



**REF NO: RFQ2019/20/009 SUPPLY AND DELIVERY OF MUNICIPAL VEHICLES TYRES**

**CLOSING DATE: 11 SEPTEMBER 2019**

<b>SUPPLIER (PRINT NAME)</b>  	
<b>ADDRESS OF SUPPLIER</b>  	
<b>TELEPHONE</b>  	<b>FACSIMILE</b>  
<b>DELIVERY PERIOD</b>  	<b>QUOTE / AMOUNT</b>  
<b>SIGNATURE OF SUPPLIER</b>  	<b>DATE</b>  

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**TENDER NOTICE & INVITATION TO TENDER**



Bid No	Bid Description	Contract Period	Availability of document	Closing date and time	Pointing system
RFQ2019/20/009	SUPPLY AND DELIVERY OF MUNICIPAL VEHICLES TYRES	Once -off	04 September 2019	11 September 2019@12pm	80/20

**INVITATION FOR PROSPECTIVE BIDDERS**

Prospective service providers are hereby invited to tender for the following project:

**Specifications:**

- As per quotation document

**Quotation documents should be accompanied by the following:**

- Company Registration Certificate
- Valid Original Tax Clearance
- Original or certified copy of BBB-EE Certificate
- Certified ID copies of Directors / members

- Municipal rates account / statement of account (The account must not be over 90 in arrears)
- CSD registration report.

Bid documents with detailed specifications and be downloaded on the Kgatelopele Local Municipality's website at [www.kgatelopele.gov.za](http://www.kgatelopele.gov.za) and on e-Tender Publication portal at [www.etenders.gov.za](http://www.etenders.gov.za) from **Wednesday, 04 September 2019** .

All sealed bids clearly marked with the Project name and Bid number must be placed in the Tender Box at the offices of the Kgatelopele Local Municipality, 222 Barker Street, Danielskuil, 8405, on or before **12:00 pm Wednesday, 11 September 2019** at which time bids will be opened in public. No emailed or faxed documents will be accepted.

**Bid documents submitted after 12:00 pm on Wednesday, 11 September 2019 won't be accepted.**

Please note that it is a prerequisite of the Municipality that all service providers are to be registered on the **National Treasury Central Supplier Database (CSD)**. The submissions of valid and up to date SARS tax clearance certificates are compulsory. Registration on CSD can be done at [www.csd.gov.za](http://www.csd.gov.za) or at your nearest Treasury and Kgatelopele Local Municipal Offices.

Bids will be evaluated according to the Kgatelopele Local Municipality's Supply Chain Management Policy, Preferential Procurement Policy Framework Act (Act 5 of 2005) and the Preferential Procurement Regulations, 2017, and Broad Base Black Economic Empowerment Act (Act 53 of 2003).

Kgatelopele Local Municipality is under no obligation to accept the lowest or any bid and reserves the right to accept the whole or part of any bid. Kgatelopele Local Municipality further reserves the right to re-advertise if it so wishes. No reasons for the acceptance or rejection of any bid will be given.

**KGATELOPELE LOCAL MUNICIPALITY**

**REF NO: RFQ2019/20/009**

**Enquiries** : 053 384 8646

**Procurement** : Mr. B Moeng (Email: supply@kgatelopele.gov.za)

**M A JANUARY (Mr.)**

**MUNICIPAL MANAGER**

**KGATELOPELE LOCAL MUNICIPALITY P.O Box 43 DANIELSKUIL**

**8405**

**MBD1**

**INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE  
(**KGATELOPELE LOCAL MUNICIPALITY**)

<b>BID NUMBER:</b>	RFQ2019/20/009
<b>CLOSING DATE:</b>	11 SEPTEMBER 2019
<b>CLOSING TIME:</b>	12:00 pm
<b>DESCRIPTION:</b>	SUPPLY AND DELIVERY OF MUNICIPAL VEHICLES TYRES

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**The successful bidder will be required to fill in and sign a written Contract Form (MBD 7)**

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BID DOCUMENTS MAY BE POSTED TO:

(We urge suppliers to submit their documents **ON TIME** to avoid late arrival or documents not reaching its destination. The municipality will not be held responsible or accountable for not accepting late submission)

The Municipal Manager  
Kgatelopele Local Municipality  
P. O. Box 43  
Danielskuil  
8405

**KGATELOPELE LOCAL MUNICIPALITY**

**REF NO: RFQ2019/20/009**

OR

DEPOSITED IN THE BID BOX SITUATED AT

Kgatelopele Municipal Offices

222 Barker Street

Danielskuil,

8405

Wooden Tender Box at Municipal Offices Entrance on the left-hand side near the cashier's Counter

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

The bid box is generally open from 07h30 until 16h45 Monday to Friday weekdays, and 08h00 until 12h00 midday.

**ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)**

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

**NB: NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE (as defined in Regulation 1 of the Local Government: Municipal Supply Chain Management Regulations)**

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

**KGATELOPELE LOCAL MUNICIPALITY**

**REF NO: RFQ2019/20/009**

NAME OF BIDDER .....

POSTAL ADDRESS .....

STREET ADDRESS .....

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

CELLPHONE NUMBER .....

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

E-MAIL ADDRESS .....

VAT REGISTRATION NUMBER .....

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN ATTACHED? (MBD

**YES/NO**

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (MBD 6.1

**YES/NO** IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

**(Tick applicable box)**

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION   
ACT (CCA)

A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN NATIONAL  
ACCREDITATION SYSTEM (SANAS)

A REGISTERED AUDITOR

**(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE 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?

**KGATELOPELE LOCAL MUNICIPALITY**

**REF NO: RFQ2019/20/009**

**YES/NO**

(IF YES ENCLOSE PROOF)

SIGNATURE OF BIDDER .....

DATE .....

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

TOTAL BID PRICE .....

TOTAL NUMBER OF ITEMS OFFERED .....

**ANY**

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**ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:**

**Municipality / Municipal Entity:** Kgatelopele Local Municipality

**Department:** Supply Chain Management Unit

**Contact Person:** Bolokang Moeng

**Tel:** 053 384 8646

**ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:**

**Contact Person:** .....

**Tel:** .....

**Fax:** .....

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**MBD 2**

**TAX CLEARANCE CERTIFICATE REQUIREMENTS**

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

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

**MBD 3.1**

**PRICING SCHEDULE – FIRM PRICES  
(PURCHASES)**

**NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED**

**IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT**

Name of Bidder.....	Bid Number.....
Closing Time .....	Closing Date .....

OFFER TO BE VALID FOR.....DAYS FROM THE CLOSING DATE OF BID.

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ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
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- Required by: .....

- At: .....

**KGATELOPELE LOCAL MUNICIPALITY**

**REF NO: RFQ2019/20/009**

- .....
- Brand and Model .....
  - Country of Origin .....
  
  - Does the offer comply with the specification(s)? \*YES/NO
  - If not to specification, indicate deviation(s) .....
  - Period required for delivery .....  
\*Delivery: Firm/Not firm
  - Delivery basis .....

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

\*\* "all applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

\*Delete if not applicable

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**SPECIFICATIONS**

**PROJECT : RFQ2019/20/009: SUPPLY AND DELIVERY OF MUNICIPAL VEHICLES TYRES**

**PROJECT GRADING : Not Applicable**

**KGATELOPELE LOCAL MUNICIPALITY**

**REF NO: RFQ2019/20/009**

**PROJECT DURATION : Once-off**

**BID DESCRIPTION : Offer is valid for 90 days from closing date of bid**

**EXECUTIVE SUMMARY**

FIRM BIDS ARE HEREBY REQUESTED FROM REGISTERED AND ACCREDITATED SERVICE PROVIDERS WITH THE FOLLOWING SPECIFICATIONS AS A MINIMUM:

- Valid original Tax Clearance Certificate
- Original BBB-EE Certificate/ sworn affidavit
- Supplier must be registered on the central Database for Government (CSD), attach the CSD registration report
- Municipal rates account/statement of account or affidavit if it is not applicable to the service provider.
- Certified ID copy of the director of the company
- Company registration certificate
- Cash flow and labour schedule

**PURPOSE**

-supply and delivery of municipal vehicles tyres

**PROJECT DESCRIPTION:**

**SPECIFICATIONS**



**MUNICIPAL VEHICLE LIST OF WORNOUT TYRES**

MODEL	TYRE SIZES	QUANTITY
<i>NISSAN UD80 TRUCK BXH 771 NC - TYRES</i>	11R 22.5 146/143 M120 RIM 8.25	7
<i>NISSAN UD80 TRUCK BXH 772 NC - TYRES</i>	11R 22.5 146/143 M120 RIM 8.25	7
<i>HYUNDAI TIPPER TRUCK BXG 156 NC - TYRES</i>	195/70 R15 104/102	5
<i>CHERRYPICKER TRAILER – TYRE</i>	195R14 106/104	1
<i>TOYOTA RAV4 KLM1NC</i>	255/65 R17	4
<i>GWM STEED BXF 327 NC (SEWER) - RIM</i>	<b>RIMS:</b> 215 R15 109/107 a six hole rim	1

