



## FRANCES BAARD DISTRICT MUNICIPALITY

### TENDER

#### BID 11/14 APPOINTMENT OF AN ELECTRICAL CONSULTING ENGINEERING TEAM FOR THE COMPILATION OF AN ELECTRICITY MASTERPLAN FOR DIKGATLONG MUNICIPALITY

Frances Baard District Municipality (FBDM) hereby invites qualified service providers to submit proposals for the above mentioned project.

This Bid will be evaluated in terms of the 80/20 preference point system as prescribed in the Preferential Procurement Regulations, 2011 pertaining to the PPPF Act (No 5 of 2000) and the Supply Chain Management Policy of Frances Baard District Municipality. Council is not bound to accept the lowest bid. Council reserves the right to partial acceptance of one or more bids.

NB: A COMPULSORY SITE/CLARIFICATION MEETING WILL BE HELD AT 10H00 ON 10 SEPTEMBER 2014 AT THE OFFICES OF FBDM, 51 DRAKENSBERG AVENUE, CARTERS GLEN, KIMBERLEY.

NB: Service providers who do not attend a compulsory briefing meeting / session will be prohibited from submitting proposals.

The closing date for submissions is 30 SEPTEMBER 2014 at 12h00. Bids will be opened in public immediately after the stated closing time.

Proposals should be clearly marked: BID 11/14 APPOINTMENT OF AN ELECTRICAL CONSULTING ENGINEERING TEAM FOR THE COMPILATION OF AN ELECTRICITY MASTERPLAN FOR DIKGATLONG MUNICIPALITY and submitted to The Municipal Manager, Frances Baard District Municipality, Private Bag X6088 Kimberly, 8300, or hand delivered to the Frances Baard District Offices: 51 Drankensberg Avenue, Carters Glen, Kimberley.

Bids documents are obtainable at FBDM's offices during working hours or on the FBDM Website ([www.francesbaard.gov.za](http://www.francesbaard.gov.za)). Enquiries on SCM matters, may be directed to Mr. E. Tlhageng at tel. (053) 838 0946 during office hours and for technicalities to Mrs. C Somers (053) 838 0911

If no response received within 90 days after the closing date, consider your proposal unsuccessful.

Municipal Manager  
Ms. M. Bogatsu



# FRANCES BAARD DISTRICT MUNICIPALITY (FBDM)



## TERMS OF REFERENCE (TOR):

**BID: 11/14 APPOINTMENT OF AN ELECTRICAL  
CONSULTING ENGINEERING TEAM FOR THE COMPILATION  
OF AN ELECTRICITY MASTERPLAN FOR DIKGATLONG  
MUNICIPALITY**



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## 1. BACKGROUND

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The Frances Baard District Municipality (FBDM) is situated in the Northern Cape Province. It is the smallest district in the province in terms of land mass but accommodates the largest proportion of the population, giving it the largest population density in the province.

Within the district fall the four (4) local municipalities of Dikgatlong, Magareng, Phokwane and Sol Plaatje. As part of our efforts to assist and support the category B municipalities, FBDM wants to assist with improving their planning processes.

As part of the above-mentioned, we have identified some issues in terms of planning relating to electricity infrastructure. FBDM has approved a budget for the compilation of an electricity master plan for Dikgatlong Municipality for the 2014/15 financial year.

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## 2. OBJECTIVES OF THIS REQUEST

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The objective of this bid is to appoint an Electrical Consulting Engineering team (service provider) for the compilation of Electricity Master Plan for the Dikgatlong Municipality to achieve the following:

- Identification of existing problem areas
- Identification of future developments and upgrading requirements
- Development of policies and related matters
- Compilation of a data base and electrical infrastructure asset register
- Identification of any operational and institutional challenges that needs to be addressed

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## 3. EXTENT OF THE WORK

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The services requested require that the appointed service provider to provide to the client an Electricity Master Plan for Dikgatlong Municipality. The works/activities to be completed under this project should include as a minimum the following:

- Doing a Status Quo Analysis with a Status Quo Report and Electrical Infrastructure Asset Register as deliverables. This should include existing infrastructure, conditional assessment and life expectancy of infrastructure, universal access (backlogs), as-built drawings, load flow studies, problem areas, etc. Please also take into account currently running projects and projects planned by Eskom for the next few years.
- Determining the Future Electrical Demand which should include the demand for new and planned developments. The Future Electrical Demand Study should also indicate how the existing infrastructure will cope with growth, when upgrading, extensions & refurbishments will become necessary, etc.



