

**KWAZULU-NATAL**  
**PROVINCIAL TREASURY**



**BID 1193/2014- F**

**APPOINTMENT OF EXTERNAL PROFESSIONAL SERVICE PROVIDER (S) TO ASSIST IN CONDUCTING INTERNAL AUDITS SERVICES AS PER INTERNAL OPERATIONAL PLANS AT VARIOUS PROVINCIAL DEPARTMENTS, MUNICIPALITIES AND PUBLIC ENTITIES AS AND WHEN ARISES DURING THE FINANCIAL YEARS 2014/15 TO 2016/17.**

**CLOSING DATE: 29 MAY 2014**

**CLOSING TIME: 11:00 AM**

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**SBD 1**

**INVITATION TO BID**

1 YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE INTERNAL AUDIT  
(KZN PROVINCIAL TREASURY)

BID NUMBER: ZNT 1193/2014-F      CLOSING DATE: 29 MAY 2014  
CLOSING TIME: 11:00

DESCRIPTION.....

BID DOCUMENTS MAY BE POSTED TO:  
The Head: Supply Chain Management  
KZN Provincial Treasury,  
PO Box 3613,  
Pietermaritzburg,  
3201

OR

DEPOSITED IN THE BID BOX SITUATED AT  
The Head: KwaZulu-Natal Provincial Treasury  
145 Chief Albert Luthuli Road  
Pietermaritzburg  
3201

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

The bid box is generally open 07h30 am to 16h00 on a normal working days Monday - Friday

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

THIS BID IS SUBJECT TO THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

**2.1 THE FOLLOWING PARTICULARS MUST BE FURNISHED**

**2.2 (FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)**

NAME OF BIDDER .....

POSTAL ADDRESS .....

STREET ADDRESS .....

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

2.2.1 CELLPHONE NUMBER .....

FACSIMILE NUMBER.....

NUMBER.....

VAT REGISTRATION NUMBER

HAS A TAX CLEARANCE CERTIFICATE BEEN SUBMITTED (SBD 2)?  
YES/NO

2.2.1.1 ARE YOU THE ACCREDITED REPRESENTATIVE

IN SOUTH AFRICA FOR THE GOODS/SERVICES OFFERED BY YOU? YES/NO  
(IF YES ENCLOSE PROOF)

SIGNATURE OF BIDDER .....

DATE.....

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

**TOTAL BID PRICE**.....

FOR VIEWING PURPOSE ONLY

**STANDARD BID DOCUMENTATION**

**SECTION A  
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR THE REQUIREMENTS OF THE KZN PROVINCIAL TREASURY.

**PLEASE NOTE**

**THIS BID CLOSING AT** : **11:00 AM**  
**CLOSING DATE** : **29 MAY 2014**  
**BID NO.** : **1193/2014-F**  
**DESCRIPTION** : **APPOINTMENT OF EXTERNAL PROFESSIONAL SERVICE PROVIDER (S) TO ASSIST IN CONDUCTING INTERNAL AUDITS SERVICES AS PER INTERNAL OPERATIONAL PLANS AT VARIOUS PROVINCIAL DEPARTMENTS, MUNICIPALITIES AND PUBLIC ENTITIES AS AND WHEN ARISES DURING THE FINANCIAL YEARS 2014/15 TO 2016/17.**  
**CONTRACT PERIOD** : **3 YEARS**  
**VALIDITY PERIOD** : **120 DAYS**  
**NAME OF BIDDER** : \_\_\_\_\_

**PROVINCIAL SUPPLIERS DATABASE REGISTRATION NO.:** \_\_\_\_\_

NB: IN ORDER TO QUALIFY FOR PREFERENCE POINTS A BIDDER MUST ENSURE THAT HE/ SHE/ IT IS REGISTERED AS A SUPPLIER ON THE KWAZULU-NATAL SUPPLIER DATABASE, AND THAT ALL INFORMATION IS ACCURATE AND UP TO DATE BEFORE THE CLOSURE OF THE BID  
**DOCUMENTS DELIVERED BY HAND MUST BE DEPOSITED IN THE BID BOX SITUATED IN:**

<b>145 CHIEF ALBERT LUTHULI STREET (a.k.a COMMERCIAL ROAD) Treasury House, GROUND FLOOR, PIETERMARITZBURG 3201</b>	<b>THE BID BOX IS AVAILABLE ON THE FOLLOWING DAYS AND TIMES : MONDAY TO FRIDAY: 08:00 - 16:00</b>
--	---

**DOCUMENTS SHALL BE ADDRESSED TO:**

**DEPARTMENT:** **PROVINCIAL TREASURY**  
**MS/ Mr:** **I.N. MADUMA / T. ZWANE**  
**TELEPHONE NO.:** **033 897 4496 / 033-897 4284**  
**TECHNICAL ENQUIRIES TO BE MADE TO:** **MS MOTLALEPULA MOTAUNG**  
**TELEPHONE NO:** **033- 897 4309 / 082 375 7408**

**SECTION B**  
**SPECIAL INSTRUCTIONS AND NOTICES TO BIDDERS REGARDING THE COMPLETION OF**  
**BIDDING FORMS**

PLEASE NOTE THAT THIS BID IS SUBJECT TO TREASURY REGULATIONS 16A ISSUED IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT, 1999, THE KWAZULU-NATAL SUPPLY CHAIN MANAGEMENT POLICY FRAMEWORK AND THE GENERAL CONDITIONS OF CONTRACT.

1. Unless inconsistent with or expressly indicated otherwise by the context, the singular shall include the plural and visa versa and with words importing the masculine gender shall include the feminine and the neuter.
2. Under no circumstances whatsoever may the bid forms be retyped or redrafted. Photocopies of the original bid documentation may be used, but an original signature must appear on such photocopies.
3. The bidder is advised to check the number of pages and to satisfy himself that none are missing or duplicated.
4. Bids submitted must be complete in all respects.
5. Bids shall be lodged at the address indicated not later than the closing time specified for their receipt, and in accordance with the directives in the bid documents.
6. Each bid shall be addressed in accordance with the directives in the bid documents and shall be lodged in a separate sealed envelope, with the name and address of the bidder, the bid number and closing date indicated on the envelope. The envelope shall not contain documents relating to any bid other than that shown on the envelope. If this provision is not complied with, such bids may be rejected as being invalid.
7. All bids received in sealed envelopes with the relevant bid numbers on the envelopes are kept unopened in safe custody until the closing time of the bids. Where, however, a bid is received open, it shall be sealed. If it is received without a bid number on the envelope, it shall be opened, the bid number ascertained, the envelope sealed and the bid number written on the envelope.
8. A specific box is provided for the receipt of bids, and no bid found in any other box or elsewhere subsequent to the closing date and time of bid will be considered.
9. No bid sent through the post will be considered if it is received after the closing date and time stipulated in the bid documentation, and proof of posting will not be accepted as proof of delivery.
10. No bid submitted by telefax, telegraphic or other electronic means will be considered.
11. Bidding documents must not be included in packages containing samples. Such bids may be rejected as being invalid.
12. Any alteration made by the bidder must be initialed.
13. Use of correcting fluid is prohibited
14. Bids will be opened in public as soon as practicable after the closing time of bid.
15. Where practical, prices are made public at the time of opening bids.
16. If it is desired to make more than one offer against any individual item, such offers should be given on a photocopy of the page in question. Clear indication thereof must be stated on the schedules attached.

**SECTION C**  
**REGISTRATION ON THE PROVINCIAL SUPPLIERS DATABASE**

1. In terms of the KwaZulu-Natal Supply Chain Management Policy Framework, all suppliers of goods and services to the Province of KwaZulu-Natal are required to register on the Provincial Suppliers Database.
2. If you wish to apply for registration, forms may be downloaded from the website, <http://www.kzntreasury.gov.za>, (click on "Document Library" and then choose "Forms") or obtained by phoning the toll free number **0800 201 049**. This number is also available for general enquiries relating to Provincial supply chain management issues..
3. If a business is registered on the Database and it is found subsequently that false or incorrect information has been supplied, then the Department may, without prejudice to any other legal rights or remedies it may have;
  - 3.1 de-register the supplier from the Database,
  - 3.2 cancel a bid or a contract awarded to such supplier, and the supplier would become liable for any damages if a less favourable bid is accepted or less favourable arrangements are made.
4. **The same principles as set out in paragraph 3 above are applicable should the supplier fail to request updating of its information on the Suppliers Database, relating to changed particulars or circumstances.**

**SECTION D**  
**DECLARATION THAT INFORMATION ON PROVINCIAL SUPPLIER DATABASE IS CORRECT**  
**AND UP TO DATE**  
(To be completed by bidder)

THIS IS TO CERTIFY THAT I (name of bidder/authorised representative)

.....

WHO REPRESENTS (state name of bidder)

.....

AM AWARE OF THE CONTENTS OF THE KWAZULU-NATAL SUPPLIER DATABASE WITH RESPECT TO THE BIDDER'S DETAILS AND REGISTRATION INFORMATION, AND THAT THE SAID INFORMATION IS CORRECT AND UP TO DATE AS ON THE DATE OF SUBMITTING THIS BID.

AND I AM AWARE THAT INCORRECT OR OUTDATED INFORMATION MAY BE A CAUSE FOR DISQUALIFICATION OF THIS BID FROM THE BIDDING PROCESS, AND/OR POSSIBLE CANCELLATION OF THE CONTRACT THAT MAY BE AWARDED ON THE BASIS OF THIS BID.

.....  
**SIGNATURE OF BIDDER OR AUTHORISED REPRESENTATIVE**

**DATE :** .....



## SECTION E

### DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state<sup>1</sup>, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

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

2.1 Full Name of bidder or his or her representative: .....

2.2 Identity ..... Number: .....

2.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>): .....