**Pricing Schedule:**

Item No	QTY	Description of goods/ services	Total
01	7	NISSAN UD80 TRUCK BXH 771 NC - TYRES 11R 22.5 146/143 M120 RIM 8.25	R
02	7	NISSAN UD80 TRUCK BXH 772 NC – TYRES 11R 22.5 146/143 M120 RIM 8.25	R
03	5	HYUNDAI TIPPER TRUCK BXG 156 NC - TYRES 195/70 R15 104/102	R
04	1	CHERRYPICKER TRAILER - TYRES 195R14 106/104	R
05	4	TOYOTA RAV4 255/65 R17	R
06	1	GWM STEED BXF 327 NC (SEWER) - RIMS 215 R15 109/107 a six hole rim	R
07		OTHER: SPECIFY	R
		<b>SUB-TOTAL</b>	R
		<b>VAT@15%</b>	R
		<b>GRAND TOTAL</b>	R

**STANDARD CONDITIONS OF TENDER****GENERAL****ACTIONS**

The Employer and each Tenderer submitting a Tender offer shall comply with these conditions of Tender. In their dealings with each other, they shall discharge their duties and obligations timeously and with integrity, and behave equitably, honestly and transparently.

**TENDER DOCUMENTS**

The documents issued by the Employer for the purpose of a Tender offer are listed in the Tender Data.

**INTERPRETATION**

The Tender Data and additional requirements contained in the Tender schedules that are included in the returnable documents are deemed to be part of these conditions of Tender.

For the purpose of these conditions for the invitation to tender, the following conditions apply:

- a. **Comparative Offer** means the Tenderers financial offer after the factors of non-firm prices,  
all unconditional discounts and any other Tendered parameters that will affect the value of the financial offer have been taken into consideration;
- b. **Corrupt Practice** means the offering, giving, receiving or soliciting of anything of value to influence The Action of the Employer or his staff or agents in the Tender process;  
and
- c. **Fraudulent Practice** means misrepresentation of the facts in order to influence the Tender process or the award of a contract arising from a Tender offer to the detriment of the Employer, including collusive practices intended to establish prices at artificial levels quality (functionality) means the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs.

### **COMMUNICATION AND EMPLOYER'S AGENT**

All communication between the Employer and a Tenderer shall be between the employer and the tenderer, and in a form, that can be read, copied and recorded.

Writing shall be in the English language. Such communication shall be for the purpose of this tender only.

### **THE EMPLOYER'S RIGHT TO ACCEPT OR REJECT ANY TENDER OFFER**

The Employer may accept or reject any variation, deviation, Tender offer, or alternative Tender offer, and may cancel the Tender process and reject all Tender offers at any time before to the formation of a contract. The Employer shall not accept or incur any liability to a Tenderer for such cancellation and rejection but will give reasons for such action upon written request to do so.

After the cancellation of a Tender process or the rejection of all Tender offers the Employer may abandon the proposed procurement and re-issue a similar Tender notice and invitation to Tender not less than six months after the closing date for Tender offers or have it performed in another manner at any time.

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## **TENDERER'S OBLIGATIONS**

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### **ELIGIBILITY**

Submit a Tender offer only if the Tenderer complies with the criteria stated in the Tender document and the Tenderer, or any of his principals, is not under any restriction to do business with Employer.

### **COST OF TENDERING**

Accept that the Employer will not compensate the Tenderer for any costs incurred in the preparation and submission of a Tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer satisfy requirements.

### **CONFIDENTIALITY AND COPYRIGHT OF DOCUMENTS**

Treat as confidential all matters arising in connection with the Tender. Use and copy the documents issued by the Employer only for the purpose of preparing and submitting a Tender offer in response to the invitation.



### **SITE VISIT AND CLARIFICATION MEETING**

Attend, where required, a site visit and clarification meeting at which Tenderers may familiarize themselves with aspects of the proposed work, services or supply and raise questions. Details of the meeting(s) are stated in the Tender Document.

### **SEEK CLARIFICATION**

Request clarification of the Tender documents, if necessary, by notifying the Employer at least five working days before the closing time stated in the Tender Document.

