



## MARULENG LOCAL MUNICIPALITY

**BID NO: MLM/SCM/32/2022**

**BID DESCRIPTION: APPOINTMENT OF AN INVESTOR OR INVESTOR OPERATOR TO TO DEVELOP PROPERTY IN MARULENG LOCAL MUNICIPALITY ON A BUILD, OPERATE AND TRANSFER MODEL (5000 MIXED HOUSING DEVELOPMENT, 1000 STUDENT ACCOMMODATION UNITS, COMMERCIAL PROPERTY AS WELL AS SUPPORTING INFRASTRUCTURE) **DECEMBER 2022****

ISSUED BY:

SUPPLY CHAIN MANAGEMENT OFFICE

MARULENG MUNICIPALITY  
P O BOX 627  
HOEDSPRUIT  
1380

MUNICIPAL MANAGER  
NS HOAEANE

<b>NAME OF TENDERER</b>	
<b>ADDRESS</b>	
<b>CSD NUMBER</b>	
<b>FAX OR EMAIL</b>	
<b>TOTAL BID PRICE</b>	

<b>INDEX</b>		
<b>Part</b>	<b>Description</b>	<b>Page</b>
1.	Details of bidder	3
2.	Advert	4
3.	Form of tender and declaration	5
4.	Contract Form	6-7
5.	Terms of Reference	8-10
6.	Price Schedule	11
7.	Evaluation Criteria	12-13
8.	Conditions of tender	14-16
9.	General Conditions of Contract	17-26
10.	Preference point system claim form	27-33
11.	Declaration of interest	34-35
12.	Declaration certificate for local production and content for designated sectors	36
13.	Declaration of procurement above 10 million(VAT included)	37
14.	Declaration of bidder's past supply chain management practices	38-39
15.	Certificate of independent bid determination	40-43
16.	Authority to sign the bid document	44
17.	Track Record of Tendering entity	45
18.	Company registration certificate	46
19.	Tax clearance certificate	47
20.	Company profile	48
21.	Valid BBBEE status level verification certificate	49
22.	Proof of payment of municipal rates and taxes(company and Directors)	50
23.	Proof of CSD (central supplier database) registration	51
24.	Maruleng Local Municipality Banking details	52

**PLEASE NOTE:**

- Each page of the tender document and schedules thereto must be initialled by the relevant authorized person in order for the document to constitute a proper contract between the Municipality and the Tenderer.
- On acceptance of the tender by the Municipality, the forms and schedules attached hereto shall be deemed to be the Conditions of Contract between the parties.
- Failure to complete all blank spaces in the forms and to attend to the other details mentioned therein may render the tender liable to rejection.

**(1) DETAILS OF BIDDER**

FULL NAMES	
COMPANY/ENTERPRISE REGISTRATION NO. OR ID NO.	
POSTAL ADDRESS	
PHYSICAL ADDRESS	
TELEPHONE NO.	
CELL NO. OF CONTACT PERSON	
FAX NO.	
E-MAIL ADDRESS	
CONTACT PERSON	
VAT REGISTRATION NO.	

## (2) ADVERT



**BID DESCRIPTION: APPOINTMENT OF AN INVESTOR OR INVESTOR OPERATOR TO DEVELOP PROPERTY IN MARULENG LOCAL MUNICIPALITY ON A BUILD, OPERATE AND TRANSFER MODEL (5000 MIXED HOUSING DEVELOPMENT, 1000 STUDENT ACCOMMODATION UNITS, COMMERCIAL PROPERTY AS WELL AS SUPPORTING INFRASTRUCTURE)**  
**BID NUMBER: MLM/SCM/32/2022**

Maruleng Municipality hereby invites quotations from prospective suppliers for the supply and delivery of Office Furniture. Tender documents containing conditions of Tender will be available as from **13 December 2022 at** Maruleng Local Municipality, Finance Department, 65 Springbok Street, at Hoedspruit. A non-refundable payment of **R500.00** will be charged for each set of documents issued or downloaded. Complete tender documents, fully completed in **BLACK INK**, priced and signed, must be sealed in an envelope clearly marked **“Tender No and Name of the Project”** must be deposited in the Tender Box at No. 65 Springbok Street, Hoedspruit, the Finance Department at the above physical address, by no later than **11:00** on the **30 January 2023**.

Maruleng Local Municipality is not compelled to accept the lowest or any tender. No late, faxed or telephonic tenders will be accepted.