2.4 Company Registration Number: .....

2.5 Tax ..... Reference ..... Number: .....

2.6 VAT Registration Number: .....

2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

<sup>1</sup>"State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

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

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

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member: .....  
Name of state institution at which you or the person connected to the bidder is employed : .....  
Position occupied in the state institution: .....

Any other particulars:  
.....  
.....  
.....

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

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

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

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

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

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

2.8.1 If so, furnish particulars:

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

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

2.9.1 If so, furnish particulars.

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

2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication **YES/NO**

of this bid?

2.10.1 If so, furnish particulars.

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

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

**YES/NO**

2.11.1 If so, furnish particulars:

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

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

<b>Full Name</b>	<b>Identity Number</b>	<b>Personal Reference Number</b>	<b>Tax Number</b>	<b>State Number / Number</b>	<b>Employee / Persal Number</b>

FOR VIEWING PURPOSE ONLY

**4 DECLARATION**

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.  
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF

PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION  
PROVE TO BE FALSE.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

May 2011

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## SECTION F TAX CLEARANCE CERTIFICATE REQUIREMENTS

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

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

**SECTION G**

**COMPULSORY OFFICIAL BRIEFING SESSION**

N. B.: THIS FORM IS ONLY TO BE INCLUDED AND COMPLETED WHEN APPLICABLE TO THE BID.

Site/building/institution involved: .....

**Bid No: 1193/2014-F**

**SERVICE:**

**APPOINTMENT OF EXTERNAL PROFESSIONAL SERVICE PROVIDER (S) TO ASSIST IN CONDUCTING INTERNAL AUDITS SERVICES AS PER INTERNAL OPERATIONAL PLANS AT VARIOUS PROVINCIAL DEPARTMENTS, MUNICIPALITIES AND PUBLIC ENTITIES AS AND WHEN ARISES DURING THE FINANCIAL YEARS 2014/15 TO 2016/17.**

THIS IS TO CERTIFY THAT (NAME) .....

ON BEHALF OF .....

ATTENDED THE BRIEFING SESSION ON: **13 May 2014 @ 09:00 A.M at Trizon Towers, 3<sup>rd</sup> floor, room 310, 121 Pietermaritz Street.**

AND IS THEREFORE FAMILIAR WITH THE CIRCUMSTANCES AND THE SCOPE OF THE SERVICE TO BE RENDERED.

.....  
**SIGNATURE OF BIDDER OR AUTHORISED REPRESENTATIVE**  
(PRINT NAME)

**DATE:** .....

.....  
**SIGNATURE OF DEPARTMENTAL REPRESENTATIVE**  
(PRINT NAME)

.....  
**DEPARTMENTAL STAMP:**  
(OPTIONAL)

**DATE:** .....

**SECTION H  
AUTHORITY TO SIGN A BID**

**A. COMPANIES**

If a Bidder is a company, a certified copy of the resolution by the board of directors, personally signed by the chairperson of the board, authorising the person who signs this bid to do so, as well as to sign any contract resulting from this bid and any other documents and correspondence in connection with this bid and/or contract on behalf of the company must be submitted with this bid, that is before the closing time and date of the bid

**AUTHORITY BY BOARD OF DIRECTORS**

By resolution passed by the Board of Directors on.....20....., Mr/Mrs.....

..... (whose signature appears below) has been duly authorised to sign all documents in connection with this bid on behalf of (Name of Company) .....

**IN HIS/HER CAPACITY AS:** .....

**SIGNED ON BEHALF OF COMPANY:** .....  
(PRINT NAME)

**SIGNATURE OF SIGNATORY:** ..... **DATE:** .....

**WITNESSES:** 1 .....  
2 .....

**B. SOLE PROPRIETOR (ONE - PERSON BUSINESS)**

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

.....  
**SIGNATURE**

.....  
**DATE**

FOR VIEWING PURPOSE ONLY



**C. PARTNERSHIP**

The following particulars in respect of every partner must be furnished and signed by every partner:

Full name of partner	Residential address	Signature
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

We, the undersigned partners in the business trading as.....  
hereby authorise .....to sign this bid as well as any  
contract resulting from the bid and any other documents and correspondence in connection  
with this bid and /or contract on behalf of

.....  
**SIGNATURE**                      **SIGNATURE**                      **SIGNATURE**

.....  
**DATE**                              **DATE**                              **DATE**

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**D. CLOSE CORPORATION**

In the case of a close corporation submitting a bid, a certified copy of the Founding Statement of such corporation shall be included with the bid, together with the resolution by its members authorising a member or other official of the corporation to sign the documents on their behalf.

By resolution of members at a meeting on ..... 20..... at .....  
.....Mr/Ms....., whose  
signature appears below, has been authorised to sign all documents in connection with this bid  
on behalf of (Name of Close Corporation) .....  
.....

**SIGNED ON BEHALF OF CLOSE CORPORATION:** .....  
(PRINT NAME)

**IN HIS/HER CAPACITY AS** ..... **DATE:** .....

**SIGNATURE OF SIGNATORY:** .....

**WITNESSES: 1** .....

2 .....

FOR VIEWING PURPOSE ONLY

**E CO-OPERATIVE**

A certified copy of the Constitution of the co-operative must be included with the bid, together with the resolution by its members authoring a member or other official of the co-operative to sign the bid documents on their behalf.

By resolution of members at a meeting on ..... 20..... at .....

Mr/Ms....., whose signature appears below, has been authorised to sign all documents in connection with this bid on behalf of (Name of co-operative).....

**SIGNATURE OF AUTHORISED REPRESENTATIVE/SIGNATORY:**

.....

**IN HIS/HER CAPACITY AS:**.....

**DATE:** .....

**SIGNED ON BEHALF OF CO-OPERATIVE:**.....

**NAME IN BLOCK LETTERS:**.....

**WITNESSES: 1** .....

**2** .....

**SECTION I  
CONDITIONS OF BID**

1. I/We hereby bid to supply all or any of the supplies and/or to render all or any of the services described in the attached documents to the KwaZulu-Natal Provincial Administration (hereinafter called the "Province") on the terms and conditions and be in accordance with the specifications stipulated in the bid documents (and which shall be taken as part of and be incorporated into this bid) at the prices and on the terms regarding time for delivery and/or execution inserted therein.
  
2. I/we agree that:
  - (a) the offer herein shall remain binding upon me and open for acceptance by the Province during the validity period indicated and calculated from the closing time of the bid;
  - (b) this bid and its acceptance shall be subject to Treasury Regulations 16A issued in terms of the Public Finance Management Act, 1999, the KwaZulu-Natal Supply Chain Management Policy Framework, the Provincial Treasury issued Practice Notes, and the KwaZulu-Natal General Conditions of Contract, with which I/we am fully acquainted;
  - (c) if I/we withdraw my bid within the period for which I/we have agreed that the bid shall remain open for acceptance, or fail to fulfil the contract when called upon to do so, the Province may, without prejudice to its other rights, agree to the withdrawal of my bid or cancel the contract that may have been entered into between me and the Province. I/we will then pay to the Province any additional expenses incurred by the Province having either to accept any less favourable bid or, if fresh bids have to be invited, the additional expenditure incurred by the invitation of fresh bids and by the subsequent acceptance of any less favourable bid. The Province shall have the right to recover such additional expenditure by set-off against monies which may be due to me under this or any other bid or contract or against any guarantee or deposit that may have been furnished by me or on my behalf for the due fulfilment of this or any other bid or contract and pending the ascertainment of the amount of such additional expenditure to retain such monies, guarantee or deposit as security for any loss the Province may sustain by reason of my default;
  - (d) if my bid is accepted, the acceptance may be communicated to me by registered post, and that the South African Post Office Limited shall be treated as delivery agent to me;
  - (e) the law of the Republic of South Africa shall govern the contract created by the acceptance of my bid and I choose *domicilium citandi et executandi* in the Republic at (full physical address) :  
.....  
.....
  
3. I/we furthermore confirm that I/we have satisfied myself as to the correctness and validity of my bid: that the price(s), rate(s) and preference quoted cover all of the work/item(s) and my obligations under a resulting contract, and I accept that any mistakes regarding the price(s) and calculations will be at my risk.
  
4. I/we hereby accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement, as the Principal(s) liable for the due fulfilment of this contract.
  
5. I/we agree that any action arising from this contract may in all respects be instituted against me and I/we hereby undertake to satisfy fully any sentence or judgement which may be pronounced against me as a result of such action.
  
6. I/we confirm that I/we have declared all and any interest that I or any persons related to my business has with regard to this bid or any related bids by completion of the Declaration of Interest Section.

**7. CERTIFICATION OF CORRECTNESS OF INFORMATION SUPPLIED IN THIS DOCUMENT**

I/we, THE UNDERSIGNED, WHO WARRANT THAT I AM DULY AUTHORISED TO DO SO ON BEHALF OF THE BIDDER, CERTIFY THAT THE INFORMATION SUPPLIED IN TERMS OF THIS DOCUMENT IS CORRECT AND TRUE, THAT THE SIGNATORY TO THIS DOCUMENT IS DULY AUTHORISED AND ACKNOWLEDGE THAT:

- (1) The bidder will furnish documentary proof regarding any bidding issue to the satisfaction of the Province, if requested to do so.
- (2) If the information supplied is found to be incorrect and/or false then the Province, in addition to any remedies it may have, may:-
  - (a) Recover from the contractor all costs, losses or damages incurred or sustained by the Province as a result of the award of the contract, and/or
  - (b) Cancel the contract and claim any damages which the Province may suffer by having to make less favourable arrangements after such cancellation.

