



# WEST RAND DISTRICT MUNICIPALITY

## TENDER DOCUMENT

FINANCE SERVICES DEPARTMENT: SUPPLY CHAIN MANAGEMENT

**BID NO: WR/CORP/01/25**

**APPOINTMENT OF PANEL OF ATTORNEYS FOR THE WEST RAND DISTRICT MUNICIPALITY (WRDM) FOR A PERIOD OF THREE YEARS.**

<p><b>West Rand District Municipality</b>  <b>Cnr 6<sup>th</sup> and Park Street</b>  <b>Private Bag X 033</b>  <b>Randfontein 1760</b>  <b>Tel: 011- 411-5000. Fax: 011 412 3663.</b>  <b>Website: www.wrdm.gov.za</b></p>	<p><b>Bidding enquiries Contact:</b>  <b>Name: Mr. G Mandona</b>  <b>Tel No.: (011) 411 5079</b>  <b>Fax No.: (011) 412-3663</b></p> <p><b>Technical enquiries Contact:</b>  <b>Name: Technical: Mr. Sam Mafojane</b>  <b>Tell No: (011) 411 5186</b></p>
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**Company Name:** .....

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

**Tel No.:** ..... **Fax No.:** ..... **E-mail:**.....

**Total Bid Offer (Inc. VAT.): R** .....

**Proof of payment for the tender document must be attached as part of the tender submission.**

**CLOSING DATE: 15 OCTOBER 2024**  
**TIME: 11H00**



# WEST RAND DISTRICT MUNICIPALITY

Suitably qualified service providers are hereby invited to submit proposals for the following:

Bid No.	Description	Evaluation Criteria	Closing Date & Time	Compulsory Briefing Session	Bid Enquiries
WR/CORP/01/25	Appointment of Panel of Attorneys for the West Rand District Municipality (WRDM) for a Period of Three (03) Years.	Administrative Compliance, Functionality and 80/20 Preferential Point System	15 October 2024 at 11:00am	Date: 03/10/2024 Time: 10h00 Venue: West Rand District Municipality (Bondesio Hall)	Technical: Mr Sam Mafojane Tell: 011 411 5186

Bid documents will be available from **13 September 2024 Time 08:30 until 15:00**, at the cashier's office, Municipal Building, Cnr 6<sup>th</sup> and Park street, Randfontein. A non-refundable of **R350.00** will be charged for a document issued or downloaded. **Proof of payment for the tender document must be attached as part of the tender submission.**

### Submission of Tenders:

Tenders must be submitted not later than **11H00 on the 15 October 2024**. **Faxed emailed and late proposals will not be accepted.**

**By hand:** Bid documents and supporting documents must be placed in a sealed envelope clearly marked the ,Bid number & Description respectively" , and be deposited in a bid box, on the Municipal Building, Cnr 6<sup>th</sup> and Park Street, Randfontein, 1760

**By Post:** To reach the Manager Supply Chain Management, Private Bag X033, Randfontein, 1760, in sufficient time for it to be placed in the Tender Box before closing time.

### Opening of Tenders

Tenders will be opened in public at **11h00, 15 October 2024**

### Bidders must take note of the following:

- ✓ Bids must only be submitted on the bid documentation provided by the West Rand District Municipality
- ✓ Persons in the service of the state are not allowed to bid; Attach Copy of ID document/s and Company registration certificate ( CK)
- ✓ Recent Municipal Statement of account (not older than 3 months) for the company and all directors not in arrears for more than 90 days or lease agreement with a recent rental invoice/statement must be attached. Attention is drawn to the "Clearance Certificate for Municipal Account". The Clearance Certificate must be completed by the Municipality where the business resides or the Landlord in case of a tenant. Lease agreement must also be attached and is the responsibility of the bidder to ensure that the "Clearance Certificate for Municipal Accounts" is completed in full and stamped by the landlord
- ✓ Attach copy of Tax Clearance Pin obtainable from SARS;
- ✓ Proof of registration with National Treasury Central Supplier Database;
- ✓ The bids will be evaluated and adjudicated in terms of Preferential Procurement Policy Framework, Act No.5 of 2000, Preferential Procurement Regulations 2022, West Rand District Municipality Preferential Procurement Policy and Supply Chain Management Policy of the West Rand District Municipality.
- ✓ Proof of payment for the tender document.
- ✓ A tender that fails to meet all the requirements stipulated in the tender documents will be unacceptable tender.