### **Compulsory submissions:**

- Company Registration Certificate
- Valid Tax Clearance or Tax Pin
- Company Profile
- Proposal
- Verified annual financial statements
- Proof of Fund(s) – This is a letter from a bank or asset management company or a licensed funder or copy of bank statement and balance that we use to verify that the bidder has the funds.
- Certified identity copies of Directors
- Complete Authority to sign tender document
- Joint Venture Agreement (where applicable)
- Valid B-BBEE Status Level Verification Certificate or Sworn Affidavit
- Letter of good standing (COIDA)
- Proof of recent Central Suppliers Database not older than 3 months.
- Recent Municipal Statement of account / rates and taxes (not older than 3 months) for the **company and all directors** not in arrears for more than **90 days** or lease agreement with a recent rental invoice/statement must be attached. Attention is drawn to the “Clearance Certificate for Municipal Account”. The Clearance Certificate must be completed by the Municipality where the business resides or the Landlord in case of a tenant. Lease agreement must also be attached and is the responsibility of the bidder to ensure that the “Clearance Certificate for Municipal Accounts” is completed in full and stamped by the landlord.
- Bidder must attach proof of payment for the tender document issued by the Municipality or Downloaded.

Enquiries related to this tender must be addressed to **Ms. NS Hoesane** During office hours, Monday to Friday between 7h00 and 16h00 at 015 5901650

**NS HOEANE**  
**MUNICIPAL MANAGER**

**(3) FORM OF TENDER AND DECLARATION**

**TENDER NO: MLM/SCM/32/2022**

**TENDER: APPOINTMENT OF AN INVESTOR OR INVESTOR OPERATOR TO TO DEVELOP PROPERTY IN MARULENG LOCAL MUNICIPALITY ON A BUILD, OPERATE AND TRANSFER MODEL (5000 MIXED HOUSING DEVELOPMENT, 1000 STUDENT ACCOMMODATION UNITS, COMMERCIAL PROPERTY AS WELL AS SUPPORTING INFRASTRUCUTURE)**

DECLARATION:

To: The Municipal Manager  
MARULENG MUNICIPALITY  
PO BOX 627  
HOEDSPRUIT  
1380

Sir

I/We, the undersigned:

- a) Tender to supply to Maruleng Municipality all of the services described both in this and the other forms and schedules to this tender.
- b) Agree that we will be bound by the specifications, prices, terms, conditions and proposals stipulated in the schedules attached to this tender document, regarding delivery and execution.
- c) Confirm that this tender may only be accepted by the MARULENG Municipality by way of a duly authorized Letter of Acceptance.
- d) Declare that we are fully acquainted with the schedules and the contents thereof and that we have signed the schedules, attached hereto
- f) Declare that each page of the tender document and amendments thereto will be initialled by the relevant authorized person in order for the document to constitute a proper contract between the Maruleng Municipality and the undersigned, on acceptance of the tender by Maruleng Municipality.

Signed at ..... on this ..... day of ..... 2023

Signature of Tenderer .....

Name of Tender .....

As Witnesses:

1. Signature ..... Name in full .....

I.D. No .....

2. Signature..... Name in full .....

I.D. No .....

**Where the Tenderer is a Company, Corporation or Firm a duly authorized resolution must accompany the tender**



**(4) CONTRACT FORM**

**SECTION 1 (TO BE FILLED IN BY THE BIDDER)**

Tender number \_\_\_\_\_ Tender  
Amount \_\_\_\_\_

Company/Entity Registered Name:  
.....

Registration  
Number:.....

**AND WHO IS** represented herein by: (full names of signatory)

duly authorised to act on behalf of the Tender in his capacity as:(title)

**HEREBY AGREES THAT** by signing the Contract Form, the Bidder:

1. confirms that it has examined the documents listed in the Index and has accepted all the Conditions of Tender;
2. confirms that it has satisfied itself as to the correctness and validity of the tender; that the price(s) and rate(s) quoted cover all the goods and/or services specified in the tender documents; that the price(s) and rate(s) cover all its obligations and accepts that any mistakes regarding price(s), rate(s) and calculations will be at its own risk;
3. offers to supply all or any of the goods and/or render all or any of the services described in the tender document to Maruleng Municipality in accordance with the: 3.1 terms and conditions stipulated in this tender document;  
3.2 specifications stipulated in this tender document; and  
3.3 at the price reflected in the tender document
4. agrees that the following documents shall form the Contract between the parties in the event that the Tenderer is successful:
  - 4.1 Price Schedule.
  - 4.2 Specification
  - 4.3 All Declarations
  - 4.4 General Conditions of Contract; and
  - 4.5 Special Conditions of Contract
5. accepts full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on it in terms of this Contract.

SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF  
\_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Print name(s):  
On behalf of the Bidder (duly authorised)

<b>WITNESSES</b>	
1	.....
2.	.....
DATE: .....	