**SIGNED ON THIS ..... DAY OF ..... 20 ..... AT .....**

.....  
**SIGNATURE OF BIDDER OR DULY  
AUTHORISED REPRESENTATIVE**

.....  
**NAME IN BLOCK LETTERS**

**ON BEHALF OF (BIDDER'S NAME)** .....

**CAPACITY OF SIGNATORY** .....

**NAME OF CONTACT PERSON (IN BLOCK LETTERS, PLEASE)** .....

.....  
**POSTAL ADDRESS** .....

.....  
**TELEPHONE NUMBER:** .....

**FAX NUMBER:** .....

**CELLULAR PHONE NUMBER:** .....

**E-MAIL ADDRESS:** .....

## **SECTION J SPECIAL CONDITIONS OF CONTRACT**

### **SECTION 1: DEFINITION OF TERMS**

#### **1.1 SERVICE**

The consultancy services to be rendered by a service provider for a period of 3 years in terms of this contract.

#### **1.2 CONTRACTOR**

The person or persons, partnership, close corporation, firm or company, whose bid for this service was accepted.

#### **1.3 AGREEMENT**

This comprises the agreement signed by parties, the conditions of bid, the bid and the specifications.

#### **1.4 AGREEMENT PERIOD**

The period during which the service is to be rendered and originally determined in the agreement, or as amended, extended or renewed in accordance with stipulations of the agreement.

#### **1.5 PARTIES**

The parties to this contract are The Head of Provincial Treasury in the KwaZulu-Natal Provincial Administration and Contractor.

#### **1.6 DEPARTMENT**

The Provincial Treasury: KwaZulu-Natal Provincial Administration.

#### **1.7 CURTAILMENT OF SERVICE**

The Department reserves the right to withdraw from the service any part/s of the contract as a whole, with one month's written notification to the contractor. In a case such as this, the contract sum will be adjusted *pro rata* from the date of withdrawal.

### **SECTION 2: INTRODUCTION AND RELEVANT INFORMATION**

2.1 This bid is invited and will be awarded and administered in terms of the following:-

- KwaZulu-Natal Supply Chain Management Policy Framework,
- Section 217 of the Constitution,
- The PFMA and its Regulations in general,
- The Preferential Procurement Policy Framework Act,
- National Treasury guidelines, and
- Provincial Treasury Supply Chain Management Practice Notes and guidelines.

- 2.2 The purpose of the above mentioned KwaZulu-Natal Supply Chain Management Policy is to change the procurement system in KwaZulu- Natal and for that purpose:
- 2.2.1 To create conditions which are conducive to the empowerment of Historically Disadvantaged Individuals (HDI's) and Women
  - 2.2.2 To promote the achievement of equity in the government contracts;
  - 2.2.3 To create a procurement system which is fair, equitable, transparent, competitive and cost effective?
  - 2.2.4 To create uniformity and simplicity in the procurement process;
  - 2.2.5 To provide for an advisory service to promote access to and knowledge of procurement process; and
  - 2.2.6 To provide for an independent and impartial Appeal structure

**2.3** **REQUIRED COMPULSORY INFORMATION**

**The bidder shall ensure that all the required information is furnished; viz:-**

- 2.3.1 Declaration that information on Provincial Supplier Database is correct and up to date (SECTION D)
- 2.3.2 Declaration of interest (SECTION E)
- 2.3.3 Tax Clearance Certificate Requirements (SECTION F),
- 2.3.4 Compulsory Briefing Session (SECTION G)
- 2.3.5 Authority to sign a bid (SECTION H),
- 2.3.6 Conditions of Bid (SECTION I),
- 2.3.7 The original Tax Clearance Certificate(s) (and not a copy thereof) must be submitted together with the bid document.
- 2.3.8 Each party to a Consortium/Group of sub-contractors must obtain separate Tax Clearance Certificate(s) and also be registered on the Suppliers Database.
- 2.3.10 A valid B-BBEE Status Level Verification Certificate must be submitted with the proposal.

**NOTE: Failure to submit the required information will invalidate the entire proposal.**

## **SECTION 3: SPECIAL CONDITIONS OF CONTRACT**

### **1.1 ACCEPTANCE OF BID**

- 1.1.1 This bid has been invited, and will be adjudicated in terms of the KwaZulu-Natal Supply Chain Management Policy Framework and the KwaZulu-Natal Provincial Practice Notes. The Provincial Treasury Bid Adjudication Committee is under no obligation to accept the lowest or any bid.
- 1.1.2 The financial standing of bidders and their ability to manufacture or to supply goods or render services may be examined before their bids are considered for acceptance.

### **2.2 APPEALS**

- 2.2.1 Entities aggrieved by a decision of a departmental Bid Adjudication Committee or a delegate of an accounting officer, may appeal to the Bid Appeals Tribunal in the prescribed manner by the Supply Chain Management Policy Framework

### **2.3 AMENDMENT OF CONTRACT**

- 2.3.1 Any amendment to or renunciation of the provisions of the contract shall at all times be done in writing and shall be signed by both parties subject to the Legal Services screening the amendment before it is signed.

### **2.4 CHANGE OF ADDRESS**

- 2.4.1 Bidders must advise the Provincial Treasury should their address (*domicilium citandi et executandi*) details change from the time of bidding to the expiry of the contract.

### **2.5 COMMUNICATION**

- 2.5.1 All correspondence with regard to this bid must be addressed or hand delivered to the:

CHIEF FINANCIAL OFFICER  
P.O BOX 3613  
PIETERMARITZBURG  
3200

ENQUIRIES: Ms I.N MADUMA/ Mr T. ZWANE    **TEL.: 033-897 4496/4284**

### **2.6 COMPLETENESS OF BID**

- 2.6.1 Bids will only be considered if correctly completed and accompanied by all relevant certificates and other necessary applicable information.

### **2.7 COMPLETION OF SPECIFICATION**

- 2.7.1 Where specifications are designed in such a way that responses would be required from bidders, these forms must be completed and submitted as part of the bid document.

### **2.8 CONDITIONS OF BID**

- 2.8.1 The successful Contractor must be in a position to assume duty on the date stipulated in the letter of acceptance.
- 2.8.2 No bid received by telegram, telex, or facsimile will be considered.
- 2.8.3 It shall be noted that the Department is under no obligation to accept the lowest or any bid.
- 2.8.4 The offer shall be made strictly according to the specification. No alternative offers will be considered.



2.8.5 Bidders must provide the following particulars about themselves as part of the bid:

- 2.8.5.1 Where they have their Headquarters
- 2.8.5.2 Where they have their Regional Office.
- 2.8.5.3 Name, address and telephone number of bankers together with their bank account number.
- 2.8.5.4 The names, identity numbers and street addresses of all partners in cases where persons, a partnership, or a firm consists of a partnership.

**2.9** In cases where a person or persons, a partnership, close corporation, firm or company enters business for the very first time, the following particulars shall be provided:

- 2.9.1 By whom, or with whose assistance, was the business plan drafted?
- 2.9.2 By whom, or with whose assistance, were the bid prices calculated?
- 2.9.3 Whose advice is relied on?
- 2.9.4 Who will provide financial support?

**2.10** A list of references must accompany this bid. Particulars shall be submitted regarding similar agreements completed successfully or of projects which the bidder is engaged in.

### **2.11 CONFIDENTIALITY**

The contractor's staff that comes into contact with Provincial Treasury's confidential information and documents may be required to sign confidentiality agreements so as to protect the Department's information.

### **2.12 CONTRACT PERIOD**

2.12.1 The contract period shall remain in force for a period of **3 years** from date of signing of official contracts.

2.12.2 The Provincial Treasury reserves the right to terminate the contract with any contractor should the contractor fail to fulfil his/her contractual obligations in terms of the contract.

### **2.13 DETAILS OF CURRENT CONTRACTS HELD BY THE BIDDER**

2.13.1 The bidder must furnish the following details of all current contracts:

- (i) Date of commencement of contract/s;
- (ii) Expiry date/s;
- (iii) Value per contract; and
- (iv) Contract details. That is, with whom held, phone number and address/s of the company.

### **2.14 EQUAL BIDS**

2.14.1 In the event that two or more bids have equal total points, the successful bid will be the one scoring the highest number of preference points for specified goals. Should two or more bids be equal in all respects, the Adjudication shall be decided by the drawing of lots.

### **2.15 EXECUTION CAPACITY**

2.15.1 The bidder will be required to provide an efficient and effective service. Therefore, the bidder is required to submit proof that he/she has the required capacity to execute the contract tendered for successfully. The bidder must supply references or state his/her experience as a company to undertake the contract. References of past experience of owners/employees of new entities must accompany the bid document.

## 2.16 EXTENSION OF CONTRACT

2.16.1 An extension of contract may be considered. It is the normal policy that contracts are not extended. However, circumstances may arise whereby a contract cannot be renewed in time. If this is found to be the case, the right is reserved to approach existing contractor(s) to extend the contract for such period agreed to.

## 2.17 GENERAL EVALUATION CRITERIA

The Bid Evaluation Committee will assess offers and adhere to the following basic guidelines when evaluating.

- a. Whether all the required information called for in the bid document has been submitted by the bidder.
- b. Has the bidder supplied references or stated his/her experience as a Company to undertake the contract. References of past experience must accompany the bid document.
- c. The financial standing of the bidder and ability to render a service may be examined before an award of bid take place.
- d. Preferences will be taken into consideration by the Department in terms of the B-BBEE Scorecard.
- e. Documented reports received from an institution/s pertaining to past bad performance by a company who is tendering, may be taken into consideration.
- f. Did the bidder attend the site inspection?
- g. Will the bidder be in a position to successfully execute the contract?