Bank Name	Standard Bank
Account Number	021307350
Branch Code	015851
Reference	Name of the Company

### Enquiries

Supply Chain Matters can be directed to **Goitsemodimo Mandona (011) 411 5079**



# WEST RAND DISTRICT MUNICIPALITY

MBD 1

## PART A INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF MUNICIPALITY/ MUNICIPAL ENTITY)</b>					
BID NUMBER:	WR/CORP/01/25	CLOSING DATE:	15 OCTOBER 2024	CLOSING TIME:	11H00am
DESCRIPTION	APPOINTMENT OF PANEL OF ATTORNEYS FOR THE WEST RAND DISTRICT MUNICIPALITY (WRDM) FOR A PERIOD OF THREE (03) YEARS.				
<b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).</b>					

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX  
SITUATED AT (STREET ADDRESS

**CNR 6TH AND PARK STREET, RANDFONTEIN, 1760**

### SUPPLIER INFORMATION

NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	<input type="checkbox"/> Yes <input type="checkbox"/> No	

**[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]**

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER	.....	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			

<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>		<b>TECHNICAL INFORMATION MAY BE DIRECTED TO:</b>	
DEPARTMENT	SCM	DEPARTMENT	Corporate Services
CONTACT PERSON	Mr G Mandona	CONTACT PERSON	Mr. Sam Mafojane
TELEPHONE NUMBER	(011) 411 5079	TELEPHONE NUMBER	(011) 411 5186
E-MAIL ADDRESS	<a href="mailto:gmandona@wrwm.gov.za">gmandona@wrwm.gov.za</a>	E-MAIL ADDRESS	<a href="mailto:smafojane@wrwm.gov.za">smafojane@wrwm.gov.za</a>

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

<b>1. BID SUBMISSION:</b>	
1.1.	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2.	<b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR ONLINE</b>
1.3.	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
<b>2. TAX COMPLIANCE REQUIREMENTS</b>	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3	APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
2.4	FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
2.5	BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.6	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.7	WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
<b>3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>	
3.1.	IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <span style="float: right;"><input type="checkbox"/> YES</span>
	<input type="checkbox"/> NO
3.2.	DOES THE ENTITY HAVE A BRANCH IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES</span>
	<input type="checkbox"/> NO
3.3.	DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES</span>
	<input type="checkbox"/> NO
3.4.	DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES</span>
	<input type="checkbox"/> NO
3.5.	IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <span style="float: right;"><input type="checkbox"/> YES</span>
	<input type="checkbox"/> NO
<p><b>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.</b></p>	

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

SIGNATURE OF BIDDER: .....

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

DATE: .....



# WEST RAND DISTRICT MUNICIPALITY



## NOTES TO BIDDERS

Bidders are requested to take note of the following:

- Municipal Bidding Documents (MBD 1-9) provided by West Rand District Municipality must be completed in full and submitted with all the required returnable documents.
- The Bid Documents must not be re-typed or re-produced as it will constitute stealing.
- A fee of **R350.00** charged for bid document is non-refundable.
- Payments are to be made at the cashiers Municipal Building, WRDM.
- The closing time for this shall be **11h00 am** at the specified date on the advert
- **No late, faxed and e-mailed bids will be accepted.**
- All bidders must adhere to the terms and conditions of bid.
- Tax Clearance Pin Certificate obtainable from SARS must be attached; failure to do so will result to the bid being non-responsive.
- Recent Municipal Statement of account (not older than 3 months) for the **company and all directors** not in arrears for more than **90 days** or lease agreement with a recent rental invoice/statement must be attached. Attention is drawn to the “Clearance Certificate for Municipal Account”. The Clearance Certificate must be completed by the Municipality where the business resides or the Landlord in case of a tenant. Lease agreement must also be attached and is the responsibility of the bidder to ensure that the “Clearance Certificate for Municipal Accounts” is completed in full and stamped by the landlord.
- The Bid Documents must be signed by an individual who has the delegated powers to sign on behalf of the Company
- Bidders are requested to verify that the company status is active with CIPC , attach copy of company registration certificates and copy(s) ID of company director(s) /member(s)
- Proof of registration with National Treasury Central Supplier database registration
- Offer to be valid for **90 working days** after the closing date of bid.
- Bid Document must be neatly banded and not be tear apart.

**FAILURE TO ADHERE TO THESE NOTES WILL RESULT IN THE BIDDER BEING DECLARED AS “NON-RESPONSIVE”**



**WEST RAND  
DISTRICT MUNICIPALITY**

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**AUTHORITY FOR SIGNATORY**

**NAME OF ENTERPRISE:** .....

**DATE:** .....

**TO WHOM IT MAY CONCERN**

It is hereby certified that Mr. /Ms. ....in his/her capacity as ..... (Designation) is duly authorized to sign all documents submitted on behalf of ..... (Name of company) in respect of the following tender:

**BID NO: WR/CORP/01/25  
APPOINTMENT OF PANEL OF ATTORNEYS FOR THE WEST RAND  
DISTRICT MUNICIPALITY (WRDM) FOR A PERIOD OF THREE (03)  
YEARS.**

Yours Sincerely

.....  
MD/CEO/ Company Secretary Etc.

