



# EMALAHLENI LOCAL MUNICIPALITY

## ELM 06/2019 (RE-ADVERT)

**REQUEST TO APPOINT A PANEL OF FORENSIC INVESTIGATORS TO CONDUCT INVESTIGATIONS INTO ALLEGATIONS OF FRAUD AND CORRUPTION FOR EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF 36 MONTHS**

<p><b>EMPLOYER:</b> <b>Emalahleni Local Municipality</b> P.O Box 3 Witbank 1035</p> <p><b>Municipal Manager</b> Tel No.: +27 (13) 690 6911 Fax No.: +27 (17) 690 6207 E-mail: <a href="mailto:maisela@emalahleni.gov.za">maisela@emalahleni.gov.za</a></p>	<p><b>QUERIES:</b></p> <p>Mr. R.E Mhlanga Tel No.: +27 (13) 690 6493 E-mail: <a href="mailto:mhlangare@emalahleni.gov.za">mhlangare@emalahleni.gov.za</a></p> <p><b>Supply Chain Management</b> Tel No.: +27 (13) 690 6497/6483/6484 E-mail: <a href="mailto:masangonz@emalahleni.gov.za">masangonz@emalahleni.gov.za</a></p>
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*Tender Closing Date: 10 July 2020  
Friday at 11:00*

TENDER PRICE	
TOTAL COST (INCL. VAT)	:.....
AMOUNT IN WORDS	:.....

### *Bidder's Details:*

Company Name	
Physical Address	
Contact No.	
E-mail Address	
Contact Person	
Central Supplier Database No.	
Company Registration No.	

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# EMALAHLENI LOCAL MUNICIPALITY



## TENDER NOTICE & INVITATION

TENDER NO.: ELM 06/2019 (RE-ADVERT)  
CLOSING DATE: 10 JULY 2020

### REQUEST TO APPOINT A PANEL OF FORENSIC INVESTIGATORS TO CONDUCT INVESTIGATIONS INTO ALLEGATIONS OF FRAUD AND CORRUPTION FOR EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF 36 MONTHS

Emalahleni Local Municipality hereby invites professional service providers/forensic investigators to conduct investigations into allegations of fraud and corruption for Emalahleni Local Municipality for the period of 36 months.

Tender documents with full specifications will be made available and can be obtained from [www.emalahleni.gov.za](http://www.emalahleni.gov.za) or [www.etenders.gov.za](http://www.etenders.gov.za).

**A compulsory briefing will not be conducted for this tender in order to prevent the spread of the Covid-19 virus through interactions. Bidders may send electronic mails for any enquiries related to this bid.**

The closing time for receipt of tenders is **11:00** on **10/07/2020**. Telegraphic, telephonic, telex, facsimile, e-mail, unmarked and **late tenders** will under no circumstances be considered and accepted. The tender box will be emptied just after closing time on the closing date. The register for all bids received may be requested thereafter and will furthermore be published on the municipal website.

- Any technical enquiries relating to the tender document may be directed to Mr. R.E Mhlanga at telephone number 013 690 6493 during working hours or e-mails can be sent to [mhlangare@emalahleni.gov.za](mailto:mhlangare@emalahleni.gov.za).

Fully completed tender documents, clearly marked "**Tender No. ELM 06/2019 (RE-ADVERT) REQUEST TO APPOINT A PANEL OF FORENSIC INVESTIGATORS TO CONDUCT INVESTIGATIONS INTO ALLEGATIONS OF FRAUD AND CORRUPTION FOR EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF 36 MONTHS**" with "**NAME of TENDERER**" must be placed in a sealed envelope and placed in the **tender box** on the **first floor**, Emalahleni Local Municipality, Civic Centre, Corner Mandela & Arras Street, eMalahleni 1039 or sent via courier services to the above mentioned address. Couriers documents should be delivered at the first floor, Supply Chain Management Offices at the aforementioned address **by no later than 11h00 on 10/07/2020**. The envelope must be endorsed with number, title and closing date as indicated above..

*Bidders will be evaluated on functionality whereby 70 points has to be attained before financial proposals can be looked at. A preferential point system shall apply whereby a contract will be allocated to a tenderer in accordance with the Preferential Procurement Policy Framework Act, Act No. 5 of 2000 and as defined in the Conditions of Tender in the tender document, read in conjunction with the Supply Chain Management Policy of Emalahleni Local Municipality where 80 points will be allocated in respect of price and 20 points in respect of B-BBEE Status Level of Contribution.*

No awards will be made to a person:

- Who is not registered on the Central Supplier Database;
- Who is in the service of the state;
- If that person is not a natural person , of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; and/or
- Who is an advisor or consultant contracted with the municipality or municipal entity.