**SECTION 2 (TO BE FILLED IN BY MARULENG MUNICIPALITY)**

By signing this *Contract Form* Maruleng Municipality (also referred to as the 'Purchaser'):

1. accepts your bid under reference number **MLM/SCM/32/2022** awarded on the \_\_\_\_\_ for **APPOINTMENT OF AN INVESTOR OR INVESTOR OPERATOR TO TO DEVELOP PROPERTY IN MARULENG LOCAL MUNICIPALITY ON A BUILD, OPERATE AND TRANSFER MODEL (5000 MIXED HOUSING DEVELOPMENT, 1000 STUDENT ACCOMMODATION UNITS, COMMERCIAL PROPERTY AS WELL AS SUPPORTING INFRASTRUCUTURE)** at the total price of \_\_\_\_\_ as indicated hereunder and/or further specified in the annexure(s).
2. undertakes to make payment for the goods/services delivered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice accompanied by the delivery note.

Item No	Description	Price Estimates (VAT Inc)	Delivery Period	Points Claimed for BBBEE
1	1000 Bond Houses			
2	2000 Subsidy			
3	2000 Low Cost Houses			
4	1000 Student Accomodation Units			
5	50 Room Boutique Hotel			
6	Fuel Depo			
7	Mall			
8	Sport Facility			
9	Automotive Sector investment	N/A		
10	Food Processing Plant	N/A		
11	Warehousing	N/A		
12	Supporting Infrastructure	N/A		
<b>Total</b>				

SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Print name(s):  
(Municipal Manager)

\_\_\_\_\_  
Date

<p><b>WITNESSES</b></p> <p>1. ....</p> <p>2. ....</p> <p><b>DATE</b></p> <p>.....</p>
---

---

## (5) TERMS OF REFERENCE

---

### 1. INTRODUCTION

- 1.1. Maruleng Municipality is dedicated towards promoting sustainable development and infrastructure development in order to achieve its vision. The municipality as a center sphere of government and custodians of its community finds itself in the most challenging space of an obligation of service delivery but also of budget constraints to achieve its mandate.
- 1.2. Within the municipal space you have infrastructure and economic development mandate that cuts across all 3 spheres of government that requires integrated and aligned planning and implementation. Our IDP has indicated that the municipality pivot on two main economic pillars that is Agriculture and Tourism. These two economic pillars play an intrinsic role in our revenue enhancement and GDP contribution but share a fraction of the infrastructure development and support needed for this sector's growth is the participation of National and Provincial department.
- 1.3. In order to achieve the integrated and aligned planning, development and implementation alluded above, the municipality needs to source expertise and capacity.
- 1.4. The Municipality has appointed a panel of service providers to mobilise funding for infrastructure and economic development projects and programme and as a result the company Kgora Africa Fund has commenced with its process of soliciting this funds. Among other milestones within the process plan, the service provider must assist and provide capacity to the municipality to develop terms of reference and in turn the municipality will carry the responsibility of facilitating procurement processes within the MMFA framework.
- 1.5. The municipality is seeking to advertise for **INVESTOR OR INVESTOR OPERATOR to TO DEVELOP PROPERTY IN MARULENG LOCAL MUNICIPALITY ON A BUILD, OPERATE AND TRANSFER MODEL (5000 MIXED HOUSING DEVELOPMENT, 1000 STUDENT ACCOMMODATION UNITS, COMMERCIAL PROPERTY AS WELL AS SUPPORTING INFRASTRUCUTRE).**
- 1.6. The preferred approach is a Build, Operate and Transfer over a period of 50 years (planning and operations combined). MLM has appointed a Transaction Advisor to facilitate the sourcing of an investor and over-see successful implementation of the project of the life cycle of the project. The Project Investment required is estimated at a minimum R3,000,000,000.00 (Three Billion Rand) inclusive of



taxes and advisory fees. The Transaction Advisor has a mandate to facilitate procurement and localise the project as well as assist and support the investor with all the necessary compliance.

## 2. PURPOSE

2.1. The purpose of this advert is to for **INVESTOR OR INVESTOR OPERATOR TO DEVELOP PROPERTY IN MARULENG LOCAL MUNICIPALITY ON A BUILD, OPERATE AND TRANSFER MODEL (5000 MIXED HOUSING DEVELOPMENT, 1000 STUDENT ACCOMMODATION UNITS, COMMERCIAL PROPERTY AS WELL AS SUPPORTING INFRASTRUCTURE).**

## 3. OBJECTIVE OF THE PROJECT

3.1. To attract investor or investor operator to the Maruleng municipality to initiate the planning, construction and operation for this property development project that will boost the economy and create employment.

## 4. SCOPE OF WORK

The scope of work is primarily capital raising for planning, construction and operation of the entire property portfolio and it further entails the following key areas

- 4.1. The preferred approach is a Build, Operate and Transfer over a period of 50 years (planning, construction and operations combined). *MLM has appointed a Transaction Advisor to facilitate the sourcing of an investor and over-see successful implementation of the project of the life cycle of the project.*
- 4.2. The Project Investment required is estimated at a minimum R3,000,000,000.00 (Three billion Rand) inclusive of taxes and advisory fees.
- 4.3. The Transaction Advisor has a mandate to facilitate procurement and localise the project as well as assist and support the investor with all the necessary compliance.