Specimen Signature (Authorized Person): .....



# WEST RAND DISTRICT MUNICIPALITY

## DECLARATION ON STATE OF MUNICIPAL ACCOUNTS

A Any bid will be rejected if:

Any municipal rates and taxes or municipal service charges owed by the bidder or any of the directors to the municipality or a municipal entity, or to any other municipality or municipal entity, are in arrears for more than three months.

B Bid Information

- i. Name of bidder .....
- ii. Registration Number .....
- iii. Municipality where business is situated.....
- iv. Municipal account number for rates .....
- v. Municipal account number for water and electricity .....
- vi. Names of all directors, their ID numbers and municipal account number.
  - 1. ....
  - 2. ....
  - 3. ....
  - 4. ....
  - 5. ....
  - 6. ....
  - 7. ....

C Documents to be attached.

- i. A copy of municipal account mentioned in B (iv) & (v) (Not older than 3 months)
- ii. A copy of municipal accounts of all directors mentioned in B (vi) (Not older than 3 months)
- iii. Proof of directors

I/We declare that the abovementioned information is true and correct and that the following documents are attached to this form:

.....  
.....

\_\_\_\_\_  
**Bidder's Signature**

\_\_\_\_\_  
**Date**

**CLEARANCE CERTIFICATE FOR MUNICIPAL ACCOUNTS**

Section 38 (d) (i) of Municipal Supply Chain Regulations requires that the municipality must reject a bidder whose municipal services, rates and taxes are in arrears for more than 90 days.

The purpose of this form is to obtain proof that municipal services, rates and taxes of the service provider and director(s) are not in arrears for more than 90 days, with the relevant municipality / landlord in the municipal area where the director(s) resides and service provider conduct the business.

**PART A** -to be completed by the relevant municipality in the case where the service provider is the registered owner of the site / owner pays for municipal services / tenant pays for municipal services. Part A to be completed only in the event that prospective bidders do not receive municipal rates & taxes statements.

**OR**

**PART B** -to be completed by the landlord in the case where the service provider is renting the premises / rental paid by tenant include municipal services. Part B to be completed by the landlord only in the event that prospective bidder does not receive a rental invoice.

<b>PART A (TO BE COMPLETED BY THE RELEVANT MUNICIPALITY)</b>	
Name of the Municipality:	
Property Physical Address:	
Registered Name:	
Official's Name: _____ Signature : _____ Date: _____	<div style="border: 1px solid black; width: 100%; height: 100%; margin: 0 auto;">                     Municipality Stamp Here                 </div>
<b>Please circle whether the account is in arrears or up-to-date</b>	
Rates and taxes : Up-to-date	/ in arrears for more than (90 Days) 3 months
Water: Up-to-date	/ in arrears for more than (90 Days) 3 months
Electricity: Up-to-date	/ in arrears for more than (90 Days) 3 months
Refuse : Up-to-date	/ in arrears for more than (90 Days) 3 months
Other services : Up-to-date	/ in arrears for more than (90 Days) 3 months
<b>PART B ( TO BE COMPLETED BY THE LANDLORD)</b>	
Name of the Tenant:	
Name of the Landlord:	
Property Physical Address:	
Landlord Signature:	



Date: \_\_\_\_\_

**Landlord's business stamp here**  
Or an Affidavit from SAPS ( in the  
event the landlord does not have  
a business stamp)

**Please circle whether the account is up-to-date or in arrears**

Rental:                      Up-to-date   /   in arrears for more than (90 Days) 3 months

Municipal services:      Up-to-date   /   in arrears for more than (90 Days) 3 months



# WEST RAND DISTRICT MUNICIPALITY



MBD 3.1

## PRICING SCHEDULE – FIRM PRICES (PURCHASES)

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

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

Name of Bidder.....	Bid Number.....
Closing Time: 11am	Closing Date: 15 October 2024

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

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

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

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

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

\*Delete if not applicable



# WEST RAND DISTRICT MUNICIPALITY



MBD 4

## DECLARATION OF INTEREST

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

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

- 3.1 Full name of bidder or his or her representative: .....
- 3.2 Identity Number: .....
- 3.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>): .....
- 3.4 Company Registration Number: .....
- 3.5 Tax Reference Number: .....
- 3.6 VAT Registration Number: .....
- 3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

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

3.8.1 If yes, furnish particulars.....  
.....

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

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

f) an employee of Parliament or a provincial legislature.

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

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

3.9.1 If yes, furnish particulars

.....  
.....

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

3.10.1 If yes, furnish particulars

.....  
.....

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

3.11.1 If yes, furnish particulars

.....  
.....

3.12 Are any of the company’s directors, trustees, managers, principles, shareholders or stakeholders in service of the state? ..... **YES / NO**

3.12.1 If yes, furnish particulars

.....  
.....