- Assessing current Policy Matters. During this process the Service Provider should look at what current policies (regarding applications, connections, Energy Usage Reduction Strategies, etc), operating procedures and agreements (with Eskom or any other service provider) are in place. Recommendations should be made on how policies, operating procedures and agreements can be improved and/or strengthened. Deliverables would include either new or revised policies or strategies, Pro forma agreements, etc.
- Assessing the Operational/Institutional issues, Resources needed for the aforementioned, Electricity Rates, etc. Look also at the qualification of the current personnel and what qualifications are needed currently as well as for future demands.
- Compiling Cost Estimates & a Proposed Capital Implementation Program. This should include the identification of possible funders.
- Compiling of Maintenance Implementation Plan Program and Operation & Maintenance Manuals for Dikgatlong's Electrical Department
- Quick-wins relating to fixing of urgent problems should also be recommended.
- Service providers are requested to determine the electrical losses for Dikgatlong Municipality for the 12 months preceding this appointment. A small report to be compiled. Municipal officials should be capacitated on how these calculations works.
- Any other recommendations relating to improving service delivery in terms of electricity to communities and improving planning in electrical department.

Two (2) hard copies and one (1) electronic copy of the Master Plan, including the various drawings, asset registers, studies, cost estimates, proposed capital implementation plans, institutional issues reports and any documentation relating to the above should be supplied at the end of the project. The service provider is however required to submit to a stakeholder committee from time to time drafts of different sections for inputs and comments.

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#### 4. DELIVERABLES

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The electricity master plan compilation must include the following deliverables:

- Status Quo Analysis with Status Quo Report
- Future Electrical Demand Report
- Policy Matters Report
- Institutional Issues Report
- Maintenance Implementation Program
- Operations & Maintenance Manual
- Cost Estimates and Proposed Capital Implementation Program
- Once-off electricity losses report
- Final Report including quick-wins, electrical losses and other recommendations.

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#### 5. PERIOD FOR COMPLETION

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The maximum period of completion for this project is 8 months from date of the appointment letter for this project. The service provider therefore must provide to FBDM a work schedule and cash-flow projection within 5 working days after receiving the appointment letter.



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## 6. LOCATION

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Dikgatlong Municipality's head office is situated in Barkly West, approximately 35 km north-west of Kimberley on the trunk road 502 route to Kuruman. Dikgatlong Municipality consists of 3 major towns Barkly West, Windsorton and Delporthoop and smaller settlements namely: Longlands, Gong-Gong, Pniel, Koopmansfontein, Smitsmine, Romance, Stilwater.

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## 6. AVAILABLE INFORMATION

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Dikgatlong Municipality has a hard copy of an outdated Electricity Masterplan but the plan does not cover all areas of the municipality. A Network Audit Report for De Beershoogte area, dated May 2014, is also available.

The areas in Dikgatlong Municipality serviced by Eskom are: Barkly West (Rooirand, Mataleng), Delporthoop (Rooikoppies, Tidimalo, Delporthoop town), Windsorton, Stilwater, Gong-Gong, Pniel, Koopmansfontein, Holpan, Smitsmine, Romance. The rest of areas are serviced by the municipality but it is the successful service provider's responsibility to verify if this data is accurate/correct.

The successful service provider must make sure he prepares a costing that will include all the surveys, data collection that will be necessary to complete a meaningful electricity master plan. This will include consultations sessions with all the relevant stakeholders including Eskom.

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## 7. LIAISON WITH CLIENT

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The successful service provider will liaise with the client during all phases of the project and advice the client on all matters relating to the project. The contact person / clients representative will be Ms C Somers unless otherwise noted at the compulsory site clarification meeting or when the tender has been awarded.

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## 8. APPOINTMENT

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The final selection and appointment will be undertaken in line with the Supply Chain Management Policy of the Frances Baard District Municipality as specified in the Bid Document. A single appointment will be made for the works in terms of this contract and bid.

The appointed service provider will be required to register as supplier/service provider on the Frances Baard District Municipality's supplier database before any payments can be made.