The municipality reserves the right to withdraw any invitation to tender and/or to re-advertise or to reject any tender or to accept a part of it. The municipality does not bind itself to accepting the lowest tender or award a contract to the bidder scoring the highest number of points.

**H.S MAYISELA  
MUNICIPAL MANAGER**

**Civic Centre  
29 Mandela Street  
eMalahleni  
1039**

**P.O Box 3  
eMalahleni**

[www.emalahleni.gov.za](http://www.emalahleni.gov.za)

# ***EMALAHLENI LOCAL MUNICIPALITY***



## **BID REQUIREMENTS**

### **ELM 06/2019 (RE-ADVERT): REQUEST TO APPOINT A PANEL OF FORENSIC INVESTIGATORS TO CONDUCT INVESTIGATIONS INTO ALLEGATIONS OF FRAUD AND CORRUPTION FOR EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF 36 MONTHS.**

1. Bid proposals are hereby invited from suitably qualified forensic investigators to conduct investigations into allegations of fraud and corruption for Emalahleni Local Municipality for the period of 36 months.
2. The conditions contained in the General Conditions of Contract (GCC), and the attached bid forms, as well as any other conditions accompanying this invitation are applicable.
3. The work procedure, the bidder proposes to follow in order to obtain the required result must be clearly outlined and its terms may not conflict with those contained in the General Conditions of Contract.
4. All documents accompanying this invitation must be completed in detail where applicable, be sealed in an envelope and be deposited in the bid box before the closing date and time. The bid box is situated at **Civic Centre, First Floor, Mandela Street, eMalahleni**.
5. Duly completed and signed original bid documents should be sealed in an envelope marked:  
  
***Bid no.: ELM 06/2019 (RE-ADVERT)***  
***Closing date: 10 July 2020***  
***Closing time: 11:00***  
***Name of bidder: \_\_\_\_\_***
6. Late bids / proposals will not be accepted. Please note that bids are late if they are not received at the address given in the invitation after the bid closing date and time,
7. No telegraphic or facsimile bids / proposals will be considered.
8. The Emalahleni Local Municipality reserves the right to accept any bid in whole or in part and does not bind itself to accept the lowest or any bid at all.
9. Bids / proposals will be valid for a period of 90 days after the closing date.
10. All bid prices must be quoted in South African currency on a fixed price basis and include VAT.

11. All relevant documents attached to this bid must be completed and signed in black ink by an authorized representative of the business.
12. The authorized representative of the business is required to initial each page of the bidding document

13. **BIDDERS SHALL TAKE NOTE OF THE FOLLOWING DOCUMENTS**

- Bidders must be registered on the Central Supplier Database (CSD) of the National Treasury and attach their CSD Report
- Original completed and signed applicable bid documents and **preference claim forms** in terms of the Preferential Procurement Regulations.
- Tax compliance status pin
- Municipal water and lights statement or written confirmation that municipal rates and Taxes and municipal service charges of the prospective bidder and all Executive Directors of the business are not in arrears from their respective Municipality or a lease agreement in the case of rental of property.
- Submission of a Certified B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a B-BBEE sworn affidavit (only if applicable)
- Joint Venture Agreement in case of a Joint Venture signed by both parties
- Authority of signatory ( Attached on Bid document)
- A Detailed Company Profile (detailing relevant past experience)
- Registration with relevant professional body
- Schedule of previous contracts completed
- Must have the necessary capacity, skill and experience to perform quality work (Partner/Engagement Director should at least have an NQF 7 level qualification, and preference will be given to team members including the Partner/Engagement Director who are certified Fraud Examiners by the Association of Certified Fraud Examiners (ACFE) and, or certified as Commercial Forensic Practitioners by the Institute Commercial Forensic Practitioners (ICFP).