3.13 Are any spouse, child or parent of the company’s directors trustees, managers, principle shareholders or stakeholders in service of the state?..... **YES / NO**

3.13.1 If yes, furnish particulars

.....





# WEST RAND DISTRICT MUNICIPALITY



## ETHICS COMMITMENT FOR ALL SUPPLIERS OF THE WEST RAND MUNICIPALITY

**In our dealings with the West Rand District Municipality we commit to uphold high standards of ethics. Among other things this means:**

- We will be honest and deal in good faith;
- We will not try to improperly influence any municipal official or decision;
- We will avoid all conflicts of interest;
- We will not engage in any form of corruption (e.g. paying bribes, giving kickbacks);
- We will not give gifts to municipal officials or councillors;
- We will not be involved in collusion with other service providers (i.e. price-fixing);
- We will ensure that all information we submit to the municipality is accurate and truthful (e.g. we will not engage in BBBEE fronting).
- We will inform the Municipality of any unethical behaviour which we become aware of in the procurement process, either related to other suppliers or to municipal officials.
- We will, through all our dealings, contribute to building a positive ethical culture in the West Rand District Municipality.

This is our commitment to help build an ethical community.

Name of Company: \_\_\_\_\_

Name of authorised person: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Private Bag X033, RANDFONTEIN 1760  
Cnr 6<sup>th</sup> & Park Street, RANDFONTEIN  
Tel: (011) 411-5000/412-2701 Fax: (011)  
412-3663



**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL  
PROCUREMENT REGULATIONS 2022**

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

**NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

**1. GENERAL CONDITIONS**

1.1 The following preference point systems are applicable to invitations to tender:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

**1.2 Applicable Preference Point System**

The applicable preference point system for this quotation is the 80/20 preference point system.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

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

	<b>POINTS</b>
<b>PRICE</b>	80
<b>SPECIFIC GOALS</b>	20
<b>Total points for Price and SPECIFIC GOALS</b>	<b>100</b>

- 1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

**2. DEFINITIONS**

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

**3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES**

**3.1. POINTS AWARDED FOR PRICE**

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

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

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 \\
 \mathbf{P_s} = \mathbf{80} \left( \mathbf{1} - \frac{\mathbf{P_t - P_{min}}}{\mathbf{P_{min}}} \right) & \mathbf{or} & \mathbf{P_s} = \mathbf{90} \left( \mathbf{1} - \frac{\mathbf{P_t - P_{min}}}{\mathbf{P_{min}}} \right)
 \end{array}$$

Where

- P<sub>s</sub> = Points scored for price of tender under consideration
- P<sub>t</sub> = Price of tender under consideration
- P<sub>min</sub> = Price of lowest acceptable tender



**3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT**

**3.2.1. POINTS AWARDED FOR PRICE**

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

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 \\
 \mathbf{P_s = 80 \left( 1 + \frac{P_t - P_{max}}{P_{max}} \right)} & \mathbf{or} & \mathbf{P_s = 90 \left( 1 + \frac{P_t - P_{max}}{P_{max}} \right)}
 \end{array}$$

Where

- P<sub>s</sub> = Points scored for price of tender under consideration
- P<sub>t</sub> = Price of tender under consideration
- P<sub>max</sub> = Price of highest acceptable tender

**4. POINTS AWARDED FOR SPECIFIC GOALS**

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
  - (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
  - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,
 then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

**Table 1: Specific goals for the tender and points claimed are indicated per the table below.**  
*(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.*  
**Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)**

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Black ownership	6	
Women	3	
People living with disability	2	
EME or QSE	2	
Youth	3	
Enterprises located in Gauteng Province – Within Gauteng = 2 Within West Rand = 4	4	
<b>Total</b>	<b>20</b>	

#### DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number: .....

4.5. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
  - One-person business/sole propriety
  - Close corporation
  - Public Company
  - Personal Liability Company
  - (Pty) Limited
  - Non-Profit Company
  - State Owned Company
- [TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;

iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –

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

..... <b>SIGNATURE(S) OF TENDERER(S)</b>	
<b>SURNAME AND NAME:</b>	.....
<b>DATE:</b>	.....
<b>ADDRESS:</b>	..... ..... ..... .....



## WEST RAND DISTRICT MUNICIPALITY

MBD 8

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

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

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

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid: Bid No: WR/CORP/01/25, **Appointment of Panel of Attorneys for the West Rand District Municipality (WRDM) for a Period of Three (03) Years** in response to the invitation for the bid made by: West Rand District Municipality

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



# **WEST RAND DISTRICT MUNICIPALITY**

## **SPECIFICATIONS**

### **APPOINTMENT OF PANEL OF ATTORNEYS FOR THE WEST RAND DISTRICT MUNICIPALITY (WRDM)**

#### **I. REQUEST FOR PROPOSAL: A PANEL OF ATTORNEYS**

The West Rand District Municipality (WRDM) hereby invites proposals from experienced firms in response to this Request for Proposals (“RFP”) to provide various legal services to the WRDM.