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## 9. SERVICE PROVIDER QUALIFICATIONS AND EXPERIENCE

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Only Service Providers with the required experience and skills in compilation of electricity master plans will be considered for this assignment. Service Providers are therefore requested to submit documentary proof of their experience/expertise and personal CV's should also be included. Proof of registration with the South African Institute of Electrical



Engineers (SAIEE) & the Engineering Council of South Africa (ECSA) is compulsory for the project team leader. Any other registration (eg Institution of Certificated Mechanical & Electrical Engineers of SA, etc.) should also be indicated as part of the proposal/offer bid. Bidders are required to give detail of all members of the project team including their responsibilities, qualifications and experience. The team leader shall be responsible for signing off on all communication regarding the project including reports, letters, etc.

In addition to the above bidders will need to give details of their proposed project team, their experience regarding the following key areas:

- Experience of the government and local government institutional environment.
- Design of electrical infrastructure and layouts.
- Implementing of electrical infrastructure projects.
- Operation and Maintenance issues regarding electrical infrastructure.

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## 10. PROPOSAL STRUCTURE

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The service provider must structure his proposal to include inter alia, also the following:

- All relevant company registration details
- Company profiles
- Résumés of persons responsible for deliverables
- List and details of sub-contractors/other professionals (including evidence of experience);
- Vat registration details;
- References with contact details of similar completed projects;
- Detailed project plan with:
  - Work methodology and phasing of the objectives and activities to be performed
  - Clear timeframes/schedule aligned with objectives and tasks/activities
  - **Budget:**
    1. All expenses must be included and linked to the objectives and tasks/activities within the project.
    2. All assumptions must be clearly indicated in the Bid Proposal
    3. A final budget and phasing of payment will be negotiated with the Service Provider and finalised at the same time of appointment.
  - **Any Value Adding Services**

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## 11. LANGUAGE MEDIUM

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All documents, correspondence, etc. are to be in **English**.

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## 12. REPORTING REQUIREMENTS

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The successful bidder will report and interact with Ms C Somers or the Manager: Infrastructure Development of FBDM and/or the delegated officials of the local municipality on all the phases of the project as follows:



### a) Monthly Reporting

Monthly meetings must be held to discuss:

- Progress;
- Problems experienced;
- Corrective measure needed or made;
- Priorities for the next month;
- Financial Management (Claims, cash-flow projections); and
- Information needed.

A formal written report, with executive summary, on the above issues must be compiled and distributed to all stakeholders at least three (3) days before the monthly meeting.

### b) Other Meetings and Engagements

Other meetings will be arranged on an ad hoc basis as and when required. The normal discussions for information gathering and collection as part of this project will not be considered as meetings and/or reporting.

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## 13. PAYMENT

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The payment structure will be based on the phases on delivery of required reporting documentation and deliverables. The client will have a maximum of 30 calendar days for payment after receipt of a bona fide claim including an original tax invoice. Take note of the following:

- The VAT invoice must be addressed to Frances Baard District Municipality.
- The contract number, invoice number and VAT registration number must be shown on each invoice.
- The VAT registration number of the *Employer* is shown on each invoice.
- A breakdown commensurate with the "prices" is shown on each invoice.
- The *Employer* accepts only original invoices.

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## 14. DISCLOSURE OF INFORMATION

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With the acceptance of this appointment you specifically undertake not to furnish information of any kind whatsoever at any stage during the validity of this appointment or any period thereafter in respect of the Works to any person or organisation outside of Frances Baard District Municipality and its authorised agents, except in cases where you have been authorised thereto in writing by the Frances Baard District Municipality.

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## 15. COPYRIGHT

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The copyright of all documentation, whether in hard copy and/or electronic format, prepared by the successful service provider in terms of this appointment shall be vested in the Frances



Baard District Municipality. FBDM will have the right/s to their use on other projects for which any other service providers have been appointed. Where such documents are used without your prior knowledge and consent, such re-use shall solely be at the risk of FBDM or any other party whatsoever re-use the documentation. No fees from such re-use shall accrue to the successful service provider.

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## 16. COMPULSORY BRIEFING SESSION

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A compulsory briefing session will be held on 10 September 2014 at **10H00** at the offices of FBDM. The physical address is: 51 Drakensberg Avenue, Carters Glen, Kimberley. It is up to the prospective bidders to visit the site to familiarise themselves of the conditions in Dikgatlong Municipality.

Ms C Somers may be contacted at 053 - 838 0911 before the closing date where after no contact may be made until the bid has been awarded.

