



HARRY GWALA DEVELOPMENT AGENCY (PTY) LTD
2011/001221/07

Harry Gwala Farmers Market, Erf 2226
Portion 27 of the Farm Ellerton, IXOPO 3276
Website: www.hgda.co.za

BUDGET AND TREASURY – SUPPLY CHAIN MANAGEMENT

APPOINTMENT OF A PANEL OF PROFESSIONAL SERVICE PROVIDERS: PACKAGING AND SOURCING OF FUNDING FOR CATALYTIC PROJECTS INCLUSIVE OF PROJECT MANAGEMENT SERVICES (AT RISK) FOR A PERIOD OF 36 MONTHS (3YEARS)

BID No- HGDA 008-2023/24

CLOSING DATE:

CLOSING TIME:

NAME OF BIDDER:

POSTAL ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E- MAIL ADRESS:

TENDER SUM (ALL INCLUSIVE) in words:

TENDER SUM (ALL INCLUSIVE) (numerical):

The bid documents must be clearly marked:

APPOINTMENT OF A PANEL OF PROFESSIONAL SERVICE PROVIDERS: PACKAGING AND SOURCING OF FUNDING FOR CATALYTIC PROJECTS INCLUSIVE OF PROJECT MANAGEMENT SERVICES (AT RISK) FOR A PERIOD OF 36 MONTHS (3YEARS)

BID NUMBER: HGDA 008-2023/24

Bid documents must be deposited in the tender box marked “**PANEL OF PROFESSIONAL SERVICE PROVIDERS: PACKAGING AND SOURCING OF FUNDING FOR CATALYTIC PROJECTS INCLUSIVE OF PROJECT MANAGEMENT SERVICES FOR A PERIOD OF 36MONTHS (3YEARS)**” located at the reception area at Harry Gwala Development Agency (HGDA), Farmers Market, Portion 27 of the Farm Ellerton, Erf 2226, Ixopo not later than **16 April 2024 at 12h00**. Bidders must attach the following mandatory returnable documents to be considered. Failure to submit will lead to disqualification of bidder. The following conditions are applicable to this bid:

- *Price (s) quoted must be firm and must be inclusive of VAT (MBD3.1)*
- *Copy of CSD (Central Supplier Database) summary report (not older than 3 months)*
- *Copy of company registration documents (compulsory)*
- *For Joint Venture Agreements, attach the CK's of each of the joint venture members (if applicable)*
- *Certified ID(s) copies of company director(s) not older than 6 months*
- *Copy of current municipal account for all Director/s and Company (not older than 3 months) or copy of lease agreement from the relevant leasing authority. If the business is operated from the residence of one of the Director/s, an original affidavit, certified, must be submitted stating the address of the premises preferably from your local SAPS office.*
- *Printed copy of tax clearance certificate accompanied by a pin for further verification.*
- *Certified copy of B-BBEE certificate or Sworn Affidavit*
- *Completed and signed Bidding Document attached to the tender document.*
- *It is therefore compulsory that the municipal entity bidding document be used. Harry Gwala Development Agency (HGDA) is not bound to accept the lowest offer or any quote.*

The following conditions will apply:

- Price(s) quoted must be valid for at least one hundred and twenty (120) days from date of your offer.
- Price(s) quoted must be firm and must be inclusive of VAT and disbursements.
- Your valid tax clearance certificate must be attached.

NB: No BID will be considered from persons in the service of the state or persons who owe rates, services, and taxes to any Municipality for a period longer than 120 days.

TENDER ADVERT

**APPOINTMENT OF A PANEL OF PROFESSIONAL SERVICE PROVIDERS:
PACKAGING AND SOURCING OF FUNDING FOR CATALYTIC PROJECTS
INCLUSIVE OF PROJECT MANAGEMENT SERVICES FOR A PERIOD OF 36MONTHS
(3YEARS)**

BID No- HGDA 008-2023/24

The Harry Gwala Development Agency (Pty) Ltd is a special purpose vehicle established by the Harry Gwala District Municipality as a special purpose vehicle designed as an implementer of strategic economic development projects and programmes for the family of municipalities within the Harry Gwala District, facilitating both private and public sector investment through inclusive projects. The foci of the Agency is on catalytic projects and programmes leading directly to investment and job creation. The Agency, while working within the context of the integrated development plans and local economic development plans set by respective municipalities, are independent in nature, driving focused objectives.

To realise its mandate and thus simultaneously augmenting growth by retaining and expanding existing business, the Agency has prioritised investment attraction through the exploration of new economies (i.e. green economy and digital economy) whilst simultaneously championing innovations in existing economies (e.g. inclusion of cannabis and hemp for medicinal purposes and use in the textile industry). The Investment may also include public-private partnerships which would require compliance as per the Treasury guidelines (i.e. transaction advisor).

To realise the above, the Agency hereby invites proposals from reputable Professional Service Providers for the packaging and sourcing of funding for District-Wide Catalytic Projects endorsed by the Harry Gwala District Municipality, inclusive of project management services for a period of 36months (3Years). The appointment of the service providers will result in the establishment of Panel and which panel will be assigned specific projects in accordance with expertise and experience.

The scope of work and bid requirements is stipulated in the tender document.

The evaluation of bids will be done in two stages in the following manner:

- First Stage - Functionality
 - Second Stage - Price and Preference Specific Goals
- ❖ 80/20 Preferential Point system in terms of the 2022 Preferential system will apply and points will be awarded based on the entity's specific goals that is on ownership and RDP goals.

PREFERENCE GOAL	80/20	Documents required for verification of points claimed by tenderer
GOAL 1 - Ownership – Maximum points	10	
Businesses who are at least 51% owned by black person. Businesses owned less than 51% by black person	3 1	ID copy of Director/Owner/CSD/ BBB-EE Certificate
Business who are at least 51% owned by black women. Business owned less than 51% by black women	3 1	ID copy of Director/Owner/CSD
Businesses who are at least 51% owned by black youth. Business owned less than 51% by black youth	2 1	ID copy of Director/Owner/CSD
Business who are at least 51% owned by disabled person	2	Attach proof from a registered doctor/physician for a bidder to obtain full points
GOAL 2 – RDP – Maximum points	10	
Business falls under the SMME category – EME/QSE	3	Detailed CSD Report
Promotion of business located within Harry Gwala Development Agency	4	<ul style="list-style-type: none"> • Detailed CSD Report • Municipal account not older than 90 days • Lease agreement and affidavit if you are leasing. • Affidavit if you are residing in rural area
Promotion of business located within KZN province. Promotion of business located in South Africa outside KZN Province	3 1	<ul style="list-style-type: none"> • Detailed CSD Report • Municipal account not older than 90 days • Lease agreement and affidavit if you are leasing. • Affidavit if you are residing in rural area

The Bid documents can be downloaded from the Harry Gwala Development Agency (Pty) Ltd website www.hgda.co.za and e-tender portal at no cost.

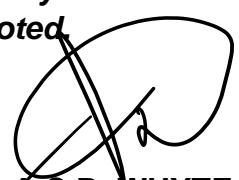
Sealed Bids Documents marked “**HGDA 009-2023/24 APPOINTMENT OF A PANEL OF PROFESSIONAL SERVICE PROVIDERS: PACKAGING AND SOURCING OF FUNDING FOR CATALYTIC PROJECTS INCLUSIVE OF PROJECT MANAGEMENT SERVICES FOR A PERIOD OF 36MONTHS (3YEARS)**” may be couriered with courier services at least 2 days before closing date to avoid late delivery or be hand delivered and must be deposited in the **TENDER BOX** located at the Reception Area, Harry Gwala Development Agency, Farmers Market, Portion 27 of the Farm Ellerton, Erf 2226, Ixopo, not later than **16 April 2024 at 12h00**, bids will be opened in public.