The WRDM will not reimburse any expenses incurred in connection with this RFP, including the costs of preparing the response, providing any additional information and attending an interview.

All material submitted in response to this RFP will become the sole property of the WRDM. The WRDM expressly reserves the right to utilize any and all ideas submitted in the proposals received, unless covered by legal or proprietary rights.

Physical inspection and interviews of the qualifying firms may be conducted at the WRDM’s discretion on a specific day or days to be disclosed later in the RFP process. All qualifying firms will be notified of the proposed interview/inspection date(s) in advance.

#### **II. APPOINTMENT PERIOD**

The term of the appointment to the panel of external legal advisors will be for 3 (Three) years and reviewable after 18 (eighteen) months. The WRDM, may, in its discretion, terminate the appointment at any time during that term.

#### **III. SCOPE OF SERVICES**

- 1) The WRDM expects from to time to time to require legal advice, assistance and representation in several areas, as specified below. While the WRDM has a competent in-house Legal Unit with experience in many of these areas, we seek to augment our existing capabilities, by being able to draw upon the resources of outside Legal expertise when needed and as issues arise. It is

expected that the appointed firms shall, at all times, provide the services diligently and in a professional manner.

- 2) The firms selected should have demonstrable qualifications and experience to handle legal work in the following practice areas:

### **2.1 Corporate**

Services would be expected to include:

- a) Advising the WRDM concerning its rights and obligations under its various operating and other agreements;
- b) Advising the WRDM in connection with potential disputes arising out of its various operating and other agreements;
- c) Advising the WRDM about possible acquisitions, sales, joint ventures and incidental matters;
- d) Advising the WRDM concerning compliance and corporate governance issues and By-laws.

### **2.2 Land Transactions**

Advice on and handling of land transactions, including but not limited to:

- a) Acquisitions and dispositions involving, e.g. rights-of-way, leases, licenses, and transfers concerning land, buildings; and
- b) Resolution of issues or disputes over property rights and related responsibilities.
- c) Land Restitution; and
- d) Evictions;

### **2.3 Litigation**

Advice on and handling of various issues, including but not limited to:

- a) General Liability – such as personal injury, property damage, professional liability, labour issues, workmen’s compensation;
- b) WRDM – customer relations;
- c) Conduct of litigation and watching briefs;
- d) Settlement negotiations;
- e) Town Planning Litigation;
- f) Labour Matters
- g) Environmental matters; and
- h) Infrastructure project management

## 2.4 **Conveyancing:**

- a) Preparation and completion of security documentation e.g. Notarial leases;
- b) Perfecting securities including registration of documents and other interests.
- c) Advising on and effecting realization of securities including foreclosures, sales, receivership, etc.
  - a)

## 2.5 **Legislation**

- a) Legislative drafting and review
  - b) Policy formulation;
  - c) Drawing of Agreements
- 1) The Firm shall exercise all reasonable skill, care and diligence in discharging these obligations in terms of the agreement and shall comply with all Prevailing Legislation relating to the rendering of the Services.
  - 2) The Services will be rendered promptly as each request for services requires, and the firm will use reasonable endeavours to adhere to the time limits agreed upon instructions furnished.
  - 3) The firm will be expected to respond to any issue raised by telephone, fax or mail within 24 hours and to any issue raised in any letter or similar manner within 48 hours;
  - 4) Where no time limits are agreed to, the services will be rendered within a reasonable period and where necessary, by Prevailing Legislation.

## 2.6 **Debt Collection**

- 1) The firm will be expected to respond to any issue raised by telephone, fax, or e-mail within 24 hours and to any issue raised in any letter or similar manner within 48 hours;
- 2) Failure to render Services within a reasonable time shall be regarded as non-performance and may lead to termination of the mandate.
- 3) The Firm shall not settle any claim or litigation by or against the WRDM without the necessary consultation with the WRDM, which authorization shall be in writing.
- 4) The firm shall comply with the debt collection protocol as agreed upon between the parties

## 2.7 **Commercial and Contract Law**

## 2.8 Company Law

### IV. PROPOSAL REQUIREMENTS

The following is a list of the information to be provided by the Proposer for legal services sought. A proposal that does not include the information required below may be deemed non-responsive and subject to rejection

In setting forth its qualifications, each Firm shall provide, concise but adequate detail of the information sought below.