### **INSURANCE**

Be aware that the extent of insurance to be provided to the Employer (if any) may not be for the full cover required in terms of the conditions of contract identified in the Contract Document. The Tenderer is advised to seek qualified advice regarding insurance.

### **PRICING THE TENDER OFFER**

Include in the rates, prices, and the Tendered total of the prices (if any) all duties, taxes (except Value Added Tax (VAT)), and other levies payable by the successful Tenderer, such duties, taxes and levies being those applicable 14 days before the closing time stated in the Tender Document.

Show VAT payable by the Employer separately as an addition to the Tendered total of the prices. Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the conditions of contract identified in the Contract Document.

State the rates and prices in ZAR Rand unless instructed otherwise in the Tender Document. The conditions of contract identified in the Contract Data may provide for part payment in other currencies.

### **ALTERATIONS TO DOCUMENTS**

Not make any alterations or additions to the Tender documents, except to comply with instructions issued by the Employer, or necessary to correct errors made by the Tenderer. All signatories to the Tender offer shall initial all such alterations. Erasures and the use of Tippex are prohibited.

### **SUBMITTING A TENDER OFFER**

Submit a Tender offer to provide the whole of the Works, services or supply identified in the Contract Document, unless stated otherwise in the Tender Document.

Return all returnable documents to the Employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing in **BLACK INK**.

Submit the parts of the Tender offer communicated on paper as an original plus the number of copies stated in the Tender Document, with an English translation of any documentation in a language other than English, and the parts communicated electronically in the same format as they were issued by the Employer.

Sign the original and all copies of the Tender offer where required in terms of the Tender Document. The Employer will hold all authorized signatories liable on behalf of the Tenderer.

Seal the original and each copy of the Tender offer as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the Employer's address and identification details stated in the Tender Data, as well as the Tenderer's name and contact address.

Only the original is to be submitted.

Seal the original Tender offer in an outer package that states on the outside only the Employer's address and identification details as stated in the Tender Document.

Accept that the Employer shall not assume any responsibility for the misplacement or premature opening of the Tender offer if the outer package is not sealed and marked as stated.

### **INFORMATION AND DATA TO BE COMPLETED IN ALL RESPECTS**

Accept that Tender offers, which do not provide all the data or information requested completely and, in the form, required, may be regarded by the Employer as non-responsive.

### **CLOSING TIME**

Ensure that the Employer receives the Tender offer at the address specified in the Tender Document not later than the closing time stated in the Tender Document. Proof of posting shall not be accepted as proof of delivery. The Employer shall not accept Tender offers submitted by telegraph, telex, facsimile or e-mail, unless stated otherwise in the Tender Data.

Accept that, if the Employer extends the closing time stated in the Tender Document for any reason, the requirements of these conditions of Tender apply equally to the extended deadline.

### **TENDER OFFER VALIDITY**

Hold the Tender offer(s) valid for acceptance by the Employer at any time during the validity period stated in the Tender Document after the closing time stated in the Tender Document.

If requested by the Employer, consider extending the validity period stated in the Tender Document for an agreed additional period.

### **CLARIFICATION OF TENDER OFFER AFTER SUBMISSION**

Provide clarification of a Tender offer in response to a request to do so from the Employer during the evaluation of Tender offers. This may include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the total of the prices or substance of the Tender offer is sought, offered, or permitted. The total of the prices stated by the Tenderer shall be binding upon the Tenderer.

### **PROVIDE OTHER MATERIAL**

Provide, on request by the Employer, any other material that has a bearing on the Tender offer, the Tenderer's commercial position (including notarized joint venture agreements), preference arrangements, or samples of materials, considered necessary by the Employer for the purpose of a full and fair risk assessment. Should the Tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the Employer's request, the Employer may regard the Tender offer as non-responsive.

Dispose of samples of materials provided for evaluation by the Employer, where required.

### **INSPECTIONS, TESTS AND ANALYSES**

Provide access during working hours to premises for inspections, tests and analysis as provided for in the Tender Data.

### **CERTIFICATES**

Include in the Tender submission or provide the Employer with any certificates as stated in the Tender Data.

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**THE EMPLOYER'S UNDERTAKINGS**

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**RESPOND TO CLARIFICATION**

Respond to a request for clarification received up to **five working days** prior to the Tender closing time stated in the Tender Document and notify all Tenderers who drew procurement documents.

**ISSUE ADDENDA**

If necessary, issue addenda that may amend or amplify the Tender documents to each Tenderer during the period from the date of the Tender Notice until **seven days** before the Tender closing time stated in the Tender Document. If, as a result a Tenderer applies for an extension to the closing time stated in the Tender Document, the Employer may grant such extension and, will then notify it to all Tenderers who drew documents.