## 5. SPECIFIC REQUIREMENTS AND METHODOLOGY

The following amongst other terms to be negotiated:

- Appointed bidder shall be required to comply with General Conditions of Contract,
- Investor/investor operator is required to comply with ECSA and CIDB rules and regulations,

- Proof of Fund (POF) for investment is required accompanied by a detailed proposal. POF must be accompanied by a cost breakdown including, start-up capital, planning fund, construction phase fund as well as O&M fund,
- A competitive bidding process will be followed,
- The successful bidder will be expected to:
  - Enter into a Service Level Agreement with TA and MLM.
  - Create a special purpose vehicle once SLA is signed.
  - To participate in the development of a Master Plan.
  - To conduct Feasibility Study and business plan.
  - Financial close
  - Construction.
  - Operation and Maintenance.
- Success fee of the TA is limited to not more than 5% with a negotiable amount payable on signing of the SLA.

## 6. DELIVERABLES

- 6.1. The Project Investment required is estimated at a minimum R3,000,000,000.00 (Three Billion Rand) inclusive of taxes and advisory fees; and
- 6.2. Concept, Pre-feasibility and Feasibility study
- 6.3. Business plan and financial close

## 7. PROJECT DURATION

- 7.1. The investor is expected to conduct planning for 8 months, construction within the first three years and operate the manufacturing plant over a period of 50 years.

*N.B The investment is expected to establish a feasible and viable project with a long term operational life span beyond the 3yrs*

**(6) PRICING SCHEDULE**

Name of Bidder \_\_\_\_\_ Bid Number

Closing Date \_\_\_\_\_ Closing Time

Offer to be valid for \_\_\_\_\_ days from the closing date of the bid.

Does the offer comply with the terms of references? **YES/NO**

If not to terms of reference, indicate deviation(s)

Period (in months or years) required for delivery

- Planning Phase delivery period.....
- Construction Phase delivery period.....
- Operations and management Phase delivery period.....

Delivery basis **Delivery: Firm/not firm**



## (7) EVALUATION CRITERIA

A two stage evaluation process will be followed to evaluate the bids received.

### 1. First stage: Evaluation in terms of compliance.

#### Compulsory submissions:

- Company Registration Certificate
- Valid Tax Clearance or Tax Pin
- Company Profile
- Proposal
- Verified annual financial statements
- Proof of Fund(s) – This is a letter from a bank or asset management company or a licensed funder or copy of bank statement and balance that we use to verify that the bidder has the funds.
- Certified identity copies of Directors
- Complete Authority to sign tender document
- Joint Venture Agreement (where applicable)
- Valid B-BBEE Status Level Verification Certificate or Sworn Affidavit
- Proof of recent Central Suppliers Database not older than 3 months
- Letter of good standing (COIDA)
- Recent Municipal Statement of account / rates and taxes (not older than 3 months) for the **company and all directors** not in arrears for more than **90 days** or lease agreement with a recent rental invoice/statement must be attached. Attention is drawn to the “Clearance Certificate for Municipal Account”. The Clearance Certificate must be completed by the Municipality where the business resides or the Landlord in case of a tenant. Lease agreement must also be attached and is the responsibility of the bidder to ensure that the “Clearance Certificate for Municipal Accounts” is completed in full and stamped by the landlord.
- Proof of payment of municipal rates and taxes or lease agreement accompanied with proof of payment of the lessee and rates and taxes of the lessor /letter of good standing from tribal authority for both the company and Directors.
- Bidder must attach proof of payment for the tender document issued by the Municipality or Downloaded.
- Use of tipex is prohibited and the bidder will be deemed non-responsive during the evaluation of tender.
- If the bidder has not heard from the municipality within 90 days from the closing date of tender, company must consider itself unsuccessful.
- The Maruleng Local Municipality does not bind itself to accept the lowest or any bid and reserves the right to accept the whole or part of the bid or to withdraw the bid and/or appoint more than one bidder for one bid.

Please initialise each page.