## PART A

## INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE EMALAHLENI LOCAL MUNICIPALITY					
BID NUMBER:	ELM 06/2019 (RE-ADVERT)	CLOSING DATE:	10 July 2020	CLOSING TIME:	11:00
DESCRIPTION	REQUEST TO APPOINT A PANEL OF FORENSIC INVESTIGATORS TO CONDUCT INVESTIGATIONS INTO ALLEGATIONS OF FRAUD AND CORRUPTION FOR EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF 36 MONTHS				
<b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).</b>					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT					
<b>EMALAHLENI LOCAL MUNICIPALITY</b> <b>CIVIC CENTRE FIRST FLOOR</b> <b>29 MANDELA STREET</b> <b>eMALAHLENI</b>					
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]
TOTAL NUMBER OF ITEMS OFFERED			TOTAL BID PRICE		R
SIGNATURE OF BIDDER	.....		DATE		.....
CAPACITY UNDER WHICH THIS BID IS SIGNED					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:			TECHNICAL INFORMATION MAY BE DIRECTED TO:		
DEPARTMENT	SCM		CONTACT PERSON	MR RE. MHLANGA	
CONTACT PERSON	MS ZINHLE MOROKU		TELEPHONE NUMBER	(013) 690 6493	
TELEPHONE NUMBER	(013) 690 6497		FACSIMILE NUMBER	(013) 690 6207	
FACSIMILE NUMBER	(013) 690 6207		E-MAIL ADDRESS	<a href="mailto:mhlangare@emalahleni.gov.za">mhlangare@emalahleni.gov.za</a>	

**PART B****TERMS AND CONDITIONS FOR BIDDING**

<b>1. BID SUBMISSION:</b>	
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.	
1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED--(NOT TO BE RE-TYPED) OR ONLINE</b>	
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.	
<b>2. TAX COMPLIANCE REQUIREMENTS</b>	
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.	
<b>3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>	
3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> NO	<input type="checkbox"/> YES
3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA? <input type="checkbox"/> NO	<input type="checkbox"/> YES
3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> NO	<input type="checkbox"/> YES
3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> NO	<input type="checkbox"/> YES
3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <input type="checkbox"/> NO	<input type="checkbox"/> YES
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.	

**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: .....



**BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) STATUS  
LEVEL CERTIFICATES**

Bidders are required to submit original and valid B-BBEE Status Level Verification Certificates or certified copies thereof together with their bids, to substantiate their B-BBEE rating claims.

Bidders who do not submit B-BBEE Status T Level Verification Certificates or are noncompliant contributors to B-BBEE do not qualify for preference points for B-BBEE but should not be disqualified from the bidding process. They will score points for out of 90 or 80 for price only and **zero** points out of 10 or 20 for B-BBEE.

**PRICING SCHEDULE**  
**(Professional Services)**

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

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

ITEM CURRENCY NO	DESCRIPTION  ** (ALL APPLICABLE TAXES INCLUDE)	BID PRICE IN RSA
------------------------	--	------------------

1. The accompanying information must be used for the formulation of proposals.
2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.

R.....

3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)

4. PERSON AND POSITIONHOURLY RATE

DAILY RATE

	R	
	R	
	R	
	R	
	R	
	R	

5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT

-----	-----	R-----	----
----- days	-----	R-----	----
----- days	-----	R-----	----
----- days	-----	R-----	----
----- days	-----	R-----	----

5.1 Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.

INCURRED RATE	DESCRIPTION	OF	EXPENSE	TO QUANTITY	BE AMOUNT
-----	-----	-----	-----	-----	-----
-----	-----	-----	-----	R-----	-----
-----	-----	-----	-----	R-----	-----
-----	-----	-----	-----	R-----	-----
-----	-----	-----	-----	R-----	-----

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

5.2 Other expenses, for example accommodation (specify, e.g. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

INCURRED RATE	DESCRIPTION	OF QUANTITY	EXPENSE	TO AMOUNT	BE
-----	-----	-----	-----	-----	-----
-----	-----	-----	-----	R-----	-----
-----	-----	-----	-----	R-----	-----
-----	-----	-----	-----	R-----	-----
				TOTAL:	
R-----					

6. Period required for commencement with project after acceptance of bid

.....

7. Estimated man-days for completion of project

.....

8. Are the rates quoted firm for the full period of contract?

..... \*YES/ NO.

9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index

.....

.....

.....

.....

\*Delete if not applicable

## **DECLARATION OF INTEREST**

1. Any legal person, including persons employed by the state<sup>1</sup>, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-
  - the bidder is employed by the state; and/or
  - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.
2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
  - 2.1 Full Name of bidder or his or her representative: .....
  - 2.2 Identity Number: .....
  - 2.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>):  
.....
  - 2.4 Company Registration Number: .....
  - 2.5 Tax Reference Number: .....
  - 2.6 VAT Registration Number: .....
  - 2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

<sup>1</sup>"State" means –

- (a) 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);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

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

2.7 Are you or any person connected with the bidder presently employed by the state? **YES / NO**

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:

.....

Name of state institution at which you or the person connected to the bidder is employed:

.....