**NB: SERVICE PROVIDERS WHO DO NOT ATTEND THE BRIEFING SESSION WILL BE PROHIBITED FROM SUBMITTING PROPOSALS.**

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## 17. BID ADJUDICATION CRITERIA

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### 17.1 Evaluation Criteria

The evaluation of this bid will be conducted in the following two (2) stages:

Firstly, the assessment of functionality will be done in terms of the evaluation criteria and the minimum threshold. A bid will be disqualified if it fails to meet the minimum threshold for functionality as per the bid invitation.

Thereafter, only those qualifying bids will be evaluated in terms of the 80/20 preference points systems, where the 80 will be used for price **ONLY** and the 20 for points awarded for B-BBEE status level of contribution. Furthermore, responsive bids that meet the functionality requirements will be invited for presentations, after which the final appointment will be made.

Only service providers that can demonstrate the required experience and skills relating to the execution of this project will be considered. The following criteria will be taken into account for appointment of a successful service provider:





## 17.2 Functionality Criteria (40)

The criteria to be used for Functionality (see attached Functionality Evaluation Criteria Checklist).

CRITERIA	MAX POINTS
Experience on specific project (Project Management) and Expertise of Key Personnel	10
Approach and Methodology	20
Project Management and Quality of Service	10

NB: Bidders that score less than 24 points for functionality will be deemed non-compliant with the bid specification

## 17.3 Evaluation Criteria (Price)

Only fixed prices for all deliverables will be accepted. The price should be inclusive of VAT.

Price	80
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## 17.4 Points awarded for B-BBEE Status Level of Contribution

B-BBEE Status Level of Contributor	Number of Points (80/20 system)
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

NB: In order to claim for these points, Bidders are required to submit an 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 have already submitted such certificate need to indicate on which bid was the certificate submitted.

## 17.5 STATUTORY AND GENERAL

The following conditions will apply:

- Price quoted must be valid for ninety (90) days from date of your offer.
- Price quoted must be firm and must be inclusive of VAT.
- A firm delivery period must be indicated.



- This Proposal will be evaluated in terms of the 80/20 preference point system as prescribed in the Preferential Procurement Regulations, 2011 pertaining to the PPPF Act (No 5 of 2000) and Supply Chain Management of Frances Baard District Municipality (NB: MDB forms are obtainable at FBDM Office during working hours as well as on the FBDM Website: [www.francesbaard.gov.za](http://www.francesbaard.gov.za)):
  - MBD 1 Invitation to Bid
  - MBD 2 Application for tax clearance certificate (Original Valid Tax Certificate- Consortia/Join Ventures/Sub-Contractors)
  - MDB 3.3 Pricing Schedules
  - MBD 4 Declaration of Interest
  - MBD 6.1 Preference claim in terms of the Preferential Procurement Regulations
  - MBD 7.2 Contract Form
  - MBD 8 Past Supply Chain management Practice
  - MBD 9 Certificate of Independent Bid Determination

### 17.6 Disqualifications

- All bids that do not submit a Tax Clearance Certificate (Original Valid Tax Certificate- Consortia/Join Ventures/Sub-Contractors)
- All bids that do not submit a proposed work plan (Functionality) will be disqualified.
- Failure to attend a Compulsory Briefing Session/Meeting.
- All bids that are received late will be disqualified.
- All bids that are faxed, e-mailed or telegraphed will be disqualified.
- Failure to complete all required forms in the bid documents and/or attachments.
- Terms and conditions that are not within the GCC (see attached).

Frances Baard District Municipality reserves the right to accept a portion of a tender, and the lowest and/or any tender will not necessarily have to be accepted

The closing date for submissions is 30 September 2014, 12h00. Proposals should be clearly marked: **BID: 11/14 APPOINTMENT OF AN ELECTRICAL CONSULTING ENGINEERING TEAM FOR THE COMPILATION OF AN ELECTRICITY MASTERPLAN FOR DIKGATLONG MUNICIPALITY** and must be submitted to **The Municipal Manager, Frances Baard District Municipality, Private Bag X6088 Kimberley, 8300**, or hand delivered to the Frances Baard District Offices, 51 Drakensberg Avenue, Carters Glen, Kimberley. For enquiries relating to Supply Chain Management, contact Mr. E. Tlhageng at: 053 - 838 0946; for technical assistance please contact Mrs. C Somers or Mr. DV Makaleni at: 053 - 838 0911.

**INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE FRANCES BAARD DISTRICT MUNICIPALITY

BID: 11/14

CLOSING DATE: 30 SEPTEMBER 2014

CLOSING TIME: 12:00

DESCRIPTION: **APPOINTMENT OF AN ELECTRICAL CONSULTING ENGINEERING TEAM FOR THE  
COMPILATION OF AN ELECTRICITY MASTERPLAN FOR DIKGATLONG MUNICIPALITY**

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

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BID DOCUMENTS MAY BE POSTED TO: THE MUNICIPAL MANAGER  
FRANCES BAARD DISTRICT MUNICIPALITY  
PRIVATE BAG X6088  
KIMBERLEY 8300

OR

DEPOSITED IN THE BID BOX SITUATED AT (*STREET ADDRESS*): *51 DRAKENSBERG AVENUE*  
CARTERS GLEN  
KIMBERLEY

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

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

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

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

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

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

NAME OF BIDDER .....

POSTAL ADDRESS .....

STREET ADDRESS .....

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

CELLPHONE NUMBER .....

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

E-MAIL ADDRESS .....

VAT REGISTRATION NUMBER .....

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE (Tender) BEEN ATTACHED? (MBD 2) YES/NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (MBD 6.1) YES/NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

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

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

A REGISTERED AUDITOR

(Tick applicable box)

**(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE)**

ARE YOU THE ACCREDITED REPRESENTATIVE  
IN SOUTH AFRICA FOR THE GOODS/SERVICES/WORKS OFFERED ?

YES/NO  
(IF YES ENCLOSE PROOF)

SIGNATURE OF BIDDER .....

DATE .....

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

TOTAL BID PRICE..... TOTAL NUMBER OF ITEMS OFFERED .....

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

**Municipality / Municipal Entity:** Frances Baard District Municipality  
**Department:** Supply Chain Management Unit  
**Contact Person:** Mr. P. Souden or Mr. E. Tlhageng  
**Tel:** 053 838 0911  
**Fax:** 053 861 1538

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

**Contact Person:** Mr. DV Makaleni  
**Tel:** 053 838 0911  
**Fax:** 053 861 1538

## TAX CLEARANCE CERTIFICATE REQUIREMENTS

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

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



# Application for a Tax Clearance Certificate

### Purpose

Select the applicable option .....Tenders  Good standing

If "Good standing", please state the purpose of this application

Two empty text input boxes for stating the purpose of the application.

### Particulars of applicant

Name/Legal name (Initials & Surname or registered name) [Grid]

Trading name (if applicable) [Grid]

ID/Passport no [Grid] Company/Close Corp. registered no [Grid]

Income Tax ref no [Grid] PAYE ref no 7 [Grid]

VAT registration no 4 [Grid] SDL ref no L [Grid]

Customs code [Grid] UIF ref no U [Grid]

Telephone no [CODE] [NUMBER] Fax no [CODE] [NUMBER]

E-mail address [Grid]

Physical address [Grid]

Postal address [Grid]

### Particulars of representative (Public Officer/Trustee/Partner)

Surname [Grid]

First names [Grid]

ID/Passport no [Grid] Income Tax ref no [Grid]

Telephone no [CODE] [NUMBER] Fax no [CODE] [NUMBER]

E-mail address [Grid]

Physical address [Grid]

Particulars of tender (If applicable)

Tender number

Estimated Tender amount R ,

Expected duration of the tender  year(s)

Particulars of the 3 largest contracts previously awarded

Date started	Date finalised	Principal	Contact person	Telephone number	Amount

Audit

Are you currently aware of any Audit investigation against you/the company?.....

If "YES" provide details

Appointment of representative/agent (Power of Attorney)

I the undersigned confirm that I require a Tax Clearance Certificate in respect of  or .

I hereby authorise and instruct  to apply to and receive from SARS the applicable Tax Clearance Certificate on my/our behalf.

-   -

Signature of representative/agent

Date

Name of representative/agent

agent

Declaration

I declare that the information furnished in this application as well as any supporting documents is true and correct in every respect.

-   -

Signature of applicant/Public Officer

Date

Name of applicant/Public Officer

Notes:

- It is a serious offence to make a false declaration.
- Section 75 of the Income Tax Act, 1962, states: Any person who
  - fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or
  - without just cause shown by him, refuses or neglects to-
    - furnish, produce or make available any information, documents or things;
    - reply to or answer truly and fully, any questions put to him ...
 As and when required in terms of this Act ... shall be guilty of an offence ...
- SARS will, under no circumstances, issue a Tax Clearance Certificate unless this form is completed in full.
- Your Tax Clearance Certificate will only be issued on presentation of your South African Identity Document or Passport (Foreigners only) as applicable.