Late, telegraphic or faxed bids will not be considered.

Tenderers that submit tenders by courier retain the responsibility of ensuring that tender documents submitted are placed in the tender box. This is not the responsibility of the Municipality. Tenders are to adhere to the General Conditions of Contract and the SCM Policy of Harry Gwala Development Agency.

Technical Enquiries: Ms Z Mkulisi (082 308 6833 or email led@hgda.co.za and Supply Chain Management enquiries: Ms N Malunga (0730537034 or email neliswa.malunga@hgda.co.za)

Harry Gwala Development Agency (Pty) Ltd does not bind itself to accept the lowest or any bid and reserves the right to accept the Bid in whole or part, at the rates quoted.



MS A.C.R. WHYTE
CHIEF EXECUTIVE OFFICER
NOTICE NO: 22-23/24

1. INTRODUCTION

The Harry Gwala Development Agency (PTY) LTD [HGDA] is an entity of the Harry Gwala District Municipality established to serve as a special purpose vehicle to augment economic growth of the District, thereby realising the developmental trajectory of the District in the Provincial, National and broader context.

HGDA was established to improve the District's ability to realise its socio-economic potential and thereby improve the livelihoods of all its citizens. These mandates range from poverty eradication, skills development aligned with economic sectors, socio-economic development facilitation, implementers of high-impact specialist projects and programmes, to investment attraction and promotion of foreign direct investment. Notwithstanding the diversity of the District and the uniqueness of communities, the overarching and primary theme is the enhancement of growth, job creation and the consequent stimulation of socio-economic development.

In respect to the advertised bid and due to the specialised and technical nature of the majority of the catalytic projects identified and endorsed by Harry Gwala District Municipality (as Parent Municipality), the Agency seeks to appoint Professional Service Providers (at risk) to package numerous catalytic projects (along with necessary studies, analysis and assessments to determine feasibility) and to thereafter solicit funding from various funding agencies. In addition, appointed service providers constituting the panel will be required to project manage the implementation of projects for the Agency and or its private sector partners. The investment may result in ventures based on Public Private Partnership which will require professional service providers to serve as Transaction Advisors in compliance with National Treasury Regulations.

The main activities in respect of the proposal are as follows:

- Develop a donor / investment funding and management strategy in accordance with the needs of the Harry Gwala Development Agency and its stakeholders and the requirements of funders / donors.
- Develop and submit funding proposals (business plans meeting all financial and technical requirements).
- Implement a management system for the administration of funding received.
- Provide technical and project management expertise and skills transfer in the sourcing and use of funding on the specific projects (inclusive of project feasibility, scoping assessment, financial viability and sustainability) and project implementation.

- Track the flow of funds and monitor the progress made regarding the implementation thereof.
- Manage all reporting and funding management requirements on behalf of the Agency.

2. PURPOSE AND OBJECTIVE

The objective of this bidding document is to invite suitably qualified professional service providers to bid for the **Packaging and Sourcing of Funding for Catalytic Projects inclusive of Project Management Services** to the Harry Gwala Development Agency (Pty) Ltd for a period of 36 months, at risk.

The purpose of the project is to appoint a panel of suitable service providers to assist the Harry Gwala Development Agency with sourcing of funding to implement High Impact Projects specifically but not limited to the ones relating to Tourism, Agriculture, Manufacturing, Forestry, Renewable Energy, Green Economy, Agro-Processing and Biofuels and Construction within the Harry Gwala District inclusive of bulk infrastructure needs (i.e. water and sanitation, roads and stormwater, energy and alternative energy etc).

3. PROBLEM STATEMENT

The developmental outcomes of local government, on and in which municipalities can have an impact include access to services and economic opportunities (wealth creation), mobility, safety, absence of pollution and congestion, proximity to social and recreational facilities, etc.

We further acknowledge that, as government, we have a momentous task in terms of an acceptable level of service delivery to eradicate infrastructure backlogs to promote the creation and provision of a conducive environment for socio-economic development. To remedy this situation, the Agency, through the present call for proposals intends attracting cross-subsidisation and mobilization of private, donor and other investment in municipal projects and programmes (catalytic and strategic).

3.1. INTENTION

The Harry Gwala Development Agency (Pty) Ltd therefore intends to acquire the services of Professional Service Providers (which may include / extend to Transaction Advisor) to lobby for catalytic and strategic funding. The appointed service provider/s would be required to structure the transaction in accordance with the Municipal Finance Management Act, 56 of 2003 and will also be the lead arrangers for the funders. The following outputs are expected from the appointed service provider:

3.1.1. Preparation of the Infrastructure Funding Business Case

The preferred service providers will prepare a strategic business case for each allocated catalytic / strategic project. Such business case will look at how the District and its family can address the existing Infrastructure funding challenges. Within the business case, the Service Provider will set out to assess the current infrastructure challenges within the District. The business case will have a strategic assessment of the infrastructure. The business case must be able to set out infrastructure funding objectives. Where appropriate, a detailed planning practice should be provided explaining how the funding strategy will be applied. The business case must incorporate the commentary on the feasibility studies, which will be carried out to verify the funding needs of each infrastructure asset per catalytic / strategic project allocated.

3.1.2. Consolidation and preparation of the Catalytic / Strategic Project Infrastructure Funding Plan

The Professional Firm is expected to undertake a comprehensive assessment of respective infrastructure and thereafter develop, taking cognizance of the existing Consolidated Infrastructure Plan of the District and the respective local municipality, and consolidate this with a comprehensive infrastructure-funding plan. The service provider will set out to look at different infrastructure needs and must take cognizance of the current activities being considered in line with the Section 78 Assessment.

The Infrastructure Funding Plan must incorporate feasibility studies and impact assessments.

The feasibility studies will include all the technical information and any shortfalls identified. Details on how each infrastructure funding project will be structured and monitored to ensure consistent delivery with set objectives.

3.1.3. Request for a Record of Decision from National Treasury

Where necessary and in respect to capital projects, the preferred service provider will set out to apply to National Treasury on behalf of the Agency, District Municipality or respective Municipality or Agency Stakeholder. The objective of this application is to acquire a record of decision from National Treasury. The transaction advisor must ensure compliance to the MFMA and clarify to National Treasury the structure of the transaction.

In instances where a record of decision is not required from National Treasury, it would be anticipated that the service provider will proceed within the parameters of the terms of reference and legislative prescripts.

3.1.4. Funding Implementation Framework

After a record of decision has been acquired from National Treasury (where necessary), the transaction advisor will set out how the funding strategy will be implemented and the procedures for monitoring, evaluation and review. The transaction advisor will develop a funding arrangement that will include the following:

- Proposed funding structure as agreed with National Treasury
- Listing of prospective financiers
- Assessment and evaluation of funding proposals
- Advising the municipality on the legal agreements relating to funding
- Advising on the cost of funding
- Advising on the payment terms (where necessary and inclusive of foreign direct investment)

3.1.5. Service Delivery and Infrastructure Investment

The Harry Gwala Development Agency has identified pivotal development areas. These priority areas are aligned to the National Key Performance Areas (NKPAs) and will be addressed through the identified development strategies within the District. The development strategies are further aligned to the Sustainable Development Goals (SDG).

