

CENTRAL KAROO DISTRICT MUNICIPALITY



FORMAL WRITTEN PRICE QUOTATION: SCM 005 – 2017-18

DEVELOPMENT AND CONDUCT OF AN AMBIENT AIR QUALITY BASELINE STUDY IN THE CENTRAL KAROO DISTRICT MUNICIPALITY

A service provider is sought to develop and conduct an Ambient Air Quality Baseline Study in the Central Karoo District Municipality. With the proposed uranium mining and the shale gas development scheduled to take place in the CKDM, it is necessary to establish the criteria pollutant levels before any mining activities take place. This information would form a scientific basis to determine if the mining and shale gas developments impact on the air quality and the environment in the CKDM.

A service provider is required to develop an air quality monitoring sampling network with the CKDM Air Quality Officer and provide sampling equipment to conduct the Baseline Study.

Statement of requirements / Description of service

Statement of requirements / description of such service will be provided on the CKDM Website, Website: www.skdm.co.za The work to be undertaken should also be informed and underpinned by the required documents and programs.

Central Supplier database registration as well as certain **Conditions** will be required as per specification document. This quotation will be evaluated in terms of the 80/20 Preference Points system as prescribed in the Preferential Procurement Regulations 2017.

All service providers are requested to submit an on-line breakdown quotation as per Specifications document under Section 4. **The breakdown quotation must include a full itemization of the project costing / budget, as quoted by the service provider.** Failure to adhere to the above will result in the service provider quote being unresponsive / non-compliant.

Price(s) quoted must be valid for at least sixty (60) days from date of offer and must be inclusive of VAT.

The quotation must be submitted on the letterhead of your company and must be returned via the following means of communication:

1. Email: manager@skdm.co.za

Quotations should reach this office by no later than **27 November 2017 by 10H00**

Contact Person: **Luvo Mankqu** at 023 449 1000 / 1061

Council reserves the right not to accept any tender or part of it.

Mr S Jooste
Municipal Manager
Central Karoo District Municipality
63 Donkin Street / Private Bag X560
BEAUFORT WEST
6970

THE FOLLOWING CONDITIONS WILL APPLY:

1. Quotations must be forwarded to manager@skdm.co.za Quotations sent to any other email address **will not be** considered.
2. Prices must be valid for at least sixty (60) days from date of offer
3. Prices quoted must be firm at must be inclusive of VAT
4. This quotation will be evaluated in terms of the 80/20 Preference Points system as prescribed in the Preferential Procurement Regulations 2017
5. All attached documents must be completed, signed and return with the quotation.
6. Suppliers must be registered on the Central Supplier Database. Suppliers who are not registered will not be considered. The summary report with the MAAA number must be forwarded with the quotation close the following documents:
 - Valid Tax Clearance Certificate
 - Valid B-BBEE Certificate
- 7. Excell spreadsheet provided must be used as price schedule**

1. TITLE:

- 1.1. A service provider is sought to develop and conduct an Ambient Air Quality Baseline Study in the Central Karoo District Municipal area. With the proposed uranium mining and the shale gas development scheduled to take place in the CKDM, it is necessary to establish the criteria pollutant levels before any mining activities take place. This information would form a scientific basis to determine if the mining and shale gas developments impact on the air quality and the environment in the CKDM.

2. INTRODUCTION AND BACKGROUND:

- 2.1. In line with the National Environmental Management: Air Quality Act (No. 39 of 2004; NEM: AQA), the Central Karoo District Municipality (CKDM) developed an Air Quality Management Plan (AQMP). An AQMP is an effective tool towards ensuring that the CKDM reaches the air quality management goals, while growing its economy. With the proposed uranium mining and shale gas developments, the CKDM would like to establish the background Ambient Air Quality levels before the proposed activities commence.