## 2.18 IRREGULARITIES

2.18.1 Companies are encouraged to advise the Department timeously of any possible irregularities which might come to their notice in connection with this or other contracts.

## 2.19 JOINT VENTURES

2.19.1 In terms of the Supply Chain Management Policy Framework, a consortium or joint venture may, based on the percentage of the contract value managed or executed by their HDI members, be entitled to equity ownership in respect of an HDI.

2.19.2 Should this bid be submitted by a joint venture, a certified copy of the joint venture agreement **must** accompany the bid document before the closing date and time of bid. The joint venture agreement must clearly specify the percentage of the contract to be undertaken by each company participating therein.

2.19.3 A trust, consortium or joint-venture must obtain and submit a **consolidated B-BBEE Status Level Verification Certificate**. The non-submission of a consolidated B-BBEE Certificate by a company will result in preference points not being allocated to such company. Failure to submit the joint venture Agreement will result in preference points not being allocated to all companies participating in the joint venture.

## 2.20 LATE BIDS

2.20.1 Bids are late if they are received at the address indicated in the bid documents after the closing date and time.

2.20.2 A late bid shall not be considered and, where practicable, shall be returned unopened to the Bidder, accompanied by an explanation.

## 2.21 NOTIFICATION OF ADJUDICATION OF BIDDER & ADVERTISING OF RESULTS

2.21.1 Notification of the Adjudication of bid shall be in writing by a duly authorized official of the Provincial Treasury.

## **2.22 PRO RATA DECREASE OF COMPENSATION**

2.22.1 Should the services not be rendered to the satisfaction of the Department and unsatisfactory items/ aspects/ events have already, in writing, been brought to the attention of the Contractor, the Department reserves the right in terms of paragraph **2.21** hereunder, to retain payment to the Contractor for as long as the unsatisfactory service continues.

## **2.23 PROVINCIAL SUPPLIERS DATABASE**

2.23.1 A bidder submitting an offer must be registered on the Provincial Suppliers Database. A bidder who has submitted an offer and is not registered on the Provincial Suppliers Database will not be considered.

2.23.2 Each party to a Joint Venture/Consortium must be registered on the Provincial Suppliers Database at the time of submitting the bid.

## **2.24 SUBMISSIONS AND COMPLETION OF SBD 6.1**

2.24.1 Bidders are to complete SBD 6.1 document where applicable. Failure by the bidder to submit a valid B-BBEE status level verification certificate, will result in the bidder not being considered for preference points allocation. If the information required is not applicable to the business, clearly insert the symbols "N/A" in the appropriate space. If the space provided is left blank, it will be regarded as information that is still outstanding and the SBD 6.1 will not be processed further.

## **2.25 TERMINATION OF SERVICES**

2.25.1 Should the Contractor fail to meet the conditions of this contract, or continue rendering unsatisfactory service, the Employer reserves the right to terminate the contract, after written notification has been served on the Contractor, with retention of the right to recover from the Contractor any losses which the Employer may suffer/ incur as a result of the failure, without prejudicing any other rights it may have.

## **2.26 TAX CLEARANCE CERTIFICATE**

2.26.1 The original Tax Clearance Certificate must be submitted with the bid before the closing date and time of the bid. Failure to submit a valid Tax Clearance Certificate will invalidate your bid unless a valid, as at the closing date of this bid, original Tax Clearance Certificate is already in the possession of the Provincial Treasury's Supply Chain Management Unit. In this regard, a clear reference must be provided e.g. bid number.

2.26.2 Each party to a Joint Venture/Consortium must submit an original valid Tax Clearance Certificate together with the bid before the closing date and time of bid.

## **2.27 UNSATISFACTORY PERFORMANCE**

2.27.1 Unsatisfactory performance occurs when performance is not in accordance with the contract conditions.

- (i) Before any action is taken, the Department shall warn the contractor by registered/certified mail that action will be taken in accordance with the contract conditions unless the contractor complies with the contract conditions and delivers satisfactory supplies or services within a specified reasonable time (7 days minimum). If the contractor does not perform satisfactorily despite the warning the Department will:
  - (a) take action in terms of its delegated powers
  - (b) make a recommendation for cancellation of the contract concerned.

## 2.28 VALIDITY PERIOD AND EXTENSION THEREOF

2.28.1 The validity (binding) period for the bid must be **120** days from close of bid. However, circumstances may arise whereby this Department may request the bidders to extend the validity (binding) period. Should this occur, the Department will request bidders to extend the validity (binding) period under the same terms and conditions as originally tendered for by bidders. This request will be done before the expiry of the original validity (binding) period.

## 2.29 VAT

2.29.1 Bid prices must be inclusive of VAT.

2.29.2 A tax invoice shall be in the currency of the Republic of South Africa and shall contain the following particulars:

- (a) The name, address and registration number of the supplier;
- (b) the name and address of the recipient;
- (c) an individual serialized number and the date upon which the tax invoice is issued;
- (d) a description of the goods or services supplied;
- (e) the quantity or volume of the goods or services supplied;
- (f) either –(i) the value of the supply, the amount of tax charged and the consideration for the supply; or  
(ii) where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax was charged.

### Previous Experience

In terms of paragraph **2.13** the Bidder must furnish the following details of all current contracts.

- (i) Date of commencement of contract/s;
- (ii) A summary of the functions/activities that were performed as part of the contract.
- (iii) Expiry date/s;
- (iv) Value per contract; and
- (v) Contract details. That is, with whom held, phone number and address/s of the company.

### **Capacity**

In terms of paragraph 2.15 the contractor will be required to provide an efficient and effective service. Therefore, the Bidder is required to submit proof that he/she has the required capacity to execute the contract tendered for successfully. The Bidder must supply references or state his/her experience as a company to undertake the contract. References of past experience of owners/employees of new entities must accompany the bid document.

**REGISTERED ADDRESS**

The Department provides the following:

- 1. Street address as it's *domicillium citandi et executandi* in respect of any lawsuit which might result from or bears relevance to this contract, as well as for purposes of notice:

The Head: KwaZulu-Natal Provincial Treasury  
145 Chief Albert Luthuli Road  
PIETERMARITZBURG  
3201

- 2. Postal Address for correspondence

The Head: Provincial Treasury  
PO Box 3613  
PIETERMARITZBURG  
3200

- 3. The Contractor shall provide the following:

Street address as his *domicillium citandi et executandi* in respect of any lawsuit which might result from or bears relevance to this contract, as well as for purposes of notices:

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

- 4. Postal address for correspondence

.....  
.....  
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FOR VIEWING PURPOSE ONLY

## ANNEXURE A: GENERAL CONDITIONS OF CONTRACT

**DEFINITIONS:** The following terms shall be interpreted as indicated:

- (a) "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- (b) "Contract" means the written agreement entered into between the Province and the Contractor, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (c) "Contract price" means the price payable to the Contractor under the contract for the full and proper performance of his contractual obligations.
- (d) "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.
- (e) "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- (f) "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 recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- (g) "Day" means calendar day.
- (h) "Delivery" means delivery in compliance with the conditions of the contract or order.
- (i) "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- (j) "Delivery into consignees store or to his site" means delivery and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the Contractor bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- (k) "Dumping" occurs when a private enterprise abroad market its goods and services 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.
- (l) "*Force majeure*" means an event beyond the control of the Contractor and not involving the Contractor's fault or negligence and not foreseeable. Such event may include, but is not restricted to, acts of the Province in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- (m) "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.

- (n) "GCC" means the General Conditions of Contract.
- (o) "Goods" means all the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- (p) "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 Contractor 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 supplies covered by the bid will be manufactured.
- (q) "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- (r) "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- (s) "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- (t) "Project site" where applicable, means the place indicated in bidding documents.
- (u) "Province" means the procuring Department, incorporating the KwaZulu-Natal Provincial Legislature.
- (v) "Republic" means the Republic of South Africa.
- (w) "SCC" means the Special Conditions of Contract.
- (x) "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the Contractor covered under the contract.
- (y) "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

## **1. CESSION OF CONTRACTS**

- 1.1 The Contract is personal to the Contractor who shall not sub-let, assign, cede or make over the Contract or any part thereof, or any share of interest therein, to any other person without the written consent of the Province, and on such conditions as it may approve.
- 1.2 This sub-clause shall not apply to sub-contracts given to regular suppliers of the Contractor for materials and minor components relating to the goods or services supplied. The Province reserves the right to require the Contractor to submit, for noting, the names of such sub-contractors in order to ascertain their registration on the Provincial Suppliers Database and they must be legal entities.

## **2. DISCREPANCIES**

Should there appear to be any discrepancies, ambiguities or want of agreement in description, dimensions, qualities or quantities in the Contract, the Contractor shall be obliged to refer the matter to the Provinces' Representative for a decision, before proceeding to execute the Contract or part thereof in respect of which the said discrepancies, ambiguities or want of agreement appear to exist.