### V. MANAGEMENT AND QUALIFICATIONS

- 1) The firm should be in the capacity to handle the volume of work that the WRDM may instruct them on at any relevant point in time. It is therefore crucial not to appoint one-person practices in areas of speciality involving large volumes of work as their (in) capacity may prejudice the WRDM's services objectives.
- 2) Only law firms which are registered with the Law Society will be considered and /or appointed. Firms should attach proof of registration. Description of the management and personnel structure of the firm detailing the number and identity of partners, associates, assistants and law clerks.
- 3) Describe the legal services which your firm could provide to the WRDM.
- 4) The firm must state the names of the partners and associates who would be assigned to the WRDM's account in each practice area, describe the expected services to be provided by each, provide their resumes including a summary of any notable cases, transactions issues and/or matters handled by them which you feel demonstrate the nature and extent of their expertise. Describe their anticipated commitments to other clients during the next 12 months.
- 5) Describe your firm's experience related to the services to be provided in response to this RFP, including a summary of any notable cases, transactions, issues and/ or matters handled by your firm's expertise and reputation.
- 6) Firms seeking to provide corporate services should specifically provide descriptions of the firm's involvement, if any with the following: any Municipality or Government Institution during the past five years, including acquisitions sales and joint ventures that are relevant to this RFP.
- 7) Identify the nature of any potential conflict of interest your firm might have in providing services to the WRDM.
  - a) Discuss fully any conflicts of interest, actual or potential, which might arise in connection with your firm's involvement with the WRDM. If

- your firm believes that a conflict of interest might arise, please describe how such conflict would be resolved.
- b) Each firm must certify in writing that its representation of the WRDM will not create any conflict of interest involving that firm.
- 8) Identify any past, pending or threatened litigation or proceedings to which you or any of your partners are or were a party and which may affect your reputation and/or could either materially impair your ability to perform the services envisaged herein and for which this RFP was issued, or will and/or could either materially impair your ability to perform the services envisaged herein and for which this RFP was issued, or will and/or might materially adversely affect the financial condition of your firm.
- 9) Provide the WRDM with copies of the following information;
- a) Copy of the lease agreement of premises or other right to occupy the premises,
- b) Copies of valid practicing Certificates (fidelity certificate) for the persons that will be handling the WRDM's work;
- c) Letter of good standing from the Law Society.

**A. MANDATORY REQUIREMENTS**

NO.	DESCRIPTION	COMPLY (✓)	NOT COMPLY (✓)
1.1.	Fidelity Fund certificate issued in terms of the Attorneys (Act No.53 of 1979 as amended).		
1.2.	Proof of registration with the relevant Law Society.		
1.3.	Letter of good standing with the relevant Law Society not older than six (6) months.		

- 10) Curriculum Vitae of the Lead and Key Staff and certified copies of qualifications as well as their speciality within the fields stated in Paragraph 3 above. The Curriculum Vitae must include the following:
- a) area of speciality
- b) years of experience in the identified areas (s) of speciality (key staff, except candidate attorneys must have at least 2 (two) years' experience in law.
- c) Number of projects undertaken in the area of speciality in the last two (2) years
- 11) The Lead Attorney must have at least seven (7) years post-admission experience in the identified area (s) of speciality.

- 12) The hourly rates from Director to Candidate Attorneys.
- 13) Three reference letters from clients for whom the bidder has provided services similar to the identified areas of speciality in the last two (2) years.
- 14) Locality, i.e. the business (and postal address) address where the bidder conducts its business including other regional offices within the Republic of South Africa.
- 15) Skills transfer strategy and implementation plan:
  - a) The bidder should demonstrate an approach and methodology of how the firm will transfer skills to the WRDM employees.

## **VI. FEE PROPOSAL**

Proposals shall include the following

1. Statement of any special considerations concerning billing or payment of fees and expenses that your firm offers and that you believe would differentiate it from other Proposers and make your firm's services more cost-effective for the WRDM.
2. Notwithstanding the rates of the Firm reflected in its proposal issued:
  - 2.1 Billing rates and disbursement rates that will be negotiated and agreed upon by the parties before conclusion of the specific Service from time to time;
  - 2.2 In unique circumstances dependent on the nature of a particular Service, billing rates and disbursement rates shall be negotiated and agreed upon at the outset of a specific Service Request;
  - 2.3 The Firm acknowledges that the amount of work, if any that will be instructed to attend will be inter alia on these rates;
  - 2.4 The WRDM will only pay for disbursements, in addition to agreed rates that have only been incurred. Proof of all disbursements must be attached to the statement of account;
  - 2.5 The law firms shall be entitled to a day fee, not in excess of seven hours per consultation and appearance;
  - 2.6 The firm shall not charge the WRDM for travelling and waiting time, save for travelling done outside the province;