Position occupied in the state institution:

.....

Any other particulars:

.....

.....

.....

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? **YES / NO**

2.7.2.1 If yes, did you attached proof of such authority to the bid document? **YES / NO**

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

.....

.....

.....

2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? **YES / NO**

2.8.1 If so, furnish particulars:

.....

.....

.....

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

2.9.1 If so, furnish particulars.

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

2.10 Are you, or any person connected with the bidder,  
aware of any relationship (family, friend, other) between  
any other bidder and any person employed by the state  
who may be involved with the evaluation and or adjudication  
of this bid?

**YES/NO**

2.10.1 If so, furnish particulars.

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

2.11 Do you or any of the directors / trustees / shareholders / members  
of the company have any interest in any other related companies  
whether or not they are bidding for this contract?

**YES/NO**

2.11.1 If so, furnish particulars:

.....  
.....

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

Full Name	Identity Number	Personal Tax Reference Number	State Employee Number / Persal Number

#### 4 DECLARATION

I THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE  
IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN

TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT

SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder



**FORM B: 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.

1.3 Points for this bid shall be awarded for:

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

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

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

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

## 2. DEFINITIONS

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

### 3. POINTS AWARDED FOR PRICE

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

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

**80/20**

or

**90/10**

$$P_s = 80 \left( 1 - \frac{Pt - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left( 1 - \frac{Pt - P_{\min}}{P_{\min}} \right)$$

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

$P_{min}$  = 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 B-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 least 51% owned by:</b>	<b>EME</b> √	<b>QSE</b> √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
<b>OR</b>		
Any EME		
Any QSE		

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

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

8.2 VAT \_\_\_\_\_ registration  
number:.....

8.3 Company \_\_\_\_\_ registration  
number:.....

**8.4 TYPE OF COMPANY/ FIRM**

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

[TICK APPLICABLE BOX]

**8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

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

**8.6 COMPANY CLASSIFICATION**

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

[TICK APPLICABLE BOX]

8.7 MUNICIPAL INFORMATION

Municipality where business is situated:

.....

Registered Account Number: .....

Stand Number:.....

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

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof 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:.....

.....

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

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions 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 disregarded if that bidder, or any of its directors have-
  - a. abused the institution's supply chain management system;
  - b. committed fraud or any other improper conduct in relation to such system; or
  - c. failed to perform on any previous contract.
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's database as 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 National Treasury after the <i>audi alteram partem</i> rule was applied).	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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>To access this Register enter the National Treasury's website, <a href="http://www.treasury.gov.za">www.treasury.gov.za</a>, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445.</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 outside of 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:		
4.4	Was any contract between the bidder and any 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"/>
4.4.1	If so, furnish particulars:		

### CERTIFICATION

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

**CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS 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**

**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 *per se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
  - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
  - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that 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.

<sup>2</sup> 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 Institution)

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.**

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

## AUTHORITY OF SIGNATORY

Indicate the status of the tenderer by ticking the appropriate box hereunder. The tenderer must complete the certificate set out below for the relevant category.

A Company	B Partnership	C Joint Venture	D Sole Proprietor	E Close Corporation

### A. Certificate for Company

I, ....., chairperson of the board of directors of .....

....., hereby confirm that by resolution of the board (**copy attached**) taken on ..... 20..., Mr/Ms ..... acting in the capacity of ....., was authorized to sign all documents in connection with this tender for contract ..... and any contract resulting from it on behalf of the company.

**As witnesses :**

- |         |                  |
|---------|------------------|
| 1. .... | Chairman : ..... |
| 2. .... | Date : .....     |

Tenderers must attach a copy of the Resolution of the Board .

### B. Certificate for Partnership

We, the undersigned, being the key partners in the business trading as ..... hereby authorize Mr/Ms .., ..... acting in the capacity of ..... to sign all documents in connection with the tender for Contract ..... and any contract resulting from it on our behalf.

NAME	ADDRESS	SIGNATURE	DATE

**NOTE :** This certificate is to be completed and signed by all of the key partners upon whom rests the direction of the affairs of the Partnership as a whole.

**C. Certificate for Joint Venture**

We, the undersigned, are submitting this tender offer in Joint Venture and hereby  
authorise \_\_\_\_\_ Mr/Ms

\_\_\_\_\_, authorised signatory of the company \_\_\_\_\_  
\_\_\_\_\_, acting in the capacity of lead partner, to sign all  
documents in connection with the tender offer for Contract and any contract  
resulting from it on our behalf.