**RETURN LATE TENDER OFFERS**

Return Tender offers received after the closing time stated in the Tender Document, **unopened**, (unless it is necessary to open a Tender submission to obtain a forwarding address), to the Tenderer concerned.

**OPENING OF TENDER SUBMISSIONS**

Unless the two-envelope system is to be followed, open valid Tender submissions in the presence of Tenderers' agents who choose to attend at the time and place stated in the Tender Document. Tender submissions for which acceptable reasons for withdrawal have been submitted will not be opened.

Announce at the opening held immediately after the opening of Tender submissions, at a venue indicated in the Tender Document, the name of each Tenderer whose Tender offer is opened, the total of **his prices, preferences claimed** and **time for completion**, if any, for the main Tender offer only.

Make available the record outlined above to all interested persons upon request.

**TWO-ENVELOPE SYSTEM**

Where stated in the Tender Document that a two-envelope system is to be followed, open **only** the **technical proposal** of valid Tenders in the presence of Tenderers' agents who choose to attend at the time and place stated in the Tender Document and announce the **name** of each Tenderer whose technical proposal is opened.

Evaluate the **quality** of the technical proposals offered by Tenderers, then advise Tenderers who remain in contention for the award of the contract of the **time** and **place** when the **financial proposals** will be opened. Open only the financial proposals of Tenderers, who score in the **quality evaluation** above the **minimum number of points** for quality stated in the Tender Data, and announce the score obtained for the technical proposals and the total price and any preferences claimed. Return unopened financial proposals to Tenderers whose technical proposals **failed** to achieve the minimum number of points for quality.

Evaluate the quality of the technical proposals offered by Tenderers, then advice Tenderers who remain in contention for the award of the contract of the time and place when the financial proposals will be opened. Open only the financial proposals of Tenderers, who score in the quality evaluation above the minimum number of points for quality stated in the Tender Data, and announce the score obtained for the technical proposals and the total price and any preferences claimed. Return unopened financial proposals to Tenderers whose technical proposals failed to achieve the minimum number of points for quality.

**NON-DISCLOSURE**

Not disclose to Tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of Tender offers, the final evaluation price and recommendations for the award of a contract, until after the award of the contract to the successful Tenderer.

**GROUND FOR REJECTION AND DISQUALIFICATION**

Determine whether there has been any effort by a Tenderer to influence the processing of Tender offers and instantly disqualify a Tenderer (and his Tender offer) if it is established that he engaged in corrupt or fraudulent practices.

### TEST FOR RESPONSIVENESS

Determine, on opening and before detailed evaluation, whether each Tender offer properly received:

- a. meets the requirements of these Conditions of Tender,
- b. has been properly and fully completed and signed, and
- c. is responsive to the other requirements of the Tender documents.

A responsive Tender is one that **conforms** to all the terms, conditions, and specifications of the Tender documents without material deviation or qualification. A material deviation or qualification is one which, in the Employer's opinion, would:

- a. Detrimentially affect the scope, quality, or performance of the Works, services or supply identified in the Scope of Work,
- b. Change the Employer's or the Tenderer's risks and responsibilities under the contract, or
- c. Affect the competitive position of other Tenderers presenting responsive Tenders, if it were to be rectified.
- d. Reject a non-responsive Tender offer, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

### ARITHMETICAL ERRORS

Check responsive Tender offers for arithmetical errors, correcting them in the following manner:

- a. Where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern.
- b. If a Bill of Quantities (or Bill of Materials or schedule of rates) applies and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate will be corrected.
- c. Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the Tenderer's addition of prices, the total of the prices shall govern and the Tenderer will be asked to revise selected item prices (and their rates if a Bill of Quantities applies) to achieve the Tendered total of the prices.

- d. Consider the rejection of a Tender offer if the Tenderer does not correct or accept the correction of his arithmetical errors in the manner described above.

**CLARIFICATION OF A TENDER OFFER**

Obtain clarification from a Tenderer on any matter that could give rise to ambiguity in a contract arising from the Tender offer.