**PRICING SCHEDULE**  
(Professional Services)

NAME OF BIDDER: ..... BID: 11/14

CLOSING TIME 12:00

ON: 30 SEPTEMBER 2014

OFFER TO BE VALID FOR 90 DAYS FROM THE CLOSING DATE OF BID.

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**PRICING DATA**

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**1. Pricing Instructions:**

1.1 The following words shall have the meanings hereby assigned to them:

Unit: The unit of measurement for each item of work for the services as defined in the Standard Specifications or the Scope of Work.

Quantity: The number of units of work for each item of the services.

Rate: The payment per unit of work at which the bidder bids to do the work for the services.

Amount: The product of the quantity and the rate bid for an item.

Lump sum: An amount tendered for an item, the extent of which is described in the Schedule of Quantities, the Scope of Work or elsewhere, but of which the quantity of work for the services is not measured in units.

Rate only: An amount per unit to be entered by the bidder for execution of the specific work for the services. No quantity is provided for this item, which may or may not be used by the Employer to extend the work to be done under the contract.

1.2 The quantities set out in the Pricing Schedule are approximate quantities. The quantities of work accepted and certified for payment for the services, and **not** the quantities given in the Pricing Schedule, will be used to determine payments to the service provider.

The validity of the Contract shall in no way be affected by differences between the quantities in the Pricing Schedule and the quantities finally certified for payment. Work for the services will be valued at the rates or lump sums Bided, subject to the provisions of paragraphs 1.8 and 1.9 of this section.

1.3 The Bid rates are all-inclusive and covers the execution of the activities as listed, including all accommodation, travelling expenses, all mandatory taxes and levies (excluding VAT), all liaison, insurance against damage, compensation for loss as well as any other possible expenses which have not been specifically mentioned, but which may be related to the execution of the work for the services. Value added tax (VAT) shall be excluded from the rates and prices and provided for as the total VAT on the cost of the Services in the Pricing Schedule.

1.4 The Bidder shall fill in a rate for each item where this is provided for. If the Bidder has bid a rate but omitted the amount, or vice versa, the missing amount or rate will, if possible, be determined in conjunction with the Bidder from the available data, and the Bidder must confirm his acceptance of these amounts and rates.

If the Bidder groups a number of items together and bids one lump sum for such group of items, this single bid lump sum shall apply to that group of items and not to each individual item, or, should he indicate against any item that full compensation for such item has been included in another item, the rate for the item included in another item shall be deemed nil.

The bid lump sums and rates shall be valid irrespective of any change in the quantities during execution of the Contract.

1.5 The services executed will be measured for payment in accordance with the methods described in this Bid Documents under the various payment items, notwithstanding any custom to the contrary.



1.6 The short descriptions of the payment items in the Pricing Schedule are given to identify the items and to provide specific details. Reference shall inter alia be made to the Scope of Work for more detailed information regarding the extent of the work entailed under each item.

1.7 Subject to the conditions stated in paragraph 1.8 below, the rates and lump sums filled in by the Bidder in the Schedule of Quantities shall be final and binding with regard to submitting the bid, and may not be adjusted should there be any mistakes in the extensions thereof and in the total sums appearing in the bid. Should there be discrepancies between the Bid Sum and the correctly extended and totalled Pricing Schedule, the rates will be deemed correct, and the Employer will have the right to make such adjustments to the Bid Sum as he deems necessary to reconcile the total of the Pricing Schedule with the Bid Sum.

In such an event the Bidder will be consulted but, failing agreement between the parties, the decision of the Employer will be final and binding. Adjustment of the Bid Sum will take place only after acceptance of the bid, but prior to the signing of the Contract. In their own interests Bidders should make doubly sure of the correctness of their bid rates, the extensions and the Bid Sum.

1.8 A Bid may be rejected if the unit rates or lump sums for some of the items in the Pricing Schedule are in the opinion of the Employer, unreasonable or out of proportion and if the Bidder fails within a period of seven (7) days of having been notified in writing by the Employer to adjust the unit rates or lump sums for such items to make such adjustments.

1.9 Payment for services will be as follows:

- a) After completion of the plans required or at different phases as per the service providers' bid proposal or as when agreed as per a service level agreement between FBDM and the successful service provider.
- b) For ad hoc requests costs will be claimed on a time and cost basis as per the pricing schedule if and when ad hoc requests are made.