## **3. QUALITY AND GUARANTEE**

- 3.1 All Goods supplied shall be equal in all respects to samples, patterns or specifications where such are provided. Any changes to quality or brands will have to be approved by the Province, as this is a change to the conditions of the contract.
- 3.2 Should the Province, after the award of the Contract and/or during the manufacture of the goods specified, decide on a variation or alteration to the specification, either at the suggestion of the Contractor or otherwise, which will be to the Province's advantage, such variation or alteration shall be performed to the Province's satisfaction. Any variation in the Contract Price arising there from shall be subject to agreement between the Province and the Contractor.
- 3.3 The Contractor shall not be relieved of his obligations with respect to the sufficiency of the materials and workmanship and the quality of the Goods supplied by the reason of no objection having been taken thereto by the Province's Representative at the time the Goods were delivered.
- 3.4 The Contractor 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 Contractor 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 Contractor, that may develop under normal use of the supplied goods in the conditions prevailing in the country of the final destination.
- 3.5 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in the Special Conditions of Contract.
- 3.6 The Province shall promptly notify the Contractor in writing of any claims arising under this warranty. The Contractor shall immediately remedy the said defect free of cost to the Province. Should the Contractor delay remedial work in excess of time stipulated by the Province's representative, the Province may have such remedial work executed at the Contractor's expense. Should the Province decide that the defect is such that it cannot be remedied, the Goods may be rejected. Such rejected goods shall be held at the risk and expense of the Contractor and shall, on request of the Province, be removed by him immediately on receipt of notification of rejection. The Contractor shall be responsible for any loss the Province may sustain by reason of such action as the Province may take, in terms of this clause.
- 3.7 The risk in respect of the Goods purchased by the Province under the contract shall remain with the Contractor until such goods have been delivered to the Province.
- 3.8 The principle feature of the Goods and Work are described in the Goods or Services Information, but the Goods or Services Information does not purport to indicate every



detail of construction, fabrication or arrangements of Goods and Works necessary to meet the requirements. Omission from the Goods or Services information of reference to any part or parts shall not relieve the Contractor of his responsibility for carrying out the Work as required under the Contract.

- 3.9 If any dispute arises between the Province and the Contractor in connection with the quality and guarantee of the Goods, either party may give the other notice in writing of the existence of such dispute, and the same shall thereupon be referred to arbitration in South Africa by a person mutually agreed upon by both parties. The submission shall be deemed to be a submission to arbitration within the meaning of the terms of the arbitration laws in force in the Republic of South Africa.

#### **4. FAILURE TO COMPLY WITH CONDITIONS AND DELAYED EXECUTION**

- 4.1 If a bidder amends or withdraws his/her/their bid after the closing time but before the bidder is notified that his/her/their bid has been accepted, or when notified that his/her/their bid has been accepted, he/she/they fail/fails, within the period stipulated in the conditions of bid or such extended period as the Province may allow, to sign a contract or to provide security when requested to do so, he/she/they shall, unless the Province decides otherwise, and without prejudice to any other right which the Province may have under paragraphs 4.2 and 4.4, including the right to claim damages if a less favourable bid is accepted or less favourable arrangements are to be made, forfeit any deposit which may have been made with the bid.
- 4.2 Should the contractor fail to comply with any of the conditions of the contract, the Province shall be entitled, without prejudice to any of its other rights, to cancel the contract.
- 4.3 Upon any delay beyond the contract period in the case of a supplies contract, the Province shall, without canceling the contract, be entitled forthwith to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any supplies delivered later at the contractor's expense and risk, or forthwith to cancel the contract and buy such supplies as may be required to complete the contract, and without prejudice to its rights, be entitled to claim damages from the contractor.
- 4.4 Upon any delay beyond the contract period in the case of a service contract, the Province shall, without prejudice to any other right and without canceling the contract, be entitled forthwith to arrange the execution of the service not rendered in conformity with the contract or to cancel the contract, and without prejudice to its other rights, be entitled to claim damages from the contractor.
- 4.5 In the event of the Province availing itself of the remedies provided for in paragraph
- 4.5.1 the contractor shall bear any adverse difference in price of the said supplies services and these amounts plus any other damages which may be suffered by the Province, shall be paid by the contractor to the Province immediately on demand, or the Province may deduct such amounts from moneys (if any) otherwise payable to the contractor in respect of supplies or services rendered or to be rendered under the contract or under any other contract or any other amounts due to the contractor; or
- 4.5.2 if the Contractor fails to supply the goods or render the service within the period stipulated in the contract, the Province shall have the right, in its sole discretion, to claim any damages or loss suffered.

- 4.6 No damages shall be claimed in respect of any period of delay which the contractor can prove to be directly due to a state of war, sanctions, strikes, lockouts, damage to machinery as a result of accidents, fire, flood or tempest or act of God, which could not be foreseen or overcome by the contractor, or to any act or omission on the part of persons acting in any capacity on behalf of the Province.
- 4.7 If the delivery of the supplies or the rendering of the service is likely to be delayed or is in fact being delayed on account of any of the reasons mentioned in paragraph 4.6, full particulars of the circumstances shall be reported forthwith in writing to the Province and at the same time the contractor shall indicate the extension of the delivery period which is desired.

## **5. PATENTS**

- 5.1 The Contractor shall pay all royalties and expenses and be liable for all claims in respect of the use of patent rights, trademarks or other protected rights, and hereby indemnifies the Province against any claims arising there from.
- 8.2 The Contractor shall indemnify the Province against all third-party claims of infringement of patent, trademark, or industrial design rights arising from the use of the goods or any part thereof by the Province.

## **6. PACKAGING, MARKING AND DELIVERY**

- 6.1 All goods shall be crated, packed or battened securely in such a manner as to prevent damage during loading, transport and off-loading. Unless otherwise specified, packing cases and packing materials are included in the Contract Price, and shall be and remain the property of the Province.
- 6.2 All goods shall be clearly marked in the manner stated in the Goods or Services Information.
- 6.3 Goods shall be delivered to the address within the Province's area of jurisdiction as set out in the Special Conditions of Contract or Goods and Services Information.
- 6.4 Goods shall be delivered on Weekdays between 08:00 and 16:00, free of all charges, only when ordered upon an official letter or form of order issued by the Province. No goods will be received on Saturdays, Sundays and public holidays. This paragraph (6.4) is applicable only when not excluded in the Special Conditions of Contract.
- 6.5 Goods delivered shall in all cases be accompanied by delivery notes in duplicate, one which will be retained by the Province. The Contractor shall be responsible for the safe delivery as to the quality, quantity and condition of the goods.
- 6.6 Delivery, unless otherwise provided for in the Special Conditions of Contract, shall be affected within seven (7) days from receipt of the order. The Contractor shall advise the Province upon receipt of an order in writing of any anticipated delays, citing reasons therefore and put forward a new anticipated delivery date. The Province may then extend the delivery date, if and as it deems fit.
- 6.7 Should the Contractor fail to supply the material within the time stated in his bid, or within the extended time allowed to him in terms of clause 6.6 hereof, the Province reserves the right (after giving the Contractor seven days notice in writing) to cancel the contract and purchase the materials elsewhere and the bidder shall refund to the Province any extra cost incurred over and above the contract price. No liability shall,

however, be attached to the Contractor if delivery of materials is rendered impossible or delayed by reason of circumstances beyond the Contractor's control.

- 6.8 If the Contractor cannot produce proof satisfactory to the Province that the delay was due to circumstances beyond his control, no price increase after the due date will be recognized.
- 6.9 If at any time the Province ascertains that, due to negligence of the Contractor or for reasons beyond his control:
- 6.9.1 No work on the order has been commenced and in the opinion of the Province, there is little or no prospect of work being commenced in reasonable time;
- 6.9.2 Delivery of any materials is being or is likely to be delayed beyond the delivery date promised, and/or
- 6.9.3 There is little or no prospect of the order being completed within a reasonable time after the promised date; the Province may, by notice to the Contractor in writing, cancel as from the future date specified in such notice, the whole or any part of the order in respect of which material has not been delivered by that date without incurring any liability by reasons of such cancellation. The cases where circumstances beyond the control of the Contractor have delayed commencement or completion of the order, cancellation of the order will be effected by mutual arrangement or where this is not possible by the decision of the Province. The Contractor shall then as soon as possible after such date deliver to the Province that part of the order which has been completed, and payment is to be effected is for the part performance on a proportional basis, subject to the uncompleted part not being an integral or essential part of the contract.
- 6.10 Should a price other than an all-inclusive price be required, this shall be specified in the SCC.

## **7. CONSIGNMENT OF GOODS**

- 7.1 Goods, if delivered by Spoornet may be consigned carriage paid in the Contractor's name, care of the Province to the place of delivery stipulated, but not in the name of the State. Goods consigned to stores located in areas which Spoornet may refuse to deliver, must be done so care of a local agent or to a local depot from which they may be re-delivered by road to such stores.
- 7.2 Contractors shall arrange with Spoornet to deliver goods to the Province's stores during the hours and on the days that the stores are open.
- 7.3 The Province will not be responsible for any damage, re-delivery charges or any other charges raised by Spoornet.
- 7.4 Claims on the South African Transport Services or on any other carrier in respect of weight, quantity, damage or loss, shall be made by the Contractor.

## **8. PAYMENT**

- 8.1 The Contractor shall furnish the Province with an invoice accompanied by a copy of the delivery note upon fulfilment of other obligations stipulated in the contract.
- 8.2 Payments shall be made promptly by the Province, but in no case later than thirty days (30) days after submission of an invoice or claim by the Contractor.
- 8.3 Payments will be made in Rand unless otherwise stipulated.
- 8.4 Payments for goods are made by the Province only. Any disputes regarding late or delayed payments must be taken up with the department and if a problem persists, the Supply Chain Management Office can be requested to investigate the delays.

## **9. INVOICES**

All invoices submitted by the Contractor must be Tax Invoices indicating quantity ordered and quantity delivered, the amount of tax charged and the total invoice amount.