**EVALUATION OF TENDER OFFERS General**

Appoint an evaluation panel of not less than three persons. Reduce each responsive Tender offer to a comparative offer and evaluate it using the Tender evaluation method that is indicated in the Tender Data and described below:

<p><b>Method 1:</b> FINANCIAL OFFER</p>	<ol style="list-style-type: none"> <li>1. Rank Tender offers from the most favourable to the least favourable comparative offer.</li> <li>2. Recommend highest ranked Tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.</li> </ol>
<p><b>Method 2:</b> FINANCIAL OFFER AND PREFERENCES</p>	<ol style="list-style-type: none"> <li>1. Score Tender evaluation points for financial offer.</li> <li>2. Confirm that Tenderers are eligible for the preferences claimed and if so, score Tender evaluation points for preference.</li> <li>3. Calculate total Tender evaluation points.</li> <li>4. Rank Tender offers from the highest number of Tender evaluation points to the lowest.</li> <li>5. Recommend Tenderer with the highest number of Tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.</li> </ol>
<p><b>Method 3:</b> FINANCIAL OFFER AND QUALITY</p>	<ol style="list-style-type: none"> <li>1. Score quality, rejecting all Tender offers that fail to score the minimum number of points for quality stated in the Tender Document.</li> <li>2. Score Tender evaluation points for financial offer.</li> <li>3. Calculate total Tender evaluation points.</li> </ol>

	<ol style="list-style-type: none"> <li>4. Rank Tender offers from the highest number of Tender evaluation points to the lowest.</li> <li>5. Recommend Tenderer with the highest number of Tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.</li> </ol>
<p><b>Method 4:</b> FINANCIAL OFFER, QUALITY AND PREFERENCES</p>	<ol style="list-style-type: none"> <li>1. Score quality, rejecting all Tender offers that fail to score the <b>minimum number of points</b> for quality stated in the Tender Data. Score Tender</li> <li>2. evaluation points for <b>financial offer</b>.</li> <li>3. Confirm that Tenderers are <b>eligible</b> for the <b>preferences claimed</b>, and if so, score Tender evaluation points for preference.</li> <li>4. Calculate total <b>Tender evaluation points</b>.</li> <li>5. Rank Tender offers from the <b>highest</b> number of Tender evaluation points to the <b>lowest</b>.</li> <li>6. Recommend Tenderer with the highest number of Tender <b>evaluation points</b> for the award of the contract, <b>unless</b> there are <b>compelling</b> and <b>justifiable</b> reasons not to do so.</li> </ol>

**INSURANCE PROVIDED BY THE EMPLOYER**

If requested by the proposed successful Tenderer, submit for the Tenderer's information the policies and / or certificates of insurance which the conditions of contract identified in the Contract Document, require the Employer to provide.

**ACCEPTANCE OF TENDER OFFER**

Accept Tender offer only if the Tenderer satisfies the legal requirements stated in the Tender Data.

Notify the successful Tenderer of the Employer's acceptance of his Tender offer by completing and returning one copy of the form of offer and acceptance before the expiry of the validity period stated in the Tender Data, or agreed additional period. Providing the form of offer and acceptance does not contain any qualifying statements, it will constitute the formation of a



contract between the Employer and the successful Tenderer as described in the form of offer and acceptance.

### **PREPARE CONTRACT DOCUMENTS**

If necessary, revise documents that shall form part of the contract and that were issued by the Employer as part of the Tender documents to take account of:

- a. Addenda issued during the Tender period,
- b. Inclusion of some of the returnable documents,
- c. Other revisions agreed between the Employer and the successful Tenderer, and
- d. The schedule of deviations attached to the form of offer and acceptance, if any.

### **ISSUE FINAL CONTRACT**

Prepare and issue the final draft of contract documents to the successful Tenderer for acceptance as soon as possible after the date of the Employer's signing of the form of offer and acceptance (including the schedule of deviations, if any). Only those documents that the conditions of Tender require the Tenderer to submit, after acceptance by the Employer, shall be included.

### **COMPLETE ADJUDICATOR'S CONTRACT**

Unless alternative arrangements have been agreed or otherwise provided for in the contract, arrange for both parties to complete formalities for appointing the selected adjudicator at the same time as the main contract is signed.

### **PROVIDE COPIES OF THE CONTRACTS**

Provide to the successful Tenderer the number of copies stated in the Tender Data of the signed copy of the contract as soon as possible after completion and signing of the form of offer and acceptance.

## **RETURNABLE DOCUMENTS**

The following documents are to be completed and returned as they constitute the Tender. Whilst many of the returnable are required for the purpose of evaluating the Tenders, some will form

part of the subsequent contract, as they form the basis of the Tender offer. For this reason, it is very important that all Tenderers return all of the following information.