This authorization is evidenced by the attached power of attorney signed by legally  
authorized signatories of all the partners to the Joint Venture.

NAME OF FIRM	ADDRESS	AUTHORISING SIGNATURE, NAME & CAPACITY
Lead partner		

**D. Certificate for Sole Proprietor**

I, \_\_\_\_\_ hereby confirm that I am the sole owner of the  
business \_\_\_\_\_ trading \_\_\_\_\_ as  
\_\_\_\_\_

**As witnesses:** **Signature:**  
1. \_\_\_\_\_ Sole owner \_\_\_\_\_  
2. \_\_\_\_\_ Date: \_\_\_\_\_

**E. Certificate for Close Corporation**

We, the undersigned, being the key members in the business trading as \_\_\_\_\_  
\_\_\_\_\_ hereby authorize Mr/Ms \_\_\_\_\_  
acting in the capacity of \_\_\_\_\_, to sign all documents in connection with  
the tender for Contract \_\_\_\_\_ and any contract resulting from it on our  
behalf.

NAME	ADDRESS	SIGNATURE	DATE

**NOTE:** This certificate is to be completed and signed by all of the key-partners upon who rests the direction of the affairs of the Partnership as a whole.

<b>CERTIFICATE OF AUTHORITY FOR JOINT VENTURES (if applicable)</b>
--

This returnable schedule is to be completed by joint ventures.

We, the undersigned, are submitting this tender offer in joint venture and hereby authorize Mr/Ms ....., authorised signatory of the company, close corporation or partnership ....., acting in the capacity of lead partner, to sign all documents in connection with the tender offer and any contract resulting from it on our behalf.

NAME OF FIRM	ADDRESS	DULY SIGNATORY      AUTHORISED
Lead partner		<div style="text-align: right; padding-right: 10px;"> <b>Signature</b> .....</div> <div style="text-align: right; padding-right: 10px;"> <b>Name</b> .....</div> <div style="text-align: right; padding-right: 10px;"> <b>Designation</b> .....</div>
		<div style="text-align: right; padding-right: 10px;"> <b>Signature</b> .....</div> <div style="text-align: right; padding-right: 10px;"> <b>Name</b> .....</div> <div style="text-align: right; padding-right: 10px;"> <b>Designation</b> .....</div>
		<div style="text-align: right; padding-right: 10px;"> <b>Signature</b> .....</div> <div style="text-align: right; padding-right: 10px;"> <b>Name</b> .....</div> <div style="text-align: right; padding-right: 10px;"> <b>Designation</b> .....</div>

**NOTE:** A copy of the Joint Venture Agreement showing clearly the **percentage contribution of each partner** to the Joint Venture shall be appended to this schedule.

## 1. TERMS OF REFERENCE (SPECIFICATIONS)

**PROSPECTIVE BIDDERS (REGISTERED FORENSIC INVESTIGATORS) ARE HEREBY INVITED TO SUBMIT PROPOSALS TO BE PART OF A PANEL OF FORENSIC INVESTIGATORS TO CONDUCT INVESTIGATIONS INTO ALLEGATION OF FRAUD AND CORRUPTION FOR EMALAHLENI LOCAL MUNICIPALITY FOR THE PERIOD OF 36 MONTHS.**

### **A. General Information**

#### **Purpose**

The Emalahleni Local Municipality is soliciting proposals from registered forensic investigators to conduct investigations into allegations of fraud and corruption cases for Emalahleni Local Municipality for a period of 36 months.

#### **Type of contract**

The contract will be shared among the potential services providers for various cases that will be investigated as the municipality requires to appoint a panel of forensic investigators and the prices will vary per investigation conducted.

#### **Submission of proposals**

The proposal must be sealed in an envelope clearly marked “**PANEL OF FORENSIC INVESTIGATORS TO CONDUCT INVESTIGATIONS INTO ALLEGATIONS OF FRAUD AND CORRUPTION**” must be deposited in the tender box of Emalahleni Local Municipality on or before the closing date of **10 July 2020** at 11:00.

Proposals must be signed by an authorized agent to bind the consultant to its provisions.

#### **Oral presentation**

Finalists may be invited to present their proposals in a meeting with the municipality at a date to be advised.

### **B. Background**

Emalahleni Local Municipality has recently appointed a service provider to run its Anti-fraud and Corruption Hotline. All allegations raised currently are expected to be investigated by the Internal Audit unit which does not have the necessary capacity to carry out such investigations and report timeously to the reporters. As such, the Municipality (ELM) has a responsibility to ensure the timely investigation of cases referred to it and to provide comprehensive feedback to the Office of the Public Service Commission and the Council.