**1.10 Please take note that the pricing schedule was drawn up in a manner that allows prospective bidders to either bid separately for each of the plans or together as options 1, 2 or 3.**

1.11 Other Notes:

- a) Value Added Tax (VAT) is to be excluded in the bid rates.
- b) The Bidder shall include in his rates for the following:
  - Attendance for all meetings with the Employer.
  - Typing and Duplication.
  - Establishment costs.
  - All per diem costs and accommodation costs of staff.
  - All other costs that may be incurred in completing all the work specified to the satisfaction of the Employer.
- c) The rates and lump sums bid are fixed for the duration of the Contract. Variations will however be made if there is a variation in the VAT rate.

**2. Pricing Schedule:**

All rates and sums of money quoted in the Pricing Schedule shall be inclusive of all staff and reimbursable costs. It must be in Rands and whole Cents. Fractions of a cent shall be discarded. No claims for additional costs will be made.

PRICING SCHEDULE				
Description	Unit	Quantity	R	Total
Compilation of an Electricity Master Plan for Dikgatlong Municipality				
Status Quo Analysis with Status Quo Report	No	1		
Future Electrical Demand Report	No	1		
Policy Matters Report	No	1		
Institutional Issues Report	No	1		
Maintenance Implementation Program	No	1		
Operations & Maintenance Manual	No	1		
Cost Estimates and Proposed Capital Implementation Program	No	1		
Electricity losses report	No	1		
Final Report including quick-wins and other recommendations.	No	1		
			<b>Sub-Total</b>	R.....
			<b>VAT (14%)</b>	R.....
			<b>TOTAL BID AMOUNT</b>	R.....

Below please find two (2) tables relating to staff and reimbursable costs which must be completed for the bid to be responsive. Please note that the rates supplied must be the rates on which the budget in the above Pricing Schedule is based. These rates will only be used for additional costs approved by FBDM for work outside the original scope of work.

Table 1: Staff Costs

STAFF COSTS				
Item No.	Personnel Name	Professional Registration	Project Designation	Hourly Unit Cost Rate

Table 2: Reimbursable Costs

REIMBURSABLE COSTS (TRAVEL, ACCOMMODATION AND INCIDENTALS)		
Item	Unit	Rate
Travel	Km	
Car Hire (Group A)	Days	
Accommodation	Nights	
Per Diem	Days	

- **Does offer comply with specification?\*YES/NO** .....

- **If not to specification, indicate deviation(s)** .....

- **Period required for delivery** .....

**\*Delivery: Firm/not firm**

- **Delivery basis** (all delivery costs must be included in the bid price).....

**Note:** All delivery costs must be included in the bid price, for delivery at the prescribed destination. \*Delete if not applicable

Any enquiries regarding bidding procedures may be directed to the SUPPLY CHAIN

MANAGEMENT: E TLHAGENG (Tel: 053 838 0946)

Or for TECHNICAL INFORMATION: DV MAKALENI (Tel: 053 838 0911)

### DECLARATION OF INTEREST

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

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

3.1 Full Name: .....

3.2 Identity Number: .....

3.3 Company Registration Number: .....

3.4 Tax Reference Number: .....

3.5 VAT Registration Number: .....

3.6 Are you presently in the service of the state\* YES / NO

3.6.1 If so, furnish particulars.

.....  
.....

3.7 Have you been in the service of the state for the past twelve months? YES / NO

3.7.1 If so, furnish particulars.

.....  
.....

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

- (a) a member of –
  - (i) any municipal council;
  - (ii) any provincial legislature; or
  - (iii) the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

3.8 Do you, have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? YES / NO

3.8.1 If so, furnish particulars.

.....  
.....

3.9 Are you, aware of any relationship (family, friend, other) between a bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? YES / NO

3.9.1 If so, furnish particulars

.....  
.....

3.10 Are any of the company's directors, managers, principle shareholders or stakeholders in service of the state? YES / NO

3.10.1 If so, furnish particulars.

.....  
.....

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

3.11.1 If so, furnish particulars.

.....  
.....

