



## **DITSOBOTLA LOCAL MUNICIPALITY**

REQUEST FOR PROPOSALS: PANEL OF ATTORNEYS ON  
LITIGATIONS, LABOUR RELATED MATTERS,  
CONVEYANCERS AND CONTRACTS

**BID NUMBER: DLM/SCM/42/2017**



**INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR THE REQUIREMENTS OF DITSOBOTLA LOCAL MUNICIPALITY

**BID NUMBER** DLM/SCM/42/2017

**CLOSING DATE** 03 MARCH 2017

**CLOSING TIME:** 12H00

**SERVICE DESCRIPTION:** REQUEST FOR PROPOSALS: PANEL OF ATTORNEYS ON LITIGATIONS, LABOUR RELATED MATTERS, CONVEYANCERS AND CONTRACTS

**The successful bidder will be required to fill in and sign a written Contract Form (MBD 7.2)**

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

Ditsobotla Local Municipality  
Civic Centre  
Nelson Mandela Drive  
**LICHTENBURG**  
2740

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

The bid box is open between 08h00 and 16h00 from Monday to Friday.

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

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

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

NAME OF BIDDER .....

POSTAL ADDRESS .....

STREET ADDRESS .....

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

CELLPHONE NUMBER .....

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

E-MAIL ADDRESS .....

VAT REGISTRATION NUMBER.....

HAS AN ORIGINAL AND VALID TAX CLEARANCE BEEN SUBMITTED? (MBD 2) YES or NO

HAS A B-BBEE STATUS LEVEL CERTIFICATE BEEN SUBMITTED? (MDB 6.1) YES or NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

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

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

A REGISTERED AUDITOR .....

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

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS/SERVICES/WORKS OFFERED? **YES/NO  
(IF YES ENCLOSE PROOF)**

SIGNATURE OF BIDDER .....

DATE .....

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

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

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ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:

SUPPLY CHAIN MANAGEMENT UNIT  
**CONTACT PERSON:** MRS. AOBAKWE SEKESE  
TEL: 018 633 3800

**TAX CLEARANCE REQUIREMENTS**

IT IS A CONDITION OF BIDDING THAT -

1. The taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with the Receiver of Revenue to meet his / her tax obligations.
2. The attached form "Application for Tax Clearance Certificate (in respect of bidders)", must be completed in all respects and submitted to the Receiver of Revenue where the bidder is registered for tax purposes. The Receiver of Revenue will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of twelve (12) months from date of issue. This Tax Clearance Certificate must be submitted in the original together with the bid. Failure to submit the original and valid Tax Clearance Certificate may invalidate the bid.
3. In bids where Consortia / Joint Ventures / Sub-contractors are involved each party must submit a separate Tax Clearance Certificate. Copies of the Application for Tax Clearance Certificates are available at any Receiver's Office.

MBD2/ Application for tax Certificate...

**APPLICATION FOR TAX CLEARANCE CERTIFICATE  
(IN RESPECT OF BIDDERS)**

1. Name of taxpayer / bidder: .....

2. Trade name: .....

3. Identification number: 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

4. Company / Close Corporation registration number: 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

5. Income tax reference number: 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

6. VAT registration number (if applicable): 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

7. PAYE employer's registration number (if applicable): 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Signature of contact person requiring Tax Clearance Certificate: .....

Name: .....

Telephone number: Code:..... Number: .....

Address: .....

.....

.....

DATE: 20\_\_\_\_ / \_\_\_\_ / \_\_\_\_

PLEASE NOTE THAT THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE (SARS) WILL NOT EXERCISE HIS DISCRETIONARY POWERS IN FAVOUR OF ANY PERSON WITH REGARD TO ANY INTEREST, PENALTIES AND / OR ADDITIONAL TAX LEVIABLE DUE TO THE LATE- OR UNDERPAYMENT OF TAXES, DUTIES OR LEVIES OR THE RENDITION RETURNS BY ANY PERSON AS A RESULT OF ANY SYSTEM NOT BEING YEAR 2000 COMPLIANT.

ATTACH TAX CLEARANCE CERTIFICATE ISSUED BY THE SOUTH AFRICAN REVENUE SERVICES

## **TERMS OF REFERENCE FOR THE APPOINTMENT OF A PANEL OF ATTORNEYS FOR DITSOBOTLA LOCAL MUNICIPALITY ON AN AS AN WHEN BASIS FOR A PERIOD OF 36 MONTHS**

### **1. OBJECTIVE**

The objective of the specification is to appoint a suitable, qualified, and competent panel of attorneys to provide legal services to Ditsobotla Local Municipality, as and when required.