## **10. CONTRACT PRICE ADJUSTMENT**

- 10.1 Firm contract Prices shall not be subject to adjustment. contract prices which are not firm shall be increased or reduced by the amount of variation between the Cost to Bidder and the actual cost to the Contractor, such variations to be subject to the following conditions:-
- 10.1.1 Where the Cost to Bidder was based on a printed catalogue or list price, the variation shall be the difference between that price list and the price list actually charged. Should it transpire that the Cost to Bidder was not based on the latest available price list at the Date of Bid, the Province shall have the right to elect the price list on which any variation shall be based.
- 10.1.2 Where the Cost to Bidder was based on a quotation by the manufacturer, or where the Contractor is the manufacturer, and the Contract Price was based on the cost of materials and labour ruling at a certain date, the variation in the Contract Price shall be calculated by means of the Steel and Engineering Industries Federation of South Africa (SEIFSA) formula if this is stipulated in the Contract, or if the Province's representative considers it to be appropriate. Where the use of the SEIFSA formula is not appropriate, the variation shall be calculated by means of another formula acceptable to the Province, which shall be indicated in the Special Conditions of Contract. Only those cost increases due to wage increases prescribed by regulating measures having the force of law, or increases in the cost of materials and railage as may be proven by documentary evidence, or published data, will be considered in determining Contract Price variation.
- 10.1.3 Any difference between Rates and Charges ruling at the time of bid and those actually paid by the Contractor will be for the account of the Province. The Contract Price adjustment arising from any variation in Rates and Charges shall, in every instance, be applied to the appropriate value, or tonnage, of the Goods shipped. Where a variation in the Cost to bidder has been allowed, the contract price shall be adjusted by the product of such variation and every component of Rates and Charges which is based on the value of the Goods, whether or not the costs of such components have varied.

- 10.1.4 No claim for increased costs will be entertained if the Contractor is unable to produce documentation to substantiate Cost to Bidder and Rates and Charges on which the contract price was based and documentation to support his claim. Such documentation must, in the opinion of the Province, adequately support the Contractor's claim. No claim for increased costs to the Contractor arising from negligence on his part, or that of the manufacturer, will be considered.
- 10.1.5 The Contractor shall, in respect of every consignment or shipment of Goods delivered, supply to the Province's Representative documentary evidence of variation, if any, in Cost to Bidder and Rates and Charges.
- 10.1.6 Claims for increased cost shall be submitted with the invoice for the Goods in respect of which the claim is made, or as soon thereafter as possible. Claims shall not be considered if received more than 90 days after the expiry of the Contract unless notice of intention to claim has been given to the Province before such date.
- 10.1.7 In the event of there being no claim by the Contractor for increased costs, the Contractor shall not be entitled to full payment under the Contract before he has submitted to the Province, in his own name or in the name of the manufacturer, a certificate declaring that there have been no adjustments in the cost of manufacture which entitle the Employer to a reduction in the Contract Price as provided for in this clause.

## **11. REMEDIES IN THE CASE OF DEATH, SEQUESTRATION, LIQUIDATION OR JUDICIAL MANAGEMENT**

- 11.1 In the event of the death of a contractor or the provisional or final sequestration of his/her/their estate or of his/her/their cession or transfer of a contract without the approval of the Province or of the surrender of his/her/their estate or of his/her/their reaching a compromise with his/her/their creditors or of the provisional or final liquidation of a contractor's company/closed corporation or the placing of its affairs under judicial management, the Province may, without prejudice to any other rights it may have, exercise any of the following options :
- 11.1.1 Cancel the contract and accept any of the bids which were submitted originally with that of the contractor or any offer subsequently received to complete the contract. In such a case the estate of the contractor shall not be relieved of liability for any claim which has arisen or may arise against the contractor in respect of supplies not delivered or work not carried out by the contractor, under the contract.
- 11.1.2 Allow the executor, trustee, liquidator or judicial manager, as the case may be, for and on behalf of and at the cost and expense of the estate of the contractor to carry on with and complete the contract.
- 11.1.3 For and on behalf of and at the cost and expense of the estate of the contractor, itself carry on with and complete the contract and in that event the Province may take over and utilize, without payment, the contractor's tools, plant and materials in whole or in part until the completion of the contract.

- 11.2 Should the Province elect to act in terms of paragraph 11.1.3 it shall give notice of its requirements to the executor, trustee, liquidator or judicial manager of the contractor's estate and should the said executor, trustee, liquidator or judicial manager fail within 14 days of the dispatch of such notice to make provision to the satisfaction of the Province for the fulfillment of such requirements, or should no trustee, liquidator or judicial manager be appointed within 14 days of the occurrence mentioned in paragraph 11.1, the Province may apply any remedy open to it in terms of the contract as if a breach thereof had taken place.
- 11.3 Should the Province act in terms of paragraph 11.1.3 the contractor must leave the premises immediately and may not occupy such premises on account of retention or any other right.

## **12. LAW TO APPLY**

The Contract shall in all respects be construed in accordance with the law of the Republic of South Africa, and any difference that may arise with the law of the Republic of South Africa, and any difference that may arise between the Province and the Contractor in regard to the Contract, shall be settled in the Republic of South Africa.

## **13. OFFERING OF COMMISSION OR GRATUITY**

If the Contractor, or any person employed by him, is found to have either directly or indirectly offered, promised or given to any office bearer of the Province or person in the employ of the Province, any commission, gratuity, gift or other consideration, the Province shall have the right, summarily and without recourse to law and without prejudice to any other legal remedy which it may have in regard to any loss or additional cost or expenses, to cancel the Contract without paying any compensation to the Contractor.

## **14. PREFERENCES**

- 14.1 Should the Contractor apply for preferences in the submission of his bid, and it is found at a later stage that these applications were incorrect or made under false pretences, the Province may, at its own right:-
- 14.1.1 Recover from the Contractor all costs, losses or damages incurred or sustained by the Province as a result of the award of the Contract; and / or
  - 14.1.2 Cancel the contract and claim any damages which the Province may suffer by having to make less favourable arrangements after such cancellation.
  - 14.1.3 The Province may impose penalties, however, only if provision therefore is made in the Special Conditions of Bid.

## **15. WEIGHTS AND MEASURES**

The quantities of goods offered or delivered shall be according to South African standard weights and measures.

## **16. SECURITY**

- 16.1 Special Conditions of Contract relating to Surety/Guarantee requirement must be dealt with in strict compliance with the Conditions of Bid set out herein.
- 16.2 In respect of contracts less than R 500 000, the guarantees and sureties required may be based on a risk evaluation conducted by the Province inviting the bid.
- 16.3 No deposits are required for bid applications for contracts below R 500 000.

## **17. ORDERS**

- 17.1 Goods shall be delivered and services rendered only upon receipt of a written official order or the signing of a contract with the Province, and accounts shall be rendered as indicated on the official order or in the contract, as the case may be.
- 17.2 The Province reserves the right to call upon any Contractor during the contract period to make known the following details:
  - 17.2.1 Name of Institution placing order;
  - 17.2.2 Provincial official order number;
  - 17.2.3 Quantity ordered; and
  - 17.2.4 List of items ordered.

## **18. EXPORT LICENCES**

- 18.1 When orders are placed for goods in respect of which an export licence from the country of origin of supplies is required, the Contractor shall:
  - 18.1.1 Not incur any direct or indirect costs in connection with the supply or despatch of such supplies before he has obtained such licence;
  - 18.1.2 If the government of the country from which the supplies are to be exported refuses, or fails to grant such licence within three months of the placing of the order, the order shall be considered to be cancelled and no liability will be accepted for any loss or expenses irrespective of the nature thereof, including loss or expenditure suffered or incurred by the Contractor or any other person in respect of the production, supply, transportation or delivery of such supplies.

## **19. INSURANCE**

- 19.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
- 19.2 Any insurance policies taken out by a Contractor to cover goods delivered for a contract must be taken out with a company registered in South Africa in terms of relevant insurance and companies acts.

## 20. INSPECTION, TESTS AND ANALYSES

- 20.1 In terms of Provincial policy, inspections of a Bidder's goods and services are permitted. Bidders and Contractors must allow reasonable access to premises to officials from the department inviting the bid, or person specially appointed by the Province to carry out inspection or tests. There are two main categories: Firstly, where the bid conditions call for goods to be inspected during the contract period. Secondly, where the inspection results are to be submitted with the bid document.
- 20.2 If it is a bid condition that goods to be produced should at any stage during production or on completion be subject to inspection, the premises of the Contractor shall be open, at all reasonable hours, for inspection by a representative of the Province or of an organization acting on its behalf.
- 20.3 Inspections tests and analyses may be carried out prior to despatch in regard to such contract goods as may be deemed necessary by the Province, and the Contractor shall provide, if required, all the required facilities for the inspection, tests and analyses of the goods free of charge and shall, if required, provide all the materials, samples and labour and available apparatus which may be required for the purposes of such inspection, tests and analyses free of charge, unless otherwise specified.
- 20.4 If there are no inspection requirements in the bid documents and no mention thereof is made in the letter of acceptance, but during the contract it is decided that inspections shall be carried out, the Province shall itself make the necessary arrangements, including payment arrangements, with the testing authority concerned. The premises of the Bidder Contractor must be open and accessible at all reasonable times for the purposes of these tests.
- 20.5 If the inspection, tests and analyses show the goods or service to be in accordance with contract requirements, the cost of the inspection, tests and analyses shall be defrayed by the Province calling for such tests or analyses. Where the supplies or services do not comply with the contract, the costs shall be defrayed by the Contractor and the Province shall have the right, without prejudice to any other legal remedy it may have, to deduct such costs from payments due to the Contractor under the contract or under any other contract.
- 20.6 Goods and services which do not comply with the contract requirements may be rejected.
- 20.7 Any 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, and such rejected goods shall be held at the cost and risk of the Contractor who shall, when called upon, remove them immediately at his own cost and forthwith substitute them for goods which do comply with the requirements of the contract, failing which such rejected goods shall be returned at the Contractor's cost and risk. Should the Contractor fail to provide the substitute goods forthwith, the Province may, without giving the Contractor a further opportunity to substitute the rejected goods, purchase such supplies as may be necessary at the expense of the Contractor, for example, the transport costs and other expenses regarding the rejected goods must be refunded by the Contractor.
- 20.8 Where imported goods are to be inspected before delivery, the Contractor shall notify his suppliers abroad of the conditions applicable to inspections.
- 20.9 Provisions contained in sub-clause 20.1 and 20.8 shall not prejudice the right of the Province to cancel the contract on account of a breach of the conditions thereof.