The major challenge with infrastructure projects (roads, stormwater, substations, etc) is that the District and its Family of LMs may not necessarily have sufficient budgets for operations and maintenance and is currently attempting to address backlogs.

The problem cannot be addressed by the District and its family alone, it is an inter-governmental issue that will need to be addressed collectively by all spheres of government as well as the private sector as socio-economic development can only be realised in the presence of government, the private sector and the community working as a collective. The youth can then be given the opportunity to develop their talent and get to professional levels.

3.1.6. Access to Water and Sanitation Services

The water supply services are, according to the Constitution of the Republic of South Africa, 1996 and the Municipal Structures Act, 32 of 2000 (As amended), the powers and functions of the Harry Gwala District Municipality.

Harry Gwala DM is the Water Service Authority for 4 Local Municipalities. The Water Services Authority Function as the core functions of the municipality is carried and shared among three departments that form the back-borne of the water service delivery. The municipality strives to reduce the water services backlogs; however, the municipality is faced with a challenge of unavailability of financial resources and funding model that is not proportional to the water services backlogs.

Limited access to services, challenges and the reliability of a constant supply and most importantly, the increasing demand to bulk infrastructure to respond to the growth and investment of the District needs priority interventions. Notwithstanding the limitations, bulk infrastructure in the construction or expansion of capacity of 3 x dams in the District will serve to increase supply however reticulation inclusive of sanitation services remains a challenge.

The District Municipality's IDP indicates that a comprehensive management strategy including an Investment Program for water resource development, bulk water supply and wastewater management for major centres which is reviewed every five years. This plan ensure that all people have access to clean, potable water and that there is enough water for agriculture and industry, recognizing the trade-offs in the use of water.

In respect to Technical Skills (Infrastructure Services and Water Services) and to enable the District Municipality to be an effective Water Services Authority and Provider, the Municipality needs technical skills to develop and maintain infrastructure in the form of project management, water reticulation, and water and wastewater process control. The following skills shortages were identified:

- Further Education and Training Certificate in Water Purification Processes
- National Certificate in Plumbing: FET Phase (Trade Test)

The following interventions are planned for the financial year 2022/2023:

- Further Education and Training Certificate in Water Purification Processes
- National Certificate in Plumbing: FET Phase (Trade Test)

3.1.7. Roads and Transport

The municipality has a well- developed road network on a national, district, and local scale, but the condition of most of the local roads are poor, and access is problematic in wet conditions. The Harry Gwala District Municipality has prepared an Integrated Transportation Plan which will designate roads in need of upgrade thus hopefully improving local movement.

The inferior condition of certain roads increases cost of transportation and in months of adverse weather conditions, accessibility is limited. In some parts of the municipal jurisdiction, roads are washed away, and learners are forced to stay away from school. Lack of adequate funding for road infrastructure and maintenance thereof remains a challenge for the Municipality as at present most projects are reliant on MIG funding.

Approximate Road Backlogs:

Local Municipality	Length of Backlog
Greater Kokstad Municipality	178km
Dr Nkosazana Dlamini Zuma Municipality	389km
Ubuhlebezwe Municipality	322km
Umzimkhulu Municipality	697km
TOTAL	1586KM

3.1.8. Access to energy and alternative energy

Universal Access to Electricity / Energy remains a 2030 National Target, access to energy or alternative sources of energy is still a challenge. There are areas that are currently being serviced by Eskom and others by the Municipality. The services in these areas are not consistent.

Aggressive strides must be made to use natural resources and locality to generate own electricity e.g. solar, wind and hydro).

Electricity in the Harry Gwala District Municipality area is supplied by ESKOM except for Kokstad Town only. Most of the households in rural areas have inadequate

access to electricity. Other alternative sources of energy such as candles; paraffin, coal etc. are utilized by households without access to electricity. The lack of access to electricity is attributed to inadequate bulk supply, poor access to areas due to topography and insufficient funding. ESKOM has informed the Municipality that it is not capable of providing the electricity requirements to the new applicants in rural areas. The existing power stations have reached maximum capacity. Eskom is in the process of commissioning a new power station in Kenterton which will serve most of the area falling under Ubuhlebezwe municipality.

3.1.9. Education / Skills Development

The quality of education in schools together with the availability of properly educated and experienced teachers and the location of schooling facilities must be continually improved together with the existence of schooling facilities on private land (farms). There exists a shortage of science and technology facilities in high schools and whilst the municipality has accessed funding and provided for a skills centre, it may not necessarily be accessible to most learners. The scarcity of science facilities and technical skills limits the employability of learners – this together with limited access to technical skills places the District and its community in a difficult position with high unemployment levels and large numbers of people with no marketable skills.

3.1.10. Refuse removal and Waste Management

Most people, especially in the farming areas, dispose their waste on-site which in some instances results in the emergence of disease because of limited information on how to manage adequate waste disposal. As a result, diseases are spread and animals are also exposed to hazardous conditions because of plastics. Awareness campaigns on the importance of proper waste management is necessary as part of attracting investment.

Recycling measures to augment economic development and reduce the volume of waste to the landfill site must be a priority especially to respond to climate change.

3.1.11. Access to decent housing and accelerated responsiveness to address backlogs

There exists a variable market for implementation of various housing typologies to facilitate access to housing but also to respond to necessary income brackets and increase municipal rates base. Current housing typologies reflect a shortage of high-income housing.

3.1.12. Access to Network Communication

The wide expanse of the Municipality and in certain areas, the low-income levels in the municipality make telecommunication virtually non-existent in certain areas. There remains some difficulty in receiving cellular network coverage and certain communities have challenges in contacting emergency services because of a lack of telecommunication facilities.

Adequate and a sustainable connection to telecommunication is also vital to doing business and it is necessary to ensure that this service is provided at an affordable cost with sufficient bandwidth so as not to slow down connectivity.

4. HOLISTIC APPROACH TO DEVELOPMENTAL AGENDA

- i. Competitive Advantage: Serviced Industrial Sites, Agriculture, agri-processing, manufacturing, locality – Gateway into South Africa from Lesotho and into KZN from the Eastern Cape.
- ii. Friendly and Safe Environment: Including Light Industrial expansion, Agri-processing potential, re-commercialisation reinstated land i.e. farms, dry port.
- iii. To Work: The Youth dominate the demographic and with influx of high school graduates into the pool of unemployed school leavers places strong emphasis on initiatives for long term development of Youth to allow them to actively engage in the labour market. Methods should focus on life-long learning thereby providing the principle of providing bursaries for school leavers.
- iv. To do business: Investment friendly initiatives to be unconventional and need to be inclusive of red tape reduction. Whilst simultaneously attracting investment it becomes imperative that methods to retain the existence and expand the operation of current business with focus on SMME's and Cooperatives to adequately address the triple challenges.

In this regard, the current methodology of procurement with public funds needs to be innovative to respond to set-aside procurement from targeted sectors (Youth, Women, Disabled and Military Veterans) and should strive to build capacity and develop skills.

