizens of the Republic of South Africa by birth or descent; or (b) who became citizens of the Republic of South Africa by naturalisation- i. before 27 April 1994; or ii. on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date;"
Definition of "Black Designated Groups"	"Black Designated Group means: (a) Black people who are youth as defined in the National Youth Commission Act of 1996; (b) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act; (c) Black people living in rural and under developed areas; (d) Black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011;"

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3. I hereby declare under Oath that:

- The Enterprise is _____ % Black Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise is _____ % Black Female Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise is _____ % Black Designated Group Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- Black Designated Group Owned % Breakdown as per the definition stated above:

COMPULSORY

- Black Youth % = _____ %
- Black Disabled % = _____ %
- Black People Living in Rural areas and Locations % = _____ %
- Black Military Veterans % = _____ %
- Based on the Financial Statements/Management Accounts and other information available on the latest financial year-end of _____, the annual Total Revenue was R10,000,000.00 (Ten Million Rands) or less
- Please Confirm on the below table the B-BBEE Level Contributor, **by ticking the applicable box.**

100% Black Owned	Level One (135% B-BBEE procurement recognition level)	
At least 51% Black Owned	Level Two (135% B-BBEE procurement recognition level)	
Less than 51% Black Owned	Level Four (135% B-BBEE procurement recognition level)	

4. I Know and understand the contents of this affidavit and I have no objection to take the Prescribed oath and consider the oath binding on my conscience and on the Owners of the Enterprise which I represent in this matter
5. The sworn affidavit will be valid for a period of 12 months from date signed by commissioner.

Deponent Signature: _____

Date: _____

Commissioner of Oaths
Signature & Stamp

ANNEXURE 'B'

SWORN AFFIDAVIT – B-BBEE QUALIFYING SMALL ENTERPRISE - GENERAL

I, the undersigned,

Full name & Surname	
Identity number	

Hereby declare under oath as follows:

1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I am a Member / Director / Owner (**Select one**) of the following enterprise and am duly authorised to act on its behalf:

Enterprise Name:	
Trading Name (If Applicable):	
Registration Number:	
Vat Number (If applicable)	
Enterprise Physical Address:	
Type of Entity (CC, (Pty) Ltd, Sole Prop etc.):	
Nature of Business:	
Definition of "Black People"	As per the Broad-Based Black Economic Empowerment Act 53 of 2003 as Amended by Act No 46 of 2013 "Black People" is a generic term which means Africans, Coloureds and Indians – (a) who are citizens of the Republic of South Africa by birth or descent; or (b) who became citizens of the Republic of South Africa by naturalisation- i. before 27 April 1994; or ii. on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date;"
Definition of "Black Designated Groups"	"Black Designated Groups means: (a) unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution; (b) Black people who are youth as defined in the National Youth Commission Act of 1996; (c) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act; (d) Black people living in rural and under developed areas; (e) Black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011;"

3. I hereby declare under Oath that:

- The Enterprise is _____ % Black Owned using the flow-through principle as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise is _____ % Black Female Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise is _____ % Black Designated Group Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- Black Designated Group Owned % Breakdown as per the definition stated above:
 - Black Youth % = _____ %
 - Black Disabled % = _____ %
 - Black Unemployed % = _____ %
 - Black People living in Rural areas % = _____ %
 - Black Military Veterans % = _____ %
- Based on the Audited Financial Statements/ Financial Statements and other information available on the latest financial year-end of _____ (DD/MM/YYYY), the annual Total Revenue was between R10,000,000.00 (Ten Million Rands) and R50,000,000.00 (Fifty Million Rands),
- Please confirm on the table below the B-BBEE level contributor, **by ticking the applicable box.**

100% Black Owned	Level One (135% B-BBEE procurement recognition level)	
At Least 51% black owned	Level Two (125% B-BBEE procurement recognition level)	

4. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
5. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature: _____

Date: _____

Commissioner of Oaths
Signature & stamp
Date:

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF MUNICIPALITY/ MUNICIPAL ENTITY)					
BID NUMBER:	WDM/2021/22-04	CLOSING DATE:	11 APRIL 2022	CLOSING TIME:	11H00AM
DESCRIPTION	PROVISION OF LEGAL SERVICES				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
WATERBERG DISTRICT MUNICIPALITY					
40 HARRY GWALA STREET					
MODIMOLLE					
0510					
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	☐ Yes	B-BBEE STATUS LEVEL SWORN AFFIDAVIT		☐ Yes	
	☐ No			☐ No	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES, ANSWER PART B:3]	
TOTAL NUMBER OF ITEMS OFFERED			TOTAL BID PRICE	R	
SIGNATURE OF BIDDER			DATE		
CAPACITY UNDER WHICH THIS BID IS SIGNED					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:			TECHNICAL INFORMATION MAY BE DIRECTED TO:		
DEPARTMENT	BTO		CONTACT PERSON	TEBOGO MANAKA	
CONTACT PERSON	GEORGE MATLOU		TELEPHONE NUMBER	014718 3380	
TELEPHONE NUMBER	014718 3352		FACSIMILE NUMBER	N/A	
FACSIMILE NUMBER	N/A		E-MAIL ADDRESS	tmanaka@waterberg.gov.za	
E-MAIL ADDRESS	gmatlou@waterberg.gov.za				