## **21. RESTRICTION OF BIDDING**

Without prejudice on any other legal remedies, the Province may impose restrictions on a Bidder in terms of which bids to the Province will not be accepted for such period as determined by the Province. This information may be passed to other provinces or State organisations in the Republic of South Africa. These restrictions may be imposed in terms of the breach of any of the requirements to be met in terms of the accepted bid or contract. The Province may also make a restriction on a bidder from another province or State institution applicable to this Province.

## **22. CONTRACTOR'S LIABILITY**

- 22.1 In the event of the contract being cancelled by the Province in the exercise of its rights in terms of these conditions, the Contractor shall be liable to pay to the Province any losses sustained and/ or additional costs or expenditure incurred as a result of such cancellation, and the Province shall have the right to recover such losses, damages or additional costs by means of set-off from moneys due or which may become due in terms of the contract or any other contract or from guarantee provided for the due fulfilment of the contract and, until such time as the amount of such losses, damages or additional costs have been determined, to retain such moneys or guarantee or any deposit as security for any loss which the Province may suffer or may have suffered.
- 22.2 The Contractor may be held responsible for any consequential damages and loss sustained which may be caused by any defect, latent or otherwise, in supply or service rendered or if the goods or service as a result of such defect, latent or otherwise, does not conform to any condition or requirement of the contract.

## **23. PRICE LISTS**

Price lists which are part of the contract shall not be amended without the approval of the Province, unless the SCC specify otherwise.

## **24. SUBMISSION OF CLAIMS**

- 24.1 Claims must be submitted within 90 days of the delivery date of items, but the delivery date will be calculated according to the delivery period stipulated in terms of the contract, unless an extension for late delivery has been granted by the Province.
- 24.2 For period contracts, no price increase will be granted within the first 180 days of the contract period. No price increase applications which are submitted later than 90 days after the contract period has expired, will be considered. The claims shall be accompanied by documentary proof and, if required, an auditor's report sustaining the claim shall be provided.
- 24.3 Claims referring to formulae and indices must be clearly set out in terms of indices or formulae values used to calculate the bid price, and the adjusted indices or values.

## **25. PROVINCIAL PROPERTY IN POSSESSION OF A CONTRACTOR**

- 25.1 Province's property supplied to a Contractor for the execution of a contract remains the property of the Province and shall at all times be available for inspection by the Province or its representatives. Any such property in the possession of the Contractor on the completion of the contract shall, at the Contractor's expense, be returned to the Province forthwith.

- 25.2 The Contractor shall be responsible at all times for any loss or damages to the Province's property in his possession and, if required, he shall furnish such security for the payment of any such loss or damages as the Province may require.

## **26. RIGHTS TO PROCURE OUTSIDE THE CONTRACT**

- 26.1 The Province reserves the right to procure goods outside the contract in cases of urgency or emergency or if the quantities are too small to justify delivery costs, or if the goods are obtainable from another organ of Province or if the Contractor's point of supply is not situated at or near the place where the goods are required or if the Contractor's goods are not readily available.
- 26.2 No provision in a contract shall be deemed to prohibit the obtaining of goods or services from a Province or local authority.

## **27. AMENDMENT OF CONTRACT**

No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force and effect 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.

## **28. NOTICES**

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

## **29. INCIDENTAL SERVICES**

- 29.1 The Contractor may be required to provide any or all of the following services, including additional services, if any, specified in the Special Conditions of Bid:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the Contractor of any warranty obligations under this contract; and
  - (e) training of the Province's personnel, at the Contractor's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

- 29.2 Prices charged by the Contractor 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 Contractor for similar services.

### **30. USE OF CONTRACT DOCUMENTS AND INFORMATION INSPECTION**

- 30.1 The Contractor shall not, without the Province'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 Province in connection therewith, to any person other than a person employed by the Contractor in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 30.2 The Contractor shall not, without the Province's prior written consent, make use of any document or information mentioned in GCC clause 30.1 except for purposes of performing the contract.
- 30.3 Any document, other than the contract itself mentioned in GCC clause 30.1 shall remain the property of the Province and shall be returned (all copies) to the Province on completion of the Contractor's performance under the contract or so required by the Province.
- 30.4 The Contractor shall permit the Province to inspect the Contractor's records relating to the performance of the Contractor and to have them audited by auditors appointed by the Province, if so required by the Province.

### **31. SPARE PARTS**

- 31.1 If specified in SCC, the Contractor may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Contractor:
- (a) such spare parts as the Province may elect to purchase from the Contractor, provided that this election shall not relieve the Contractor of any warranty obligations under the contract.
  - (b) In the event of termination of production of the spare parts:
    - (i) Advance notification to the Province of the pending termination, in sufficient time to permit the Province to procure needed requirements; and
    - (ii) Following such termination, furnishing at no cost to the Province, the blueprints, drawings, and specifications of the spare parts, if requested.

### **32. PENALTIES**

- 32.1 Subject to GCC Clause 4, if the Contractor fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the Province 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 delayed goods or unperformed services, using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The Province may also consider termination of the contract in terms of the GCC.

### **33. ANTI-DUMPING AND COUNTERVAILING DUTIES AND RIGHTS**

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

### **34. GOVERNING LANGUAGE**

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.

### **35. TAXES AND DUTIES**

- 35.1 A foreign Contractor shall be entirely responsible for all taxes, stamp duties, licence fees, and other such levies imposed outside the Province's country.
- 35.2 A local Contractor shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the Province.
- 35.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Province must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

## SECTION B: TERMS OF REFERENCE

### APPOINTMENT OF EXTERNAL PROFESSIONAL SERVICE PROVIDER (S) TO ASSIST IN CONDUCTING INTERNAL AUDITS SERVICES AS PER INTERNAL OPERATIONAL PLANS AT VARIOUS PROVINCIAL DEPARTMENTS, MUNICIPALITIES, AND PUBLIC ENTITIES AS AND WHEN THE NEED ARISES DURING THE FINANCIAL YEARS 2014/15 to 2016/17.

#### 1. BACKGROUND

##### 1.1 The KwaZulu-Natal Provincial Internal Audit Services (PIAS)-

- is obligated to provide internal audit services, as contemplated in section 4 of the KwaZulu-Natal Internal Audit Act, 2001 (Act no. 2 of 2001), to all provincial departments, municipalities, and provincial public entities;
- provide risk and governance-related consulting services, as well as forensic investigations to provincial departments, municipalities and public entities;
- In terms of Public Finance Management Act (PFMA) and the Municipal Finance Management Act (MFMA), provide internal audit and risk management related support services to the municipalities, provincial departments , municipal entities; and
- Provide information technology (IT) and other special project management related services.

##### 1.2 The PIAS's functions include the following:

- Information Technology Audits;
- Performance Audits;
- Environmental Audits;
- Financial Audits;
- Risk management and Governance audits;
- Forensic Investigations;
- Compliance audits;
- Internal Audit technical expertise services;
- Risk Management facilitation and technical support; and
- Special Projects, e.g.
  - Review and development of fraud prevention plans;
  - Review and development of various governance related support services (e.g Business Continuity Plans (BCP) reviews, IT governance frameworks, etc.)

#### 2. OBJECTIVES

##### 2.1 The main objective of the PIAS is therefore to add value to its clients through:

- Enhanced internal audit, risk management and forensic investigation services;
- Value added internal audit and risk management technical support services; and
- Enhanced governance related support services and in particular, ensuring that these services are sufficiently extended to the public entities and municipalities where needs be.

These objectives may be achieved if the required complementary resources are accessible, particularly with regards to various specialized skills as depicted in the scope below.

#### 3. SCOPE OF WORK

##### 3.1 The following types of skills may be required by the Provincial Internal Audit Services on an "as and when needed" basis during the financial years 2014/15 to 2016/17:

Category of IA Services	Skills requirements	Description of Services required
1. System Risk based and Governance Audits	Risk and Compliance Auditors	Conduct risk and other regulatory audits, conduct PFMA ,MFMA and other Governance compliance reviews and provide training and development
2. Forensic Investigations	Forensic Investigators	Conduct forensic investigations, evaluations and assistance with the development of anti-fraud prevention strategies, Fraud

		awareness, and the provision of training and development
3. Information Technology Audits	Information Technology Auditors	Conduct Information Technology audits, provide support on computer-assisted audit techniques (CAATs) and provide training and development
4. Performance Audits	Performance Auditors	Conduct performance audits and provide training and development
5. Control Self Assessment and Risk Management	Risk Management practitioners/specialists	Assist with the review and development of risk management policies and frameworks; facilitation of risk assessments; assist with the identification of risks; assist with the risk management and governance-related training/workshops; and assist with the provision of risk management information systems.
6. Environmental Audits	Environmental Auditors	Conduct environmental audits and provide training and development
7. Consulting and Special Projects	Specialists in internal audit, project management, IT, governance related programs, etc.	Assist with the review and development of governance practices/frameworks, including business continuity plans, occupational health and safety (OHS) risk assessments, IT governance and security and any other governance related activities deemed necessary in terms of PIAS support to its clients.
8. Internal Audit Technical Services	Internal Audit Technical Specialists	Develop and implement an Internal Quality Assurance Program, IT Audit Methodology, Environmental Audit methodology, risk management methodology, review of control self assessments (CSA) Program, identify new developments in Internal Audit, develop/review an internal audit competency model and balanced scorecard or other effectiveness matrices and provide training and development.
9. Financial Audits	Financial Auditors	Financial statement reviews, review of internal financial controls.