**2. Second stage: Functionality Evaluation: Bids will be evaluated based on the following criteria for functionality:**

**EVALUATION CRITERIA**

Bids will be evaluated based on the following criteria for Functionality

Criteria	Applicable values/points			Weight
<b>EXPERIENCE</b>  <i>This test the experience of bidders in providing similar services in local Government/public sector (the bidder must attach credible appointment letters.</i>	3 or More appointment letters(30 points)			30
	2 previous appointment letters(20 points)			
	1 previous appointment letter (10 points)			
<b>PROOF OF FUNDS</b> Bidder is required to produce proof of funds adequate for the project or more which demonstrate financial capability	YES = 60 NO = 0			60
<b>METHODOLOGY</b> Bidder is expected to make a detailed proposal with clear plan of execution of task, cost, time frame for the execution of work, quality assurance	Poor	Attached proposal but not meeting the requirements	0	5
	Average	Attached proposal but meeting (i) or (ii) or (iii) or either of the one of the requirements or either of two requirements	3	
	Good	Proposal attached and has met all approach in the criteria detailed execution plan , timeframe and quality assurance	5	
<b>AVAILABILITY OF HUMAN RESOURCES</b> <i>Bidder must attach organogram and CV's of Team Members + relevant tertiary qualifications</i>	<b>5 Points= attached organogram and CV's of Team Members + relevant tertiary qualifications</b> <b>0 points= not attached organogram and CV'S of team members + relevant tertiary qualifications</b>			5
<b>Total Points</b>				100
<b>FUNCTIONALITY MINIMUM</b>				<b>70%</b>

**NB: tenders will be evaluated in terms of the 80/20 preference point systems prescribed in the Preferential Procurement Policy Framework Act, 5/2000 and preferential procurement regulations of 2017. Service providers need to score a minimum of 70% to be considered for further evaluation.**

## **(8) CONDITIONS OF TENDER**

**ALL TENDER CONDITIONS AND/OR INSTRUCTIONS SET OUT BELOW MUST BE STRICTLY ADHERED TO, FAILING WHICH THIS TENDER SUBMISSION WILL BE DECLARED NON-RESPONSIVE.**

7.1 No tender will be considered unless submitted on Maruleng Municipality tender document.

7.2 Any portion of the tender document not completed will be interpreted as 'not applicable'. Notwithstanding the foregoing, failure to complete any compulsory portion of the tender document may result in the tender being declared non-responsive.

7.3 Tenders must be properly received and deposited, on or before the closing date and before the closing time, in the relevant tender box at No. 64 Springbok Street, Hoedspruit, the Finance Department. If the tender submission is too large to fit in the allocated box, please enquire at supply chain office no 20 for assistance.

7.4 The municipality reserves the right to accept:

7.4.1 the whole tender or part of a tender or any item or part of any item, or to accept more than one tender (in the event of a number of items being offered), and municipality is not obliged to accept the lowest or any tender;

7.4.2 a tender which is not substantially or materially different from the tender Specification.

7.5 The municipality shall not consider tenders that are received after the closing date and time for such a tender.

7.6 The municipality will not be held responsible for any expenses incurred by Tenderers in preparing and submitting tenders.

6.7 The municipality may, after the closing date, request additional information or clarification of tenders in writing.

7.8 A Tenderer may request in writing, after the closing date, that the tender offer be withdrawn. Such withdrawal will be permitted or refused at the sole discretion of the municipality after consideration of the reasons for the withdrawal.

7.9 The municipality reserves the right to adjust arithmetical errors in the extension of rates and totals in the quote, and the bidder will be informed of the effect of any corrections on his quotation sum prior to the award of the contract. In no case will quoted rates be adjusted when correcting such errors.

7.10 Telegraphic quotations or quotations by facsimile will not be accepted for consideration except for the instance as indicated above where the employer needs to have amendments to the quotation.

### **7.11 Resolutions and Authorities**

A tender submitted:

7.11.1 by a registered company may not be considered unless accompanied by a resolution by the Directors of the company authorizing the tender to be made and the signatory to sign the tender on the company's behalf **{{(16) Authority to Sign Bid Document on page 53 to be completed}}**;

7.11.2 by a registered close corporation may not be considered unless accompanied by written authority from all the members of the close corporation authorizing the tender to be made and the signatory to sign the tender on the close corporation's behalf **{{(16) Authority to Sign Bid Document on page 53 to be completed}}**

**completed}** 7.11.3 by a partnership/consortium/joint venture may not be considered unless accompanied by written authority from all parties to the partnership/consortium/joint venture authorising the tender to be made and the signatory to sign the tender on the partnership/consortium/joint venture's behalf.

## **7.12 Partnerships/Consortiums/Joint Ventures**

In the case of partnerships/consortiums/joint ventures, a copy of the partnership/consortium/joint venture agreement must be submitted with the tender document.

## **7.13 Validity Period**

6.13.1 Any tender submitted shall remain valid, irrevocable and open for written acceptance by the municipality for **a period of 90 days** from the closing date or for such extended period as may be applicable.

7.13.2 The tender amount will not be amended during the aforesaid validity period.

7.13.3 The aforesaid validity period may be extended by the municipality provided that the original validity period has not expired, and that all bidders are given an opportunity to extend such period. Any such extension shall be agreed to by a bidder in writing.

7.13.4 Bidders who fail to respond to such a request before the validity of their tender expires, or who decline such a request shall not be considered further in the evaluation process.