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:										
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION. 1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR ONLINE 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.										
2. TAX COMPLIANCE REQUIREMENTS										
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS. 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS. 2.3 APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA. 2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3. 2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID. 2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER. 2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.										
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS										
<table style="width: 100%; border: none;"> <tr> <td style="width: 70%;">3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?</td> <td style="text-align: right;">☐ YES ☐ NO</td> </tr> <tr> <td>3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA?</td> <td style="text-align: right;">☐ YES ☐ NO</td> </tr> <tr> <td>3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?</td> <td style="text-align: right;">☐ YES ☐ NO</td> </tr> <tr> <td>3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?</td> <td style="text-align: right;">☐ YES ☐ NO</td> </tr> <tr> <td>3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?</td> <td style="text-align: right;">☐ YES ☐ NO</td> </tr> </table> IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.	3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	☐ YES ☐ NO	3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA?	☐ YES ☐ NO	3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	☐ YES ☐ NO	3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	☐ YES ☐ NO	3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	☐ YES ☐ NO
3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	☐ YES ☐ NO									
3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA?	☐ YES ☐ NO									
3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	☐ YES ☐ NO									
3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	☐ YES ☐ NO									
3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	☐ YES ☐ NO									

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

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

DATE:

MBD 4

DECLARATION OF INTEREST

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

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

3.2 Identity Number:

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

3.4 Company Registration Number:

3.5 Tax Reference Number:.....

3.6 VAT Registration Number:

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

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

3.8.1 If yes, furnish particulars.

.....

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

3.13.1 If yes, furnish particulars.

.....

.....

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

3.14.1 If yes, furnish particulars:

.....

.....

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

Full Name	Identity Number	State Employee Number

.....
Signature

.....
Date

.....
Capacity

.....
Name of Bidder

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL
PROCUREMENT REGULATIONS 2011**

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, 2011.

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 R1 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to exceed/not exceed R1 000 000 (all applicable taxes included) and therefore the..... preference point system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contribution.

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

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

1.5 Failure on the part of a bidder to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS), or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or a sworn affidavit confirming annual turnover and level of black ownership in case of an EME and QSE together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

2. DEFINITIONS

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

contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

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

issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

6. BID DECLARATION

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

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

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

8. SUB-CONTRACTING

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

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

- 8.1.1 If yes, indicate:

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

(Tick applicable box)

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

9. DECLARATION WITH REGARD TO COMPANY/FIRM

- 9.1 Name of company/firm:.....
- 9.2 VAT registration number:.....
- 9.3 Company registration number:.....

9.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

9.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

9.7 MUNICIPAL INFORMATION

Municipality where business is situated:

Registered Account Number:

Stand Number:.....

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

9.9 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

- (a) disqualify the person from the bidding process;
- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from

obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and

- (e) forward the matter for criminal prosecution.

WITNESSES

1.
2.

.....
SIGNATURE(S) OF BIDDERS(S)

DATE:

ADDRESS

.....

.....

CONTRACT FORM - RENDERING OF SERVICES

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

PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
 - (i) Bidding documents, viz
 - Invitation to bid;
 - Tax clearance certificate;
 - Pricing schedule(s);
 - Filled in task directive/proposal;
 - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
 - Declaration of interest;
 - Declaration of Bidder's past SCM practices;
 - Certificate of Independent Bid Determination;
 - Special Conditions of Contract;
 - (ii) General Conditions of Contract; and
 - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES	
1	
2	
DATE:	

CONTRACT FORM - RENDERING OF SERVICES**PART 2 (TO BE FILLED IN BY THE PURCHASER)**

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

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

4. I confirm that I am duly authorised to sign this contract.

SIGNED AT ON

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1

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

4.3.1	If so, furnish particulars:		
Item	Question	Yes	No
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	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.**

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js367bW

CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Municipality / Municipal Entity)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

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

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js9141w 4

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

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General Conditions of Contract

1. Definitions

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

obligations of the supplier covered under the contract.

- 1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

2. Application

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

3. General

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

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

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental services

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

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

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

14. Spare parts

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

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

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

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

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

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

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

17. Prices

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

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

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

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

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

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

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

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

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

22. Penalties

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

23. Termination for default

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

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

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

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

23.4 If a purchaser intends imposing a restriction on a supplier or any

person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

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

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

may be due to him

**25. Force
Majeure**

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

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

**26. Termination
for insolvency**

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

**27. Settlement of
Disputes**

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

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

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

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

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

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

(b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of
liability**

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

(a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation Programme (NIP)** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34. Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

Js General Conditions of Contract (revised July 2010)