CERTIFICATION

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

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

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

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

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

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

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011.**

### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R1 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to not exceed R 1 000 000 (all applicable taxes included) and therefore the 80/20 point system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

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

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

	<b>POINTS</b>
<b>1.3.1.1 PRICE</b>	<b>80</b>
<b>1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	<b>20</b>
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.5 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

2.1 “**all applicable taxes**” includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

2.2 “**B-BBEE**” means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

2.3 “**B-BBEE status level of contributor**” means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic

Empowerment Act;

- 2.4 **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- 2.5 **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.6 **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- 2.7 **“consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- 2.8 **“contract”** Error! Bookmark not defined. means the agreement that results from the acceptance of a bid by an organ of state;
- 2.9 **“EME”** means any enterprise with an annual total revenue of R5 million or less .
- 2.10 **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 **“non-firm prices”** means all prices other than “firm” prices;
- 2.13 **“person”** includes a juristic person;
- 2.14 **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.16 **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- 2.17 **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.18 **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

### 3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid



must be the one scoring the highest number of preference points for B-BBEE.

- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

#### 4. POINTS AWARDED FOR PRICE

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

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

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

Where

$P_s$  = Points scored for comparative price of bid under consideration

$P_t$  = Comparative price of bid under consideration

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

#### 5. Points awarded for B-BBEE Status Level of Contribution

- 5.1 In terms of Regulation 5 (2) and 6 (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	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

- 5.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a

Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA’s approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.

- 5.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

**6. BID DECLARATION**

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

**7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1**

7.1 B-BBEE Status Level of Contribution: ..... = .....(maximum of 20 points)

**(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA).**

**8 SUB-CONTRACTING**

8.1 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)

8.1.1 If yes, indicate:

- (i) what percentage of the contract will be subcontracted? .....%
- (ii) the name of the sub-contractor? .....
- (iii) the B-BBEE status level of the sub-contractor? .....
- (iv) whether the sub-contractor is an EME? YES / NO (delete which is not applicable)

**9 DECLARATION WITH REGARD TO COMPANY/FIRM**

9.1 Name of firm :.....

9.2 VAT registration number :.....

9.3 Company registration number :.....

9.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

9.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

9.7 MUNICIPAL INFORMATION

Municipality where business is situated .....

Registered Account Number .....

Stand Number .....

9.8 TOTAL NUMBER OF YEARS THE COMPANY/FIRM HAS BEEN IN BUSINESS?

.....

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

- (i) The information furnished is true and correct;
- (ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form.
- (iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- (iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after

the audi alteram partem (hear the other side) rule has been applied; and

(e) forward the matter for criminal prosecution

**WITNESSES:**

1. ....

<p>..... SIGNATURE(S) OF BIDDER(S)</p>
--

2. ....

DATE:.....

ADDRESS:.....

.....

.....

.....

**CONTRACT FORM - RENDERING OF SERVICES**

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

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

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

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

WITNESSES	
1	.....
2	.....
DATE: .....	

**CONTRACT FORM - RENDERING OF SERVICES**

**PART 2 (TO BE FILLED IN BY THE PURCHASER)**

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

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

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

SIGNED AT ..... ON .....

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

WITNESSES

1 .....

2 .....

DATE: .....

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

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

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

4.3.1	If so, furnish particulars:		
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

**CERTIFICATION**

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

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

.....  
**Signature**

.....  
**Date**

.....  
**Position**

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



**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

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

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

<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 Municipality / Municipal Entity)

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

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

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

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

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

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

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

Js9141w 4

# **THE NATIONAL TREASURY**

**Republic of South Africa**



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

**July 2010**

**GOVERNMENT PROCUREMENT**  
**GENERAL CONDITIONS OF CONTRACT**  
**July 2010**

**NOTES**

The purpose of this document is to:

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

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

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

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## General Conditions of Contract

### 1. Definitions

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

**2. Application**

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

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

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

**3. General**

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

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

**4. Standards**

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

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

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

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

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

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

**6. Patent rights**

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

**7. Performance security**

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

**8. Inspections, tests and analyses**

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

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

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

**9. Packing**

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

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

**10. Delivery and documents**

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

10.2 Documents to be submitted by the supplier are specified in SCC.

**11. Insurance**

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

**12. Transportation**

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

**13. Incidental services**

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

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

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

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

#### **14. Spare parts**

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

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

#### **15. Warranty**

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

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

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

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

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

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

**16. Payment**

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

**17. Prices**

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

**18. Contract amendments**

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

**19. Assignment**

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

**20. Subcontracts**

- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this 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 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

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

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

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

**22. Penalties**

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

**23. Termination for default**

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

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

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

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

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

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

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

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

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

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

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

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

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



may be due to him

**25. Force Majeure**

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

**26. Termination for insolvency**

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

**27. Settlement of Disputes**

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
  - (b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of liability**

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

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

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