7.13.5 In the event that an appeal in terms of the Systems Act 32 of 2000, is received, the validity period of the tender shall be deemed to be extended until finalisation of the appeal; unless the bidder has requested in writing that its tender be withdrawn. The provisions in respect of withdrawal as set out in clause 6.8 above will apply to such withdrawal.

7.14 Unauthorized alterations and additions in the nature of statement of interpretation of this bid document must be avoided. If any such amendments are made or if the bid document is not properly completed, it will cause the bid to be invalid. Any point of difficulty or doubt must be cleared with the municipality. Should any query be found to be of any significance, the municipality will inform all bidders accordingly.

7.15 Any bidder which is or whose directors are in arrears with their municipal rates and taxes or municipal charges due to any Municipality for more than three months will be unsuccessful

## **7.16 Tax clearance**

7.16.1 No award shall be made to a person whose tax matters have not been declared to be in order by the South African Revenue Service (SARS).

7.16.2 Tenderers are therefore required to obtain a valid Tax Clearance Certificate from the local SARS office where such Tenderer is registered for income tax/VAT purpose

## **6.17 Central Suppliers Database (CSD)**

6.17.1 No awards will be made to a tenderer who is not registered on the Central Supplier Database (CSD). 6.17.2 Registration on the Central Supplier Database must be done online via the website: <https://secure.csd.gov.za/>

## **(9) GENERAL CONDITIONS OF CONTRACT**

### *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 (GCC) 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 GCC. Whenever there is a conflict, the provisions in the SCC shall prevail.



## TABLE OF CLAUSES

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

## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:

- 1.1 "Closing time" means the date and hour specified in the tender documents for the receipt of Tenders.
- 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7 "Day" means calendar day.
- 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
- 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods are so delivered and a valid receipt is obtained.
- 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 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 Tender submission) designed to establish Tender 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 tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the goods covered by the Tender will be manufactured.
- 1.17 "Local content" means that portion of the tender 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 tender 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 "Supplier" means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.
- 1.26 "Tort" means in breach of contract.
- 1.27 "Turnkey" means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.
- 1.28 "Written" or "in writing" means hand-written in ink or any form of electronic or mechanical writing.

## **2. Application**

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

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

**3. General**

- 3.1 Unless otherwise indicated in the tender documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a Tender. Where applicable a non-refundable fee for documents may be charged.
- 3.2 Invitations to Tender are usually published in locally distributed news media and on the Maruleng Municipality website.

**4. Standards**

- 4.1 The goods supplied shall conform to the standards mentioned in the tender 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.
- 6.2 When a supplier developed documentation / projects for the Maruleng Municipality, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the Maruleng Municipality.

**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 tender documents or another form acceptable to the purchaser; or
  - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

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

- 8.1 All pre-tender testing will be for the account of the bidder.
- 8.2 If it is a Tender condition that goods to be produced or services to be rendered should at any stage be subject to inspections, tests and analyses, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or organization acting on behalf of the purchaser.
- 8.3 If there are no inspection requirements indicated in the tender documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Goods and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods, which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods

forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.

- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.

## **9. Packing**

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size 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, and in any subsequent instructions ordered by the purchaser.

## **10. Delivery and documents**

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

## **11. Insurance**

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

## **12. Transportation**

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

## **13. Incidental Services**

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

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

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

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

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

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

#### **15. Warranty**

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

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

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

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

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

#### **16. Payment**

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

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon 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.

**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 Tender, with the exception of any price adjustments authorized or in the purchaser's request for Tender validity extension, as the case may be.

**18. Variation orders**

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

**19. Assignment**

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

**20. Subcontracts**

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

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

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

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

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

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

21.5 Upon any delay beyond the delivery period in the case of a goods contract, the purchaser shall, without cancelling the contract, be entitled to purchase goods of a similar



quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## **22. Penalties**

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

## **23. Termination for default**

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

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

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

## **24. Antidumping and countervailing duties and rights**

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

## **25. Force Majeure**

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

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

**26. Termination for insolvency**

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

**27. Settlement of Disputes**

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

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

**28. Limitation of Liability**

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

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

28.3 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.
- 31. Notices**
- 31.1 Every written acceptance of a Tender 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 Tender 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 Tender SARS must have certified that the tax matters of the preferred bidder are in order.
- 32.4 No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.
- 33. Transfer of contracts**
- 33.1 The contractor shall not abandon, transfer, cede assign or sublet a contract or part thereof without the written permission of the purchaser
- 34. Amendment of contracts**
- 34.1 No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.
- 35. Prohibition of restricted practices**
-

- 35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding.
- 35.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No. 89 of 1998.
- 35.3 If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

## **(10) PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017**

This preference form forms part of this tender. 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 BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.**