- v. A better life and access to quality service delivery: Revenue enhancement strategies need to be crafted which do not increase the burden on those that can afford to meet the cost of services and infrastructure plans regularly updated to identify critical infrastructure requirements. In addition, the Municipality needs to

respond to infrastructure development to attract investment, especially in the nodal areas (e.g. Ubuhlebezwe, Bulwer and Greater Kokstad).

- vi. Good Governance incl the Policy Environment: A constitutional mandate exists that requires that we remain accountable and in so doing, the onus rests with us to facilitate participative governance to strengthen coordination and capacity. A policy environment which is pro-poor but economically sustainable needs to be informed by all stakeholders and actively implemented.
- vii. Improved livelihoods: The spatial inequity created by past imbalances continues to exist in predominantly the rural areas. Pragmatic measures to redesign areas should have already occurred however in the absence of this, this strategy through its catalytic projects needs to remain mindful of the pressing need for spatial equity.

5. SCOPE AND EXTENT OF WORK (TERMS OF ENGAGEMENT)

Proposals are therefore invited from suitably qualified professional service providers (Transaction Advisors, Consultants, Consortiums etc and other relevant service providers –with varied skills) for the Packaging of Catalytic Projects inclusive of all necessary reports, studies and formulation of capital project business plans to enable the successful solicitation of funding from an array of funding agencies, at risk.

The main activities in respect of the above request for proposals are as follows:

- i. Project feasibility study, EIA, Project Scoping Assessment, Analysis of Financial Viability, Sustainability, etc – where necessary
- ii. Business Plan formulation together with compliance and completion of the requirements of the funding applications
- iii. Project design including Bill of Quantity, etc inclusive of ensuring that where applicable, projects implemented are compliant with the principles of labour intensity and the sourcing of materials and labour from within the District. Cognizance is however taken of the possible limitation of available skills and resources however every effort must be made to establish local skills or provision of services.
- iv. Project Management and Work Supervision

Priority is given to all unfunded Catalytic Projects and their sub-projects and programmes across all economic sectors.

NOTE: Preferred or Identified Service Providers will be required to conduct the activities as listed in i – iv at their own cost. When the project/s are approved and funding granted, costs incurred will be reimbursed from the project budget.

It is therefore imperative that the service cost is accurately built into the project scope. Fees for project management will be in accordance with ECSA rates.

5.1 The preferred service providers (constituting a panel) will be engaged by HGDA on a contractual basis subject to the following terms and conditions which remain enforceable throughout the duration of the contract:

5.1.1. Will be engaged by HGDA on a contractual basis for a period of 36 months (3years) commencing on the date of appointment. Subject to successful negotiation by all parties, the contract may be renewed or extended for a period as contemplated in legislative prescripts.

5.1.2. Ensure that all activities and processes are undertaken in compliance with legislative prescripts as well as the Agency policy.

5.1.3. Provide the Agency with:

5.1.3.1. All documentation (electronic and hard copy) of all processes undertaken in the application and consideration of projects (inclusive of studies undertaken, analysis, cost comparison, business and marketing plans, financial projections, etc). The intellectual property remains and must revert to the ownership of the Agency who reserves its rights in respect to the unauthorised usage of information without prior consent.

5.1.3.2. Quarterly reports on the funding agencies (government, non-governmental, etc) who have been approached and the status of the application process or any other process being undertaken.

5.1.3.3. Quarterly progress reports on projects for which funds have been sourced (inclusive herein are labour reports with full details – copies of identity documents, timesheets, proof of pay, etc). It is also necessary that the reports are presented at a Catalytic Fund Project Management Committee and at which all preferred Service Providers will be requested to report monthly or as determined by the Agency.

5.1.4. The office of the Chief Executive Officer will provide identified Service Providers with the contact details of delegated officials either at the Agency, Harry Gwala District Municipality or Local Municipality/s who has/have been

delegated by the mentioned office or that of the Accounting Officer of the Municipality concerned, to represent the interest of the Agency and or Municipality. It is important however to note that any instruction received or mandate received outside the parameters of a process require the explicit authorisation of the Chief Executive Officer of the Harry Gwala Development Agency.

- 5.1.5. Any official delegated will be deemed the Project Champion who, together with the Service Provider, will be required to establish and maintain a successful working relationship.
- 5.1.6. Correspond, via the office of the Chief Executive Officer, with all external organisations or funders (regional, national and international).
- 5.1.7. Deliver the determined deliverables, services and performance outcomes within the approved timeframe for the identified project / programme. Gross delays, outside the control of the Service Provider and Agency / Municipality, which amount to more than 30% of the approved timeframe will result in the automatic termination of the contract unless valid reasons are provided to and accepted by the Chief Executive Officer.
- 5.1.8. Deploy adequately qualified, experienced and competent personnel to work on the identified projects / programmes for the duration of this contract. The deployed personnel will need to be approved by the Chief Executive Officer, in writing, as part of the acceptance.
- 5.1.9. The Service Provider will thus provide the Agency with a comprehensive curriculum vitae indicating the qualifications, experience and job description of the deployed personnel who are required to subject themselves to any administrative processes that the Agency will engage in (credit and security checks, being a political office bearer, etc).
- 5.1.10. Shall be paid for all work undertaken (scoping assessment, EIA, etc) together with Professional services in accordance with the percentage determined in line with acceptable rates (ECSA). It, therefore, needs to bear in mind that all appointments are at risk and therefore all projected payments will be based on actual funding received in line with business plans submitted and approved.

It is the onus of the Service Provider to indicate the activities required under each of the projects prior to undertaking the actual activities to receive the endorsement of the Agency. Any activity undertaken outside the agreed to activities may result in the Agency not authorising the reimbursement of costs.

It is again stressed that all sanctioned work / activities undertaken by the Service Provider are done at risk and will only be subject to reimbursement on the receipt of funds approved for the implementation of the project/programme.

- 5.1.11. Must comply with the given institutional arrangements for undertaking works under the concluded contract.
- 5.1.12. Ensure that there is a programme in place which addresses the transfer of skills to identified Agency and municipal employees for specified works relating to the relevant nature of the project.
- 5.1.13. Is responsible for and must provide comprehensive insurance as a risk retention / mitigating measure should any works, technical methodology or advise provided by the Service Provider results in damage and loss to the Agency and or Municipality, Service Provider's and or Third Party's property, reputation or employees.

Proof of insurance as a risk retention / mitigating measure must be provided to the Agency, for record purposes, within 60 (sixty) days from appointment.

The Service Provider will indemnify the Agency and individual Municipality/s in all aspects in the above regard (comprehensive indemnity).

- 5.1.14. Shall not be entitled to cede, assign, sub-contract, delegate or make over in any way any of its rights of obligation acquired in terms of this contract, without prior written consent of the Agency, which consent shall not be unreasonably withheld.

5.2. The Harry Gwala Development Agency (HGDA) shall:

- 5.2.1. Where possible, assist the Service Provider in lobbying for funding and or relevant specialised assistance from identified institutions, organisations and private companies. It is important that this is not an obligatory responsibility.
- 5.2.2. Approve all business plans, designs and all associated documentation / concepts prior to implementation and or submission for the consideration and approval of responsible institutions, organisations and private companies.

5.3. General:

- 5.3.1. All equipment, vehicles, plant, licenses, copyrights, etc that is procured under the auspices of the concluded contract between the two parties and any other party shall remain and or revert as the property of the Harry Gwala Development Agency or respective Municipality and will be listed on the respective Asset Register.