### **C. Scope of Works**

- The primary objective of the forensic investigation is to conduct investigations to ascertain whether there is substance into allegations of fraud and corruption reported to the Municipality's Anti-Fraud and Corruption Hotline and other internal reporting mechanisms, as and when required.
- Report of the factual findings and advise the ELM of the recommended course of action relating to remediation of control weaknesses that led to potential fraud/mismanagement.
- The successful service provider shall submit a project plan with a comprehensive budget containing a breakdown of the hourly tariff (VAT inclusive), per category as required for the investigation services for prior approval by the project manager.
- The scope should focus on the objectives detailed above and should include activities that require the service provider/s to independently ascertain whether there is substance into allegations of fraud and corruption reported to ELM for investigation.
- The successful bidder shall work in conjunction with the Chief Audit Executive (CAE) on the pre-screening and planning of the phases of the investigation process and must be prepared to regularly report the progress to the Accounting Officer and the Audit Committee. All reports and supporting documents will be reviewed by the Chief Audit Executive.
- All intellectual property including the audit reports, working papers and other supporting documents will become the property of ELM.
- All information obtained from ELM will be regarded as classified information, and as such be handled properly as required by the Minimum Information Security Standards (MISS) policy.
- Have a quick turn-around time in terms of project completion.
- Must have the necessary capacity, skill and experience to perform quality work (Partner/Engagement Director should at least have an NQF 7 level qualification, and preference will be given to team members including the Partner/Engagement Director who are certified Fraud Examiners by the Association of Certified Fraud Examiners (ACFE) and, or certified as Commercial Forensic Practitioners by the Institute Commercial Forensic Practitioners (ICFP);

### **D. Information Required from the Consultant**

- **Business organization**

State the full name and address of the organization and, if applicable the branch office or subordinate element that will perform or assist to perform the works. Indicate and provide details of BBBEE certificate.

- **Consultant qualifications and past experience**

Include in the proposal a brief statement of the past experience and qualifications of the persons from the firm that will be directly and actively involved in the project.

According to the Municipal Supply Chain Management Policy, bidders must provide particulars of:

- a. all consultancy services provided to an organ of state in the last five years; and
- b. any similar consultancy services provided to an organ of state in the last five years.

Specialist skills in the relevant service must be demonstrated.

- **Methodology**

Indicate the basic methodology to be used in completing the task to demonstrate that the project will be completed successfully.

- **Team Capability**

Briefly explain the technical capability of the project team that will be directly involved in the execution of the project. Also include the availability of resources including equipment at the team's disposal to be able to execute the project successfully.

- **Price Proposal**

A breakdown of the hourly tariff, VAT inclusive, per category (e.g. Director, Management and other relevant level of expertise) as required for service rendered and an estimated percentage of disbursements (inclusive of VAT) per year for the period of 36 months. Expenditure incurred without the prior approval of ELM will not be reimbursed.

The hourly rates as laid down by the Auditor-General must be used as a guideline and should not be exceeded.

The Municipality shall not pay any unproductive or duplicated time spent by the service provider on any assignment as a result of staff changes or redrafting of reports due to incorrect findings.

***Please ensure that the following documents are attached:***

- Bidders must be registered on the Central Supplier Database (CSD) of the National Treasury and attach their CSD Report
- Original completed and signed applicable bid documents and **preference claim forms** in terms of the Preferential Procurement Regulations.
- Tax compliance status pin
- Municipal water and lights statement or written confirmation that municipal rates and taxes and municipal service charges of the prospective bidder and all Executive Directors of the business are not in arrears from their respective municipality.

- Submission of a Certified B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a B-BBEE sworn affidavit
- Joint Venture Agreement in case of a Joint Venture signed by both parties
- Authority of signatory ( Attached on Bid document)
- A Detailed Company Profile (detailing relevant past experience)
- Certified copies of proof of registration certificates with relevant professional bodies
- Proof of Professional Indemnity Insurance, signed by the Insurance Broker
- Schedule of previous contracts completed
- A Detailed Company Profile (with relevant past experience)
- Must have the necessary capacity, skill and experience to perform quality work (Partner/Engagement Director should at least have an NQF 7 level qualification, and preference will be given to team members including the Partner/Engagement Director who are certified Fraud Examiners by the Association of Certified Fraud Examiners (ACFE) and, or certified as Commercial Forensic Practitioners by the Institute Commercial Forensic Practitioners (ICFP)