### **2. SCOPE OF WORK**

The successful firm of attorneys constituting the panel will be required to render legal services to Ditsobotla Local Municipality in, but not limited to, the following areas:

- *Public Law* - Constitutional and Administrative law with a focus on the Constitution of the Republic of South Africa, 1996 and all other legislation and prescripts relevant to the mandate, powers and functions of Ditsobotla Local Municipality, the Local Government: Finance Management Act 56 of 2003, and Treasury Regulations and Directives.
- *Labour Law* - With a focus on labour disputes, disciplinary inquiries, matters referred to the CCMA, litigation in the Labour Court, and contracts of employment.
- *Laws of Contract* - drafting and vetting of contracts.
- Litigation by and against Ditsobotla Local Municipality in the Magistrates Court, High Court, Supreme Court of Appeal, Constitutional Court, CCMA, Equality Court etc.

The successful firms of attorneys:

### **3. REQUIREMENT AND CONDITIONS**

3.1. The successful firms of attorneys are required to:

- 3.1.1. Have been in practice as a firm of attorneys for at least ten years;
- 3.1.2. Submit a detailed profile of the firm, including proof of qualifications, admissions as attorney, and experience of the key personnel that will be involved;
- 3.1.3. Demonstrate their experience in dealing with the scope of work as contained in this tender document by the submission of at least three reference letters from clients to whom the firm has provided such legal services in the past five years;
- 3.1.4. Submit a certified copy of the Fidelity Fund Certificate issued in terms of the Attorneys Act, 1979;
- 3.1.5. Submit a letter of good standing with the relevant Law Society of South Africa relating to the firm and the individual attorneys that will be involved;
- 3.1.6. Provide the details of the firm's locality, infrastructure and resources, and confirmation of premises from which it conducts its business.

3.2. The successful firms of attorney shall communicate directly to the Municipal Manager for any legal services required.

- 3.3. The successful firms of attorneys will be required to provide Ditsobotla Local Municipality with a breakdown of the fees to be charged by counsel in advance, i.e. before counsel is briefed.
- 3.4. The successful firm of attorneys is expected to disclose to Ditsobotla Local Municipality any conflict of interest that may have an impact on them providing any of the legal services referred to in this specifications, irrespective of when it may arise.
- 3.5. The successful firms of attorneys will be appointed for a period of three years and will be requested to provide legal services to Ditsobotla Local Municipality as and when the need arises.

#### 4. DELIVERY ADDRESS

The service will be rendered at the below indicated address:

Ditsobotla Local Municipality  
Civic Centre  
Cnr. Nelson Mandela Drive & Transvaal Street  
**LICHTENBURG**

#### 5. PRICING

- 5.1. The successful firms of attorneys have to indicate its fees in an hourly rate (VAT inclusive) and should differentiate between fees for candidate, junior and senior attorneys, associates, partner's professional assistants, and other staff. The escalation rate of fees must also be provided.
- 5.2. All prices and fees must be in South African Rand and inclusive of VAT.  
**Complete MDB 3.3. and indicate your budget breakdown on a separate page.**

#### 6. SUBMISSION REQUIREMENTS

The following must be included as part of the tender document:

Item	Description
1	Original certified copy of the Fidelity Fund Certificate issued in terms of the Attorneys Act, 1979.
2	Original certified Proof of registration with Law Society.
3	Original certified copy of letter of good standing with the relevant Law Society of South Africa not older than six months.
4	Completion of all the MBD forms and all mandatory documents (e.g. Original valid Tax Clearance Certificate).
5	Original certified copies of the firms CIPC registration documents listing all members.

- 6.1.1. Bidders that do not meet these minimum requirements at this above phase will be regarded as non-responsive and will not be evaluated further.
- 6.1.2. The above phase does not have any weighting. Bidders will be automatically disqualified if any MBD documents are not completed or submitted or any other mandatory requirements are not complied with.



## 6.2. PHASE 2: EVALUATION CRITERIA ON FUNCTIONALITY

6.2.1. Tenders will be evaluated based on functionality, which has been allocated a total of 100 points.

6.2.2. Bidders must score at least 60 points out 100 points on functionality to be considered to phase three. Bidders who score less than 60 points for phase two will be disqualified and will not be considered for phase three.