This excludes property or assets purchased by the Service Provider using funds paid to the Service Provider as payment of services rendered and which are for the benefit of the Service Provider and not the implementation of the concluded contract.

- 5.3.2. Any misleading information or documentation provided to the Agency by the Service Provider may result in the termination of the concluded contract.

5.4. Financial:

- 5.4.1. ALL FUNDS that are sourced under the current terms of reference, as may be amended, shall be deposited into the Harry Gwala Development Agency's Primary Bank Account. The details of which will be provided accordingly.

- 5.4.2. Funds sourced cannot be in the form of loans or attract any repayment amount or higher purchase value.

- 5.4.3. Any other related South African and International regulations and legislation applicable inclusive of export/import, trading regulations, exchange rate, etc which are applicable or will become applicable to this contract are acknowledged as part of the rules governing this contract.

5.5. Contractual Obligations:

- 5.5.1. Should the Service Provider commit a breach of any term of this contract and fail to rectify it within 14 (fourteen) days of being called upon to do so, or effect or endeavour to effect a composition of the claims of any of its creditors, or suffer default judgement to be taken against it and fail to satisfy same within 14 (fourteen) days thereof, or be placed under sequestration, whether voluntary or compulsory, provisionally or finally (unless such liquidation is for the purpose of immediate reconstruction), then the Agency shall have the right to forthwith terminate this agreement without prejudice to any other rights which it may have in terms of this agreement or the law.

- 5.5.2. The conditions, once concluded, contain the entire agreement between the parties and no variation thereof shall be valid, unless it has been reduced to writing and has been signed by both parties.
- 5.5.3. Preferred Service Providers are not permitted to bid as implementers (Contractors) of projects for which they have formulated the necessary documents and sourced funding as this is tantamount to a conflict of interest.

6. EXPECTED OUTCOMES AND DELIVERABLES (SCOPE OF WORK FOR THIS CONTRACT)

6.1. The scope of the contract is centered on local economic development, investment attraction inclusive of the social aspect of development together with public services infrastructure development. The preferred or successful Service Provider/s will be expected to produce the following deliverables, where applicable:

- 6.1.1. Conducting, where necessary, Feasibility Studies inclusive of Financial Viability, Project Scoping Assessment, Environmental Impact Assessments, Sustainability Analysis, etc at own cost and to recover costs incurred upon successful securing of funding for project implementation.
- 6.1.2. Formulation of Project Business Plan, inclusive of financial projections, any marketing plans, securing supplier commitment (relative to economic development projects), at own cost with costs incurred to be drawn from approved funding for project implementation.
- 6.1.3. Apply for funding after obtaining the Agency and or respective Municipality's approval on the Business Plan and associated documentation from the funding agency. It is important to indicate that funding already provisioned for transfer to the Agency or respective Municipality (i.e. amounts listed in the Division of Revenue Act or subsequently promulgated) is excluded and cannot be solicited by preferred service providers.
- 6.1.4. As part of Professional Services, following successful securing of funds:
 - a. Formulation of project design
 - b. Drafting of Bid Documentation including Bill of Quantities and standard conditions of contract for consideration by the Richmond Municipality in compliance with its Supply Chain Management Policy
 - c. Provision of Project Management Services (all inclusive – site works supervision, technical advice, monthly reporting to Agency and or

Municipality and funder, value for money assessments, labour reporting, attending Project Management Committee meetings, etc)

6.2. To fulfill the above, prospective Service Providers are expected to ensure that their professional team is comprised of the following professional disciplines:

- Civil and Structural Engineers
- Architect
- Quantity Surveyor
- Environmental Specialist
- Electrical and Electronics (taking cognizance of green economy) Engineer.
- Health and safety specialists.
- Financial specialist / Economist / Transaction Advisor

NOTE: Tenderers are required to submit with their bids the list with the name and profiles of the multi-discipline professional service providers that they will be using for the implementation of the project.

7. INSTITUTIONAL ARRANGEMENTS

7.1. The institutional arrangements are crucial for efficient, effective and economical service delivery to realise the objectives of the Agency. The following institutional arrangements are applicable to this contract:

7.2. The project locality must be compliant with the Land Use Management Scheme and the Spatial Development Framework, inclusive of the already identified Nodal Development Areas, etc.

Should projects be identified outside of the above, a formal request for consideration must be made to the Agency for consideration prior to undertaking any activity which may attract costs.

7.3. Service Provider/s must liaise with the Agency / Municipality through the identified / delegated Department/Unit (e.g. Project Management Unit, Local Economic Development, etc)

7.4. Each project must establish a Project Management Committee which will be constituted by the Consultant, Agency and Municipal representative/s and eventual Contractor. The Committee must meet in compliance with the following:

- 7.4.1. Quarterly reports on the funding agencies (government, non-governmental, etc) who have been approached and the status of the application process or any other process being undertaken.
- 7.4.2. Quarterly progress reports on projects for which funds have been sourced (inclusive herein are labour reports with full details – copies of identity documents, timesheets, proof of pay, etc)
- 7.4.3. It is also necessary that the reports are presented at a Capital Fund Project Management Committee and at which all preferred Service Providers (consultants and contractors will be requested to report monthly or as determined).
- 7.4.4. Reports are to be forwarded to the identified Agency / municipal department/ departmental unit (the details of delegated official will be provided to Service Providers).
- 7.4.5. Payments and enquiries (Consultant and Contractor) must be directed through the respective delegated official.
- 7.4.6. All correspondence must be addressed to the Chief Executive Officer and only correspondence received at the consent of the Chief Executive Officer will be deemed binding.

8. **EVALUATION CRITERIA**

This bid will be evaluated in two stages:

- Stage 1 – Functionality.
- Stage 2 – Price and Preferential specific goals

8.1. FUNCTIONALITY

Key aspect of criterion	Basis for points allocation	Max. Points	Verification Method
Confirmation of Expertise (Professional Services)	<u>Proposed skills (1 or more of the listed qualifications):</u> Lead Partner: Project Management; Economics (Development Studies); Financial Management; or Business Management	20	Comprehensive CV, Certified copies of qualifications and traceable references. Qualifications include: Degree or advanced qualification in the listed fields of study. Must have been involved as Lead Partner in a minimum of 5 projects to be listed on CV.

	<p><u>Proposed skills (1 or more of the listed qualifications):</u></p> <p>Team Members: Engineering; Accounting; Risk Management; Contract Management; Legal / Law; or Town and Regional Planning</p>	<p>20</p> <p>(10 points per specialist with a minimum of 2)</p>	<p>Comprehensive CV, Certified copies of qualifications and traceable references. Qualifications include:</p> <p>Degree or advanced qualification in the listed fields of study.</p> <p>Must have been involved as Lead Partner in a minimum of 5 projects to be listed on CV. Minimum of 2 specialists holding a qualification in the mentioned fields.</p>
Experience and ability to implement similar project -	Proven Experience in Fund Raising / Investment Attraction / Business Modelling	<p>15</p> <p>(5 points per project submitted with a minimum of 3 projects)</p>	Confirmation of approval in fund raising investment attraction or business – submission of funding agreement or letter of confirmation from Client of which 2 clients must be in the public (government) sector (minimum of 3 projects successfully implemented)
Company or Partner Experience	Technical Experience and knowledge in PPP Structuring and Procurement	15	Written confirmation from client / public body indicating success in the conclusion of a PPP Agreement reflecting details of prospective service provider