#### **Additional conditions**

- The lowest or any proposal will not necessarily be accepted, and Emalahleni Local Municipality reserves the right to accept the whole or any portion of a proposal.
- All prices and details must be legible / readable to ensure the bid will be considered for adjudication.
- Bidders are requested to furnish the full registered name of the bidding company on the bid.
- Bidders are also required to initial each page of the proposal.
- Corrections may not be made by means of a correction fluid or tape such as Tipp-ex or a similar product. In the event of a mistake having been made it shall be crossed out in ink and be accompanied by a full signature at each and every alteration. The Municipality reserves the right to reject the proposal if corrections are not made in accordance with the above.
- No price increases will be considered in the event of payments made against invoiced prices.

**HS MAYISELA  
MUNICIPAL MANAGER**

Civic Centre  
29 Mandela Street  
eMalahleni  
1035

P.O Box 3  
eMalahleni  
1035

## 2. SPECIAL CONDITIONS OF CONTRACT

1. The successful service provider must provide clearance from the municipality where they are based indicating that they are not in arrears with regard to their respective municipal services accounts.
2. Bidders must initial all the pages of the Bid document and sign the Bidder particulars page in full.
3. Bidders must complete the original Bid document in black ink, and notice must be taken that tip-ex may not be used in the document
4. The original Bid document must be submitted together with the cost proposals
5. The transaction shall be subject to any stipulations in any Act, Ordinance or By-law pertaining thereto.
6. No proposals by any person that is not competent to enter into an agreement will be considered and if it is established that it is the case, the contract agreement in this regard will be considered null and void by Council.
7. Disputes must be settled by means of mutual consultation, mediation (with or without legal representation) or when unsuccessful, in a South African court of law on an attorney and client scale.
8. Should any legal action be deemed necessary to determine any aspect arising out of these conditions or to enforce any rights in terms of these conditions, then and in that event the parties hereto agree categorically to the jurisdiction of the Magistrate's Court to hear such action and to pass judgment notwithstanding the fact that the cause of action is beyond the jurisdiction of the Court: Provided always that Council shall have the right in its sole discretion to take action in any competent higher court in any matter exceeding the ordinary jurisdiction of the Magistrate's Court.
9. Services delivery levels and quality of the work will be a measure of appointment and retention in the panel;
10. A firm of forensic investigations consultants assigned any work may not cede, assign or sub-contract any part thereof to any person unless with the written consent of ELM or as may be required by the applicable laws.
11. There will be no guarantee that forensic investigation consultants will receive instructions if they are appointed onto the ELM's panel.
12. All instruction(s) to the panel of forensic investigations consultants shall be given in writing, by a duly authorized representative of ELM.

Council reserves the right to accept any cost proposal in a tender submitted or part thereof and will not be obliged to accept the highest tender price submitted in a tender OR any proposal submitted.

### **3. GENERAL CONDITIONS OF CONTRACT**

See Annexure B- (General Conditions of Contract)

#### 4. PROJECT PROPOSALS BY BIDDER

Kindly indicate further scope of work envisaged. (See Section C under General Information, page 33).

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

## 5. SPECIAL PROPOSALS/REQUESTS BY BIDDER

Any proposal, request or condition that should be taken into account during consideration of the Bid.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

## **6. GENERAL**

All the drawings, designs and relevant documentation must be handed to the Emalahleni Municipality on completion of the project.

## **7. FINANCIAL CONTRACT ARRANGEMENTS**

The following financial conditions are set by Council:

- a) No payment of the milestones shall be made prior to an inspection to be done by Council to determine whether the work is complete and satisfactory
- b) Payment will be made upon completion of milestones as agreed to in the tender
- c) Payment of the sub-consultants will be made by the successful bidder/appointed consultant in due consultation with Council and upon verification by Council that the work is complete and satisfactory.

## **8. EVALUATION AND ADJUDICATION CRITERIA**

All bid proposals received will be evaluated and adjudicated on an 80/20 preference point system.

### **Technical Proposal**

All bid proposals received will firstly be evaluated on the following scoring criteria on the basis of functionality and price (80%) and B-BBEE (20%). Prospective bidders must at least achieve a minimum score of **70%** in respect of functionality in order to be regarded as responsive and to qualify for further evaluation.