### **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 R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2

- a) The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable;

1.3 Points for this bid shall be awarded for:

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

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

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

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6 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**

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“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 goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents. (g) **“prices”** includes all applicable taxes less all unconditional discounts; (h) **“proof of B-BBEE status level of contributor”** means:
  - 1) B-BBEE Status level certificate issued by an authorized body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

### 3. POINTS AWARDED FOR PRICE

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

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

**80/20 or 90/10**

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

**80/20 or 90/10**

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

Where

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

$P_t$  = Price of bid under consideration

Pmin = Price of lowest acceptable bid

**4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR**

4.1 In terms of Regulation 6 (2) and 7 (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>B-BBEE Status Level of Contributor</b>	<b>Number of points (90/10 system)</b>	<b>Number of points (80/20 system)</b>
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

**5. BID DECLARATION**

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

**6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS**

**1.4 AND 4.1**

6.1 B-BBEE Status Level of Contributor: . = ..... (maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

**7. SUB-CONTRACTING**

7.1 Will any portion of the contract be sub-contracted?

**(Tick applicable box)**

YES	NO
-----	----

7.1.1 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 or QSE

**(Tick applicable box)**

YES	NO
-----	----

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME	QSE
	√	√
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
<b>OR</b>		
Any EME		
Any QSE		

**8. DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....





8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

8.7 MUNICIPAL INFORMATION

**Municipality where business is situated:**

.....

**Registered Account Number:** .....

**Stand Number:**.....

8.8 Total number of years the company/firm has been in business:.....

8.9 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 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 paragraphs 1.4 and 6.1, 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 contributor 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) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury 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. ....

2. ....

.....  
SIGNATURE(S) OF BIDDERS(S)

DATE: .....

ADDRESS .....

.....

.....

**(11) DECLARATION OF INTEREST – STATE EMPLOYEES**

1. No tender will be accepted from persons in the service of the state .
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to tender. In view of possible allegations of favouritism, should the resulting tender, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the tenderer or their authorised representative declare their position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest.
3. In order to give effect to the above, the following questionnaire must be completed and submitted with the tender.

Full Name: \_\_\_\_\_

Identity Number: \_\_\_\_\_

Company Registration Number: \_\_\_\_\_

Tax Reference Number: \_\_\_\_\_

VAT Registration Number: \_\_\_\_\_

Are you presently in the service of the state   
YES/NO If so, furnish particulars.

\_\_\_\_\_  
\_\_\_\_\_

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

If so, furnish particulars

\_\_\_\_\_  
\_\_\_\_\_

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

If so, furnish particulars

\_\_\_\_\_  
\_\_\_\_\_

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

If so, furnish particulars

---

---

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

If so, furnish particulars

---

---

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

If so, furnish particulars

---

---

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

Full Name	Identity Number	State Employee Number

CERTIFICATION

I, the undersigned (name)

---

Certify that the information furnished on this declaration form is correct. I accept that the Municipality may act against me should this declaration prove to be false.

Signature

Date

Position

---

  

---

Name of Tenderer

---

  

---

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

***(a) a member of –***

***(i) any municipal council;***

***(ii) any provincial legislature; or***

***(iii) the national Assembly or the national Council of provinces;***

***(b) a member of the board of directors of any municipal entity;***

***(c) an official of any municipality or municipal entity;***

***(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);***

***(e) a member of the accounting authority of any national or provincial public entity; or (f) an employee of Parliament or a provincial legislature.***

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

**(12) DECLARATION FOR PROCUREMENT**

The following must be completed where the tender exceeds R10million (VAT included).

- 1. Are you by law required to prepare annual financial statements for auditing? **YES/NO**
  - 1.1. If YES, attach audited annual financial statements for the past three years or since the date of establishment, if established during the past three years.
  
- 2. Do you have any outstanding undisputed commitment for Municipal services towards the Municipality or any other service provider in respect of which payment is overdue for more than 30 days? **YES/NO**
  - 2.1. If NO, this serves to certify that the Tenderer has no outstanding undisputed commitment for Municipal services towards the Municipality or any other service provider in respect of which payment is overdue for more than 30 days.
  - 2.2. If YES, provide particulars.
   
\_\_\_\_\_
   
\_\_\_\_\_
   
\_\_\_\_\_
  
- 3. Has any contract/tender been awarded to you by an organ of state during the past five years where any material, non-compliance or dispute concerning the execution of such contract/tender occurred? **YES/NO**
  - 3.1. If YES, furnish particulars.
   
\_\_\_\_\_
   
\_\_\_\_\_
   
\_\_\_\_\_
  
- 4. Will any portion of goods or services be sourced from outside the Republic of South Africa, and if so what portion or is it expected that any portion of payment from the Municipality will be transferred out of the Republic? **YES/NO**
  - 4.1. If YES, furnish particulars.
   