- 2.7 The fee notes submitted shall be on an itemized form, clearly indicating the actual work done, time spent, date, the person who attended such work and the fee charged for each item;
- 2.8 The firm may submit interim bills to the WRDM at appropriate intervals during each matter as appropriate and generally at the time when a particular phase of the matter has been completed;
- 2.9 Whether or not your firm will receive any portion of the costs awarded to the WRDM in any matter will be at the sole discretion of the WRDM.
- 2.10 The firm shall promptly advise the WRDM of any award of costs against it or in its favour in any matter;
- 2.11 The WRDM shall exercise its best endeavours to settle any invoices sent to it by the firm within 30 days of receipt of same. The firm will not be entitled to charge interest on any unpaid bills unless specifically agreed with the WRDM;
- 2.12 The firm shall advise the WRDM of the most convenient mode of payment entails any bank charges, those charges will be for the firm's account and the WRDM will have no liability to meet those charges;
- 2.13 In the event that the municipality asks your firm to cease work on any matter, the firm will be entitled to payment of the reasonable fees up to the cessation of work on the matter; and
- 2.14 The fees agreed thereto shall be reviewed annually based on the CPIX.

## **VII. TECHNICAL EVALUATION CRITERIA**

The below-mentioned criteria regarding Functionality is required for responsiveness and therefore eligibility for the next stage of evaluation. This is done to determine the ability of each bidder to successfully execute the contract according to specifications.

Failure to score the minimum of 40 points out of 50 points will lead to non-compliance and bidders will be rejected after this phase and not continue for



price scoring. If any criterion is rated zero points, the tenderer will be rejected, even if the required 40 out of 50 points are achieved.

For purposes of comparison and in order to ensure meaningful evaluation, bidders are requested to furnish detailed information in substantiation of compliance with the functionality criteria mentioned.

These criteria shall only determine whether a tender will further be evaluated and will not influence the points scored on Price.

Evaluation Criteria	Score		
<b>Capacity and experience of the proposed team</b>			
<p>a) <b>Demonstrate ability in the identified scope of the speciality.</b> Experience, as reflected in similar projects (5 key projects completed in the last 5 years), Indicate the following in the form of a table which should cover an area of speciality, description of the project, the value of the contract, name of client and client contact person, period of the contract, start and end date.</p> <p>Instruction letters for specific cases (not only appointment letters on a panel of attorneys) must be submitted for each project.</p> <p>b) <b>A minimum of five reference letters from contactable municipal clients for similar work completed (projects and not only appointment on panel of attorneys). Reference letters must refer to specific projects completed and indicate the satisfaction rating of the municipal client with the work completed</b></p>	<b>25</b> <i>(5 points for every qualifying project, to a maximum of 25 points)</i>		
<p>c) <b>Indicate the lead attorney/s responsible for instructions from the WRDM and the project of serving on the panel of attorneys of the WRDM. Indicate the field of speciality of the lead attorney/s.</b> Provide detailed CVs and certified copies of qualifications of lead attorney/s who will be directly involved in providing the required services specifying areas of speciality as referred to in the Scope of Works. The lead attorneys must have at least seven (7) years post-admission working experience in identified areas of specialty.</p> <p>d) <b>Provide detailed CVs of team members and certified copies of qualifications specifying areas of speciality as referred to in the Scope of Works. The team members must have at least two (02) years minimum post-admission working experience in identified areas of specialty.</b></p>	<b>10</b> <i>(4 points for info of lead attorney, 4 points for CV and qualifications, 2 points for years of experience)</i>		
<p><b>Capacity and experience of the firm</b> The Service Provider should demonstrate the capacity and experience of the firm in demonstrating that at least 5 similar projects with municipalities have been completed successfully within the last five years. Letters of reference from such municipalities must be submitted</p>	<b>5</b> <i>(0 points if less than 5 similar projects)</i>		
<b>Total</b>	<b>50</b>		
<b>Threshold Score</b>	<b>40</b>		

All information and particulars necessary to properly evaluate the tender must be furnished on the submission. Incomplete particulars and documents required to substantiate the Company's claim or insufficient documentary proof thereof will be construed to mean that the Company is forfeiting the evaluation points in that regard.

## **VIII. PROPOSAL INSTRUCTIONS AND CONDITIONS**

### **A. LIMITATIONS**

1. This RFP does not commit the WRDM to award a contract, pay any costs incurred in the preparation of response, or procure or contract for services of any kind whatsoever. The WRDM reserves the right, in its sole discretion, to accept or reject any or all responses as a result of the RFP in whole or in part.
2. Proposers may be requested to clarify the contents of their proposal. Other than to provide such information as may be required by the WRDM, no Proposer will be allowed to alter its proposal or add new information after the RFP due date.
3. All material submitted in response to this RFP will become the sole property of the WRDM.