### **FUNCTIONALITY BREAKDOWN AND WEIGHTS**

<b>NO.</b>	<b>ITEM</b>	<b>DESCRIPTION</b>	<b>DETAILS</b>	<b>SCALE</b>	<b>WEIGHT</b>
1.	Experience	The bidder's infrastructure resources and proof of existence	Company profile incorporating: Proof that the bidder has been in existence in practice for a period of at least 1 to five (5) 1-3 years=10; 4-5 years=20	20	20
2.	Capacity	Inspect the policy or documents relating to a secured document environment by the bidders. No inspection in loco will be performed, however, a review of the management and securing of documentation will be done on the documents provided by the bidders. 20=Documents	Records of infrastructure:  Confirmation of the premises from which the bidder conducts its business, the bidder's communication and documents service facilities (Secured document environment)	20	20
3.	Knowledge and expertise	Area(s) of specialty of the forensic investigations consultants.  Must have the necessary capacity, skill and experience to perform quality work (Partner/Engagement Director should at least have an NQF 7 level qualification, and preference will be given to team members including the Partner/Engagement Director who are certified Fraud Examiners by the Association of	Curriculum Vitae's of the core service team that will be attending to the ELM investigations.  a. A brief summary of five (5) forensic matters attended to in the last (3) years prior to the closing date of this request for proposal;  1 year = 10 points; 2 years=20 points; 3 years=30 points	30	30

		Certified Fraud Examiners (ACFE) and, or certified as Commercial Forensic Practitioners by the Institute Commercial Forensic Practitioners (ICFP)			
4.	Track record (References)	<p>If the following references exist, then points should be allocated as follows:</p> <p>1 reference=10 points  2 references =20 points  3nReferences = 30 points</p>	Three reference letters from clients to whom the bidder has provided services similar to ones listed in the identified area of service.	30	30
Total functionality points				<b>100</b>	<b>100</b>

The municipality is looking for a panel of at most five (5) service providers.

**First five Service Providers who have scored the highest will be appointed on the panel.**

### Financial Proposals

All bidders who have scored a minimum of 70% on functionality will be considered for further evaluation and all those who failed to achieve the minimum percentage will be disqualified.

The following formula will be used to calculate the percentage for price / financial proposals:

$$Ps = (Pmin / Pt) \times Ap$$

Where

Ps = % scored for price bid / proposal under consideration

Pm = lowest acceptable proposal / bid

Pt = price of bid / proposal under consideration

Ap = % allocated for price

### **Calculation of points for Price**

The following formula will be used to convert percentages scored for functionality and price into points in terms of the evaluation criteria:

$$Ps = 80 \{1 - (Pt - Pm / Pmin) \}$$

Where

Ps = Points scored for price of the bid / proposal under consideration

Pt = Rand value of bid number under consideration

Pm = Rand value of the lowest acceptable bid

### **Calculation of total points scored**

The points scored for functionality and price will then be added to the points scored for preference points in terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations.

## **SELF COMPLIANCE CHECK SHEET**

Ref no	Question	ELM'S Requirement	Bidder's Response
		YES *	YES / NO
1	Have you initialled all the pages of the bid document?	YES	
2	Have you completed and signed the Returnable Schedules required?	YES	
3	Have you completed and signed the MBD 4 form - Declaration of Interest?	YES	
4	Have you taken note of the contents of par 5 of MBD 6.1 to substantiate your B-BBEE rating claims? Have you submitted an original, valid or certified copy of your Company's B-BBEE certificate to qualify for preference points?	YES	
5	Have you completed and signed the MBD 8 – Declaration of bidder's past Supply Chain Management Practices and MBD 9 – Certificate of Independent Bid Determination?	YES	
6	Have you completed the MBD 1 form?	YES	
7	Is the Company registered with the Central Supplier Database (CSD) in terms of the category required in this Specification? Have you submitted a copy of your CSD Report?	YES	
8	Do you understand the Scope of Work that includes the Standard Specifications / Project Specifications and Particular Specifications?	YES	

.....  
**Signature**

.....  
**Date**

.....  
**Position**

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



# **THE NATIONAL TREASURY**

**Republic of South Africa**



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## **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT**

July 2010

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## General Conditions of Contract

### 1. Definitions

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

## **4. Standards**

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

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

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

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

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 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.

## **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.

23.2 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.



**THE NATIONAL TREASURY: Republic of South Africa**

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

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

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

**24. Anti-dumping and countervailing duties and rights**

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

**25. Force Majeure**

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

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

**26. Termination for insolvency**

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

**27. Settlement of Disputes**

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

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

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
- 34. Amendment of contracts** 34.1 No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.
- 35. Prohibition of restrictive practices** 35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding.
- 35.2 If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 Of 1998.
- 35.3 If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.