- 2.2. The successful service provider would be required to provide and assist with the following:

- 2.2.1. Eight (8) Dust Fallout sampling buckets. Four (4) sites will be selected and sampled for a period of a month at a time and four buckets will be kept to swop at the end of the sampling period. The Dust Fallout samples need to be analysed for four (4) metals (uranium and thorium, potassium and molybdenum). The sampling campaign will be conducted three (3) times during the period January 2018 to end April 2018;

- 2.2.2. An instrument to conduct continuous PM₁₀ (real-time) sampling for five (5) months – for the period January 2018 to mid-June 2018; and

- 2.2.3. An instrument to conduct continuous meteorological monitoring for five (5) months – for the period January 2018 to end mid-June 2018. The meteorological parameters should include temperature (ttt), rainfall, wind speed (wsp), and wind direction (wdr), and relative humidity (rh).

- 2.2.4. Send samples to the accredited laboratory.

- 2.3. The service provider will be required to have a team that has knowledge and experience in the following:

- 2.3.1. Ambient air quality monitoring network development;

- 2.3.2. Monitoring Dust Fallout and having it analysed for 4 metals (uranium and thorium, potassium and molybdenum). The sampling campaign is to be repeated three (3) times;

- 2.3.3. Continuous real-time PM₁₀ sampling;

- 2.3.4. Continuous real-time Meteorological monitoring (wdr,wsp, ttt, rh, rainfall);

- 2.3.5. Monitoring, mentorship and skills transfer;

- 2.3.7 Developing an Ambient Air Quality Baseline Study; and

- 2.3.8 Compilation and submitting a final Air Quality Baseline Study Report

4. STATEMENT OF REQUIREMENTS / DESCRIPTION OF SERVICE:

- 4.1. A service provider is required to develop an air quality monitoring sampling network with the CKDM Air Quality Officers and provide sampling equipment to conduct the Baseline Study.
- 4.2. The work to be undertaken should be informed and underpinned by the following documents and programmes:
 - 4.2.1. National Environmental Management Air Quality Act, Act No. 39 of 2004;
 - 4.2.2 The 2012 National Framework for Air Quality Management in the Republic of South Africa;
 - 4.2.3. CKDM Air Quality Management Plan
 - 4.2.5. Provincial Spatial Development Framework 2014
 - 4.2.6. Western Cape 2nd Generation Air Quality Management Plan
- 4.3. The elements of the project that the prospective service provider will be responsible for needs to entail the following:
 - 4.3.1. Develop an air quality sampling network to include:
 - Three (3) Dust Fallout sampling campaigns where sampling is conducted over a month period and analysed for 4 metals (uranium and thorium, potassium and molybdenum) at four (4) sampling sites.
 - Continuous real-time PM₁₀ sampling for 5 (five) months (January 2018 – mid-June 2018).
 - Continuous real-time Meteorological monitoring (wdr,wsp, ttt, rh, rainfall)
 - 4.3.2. Project Management of the project and its deliverables, including any sub-deliverables quoted for by the service provider in their proposal;
 - 4.3.3. Full engagement with the District Air Quality Officer and any third party identified by the CKDM, at all stages of the project and as required;
 - 4.3.4. The Service Provider will be responsible for the development, editing and refinement of all reports, to be approved by the District Air Quality Officer;
 - 4.3.5. A Project Management Committee (PMC) will be established between the CKDM, the Service Provider, and any other stakeholders that may be deemed relevant; and
 - 4.3.6. The team is expected to work closely with the CKDM.
- 4.4. The appointed service provider will be required to supply:
 - A Phase 1: Ambient Air Quality Monitoring Network Proposal. The Proposal Report must include a stand-alone easy-to-understand Executive Summary, as well as a Presentation on the proposed sampling points.

- A Phase 2: Placing buckets at the four (4) locations identified and allowing it to sample for a month. Sending the Dust Fallout samples to a laboratory for analysing it for four (4) metals (uranium and thorium, potassium and molybdenum). The sampling campaign needs to be repeated three (3) times.
- The successful service provider will be required to deliver the following:
 - Schedule an Inception Meeting, within two weeks of appointment, unless otherwise agreed.
 - A Project Plan, indicating tasks and deliverables, with timeframes, noting the dates as indicated below.
 - A payment schedule, as per the Project Plan.
 - Submission of monthly reports, minutes of any meetings, workshops (if any) or PMC meetings, must be submitted within ten (10) working days of the event. Note that payments will only be made once all documents received have been reviewed and signed off. The quotation must therefore detail all associated costs.
 - The service provider must provide the CKDM with an electronic version of the draft final report by 15 June 2018, and make provision for at least two (2) editorial review changes to take place, prior to submitting the Baseline Study Report.
 - The service provider must provide the CKDM with two hard copies, and two electronic copies (one in Microsoft Word and one in Adobe PDF) of the **final Report** and **Executive Summary**.
 - The successful service provider should prepare all documentation in a format which is compatible with MS Office for Windows Operating Systems.
 - The project must be completed by **18 June 2018**. Failure to meet all the final deliverables by the indicated deadline will result in penalties, unless otherwise agreed.