### **B. PROPOSAL SUBMISSION**

1. Non-responsive proposals include, but are not limited to, those that:
  - a) Are irregular or not in conformance with RFP requirements and instructions;
  - b) Are conditional, incomplete, indefinite or ambiguous
  - c) Are intended to accomplish only part of the overall work
  - d) Have no signature or any improper one
  - e) Are not submitted on time or are submitted at any time via facsimile or email
2. The WRDM may waive minor informalities or irregularities in a proposal that are merely a matter of form and not substance and the correction of which would not be prejudicial to other proposals

### **C. SPECIAL CONDITIONS**

1. The successful Proposer must agree to provide the WRDM with audit access on request during the term of the contract.
2. The WRDM at any time, in its sole discretion, may terminate its contract with the selected firm(s), or postpone or delay all or any part of the contract, upon written notice to the selected firm(s).
3. Confidentiality and security of the WRDM information and data.

**D. ADDENDA ERRORS AND OMISSIONS**

If a Proposer discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, immediate notification to the Municipal Manager in writing must be made, of such error with a request for clarification or modification to the document. Such clarification or modification must not materially alter the tenor of the original proposal.

Should the WRDM find it necessary, modification to the RFP will be made by addenda. Such modifications may be given by written notice to all parties who have been furnished an RFP.

If a Proposer fails to notify the WRDM of a known or an error that reasonably should have been known the final filing date for submission, the Proposer shall assume the risk. If awarded the contract the Proposer(s) shall not be entitled to additional compensation or time because of the error or its late correction.

**IX. PROXIMITY TO THE MUNICIPALITY**

The WRDM will not be liable for travel costs for attorneys who operate outside the boundaries of the WRDM.

**X. APPOINTMENT AND APPROVAL**

The WRDM's selection of successful Proposers shall not be binding until a Service Level Agreement has been signed by the WRDM and the successful bidder.

Attorneys shall be appointed for 3 years, which will be reviewable after 18 months of service.

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



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

**NATIONAL TREASURY: Republic of South Africa**

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**TABLE OF CLAUSES**

1. Definitions
2. Application
3. General
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6. Patent Rights
7. Performance security
8. Inspections, tests and analyses
9. Packing
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21. Delays in the supplier's performance
22. Penalties
23. Termination for default
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28. Limitation of Liability
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30. Applicable law
31. Notices
32. Taxes and duties
33. Transfer of contracts
34. Amendments of contracts
35. Prohibition of restrictive practices

## THE NATIONAL TREASURY: Republic of South Africa 3

### 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 anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7 "Day" means calendar day.
- 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
- 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods are so delivered and a valid receipt is obtained.
- 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

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- 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 have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the Factory in the Republic where the goods covered by the bid will be manufactured.
- 1.17 “Local content” means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.
- 1.18 “Manufacture” means the production of products in a factory using labor, 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.

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- 1.25 “Supplier” means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.
- 1.26 “Tort” means in breach of contract.
- 1.27 “Turnkey” means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product service required by the contract.
- 1.28 “Written” or “in writing” means hand-written in ink or any form of electronic or mechanical writing.



## **2. Application**

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

## **3. General**

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a nonrefundable fee for documents may be charged.
- 3.2 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.

## **4. Standards**

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

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

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

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- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

## **6. Patent Rights**

- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 6.2 When a supplier developed documentation / projects for the municipality / municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the municipality / municipal entity.

## **7. Performance security**

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

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

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

- 8.6 Goods and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods, which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.

## **9. Packing**

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

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

## **10. Delivery and documents**

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

## **11. Insurance**

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

## **12. Transportation**

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

## **13. Incidental Services**

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

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

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

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

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

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

#### **15. Warranty**

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

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

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

- 15.4 Upon receipt of such notice, the supplier shall, within the period specified and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

#### **16. Payment**

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

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- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated.

#### **17. Prices**

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

#### **18. Variation orders**

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

#### **19. Assignment**

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

#### **20. Subcontracts**

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

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

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the goods are required, or the supplier's services are not readily available.

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- 21.4 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is granted upon pursuant to GCC Clause 22.2 without the application of penalties.
- 21.5 Upon any delay beyond the delivery period in the case of a goods contract, the purchaser shall, without cancelling the contract, be entitled to purchase goods of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

**22. Penalties**

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

**23. Termination for default**

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - (b) if the supplier fails to perform any other obligation(s) under the contract; or
  - (c) if the supplier, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner, as it deems appropriate, goods, works or

services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

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

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23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.

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

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

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

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

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

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## **24. Antidumping 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 favorable difference shall on demand be paid forthwith by the supplier to the purchaser or the purchaser may deduct such amounts from moneys (if any) which may otherwise be due to the supplier in regard to goods or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

## **25. Force Majeure**

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

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

## **26. Termination for insolvency**

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

## **27. Settlement of Disputes**

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

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



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

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

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

### **28. Limitation of Liability**

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

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

### **29. Governing language**

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

### **30. Applicable law**

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

### **31. Notices**

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

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

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

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

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

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

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

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

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

### **34. Amendment of contracts**

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

### **35. Prohibition of restrictive practices:**

35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of **restrictive practices** 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding.

35.2 If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 of 1998.

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