\_\_\_\_\_
   
\_\_\_\_\_
   
\_\_\_\_\_

I the under signed certified that the information provided on this schedule is correct and accept that the Municipality may act against me should this declaration proves to be false.

\_\_\_\_\_  
SIGNATURE

DATE-----

\_\_\_\_\_  
NAME OF TENDERER



<b>(13) DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES</b>
--

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

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

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

	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	<input type="checkbox"/>	<input type="checkbox"/>
4.3.1	If so, furnish particulars:		
<b>Item</b>	<b>Question</b>	<b>Yes</b>	<b>No</b>
4.4	Do you owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	<input type="checkbox"/>	<input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	<input type="checkbox"/>	<input type="checkbox"/>
4.7.1	If so, furnish particulars:		

**CERTIFICATION**

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

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

.....  
**Signature**

.....  
**Date**

.....  
**Position**

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





## **(14) CERTIFICATE OF INDEPENDENT BID DETERMINATION**

1 This Municipal Bidding Document (MBD) must form part of all bids<sup>1</sup> invited.

2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement

between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.

3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:

- a. take all reasonable steps to prevent such abuse;
- b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
- c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.

4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that,

when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.

5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be

completed and submitted with the bid:

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

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

## CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

\_\_\_\_\_ (Bid Number and Description)

in response to the invitation for the bid made by:

\_\_\_\_\_ (Name of Municipality / Municipal Entity)

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

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

(Name of Bidder)

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

qualifications, abilities or experience; and

(c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.

7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

- (a) prices;
- (b) geographical area where product or service will be rendered (market allocation)
- (c) methods, factors or formulas used to calculate prices;
- (d) the intention or decision to submit or not to submit, a bid;
- (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
- (f) bidding with the intention not to win the bid.

8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.

9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

SIGNATURE: ..... DATE: ..... (of person authorised to sign on behalf of the Bidder)



**(15) AUTHORITY TO SIGN BID DOCUMENT RESOLUTION BY DIRECTORS / MEMBERS:**

**RESOLUTION for completion by Directors (if the Bidder is a (Pty) Ltd or Ltd) or Members (if the T Bidder is a CC)**

NAME OF TENDERER: \_\_\_\_\_

Meeting held at \_\_\_\_\_  
(place)

On \_\_\_\_\_ (date)

RESOLVED THAT:

1. The Bidder submits a tender to the Maruleng Municipality in respect of Bid No: **MLM/SCM/32/2022: APPOINTMENT OF AN INVESTOR OR INVESTOR OPERATOR TO TO DEVELOP PROPERTY IN MARULENG LOCAL MUNICIPALITY ON A BUILD, OPERATE AND TRANSFER MODEL (5000 MIXED HOUSING DEVELOPMENT, 1000 STUDENT ACCOMMODATION UNITS, COMMERCIAL PROPERTY AS WELL AS SUPPORTING INFRASTRUCUTRE).**

2. Mr. /Ms. \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ and who will sign as follows:

\_\_\_\_\_  
(SPECIMEN SIGNATURE)

be, and is hereby, authorized to sign the tender and any and all other documents and/or correspondence in connection with and relating to the tender, as well as to sign any contract and or all documentation resulting from the award of the tender.

**Note: The resolution must be signed by all the directors /members of the Tenderer. Should the space provided below not be sufficient for all directors/members to sign, please attach a separate sheet to this schedule in the same format.**

No	Name	Capacity	Signature
1			
2			
3			
4			
5			

**(16) TRACK RECORD OF TENDERING ENTITY**

The following is a Statement of Work of similar nature recently successfully executed by myself / ourselves:

Employer	Contact Person and Telephone Number	Nature of Work	V alue of Work (inclusive VAT)	of Date Delivered or Expected to be Completed

SIGNATURE: \_\_\_\_\_  
*(of person authorised to sign on behalf of the Bidder)*

DATE:



**COMPANY REGISTRATION CERTIFICATE**



| (17) TAX CLEARANCE CERTIFICATE |



| (18) COMPANY PROFILE |



---

**(20) BBBEE STATUS LEVEL VERIFICATION CERTIFICATE**

---

---

**(22) PROOF OF PAYMENT OF MUNICIPAL RATES AND TAXES (BOTH COMPANY & DIRECTORS)**

---

---

**(23) PROOF OF RECENT CSD REPORT (CENTRAL SUPPLIER DATABASE)**

---

**(24) MARULENG BANKING DETAILS**

---

<b>DETAILS OF THE BANK</b>	<b>BANK DETAILS APPLICABLE TO MARULENG MUNICIPALITY</b>
Name of Bank	Standard Bank
Account number	033355487
Type of account	Current
Branch name & code	052752
Branch Name	Hoedspruit
Reference	MLM/SCM/31/2022