Project Comprehension and Project Management Plan	<p>Demonstrate understanding of the Terms of Reference that would enhance desired outcomes and should include:</p> <ul style="list-style-type: none"> • How the Transaction Advisor proposes to manage the set of deliverables outlined in the Terms of Reference. • A proposed outline Work Plan with timetable for delivery. • The suitability of each person in the team for the proposed roles in terms of their relevant skills and experience cross referenced to each deliverable in the Terms of Reference 	<p>15</p> <p>Good – 15</p> <p>Acceptable – 8</p> <p>Fair – 6</p> <p>Poor – 1</p> <p>No submission – 0</p>	<p>Comprehensive Methodology:</p> <p>The Tenderer to submit a comprehensive methodology, clearly detailing realization of objectives, processes, procedures, suitability of professional team, financial modelling (noting ECSA and NT Guidelines) to be implemented during the implementation of the project.</p>
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	<ul style="list-style-type: none"> • The availability of each person to perform the work • How the Advisory team members will be supervised. • How interaction with the various streams will take place. • Financial modelling • Any innovative ideas for how the whole assignment can best achieve its objectives 		<p>GOOD: Methodology adequately addresses all the headings above.</p> <p>ACCEPTABLE: Methodology addresses three of the headings above.</p> <p>FAIR: Methodology addresses less than three of the headings above.</p> <p>POOR: Methodology addresses less than three of the headings above.</p> <p>No submission: Methodology is not related to the required information or is not submitted.</p>
Bank Rating	<p>To determine the ability of the Service Provider to “bank roll” activities until project approval</p> <ul style="list-style-type: none"> • Code B • Code C • Code D 	<p>15</p> <p>15</p> <p>10</p> <p>5</p>	<p>Bank Rating letter not older than 3 Months.</p> <p>(Must bear original stamp of bank)</p> <p>FAILURE TO SUBMIT BANK RATING LETTER WILL RESULT IN NO POINTS BEING AWARDED</p>
		100	

Bidders scoring less than 60 points (60%) on functionality will be disqualified and will not proceed to the next phase of evaluation.

9. PROJECT TIMEFRAME

The contract is for the period of 36 months commencing from the date awarded but can be terminated when there is proof of underperformance or substandard.

10. FEATURES REQUIRING SPECIAL ATTENTION

All Annexure to these Terms of Reference that require completion by the bidder must be completed in full and returned with the bid. Failure to do so may disqualify the bid.

11. TERMS AND CONDITIONS OF THE PROPOSAL

Appointment will be made in terms of the Harry Gwala Development Agency's Procurement Policy.

12. NEGOTIATING A FAIR MARKET PRICE

The HGDA reserves the right to enter into negotiations with the preferred bidders for a fair market price if on its own assessment is of the view that the highest scoring bidder is charging prices higher than the fair market price.

13. NON-APPOINTMENT

The Harry Gwala Development Agency reserves the right not to make an appointment should it find that bidding parties do not meet the specified criteria.

14. COMPLETION

Projects will not be paid for unless the required services have been correctly delivered.

15. COURTESY

In dealings with the municipal entity internal structures, the bidder is required to deal with discussions and disputes with deliberate courtesy and understanding, in close liaison with the Harry Gwala Development Agency.

Prior to the commencement of works, the successful bidder shall arrange through the office of the Chief Executive Officer to be introduced to the appropriate Harry Gwala Development Agency structures and to be briefed upon any sensitivities that need to be observed.

16. GENERAL

Tender offers will only be accepted on condition that:

- a. The tender offer is signed by a person authorized to sign on behalf of the Tenderer.
- b. A Tenderer who submitted tenders as joint venture has included an acceptable Joint Venture Agreement with his tender.
- c. The Tenderer or any of its principals, directors or managers is not employed by the state or any municipality and municipal entity.
- d. Quotation/ proposal must be on a company letterhead.
- e. Bids submitted are to hold good for a period of 120 days and must be inclusive of VAT,
- f. The enclosed forms MBD 4, MBD 6.1(**must be completed to claim points**), MBD 8 & MBD 9 must be scrutinized, completed and submitted together with your Bid.
- g. **NB: No Bid will be considered from persons in the service of the state.**
- h. Proof of company registration

- i. A valid tax clearance certificate is included with this tender or tax compliance status with the pin.
- j. In case of a bidder owning a property, they must provide a municipal statement confirming status of municipal accounts not older than 3 months (Bidders must not be in arrears for more than 90 days)
- k. In case of a bidder leasing the property, they must attach a lease agreement & letter from landlord stating that rent is up to date. The letter must not be older than 3 months.
- l. In case of the bidder operating in an area that doesn't pay rates, they must attach a sworn affidavit stating that rates are not paid in that area. The affidavit must not be older than 3 months.
- m. If the bidder is staying with parents, spouse or any family relative in an area where rates are paid (an affidavit from the bidder or signed letter from the property owner stating that the bidder is not responsible for municipal accounts must be attached). Affidavit or letter must not be older than 3 months.
- n. The Tenderer or any of its principles is not listed on the register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector.
- o. The tenderer has not abused the Employers' Supply Chain Management System or has failed to perform on any previous contract and has been given a written notice to this effect; and
- p. The Employer is satisfied that the Tenderer or any of his principles has not influenced the tender offer and acceptance by the following criteria:
 - Having offered, promised or given a bribe or other gift remuneration to any person in connection with the obtaining or execution of this Contract.
 - Having acted in a fraudulent or corrupt manner in obtaining or executing of this contract.
 - Having approached an officer or employee of the Employer or the Employers' Agent with the objective of influencing the award of a Contract in the Tenders' favor
 - Having entered into any agreement or arrangement, whether legally binding or not, with any other person, firm or company to refrain from Tendering for this Contract or as to the amount of the Tender to be submitted by either party and
 - Having disclosed to any other person, firm or company other than the Employer, the exact or approximate amount of his proposed Tender.

In the event of any of the above, the Harry Gwala Development Agency may, in addition to using any other legal remedies, repudiate the Tender offer and acceptance and declare the Contract invalid should it have been concluded already.

The Harry Gwala Development Agency's Supply Chain Management Policy shall apply.

The Municipal Entity does not bind itself to accept the lowest or any Bid and reserves the right to accept the Bid as whole or in part, at the rates quoted.

FAILURE TO COMPLY WITH THE ABOVE CONDITIONS IN ALL RESPECTS WILL RESULT IN THE TENDER BEING DEEMED NON-RESPONSIVE. IF THE PRICE OFFERED IS NOT MARKET RELATED, THE HARRY GWALA DEVELOPMENT AGENCY MAY NOT AWARD THE CONTRACT TO THAT TENDERER AND MAY NEGOTIATE FOR MARKET RELATED PRICE WITH THE TENDERER, FAILING WHICH, NEGOTIATE WITH THE NEXT PREFERRED TENDERER OR TENDER MAY BE CANCELLED.

17. DOCUMENTATION

The proposal document submitted must include all the information deemed necessary to evaluate your submission on the bases stipulated in this document. **The additional forms appended to this document must also be included in the submission.**

This document may be detached and re-bound to ensure neatness and to also avoid the risk of accidentally losing of loose sheets. In the process of doing that, please be careful not to lose any of the pages of this document because should that be the case, your proposal may be regarded as incomplete.

RELEVANT EXPERIENCE

The Bidder shall enter in the spaces provided below a list of relevant recent experience.