6.2.3. The following scale will be used to rate this sub criterion on the score sheet:

1	2	3	4	5
Poor	Average	Good	Very Good	Excellent

6.2.4. The criteria below will be applied to evaluate functionality:

Criteria	Weight
Experience of the bidder for each selected category mentioned below <ul style="list-style-type: none"> <li>• Public Law</li> <li>• Conveyancing</li> <li>• Constitutional Law</li> <li>• Labour Law</li> <li>• Corporate Law</li> <li>• Law of Contract</li> <li>• Litigation by and against Ditsobotla Local Municipality</li> </ul>	20
Detailed CVs of members who will be directly involved in providing the required services. The team members must have at least five years' experience in the above mentioned categories.	15
Detailed firm's profile including proof of qualifications, admission as attorneys and experience of the individuals that will be involved in rendering the service	20
Provide details of the firm's locality, infrastructure and confirmation of the premises from which it conducts its business.	15
Demonstration of experience in dealing with the scope of work referred to in the specification by providing at least three reference letters from clients to whom the firm has provided such legal services in the past five years.	30
<b>Total Functionality Score</b>	<b>100</b>
<b>Threshold</b>	<b>60</b>

## 6.3. PHASE 3: PRICE AND B-BBEE

Price	90
BBBEE Original certified copy of the BBBEE rating certificate issued by the accredited verification agency must be attached	10

### 6.3.1. Points awarded for Price

90/10 Preference Point Systems

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

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

Where

Ps = Points scored for comparative price of bid under consideration  
 Pt = Comparative price of bid under consideration  
 Pmin = Comparative price of the lowest acceptable bid

### 6.3.2. Points awarded for BBBEE Status Level of Contribution

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

<b>BBBEE Status Level of Contribution</b>	<b>Number of Points (90/10 system)</b>	<b>Number of Points (80/20 system)</b>
1	10	20
2	9	18
3	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

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.

Bidders other than EMEs submit their original and valid B-BBEE Status Level Verification Certificates 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.

## 7. DOCUMENT SUBMISSION INSTRUCTION

7.1. All bids documents must be deposited into Bid/Tender box situated at Ditsobotla Local Municipality, on or before 3 March 2017, at 12h00 at the following address:

Ditsobotla Local Municipality  
 Civic Centre  
 Nelson Mandela Drive  
 First Floor, Office Number 12  
**LICHTENBURG**

7.2. Bid documents should be marked for attention: Supply Chain Management and deposited into Tender Box at Room 2, First Floor, Civic Centre.

PRICING SCHEDULE

<b>NAME OF BIDDER:</b> .....	<b>BID NUMBER:</b> DLM/SCM/42/2017
<b>CLOSING TIME:</b> 12H00	<b>CLOSING DATE:</b> 3 MARCH 2017

OFFER TO BE VALID FOR 120 DAYS FROM THE CLOSING DATE OF THE BID.

ITEM NO	DESCRIPTION	BID PRICES IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
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**THE APPOINTMENT OF A PANEL OF ATTORNEYS FOR DITSOBOTLA LOCAL MUNICIPALITY FOR A CONTRACTUAL PERIOD OF THREE YEARS**

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

R.....

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

4. PERSON AND POSITION

HOURLY RATE

DAILY RATE

..... R.....

..... R.....

..... R.....

..... R.....

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

..... R.....days

..... R.....days

..... R.....days

- 5.1 Travel expenses (specify, for example rate/km, class of air-travel etc.). Only actual costs recoverable. Proof of the expenses incurred must accompany certified invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
			R.....
			R.....
			R.....
			R.....
<b>TOTAL</b>			<b>R.....</b>

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

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
			R.....
			R.....
			R.....
			R.....
<b>TOTAL</b>			<b>R.....</b>

6. Period required for commencement with project after acceptance of bid .....
7. Estimated man-days for completion of the project .....
8. Are the rates quoted firm for the full period of contract? YES/NO
9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index. ....  
 ....  
 .....
10. Total Bid Price

**DECLARATION OF INTEREST**

**MDB4**

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

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

- 3.1 Full Name of Bidder or his representative: .....
- 3.2 Identity Number: .....
- 3.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>): .....
- 3.4 Company Registration Number: .....
- 3.5 Tax Reference Number: .....
- 3.6 VAT Registration Number: .....
- 3.7 The names of all directors/trustees/shareholder members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.
- 3.8 Are you presently in the service of the state? **YES / NO**
  - 3.8.1 If yes, furnish particulars .....
- 3.9 Have you ever been in the service of the state in the past twelve months? **YES / NO**
- 3.10 Do you have any relationship with any person (family, friend, other) in the service of the state and who may be involved with evaluation and adjudication of this bid?  
**YES/ NO**

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

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

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

3.10.1 If yes, furnish particulars .....

.....

3.11 Are you aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved in the evaluation and adjudication of this bid?

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

3.12.1 If yes, furnish particulars .....

.....