1. Pricing Schedule – Firm Prices
2. Declaration of Interest
3. Certificate of Independent Tender Determination
4. Preferential Procurement document in terms of Preferential Procurement Regulations, 2017 (Preferential Procurement Policy Framework act, act no 5 of 2000)
5. Declaration of Tenderer's Past Supply Chain Management Practices
6. Certificate of Independent Bid Determination

#### **RETURNABLES THAT MUST BE ATTACHED TO THE TENDER DOCUMENT**

1. Tax Clearance Certificate
2. CSD Registration Report
3. Municipal Rates Account that is not more than 90 days in arrears
4. Certified Identity Documents of Directors/Managers
5. Company Registration Certificates
6. Valid/Certified BBBEE Certificate or a Sworn Affidavit
7. That stamps certifying the documents such as Rates account, Affidavit, ID must not be over three months.

**MBD 4**

#### **DECLARATION OF INTEREST**

1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
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, hareholder<sup>2</sup>):

.....

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. ....

.....

<sup>1</sup>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.

<sup>2</sup> 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.....  
.....

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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

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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 Number	Employee

.....  
**Signature**

.....  
**Date**

.....  
**Capacity**

.....  
**Name of Bidder**

MBD6.1

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

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

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

**1. GENERAL CONDITIONS**

- 1.1 The following preference point systems are applicable to all bids:
  - the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
  - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- 1.2
  - a) The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable; or
- 1.3 Points for this bid shall be awarded for:
  - (a) Price; and
  - (b) B-BBEE Status Level of Contributor.
- 1.4 The maximum points for this bid are allocated as follows:

	POINTS
<b>PRICE</b>	
<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>	

Total points for Price and B-BBEE must not exceed	100
---	-----

- 1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for BBEE status level of contribution are not claimed.
- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

## 2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the BroadBased Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents. (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
- 1) B-BBEE Status level certificate issued by an authorized body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good



Practice;

- 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) “QSE” means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) “rand value” means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

**3. POINTS AWARDED FOR PRICE**

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

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

$$\begin{matrix}
 & \mathbf{80/20} & & \mathbf{or} & & \mathbf{90/10} \\
 \\
 & \frac{Pt - P_{min}}{Ps = 80} & & & & \frac{Pt - P_{min}}{Ps = 90} \text{ or } Ps = \\
 \\
 & P_{min} & & & & P_{min}
 \end{matrix}$$

Where

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

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

4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4

8	1	2
Non-compliant contributor	0	0

**5. BID DECLARATION**

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

**6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1**

6.1 B-BBEE Status Level of Contributor: . = (maximum of 10 or 20 points) (Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of BBEE status level of contributor.

**7. SUB-CONTRACTING**

7.1 Will any portion of the contract be sub-contracted?

*(Tick applicable box)*

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

7.1.1 If yes, indicate:

i) What percentage of the contract will be subcontracted.....%      ii) The name of the sub-contractor.....

iii) The B-BBEE status level of the sub-contractor..... iv) Whether the sub-contractor is an EME or QSE *(Tick applicable box)*

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

v) **Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:**

<b>Designated Group: An EME or QSE which is at last 51% owned by:</b>	<b>EME</b> √	<b>QSE</b> √
<b>Black people</b>		

<b>Black people who are youth</b>		
<b>Black people who are women</b>		
<b>Black people with disabilities</b>		
<b>Black people living in rural or underdeveloped areas or townships</b>		
<b>Cooperative owned by black people</b>		
<b>Black people who are military veterans</b>		
<b>OR</b>		
<b>Any EME</b>		
<b>Any QSE</b>		

**8. DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1 Name of company/firm:..... 8.2

VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....  
 ...  
 .....  
 ...  
 .....  
 ...  
 .....  
 ...

**8.6 COMPANY CLASSIFICATION**

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

[TICK APPLICABLE BOX]

**8.7 MUNICIPAL INFORMATION**

**Municipality where business is situated:**

.....

**Registered Account Number:** .....

**Stand**

**Number:**.....

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

8.9 I/we, the undersigned, who is/are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/firm for the preference shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form; iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct; iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

- (a) disqualify the person from the bidding process;
- (b) recover costs, losses or damages it has incurred or suffered as a result of that person’s conduct;

- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and (e) forward the matter for criminal prosecution.

**WITNESSES**

1. ....

2. ....

.....

**SIGNATURE(S) OF BIDDERS(S)**

**DATE:** .....

**ADDRESS** .....

.....

.....

**MBD 8**

**DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES**

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all

reasonable steps are taken to combat the abuse of the supply chain management system.