Employer (Name, Tel. No. or Fax No.)	Details of Project (Attach ref letters)	Value of Work (fees)	Year

CERTIFICATE OF AUTHORITY

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

(I) COMPANY	(II) CLOSE CORPORATI ON	(III) PARTNERSHI P	(IV) JOINT VENTURE	(V) SOLE PROPRIETOR

(I) CERTIFICATE FOR COMPANY

I, _____ Chairperson of the Board of Directors of _____ hereby confirm that by resolution of the Board (copy attached) taken on _____ (insert date) that Mr./Ms _____ acting in the capacity of _____ is authorized to sign all documents in connection with this tender and any contract resulting from it on behalf of the company.

Chairman: _____

As Witnesses: 1 _____

2 _____

Date: _____

(II) CERTIFICATE FOR CLOSE CORPORATION

We, the undersigned, being the key members in the business trading as _____

_____ hereby authorize Mr./Ms _____

acting in the capacity of _____

to sign all documents in connection with the tender for Contract No _____
and any contract resulting from it on our behalf.

NAME	ADDRESS	SIGNATURE	DATE

Note: This certificate is to be completed and signed by all of the key members upon whom rests the direction of the affairs of the Close Corporation as a whole.

(III) CERTIFICATE FOR PARTNERSHIP

We, the undersigned, being the key partners in the business trading as,

hereby authorize Mr./Ms _____

acting in the capacity of _____

to sign all documents in connection with the tender for Contract No _____
and any contract resulting from it on our behalf.

NAME	ADDRESS	SIGNATURE	DATE

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

(IV) CERTIFICATE FOR JOINT VENTURE

We, the undersigned, are submitting this tender offer in Joint Venture and hereby

authorize Mr./Ms

_____, authorized signatory of the company,
_____acting in the capacity of lead partner, to sign all documents in connection with the tender offer for Contract No. _____ and any contract resulting from it on our behalf.

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

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

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

(V) CERTIFICATE FOR SOLE PROPRIETOR

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

Signature of Sole owner: _____

As Witnesses:

1 _____

2. _____

Date: _____

COMPULSORY ENTERPRISE QUESTIONNAIRE

The following particulars must be furnished. In the case of a joint venture, separate enterprise questionnaires in respect of each partner must be completed and submitted.

Section 1. Name of enterprise: _____

Section 2. VAT registration number, if any: _____

Section 3. CIDB registration number, if any: _____

Section 4. Particulars of sole proprietors and partners in partnerships.

Name*	Identity number*	Personal income tax number*

** Complete only if sole proprietor or partnership and attach separate page if more than three partners.*

Section 5. Particulars of companies and close corporations

Company registration number: _____

Close corporation number: _____

Tax reference number: _____

Section 6. Record in the service of the state

Indicate by marking the relevant boxes with a cross, if any sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months in the service of any of the following:

- | | |
|---|---|
| <input type="checkbox"/> a member of any municipal council | <input type="checkbox"/> an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999) |
| <input type="checkbox"/> a member of any provincial legislature | <input type="checkbox"/> a member of an accounting authority of any national or provincial public entity |
| <input type="checkbox"/> a member of the National Assembly or the National Council of Provinces | <input type="checkbox"/> an employee of Parliament or a provincial legislature |
| <input type="checkbox"/> a member of the board of directors of any municipal entity | |
| <input type="checkbox"/> an official of any municipality or municipal entity | |

If any of the above boxes are marked, disclose the following*:

Name of spouse, child or parent	Name of institution, public offices, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

* Insert separate page if necessary.

Section 7.

Record of spouses, children and parents in the service of the state

Indicate by marking the relevant boxes with a cross, if any spouse, child or parent of sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months in the service of any of the following:

- a member of any municipal council
- a member of any provincial legislature
- a member of the National Assembly or the National Council of Provinces
- an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999)
- a member of an accounting authority of any national or provincial public entity
- an employee of Parliament or a provincial legislature
- a member of the board of directors of any municipal entity
- an official of any municipality or municipal entity

If any of the above boxes are marked, disclose the following*:

Name of spouse, child or parent	Name of institution, public offices, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

* Insert separate page if necessary.

The undersigned, who warrants that he/she is dully authorised to do so on behalf of the enterprise:

- i. authorises the Employer to obtain a tax clearance certificate from the South African Revenue Services that my/our tax matters are in order;
- ii. confirms that neither the name of the enterprise or the name of any partner, manager, director or other persons, who wholly or partly exercises, or may exercise, control over the enterprise appears on the Register of Tender

Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004;

- iii. confirms that no partner, member, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise, has within the last five years been convicted of fraud or corruption;
- iv. confirms that I/we am/are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest; and
- v. confirms that the contents of this questionnaire are within my personal knowledge and are to the best of my belief both true and correct.

Signed: _____ Date: _____

Name: _____ Position: _____

Enterprise name: _____

C: RECORD OF ADDENDUM TO TENDER DOCUMENTS

I / We confirm that the following communications received from the Employer or his representative before the date of submission of this tender offer, amending the tender documents, have been taken into account in this tender offer.

ADD. No	DATE	TITLE OR DETAILS
1		
2		
3		
4		
5		

SIGNATURE: DATE

(of person authorised to sign on behalf of the Tenderer)

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE HARRY GWALA DEVELOPMENT AGENCY

BID NUMBER:	HGDA 008-2023/24	CLOSING DATE:	16/04/2024	CLOSING TIME:	12H00
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DESCRIPTION	APPOINTMENT OF A PANEL OF PROFESSIONAL SERVICE PROVIDERS: PACKAGING AND SOURCING OF FUNDING FOR CATALYTIC PROJECTS INCLUSIVE OF PROJECT MANAGEMENT SERVICES (AT RISK) FOR A PERIOD OF 36 MONTHS (3YEARS)
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THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).

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

HARRY GWALA FARMERS MARKET, ERF 2226
PORTION 27 OF THE FARM ELLERTON
IXOPO
3276

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 EARN POINTS FOR PREFERENCE SPECIFIC GOALS]

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]
--	--	---	---

FOR THE GOODS /SERVICES /WORKS OFFERED?		THE GOODS /SERVICES /WORKS OFFERED?	
TOTAL NUMBER OF ITEMS OFFERED		TOTAL PRICE	BID R
SIGNATURE OF BIDDER	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT	Supply Chain Management	CONTACT PERSON	Ms P Nkosi
CONTACT PERSON	Ms N Malunga	TELEPHONE NUMBER	072 420 0652
TELEPHONE NUMBER	083 345 8249	FACSIMILE NUMBER	N/A
FACSIMILE NUMBER	N/A	E-MAIL ADDRESS	phumzile.nkosi@hgda.co.za
E-MAIL ADDRESS	neliswa.malunga@hgda.co.za		

PART B

TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:	
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.	
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR ONLINE	
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.	
2. TAX COMPLIANCE REQUIREMENTS	
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.	
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER’S PROFILE AND TAX STATUS.	
2.3 APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.	
2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.	
2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.	
2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.	
2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.	
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS	
3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.	

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS WILL 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:

**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**

DESCRIPTION	QUANTITY	AMOUNT
		
	SUB-TOTAL	
	VAT (15%)	
TOTAL		

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.