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

3.13.1 If yes, furnish particulars .....

.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract? **YES / NO**

3.14.1 If yes, furnish particulars .....

.....

4. Full Details of directors / trustees / members / shareholders:

Full Names	Identity Number	State Employee Number

.....  
**SIGNATURE**

.....  
**DATE**

.....  
**CAPACITY**

.....  
**NAME OF BIDDER**

**DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES****MBD8**

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

<b>Item</b>	<b>Question</b>	<b>Yes</b>	<b>No</b>
4.1	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</p>	<p><b>Yes</b></p> <input type="checkbox"/>	<p><b>No</b></p> <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities (Act 12 of 2004)?</p> <p>The Register of Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</p>	<p><b>Yes</b></p> <input type="checkbox"/>	<p><b>No</b></p> <input type="checkbox"/>

Item	Question	Yes	No
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption in the past five years?	<b>Yes</b> <input data-bbox="1166 488 1232 539" type="checkbox"/>	<b>No</b> <input data-bbox="1318 488 1383 539" type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three years?	<b>Yes</b> <input data-bbox="1166 775 1232 826" type="checkbox"/>	<b>No</b> <input data-bbox="1318 775 1383 826" type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	<b>Yes</b> <input data-bbox="1166 1099 1232 1151" type="checkbox"/>	<b>No</b> <input data-bbox="1318 1099 1383 1151" type="checkbox"/>
4.5.1	If so, furnish particulars:		

**CERTIFICATION**

I, the undersigned (full names) ..... certify that the information furnished on this declaration form true and correct.

I accept that in addition to cancellation of a contract, action may be taken against me should this declaration prove to be false.

.....  
**Signature**

.....  
**Date**

.....  
**Position**

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



**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

**MDB 9**

1. This Municipal Bidding Document must form part of all bids<sup>3</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 a an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging)<sup>4</sup>. Collusion bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
3. Municipal Supply Chain Regulation 38(1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
  - (a) Take all reasonable steps to prevent such abuse;
  - (b) Reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
  - (c) Cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
4. This MDB serves as a certificate of declaration that would be used by institutions to ensure that, when bidders 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 (MBD9) must be completed and submitted with the bid:

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<sup>3</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.

<sup>4</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 / services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned in submitting the accompanying bid:

.....

**(Bid Number and Description)**

in response to the invitation for the bid made by:

.....

**(Name of Municipality/Municipal Entity)**

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

I certify on behalf of: ..... that:

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 authorised 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 authorised 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 organisation, 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 or 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>5</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 agreement 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 submit, a bid;
  - (e) the submission of a bid that do not meet the specifications and conditions of the bid; or
  - (f) the bidding with the intention of not winning the bid.

<sup>5</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 the contract.

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 product 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 the awarding of the contract.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat 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 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**

## GOVERNMENT PROCUREMENT

### GENERAL CONDITIONS OF CONTRACT

#### NOTES

The purpose of this document is to:

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

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

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

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## General Conditions of Contract

### 1. Definitions

The following terms shall be interpreted as indicated:

- 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7 "Day" means calendar day.
- 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
- 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.

- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

## **2 Application**

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

## **3 General**

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

#### **4 Standards**

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

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

- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

#### **6 Patent rights**

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

#### **7 Performance security**

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



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

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Ditsobotla Local Municipality or an organization acting on behalf of the municipality.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

## **9. Packing**

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

## **10. Delivery and documents**

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

## **11. Insurance**

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

## **12. Transportation**

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

## **13. Incidental services**

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
  - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

## **14. Spare parts**

- 14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
  - (b) in the event of termination of production of the spare parts:
    - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and

- (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

## **15. Warranty**

- 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

## **16. Payment**

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

## **17. Prices**

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

## **18. Contract amendments**

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

## **19. Assignment**

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

## **20. Subcontracts**

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

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

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

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

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

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

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

## **22. Penalties**

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum

calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

### **23. Termination for default**

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

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

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

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

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

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

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

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

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

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's

name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

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

24.1 When, after the date of bid, provisional payments are required, or antidumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase.

When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

#### **25. Force Majeure**

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

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

#### **26. Termination for insolvency**

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

#### **27. Settlement of Disputes**

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

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

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

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

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

- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier.

## **28. Limitation of liability**

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

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

## **29. Governing language**

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

## **30. Applicable law**

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

## **31. Notices**

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

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

## **32. Taxes and duties**

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

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

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted

by the bidder. This certificate must be an original issued by the South African Revenue Services.

**33. National Industrial Participation (NIP) Programme**

33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

General Conditions of Contract (revised February 2008)