3.2 In addition to the above requirements, service providers must maintain full support services which include the following:

- Management of resources;
- Project Management, if required;
- Guarantee of quality in the product developed and services provided; and

- Contractual control for resources supplied.

### 3.3 Transfer of skills

The plan for transfer of specialized skills should be included and that plan will be evaluated on Closure of the Project. The service provider needs to include topical, value adding areas where skills may be lacking in the profession and detail what specializations they can offer to enhance PIAS services to clients.

## 4. DELIVERABLES

The output requirement is to provide the Provincial Internal Audit Services with the necessary assistance in the form of audit reports, training workshops and sessions, manpower etc, as and when required.

## 5. COMPETENCY/EXPERTISE REQUIRED

- Knowledge and expertise in the application of the best practice audit methodologies suitable for the public sector institutions, and preferably the Provincial Internal Audit Methodology.
- A clear understanding of the dynamics of the KwaZulu-Natal Provincial Government, Local municipalities, and public entities.
- Knowledge and experience in the workings of the Government systems which include Basic Accounting System (BAS) , Personnel Salary System (PERSAL), HARDCAT, Vulindlela, and etc.
- Thorough knowledge of the PFMA, MFMA, associated regulations, practice notes, instruction notes and MFMA circulars.
- Thorough knowledge and understanding of the Government Annual Financial Statement requirements.
- Competency of specialist internal audit teams in performing various audits.
- Ability to transfer skills and expertise to Provincial Internal Auditors.
- Service providers shall provide only personnel with the required competency and skills necessary to complete the task assigned.
- Experience and expertise to undertake multi-faceted forensic audits.
- Practical knowledge and technical skills on PFMA, MFMA and other relevant public sector practices.

## 6. COMMUNICATION AND REPORTING

6.1 The successful bidder(s) will report to the Chief Audit Executive (CAE) and/or her delegated representatives in relation to various assignments, according to agreed terms as would be documented on the subsequent service level agreements or contracts.

6.2 Particular projects will be initiated by means of written instructions to the successful bidders on random basis, backed by verbal briefings where necessary.

## 7. DETAILS OF SERVICE PROVIDER'S PROPOSAL

Prospective service providers must provide information in the under-mentioned sequence and in not more than 10 (ten) pages:

- Company/Individual profile.
- Approach and methodologies to be applied in various projects/service lines (refer to scope).
- Similar assignments undertaken, contactable references, nature of assignment, duration, value and number of persons developed as a result of assignments, as well as availability of resources when required
- Profile of various specialists as depicted on the scope above.

## 8. CONDITIONS

Proposals may be submitted for any or all of the categories indicated in the scope above. Responses should, however, clearly indicate which category the bidder is responding to and include the following:

- 8.1 A response to each of the elements in the evaluation matrix of not more than ten (10) pages per element including annexure(s), if any.
- 8.2 Where an entity forms a joint venture or a consortium with (an) other entities(y), the parties to this agreement must express in the bid proposal what aspect of the scope of work each party would be adding value to and what percentage each party will receive in terms of the proceeds flowing from any assignment.
- 8.3 The successful bidder(s) will enter into a contractual agreement(s) with the Provincial Treasury confirming the appointment on the list of service providers.
- 8.4 Proposals should also clearly indicate how bidders intend to transfer skills to the Provincial Internal Audit staff. This should particularly indicate how this was done in previous assignments.
- 8.5 As and when assignments are agreed upon, the Provincial Treasury will stipulate the rates to be paid per consultant in terms of experience, preferably separate between trainee, junior, middle, and senior consultants. The Bidder is required to specifically indicate its acceptance of this condition.**
- 8.6 The bidder's staff compliment **must** address the demographics of the country in line with government policies, and must provide evidence that it is complying with transformation in terms of Broad Based Black Economic Empowerment (B-BBEE)
- 8.7 Payment will only be made upon approved deliverables. The Consultant should note that no payment will be made should the Department not be satisfied with the standard of deliverables.

## 9. BRIEFING SESSION

A briefing session will be held as follows:

Venue: 121 Chief Albert Luthuli Street, Pietermaritzburg (corner of Chief Albert Luthuli and Pietermaritz Street) Trizon Towers, 3<sup>rd</sup> floor, Room 3-10.

Date: 13 May 2014

Time: 09h00

The briefing session is compulsory. A bid (s) received from a non-attending bidder, will be disqualified and will not be considered for appointment on the list. Where a joint venture or a consortium is bidding at least one of the members should have attended.



## 10. EVALUATION CRITERIA

10.1 The Provincial Treasury reserves the right not to accept any bid or part of bids, as the information outlined in the evaluation matrix table below will play a major role when evaluating this bid.

10.2 Prospective bidders will be rated on functionality requirements in accordance with the following matrix.

**NB Once on the list of service providers the evaluation criteria for awarded assignments will be provided in the Terms of Reference for the actual services required and will include price.**

Prospective bidders will be rated from the scale of 0-3 as follows:

0 = non response

1 = poor

2 = good

3 = excellent

**MATRIX FOR EVALUATION (70% Threshold)**

No.	Elements	0	1	2	3	Weights	Total
1.	Company Profile					2	
2.	Approach and Methodology					10	
3.	Similar assignments undertaken					17	
4.	Demonstrable capabilities of various audit specialists					16	
	<b>Functionality</b>					<b>45</b>	

**NOTE:** In order to ensure meaningful evaluation, bidders must submit detailed information in substantiation of the evaluation criteria mentioned.

**NOTE:** Preference Points will only be applicable as and when projects/assignments are to be awarded.

## 11. CONTACT PERSON FOR TECHNICAL ENQUIRIES

Should there be any enquiries, please direct them to the following person:

Ms M Motaung

Senior General Manager IA

Provincial Treasury

Pietermaritzburg

Tel (033) 897 4309

Fax (033) 897 4562

Mobile 082 375 7408

E-mail [motlalepula.motaung@kzntreasury.gov.za](mailto:motlalepula.motaung@kzntreasury.gov.za)

### INDEMNITY UNDERTAKING

I/We \_\_\_\_\_ (insert Service Providers name) hereby indemnifies and hold the Kwa Zulu Natal Government harmless in respect of all costs that may be incurred by me/us for the submission or performance of this bid.

I/We further indemnify the KwaZulu Natal Government in respect of all legal and other expenses as they are incurred by the KwaZulu Natal Government in examining, resisting or settling any damages, injuries or loss that may be occasioned by work necessary in terms of this bid.

\_\_\_\_\_  
Witness :

\_\_\_\_\_  
Signature of authorised person to sign the bid.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name

FOR VIEWING PURPOSE ONLY

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

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

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

### 1. GENERAL CONDITIONS

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

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

1.2 The value of this bid is estimated to exceed R1 000 000 (all applicable taxes included) and therefore the **90/10 system** shall be applicable.

1.3 Preference points for this bid shall be awarded for:

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

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

	POINTS
<b>1.3.1.1 PRICE</b>	<b>90</b>
<b>1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	<b>10</b>
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

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

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

## 2. DEFINITIONS

- 2.1 “**all applicable taxes**” includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 2.2 “**B-BBEE**” means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 2.3 “**B-BBEE status level of contributor**” means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 2.4 “**bid**” means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- 2.5 “**Broad-Based Black Economic Empowerment Act**” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.6 “**comparative price**” means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- 2.7 “**consortium or joint venture**” means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- 2.8 “**contract**” means the agreement that results from the acceptance of a bid by an organ of state;
- 2.9 “**EME**” means any enterprise with an annual total revenue of R5 million or less .
- 2.10 “**Firm price**” means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 “**functionality**” means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 “**non-firm prices**” means all prices other than “firm” prices;
- 2.13 “**person**” includes a juristic person;
- 2.14 “**rand value**” means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 “**sub-contract**” means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.16 “**total revenue**” bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- 2.17 “**trust**” means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.18 “**trustee**” means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

### 3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

### 4. POINTS AWARDED FOR PRICE

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

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

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

Where

- $P_s$  = Points scored for comparative price of bid under consideration
- $P_t$  = Comparative price of bid under consideration
- $P_{\min}$  = Comparative price of lowest acceptable bid

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

- 5.1 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)
1	10
2	9

3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

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

## 6. BID DECLARATION

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

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

7.1 B-BBEE Status Level of Contribution: ..... = .....(maximum of 10. points)

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

**8 SUB-CONTRACTING**

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

8.1.1 If yes, indicate:

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

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

9.1 Name of company/firm ..... :

9.2 VAT registration number :

9.3 Company registration number .....  
:

9.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

9.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

9.7 Total number of years the company/firm has been in business? .....

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

- (i) The information furnished is true and correct;

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

**WITNESSES:**

1. ....

.....  
SIGNATURE(S) OF BIDDER(S)

2. ....

DATE: .....

ADDRESS: .....

.....

.....



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

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

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's database as companies or persons prohibited from doing business with the public sector?  <b>(Companies or persons who are listed on this database were informed in writing of this restriction by the National Treasury after the <i>audi alteram partem</i> rule was applied).</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? <b>To access this Register enter the National Treasury's website, <a href="http://www.treasury.gov.za">www.treasury.gov.za</a>, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445.</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

**CERTIFICATION**

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

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

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

.....  
**Signature**

.....  
**Date**

.....  
**Position**

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

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**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Standard Bidding Document (SBD) must form part of all bids<sup>1</sup> invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
  - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
  - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD 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 (SBD 9) must be completed and submitted with the bid:

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

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

### CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

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(Bid Number and Description)

in response to the invitation for the bid made by:

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(Name of Institution)

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

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

(Name of Bidder)

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

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

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

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

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

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