CONDITIONS OF TENDER

- Price(s) quoted must be valid for at 120 days from date of offer for evaluation purposes.
- Price(s) quoted must be firm and include VAT
- Tenderers original valid tax clearance certificate must be attached.

- Tender original or certified B-BBEE Certificate must be attached to the document
- Tender documents signed by a person who does not have authority to sign will be disqualified.
- Tenderers who did not complete the compulsory questionnaire, who abuse the employer's supply chain management system will not be conceded
- Non-collusion affidavit to be executed by bidder and submitted with the bid.

DECLARATION OF INTEREST

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

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

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

3.2 Identity Number:

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

3.4 Company Registration Number:

3.5 Tax Reference Number.....

3.6 VAT Registration Number:

3.7 The names of all directors / trustees / shareholder's 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.
.....
.....
.....

¹MSCM Regulations: "in the service of the state" means to be –

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

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

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

3.9.1 If yes, furnish particulars.....

.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid?

YES / NO

3.10.1 If yes, furnish particulars.

.....

.....

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

3.11.1 If yes, furnish particulars

.....

3.12 Are any of the company's directors, trustees, managers, Principle shareholders or stakeholders in service of the state?

YES / NO

3.12.1 If yes, furnish particulars.

.....
.....

3.13 Are any spouse, child or parent of the company's director's trustees, managers, principle shareholders or stakeholders in service of the state?

YES / NO

3.13.1 If yes, furnish particulars.

.....
.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract.

YES / NO

3.14.1 If yes, furnish particulars:

.....
.....

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

Full Name	Identity Number	State Employee Number

5. DECLARATION

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 4 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature Date

.....
Position Name of bidder

**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 To be completed by the organ of state

(delete whichever is not applicable for this tender).

- The applicable preference point system for this tender is the **90/10** preference point system.
- The applicable preference point system for this tender is the **80/20** preference point system.
-
- Either the **90/10 or 80/20 preference point system** will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

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 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS	20
Total points for Price and SPECIFIC GOALS	100

- 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:

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \\ \mathbf{Ps} = \mathbf{80} \left(\mathbf{1} - \frac{\mathbf{Pt} - \mathbf{Pmin}}{\mathbf{Pmin}} \right) & \mathbf{or} & \mathbf{Ps} = \mathbf{90} \left(\mathbf{1} - \frac{\mathbf{Pt} - \mathbf{Pmin}}{\mathbf{Pmin}} \right) \end{array}$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = 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:

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \\ \mathbf{Ps} = \mathbf{80} \left(\mathbf{1} + \frac{\mathbf{Pt} - \mathbf{Pmax}}{\mathbf{Pmax}} \right) & \mathbf{or} & \mathbf{Ps} = \mathbf{90} \left(\mathbf{1} + \frac{\mathbf{Pt} - \mathbf{Pmax}}{\mathbf{Pmax}} \right) \end{array}$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = 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) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
GOAL 1 - Ownership – Maximum points	10	
Business who are at least 51% owned by black person	3	
Business owned less than 51% by black person	1	
Business who are at least 51% owned by black women	3	
Business owned less than 51% by black women	1	
Business who are at least 51% by black youth	2	
Business owned less than 51% by black youth	1	
Business owned more than 51% by disabled person	2	
GOAL 2 – RDP – Maximum points	10	

Business falls under the SMME category – EME/QSE	3	
Promotion of business located within Harry Gwala District	4	
Promotion of business located within KZN province	3 1	
Promotion of business located in South Africa outside KZN Province		

DECLARATION WITH REGARD TO COMPANY/FIRM

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

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM [TICK APPLICABLE BOX]

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

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.

.....
SIGNATURE(S) OF TENDERER(S)

SURNAME AND NAME.....

DATE:

ADDRESS:
.....
.....
.....

DECLARATION OF BIDDER’S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

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

4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
Item Question Yes No			
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

CERTIFICATION

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Municipality / Municipal Entity)

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

I certify, on behalf of:

that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;

- (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

THE NATIONAL TREASURY
Republic of South Africa



**GOVERNMENT PROCUREMENT:
GENERAL CONDITIONS OF CONTRACT**

July 2010

TABLE OF CLAUSES

1. **Definitions**
 2. Application
 3. General
 4. Standards
 5. Use of contract documents and information inspection
 6. Patent Rights
 7. Performance security
 8. Inspections, tests and analyses
 9. Packing
 10. Delivery and documents
 11. Insurance
 12. Transportation
 13. Incidental Services
 14. Spare parts
 15. Warranty
 16. Payment
 17. Prices
 18. Variation orders
 19. Assignment
 20. Subcontracts
 21. Delays in the supplier's performance
 22. Penalties
 23. Termination for default
 24. Anti-dumping and countervailing duties and rights
 25. Force Majeure
 26. Termination for insolvency
 27. Settlement of Disputes
 28. Limitation of Liability
 29. Governing language
 30. Applicable law
 31. Notices
 32. Taxes and duties
 33. Transfer of contracts
 34. Amendments of contracts
 35. Prohibition of restrictive practices

General Conditions of Contract

Definitions indicated:

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

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- market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the goods covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South

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s” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 “Supplier” means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.
- 1.26 “Tort” means in breach of contract.
- 1.27 “Turnkey” means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.
- 1.28 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.
- 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.
- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

- 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

Be extended only so far as may be necessary for the purpose of performance.

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

- 5.3 Any documents 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 supplier's performance under the contract if so require 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.

5. Use of contract documents and information inspection

- 6 Patent Rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 6.2 When a supplier developed documentation / projects for the municipality / municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the municipality / municipal entity.
- 7 Performance security**
- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque.
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

8 *Inspections, tests and analyses*

- 8.1. All pre-bidding testing will be for the account of the bidder.
- 8.2. If it is a bid condition that goods to be produced or services to be rendered should at any stage be subject to inspections, tests and analyses, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or organization acting on behalf of the purchaser.
- 8.3. If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4. If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5. Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6. Goods and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7. Any contract goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods, which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.
- 8.8. The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.

9 Packing

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

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

10 Delivery and documents

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

11 Insurance

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

12 Transportation

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

13 Incidental Services

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

- 13.1.1. performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- 13.1.2. furnishing of tools required for assembly and/or maintenance of the supplied goods;
- 13.1.3. furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- 13.1.4. 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
- 13.1.5. training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2. Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be

agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

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

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

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

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

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

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

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16 Payment

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

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

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

16.4 Payment will be made in Rand unless otherwise stipulated.

17 Prices

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

18 Variation orders

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

19 Assignment

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

20 Subcontracts

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

21 Delays in the supplier's performance

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

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend

the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

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

21.4 goods are required, or the supplier's services are not readily available.

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

21.6 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.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.
- 23.5 Any restriction imposed on any person by the purchaser will, at the discretion of the purchaser, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the purchaser actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
 - (ii) the date of commencement of the restriction
 - (iii) the period of restriction; and
 - (iv) the reasons for the restriction.

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

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

24 Anti-dumping and countervailing duties and rights

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

25 Force Majeure

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

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

26 Termination for insolvency

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

27 Settlement of Disputes

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

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

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

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

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

28. Limitation of Liability

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

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

28 Governing language

28.1. 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.

29 Applicable law

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

30 Notices

30.1 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.

30.2 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.

31 *Taxes and duties*

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

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

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

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

**32 Transfer
of
contracts**

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

**33 Amendmen
t of contracts**

33.1 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.

34 Prohibition of 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.