- 3 The bid of any bidder may be rejected if that bidder, or any of its directors have:
- a. abused the municipality’s / municipal entity’s supply chain management system or committed any improper conduct in relation to such system;
  - b. been convicted for fraud or corruption during the past five years;
  - c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury’s Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p><b>The Database of Restricted Suppliers now resides on the National Treasury’s website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</b></p>	<p>Yes <input type="checkbox"/></p>	<p>No <input type="checkbox"/></p>

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)?  <b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
Item Question		Yes	No
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

**CERTIFICATION**

**I, THE UNDERSIGNED (FULL NAME)**

.....**CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM TRUE AND CORRECT.**

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

.....

**Signature**

.....

**Date**

.....

**Position**

.....

**Name of Bidder**



## MBD 9

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

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

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

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

\_\_\_\_\_  
(Bid Number and Description)

in response to the invitation for the bid made by:

\_\_\_\_\_  
(Name of Municipality / Municipal Entity)

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

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

(Name of Bidder)

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

- (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
- (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

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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

**KGATELOPELE LOCAL MUNICIPALITY**

**REF NO: RFQ2018/19/011**

**GOVERNMENT PROCUREMENT:**

**GENERAL CONDITIONS OF CONTRACT  
TREASURY: Republic of South Africa**

**THE NATIONAL**

**TABLE OF CLAUSES**

1. Definition
2. Application
3. General
4. Standards
5. Use of contract documents and information inspection
6. Patent Rights
7. Performance security
8. Inspections, tests and analyses
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental Services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Variation orders
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Anti-dumping and countervailing duties and rights

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25. Force Majeure
26. Termination for insolvency
27. Settlement of Disputes
28. Limitation of Liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. Transfer of contracts
34. Amendments of contract

## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:

- 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7 "Day" means calendar day.

- 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
- 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods are so delivered and a valid receipt is obtained.
- 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still



to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the goods covered by the bid will be manufactured.

- 1.17 “Local content” means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.
- 1.18 “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 “Order” means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 “Project site,” where applicable, means the place indicated in bidding documents.
- 1.21 “Purchaser” means the organization purchasing the goods.
- 1.22 “Republic” means the Republic of South Africa.
- 1.23 “SCC” means the Special Conditions of  
Contract.
- 1.24 “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 “Supplier” means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.
- 1.26 “Tort” means in breach of contract.

- 1.27 “Turnkey” means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.
- 1.28 “Written” or “in writing” means hand-written in ink or any form of electronic or mechanical writing.

## **2. Application**

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

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

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

## **3. General**

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

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

#### **4. Standards**

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

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

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 extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

## **6. Patent Rights**

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

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

## **7. Performance security**

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

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

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

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

(b) a cashier's or certified cheque

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

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

8.1 All pre-bidding testing will be for the account of the bidder.

8.2 If it is a bid condition that goods to be produced or services to be rendered should at any stage be subject to inspections, tests and analyses, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or organization acting on behalf of the purchaser.

8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

8.5 Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

8.6 Goods and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

8.7 Any contract goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods, which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may,

without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.

## **9. Packing**

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

## **10. Delivery and documents**

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

## **11. Insurance**

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

## **12. Transportation**

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

## **13. Incidental Services**

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

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

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

## **14. Spare parts**

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

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

## **15. Warranty**

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



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

## **16. Payment**

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

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

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

16.4 Payment will be made in Rand unless otherwise stipulated.

## **17. Prices**

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

## **18. Variation orders**

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

## **19. Assignment**

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

## **20. Subcontracts**

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

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

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

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

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

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

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

## **22. Penalties**

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

## **23. Termination for default**

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

(a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;

(b) if the supplier fails to perform any other obligation(s) under the contract; or

(c) if the supplier, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23. 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.

## **24. Anti- dumping and counter- vailing 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 antidumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the supplier to the purchaser or the purchaser may deduct such amounts from moneys (if any) which may otherwise be due to the supplier in regard

to goods or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

## **25. Force Majeure**

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

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

## **26. Termination for insolvency**

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

## **27. Settlement of Disputes**

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

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

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

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

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

## **28. Limitation of Liability**

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

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

## **29. Governing language**

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

## **30. Applicable law**

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

### **31. Notices**

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

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

### **32. Taxes and duties**

32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid SARS must have certified that the tax matters of the preferred bidder are in order.

32.4 No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.

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

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



### **33.2. Amendment of contracts**

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