4.5. All documents and presentations to be submitted must be done using the Corporate Guidelines, as prescribed by the CKDM. The Service Provider must liaise with the CKDM to obtain the Corporate Guidelines.

4.6. Any communication of the project will be subjected to the approval of the Environmental Health Unit, within the CKDM.

5. RESPONSIBILITIES:

5.1. Additional responsibilities if any will be discussed before the project commence with the successful service provider.

6. CONTACT INFORMATION:

6.1 All service providers are requested to submit an on-line breakdown quotation as per Specifications under Section 4 above. **The breakdown quotation must include a full itemization of the project costing / budget, as quoted by the service provider.** Failure to adhere to the above will result in the service provider quote being unresponsive / non-compliant.

Mr Luvo Mankqu at:

Tel: 023 449 1061

Email: luvomankqu@skdm.co.za

6.2 SUPPLIER DATABASE REGISTRATION

All prospective service providers must be registered on:

- a) Central Supplier Database (CSD)
- b) CKDM Supplier Database

All prospective Service Providers who are not registered on the Central Supplier Database are requested to self-register on www.csd.gov.za. Please note that bidders who are **not duly registered** on the CSD at the time of bid closing will be deemed non-compliant.

Should service providers require assistance with the registration process please contact:

The Central Karoo District Municipality (CKDM)

Contact person: Daylen Lott at tel no: 023 449 1000 / 1037

All prospective Service Providers are invited to register as a supplier on the CKDM Database. Enquiries regarding the registration process as well as updating their status may be referred to Alicia Lenders or Daylen Lott at the 023 449 1000 / 1037

7. CONDITIONS:

8.1. All quotes are to indicate the validity period of a minimum of 60 days.

8.2. All quotes are to indicate the manufacturers guarantee on items requested.

8.3. Fluctuations in foreign exchange rates (where applicable) needs to be considered and included in the quote. No variation in invoicing will be considered after the quotation has been received.

8.4. All prices quoted are to include VAT (14%) if supplier is VAT registered. Service provider is to indicate on quotation if VAT is not applicable.

	Compiled by:	Approved by:
Initial/s and Surname		
Position		
Signature		
Date		

COMPANY'S DETAILS

The following details schedule must be completed to ensure that the prerequisite requirements to tendering are met.

Registered Company Name:			
Contact Person:			
Cell phone number:		Office Number	
Fax number:		e-mail address	
Company Physical Address:			
Company Postal Address:			
Company Registration Number:			
VAT Number: (if registered)			
Bank Name and Branch:			
Bank Account Number:			
Name of Account Holder:			

Name of Bidder :			
Position:			
Signature :		Date :	

AUTHORITY FOR SIGNATORY

Details of person responsible for Tender process

Name

.....

Contact number ()

.....

Address of office submitting the Tender

.....

.....

.....

Telephone no ()

.....

Fax no ()

.....

E-mail address

.....

Signatories for close corporations and companies shall confirm their authority by attaching to this form a **duly signed and dated original or certified copy** of the relevant resolution of their members or their board of directors, as the case may be.

"By resolution of the board of directors passed on (date)

Mr.

has been duly authorized to sign all documents in connection with the Tender for Contract Numberand any Contract which may arise there from on behalf of

(BLOCK CAPITALS)

.....

.....

SIGNED ON BEHALF OF THE COMPANY

IN HIS CAPACITY AS

.....

DATE

.....

FULL NAMES OF SIGNATORY

.....

AS WITNESSES

1.

.....

2.

.....

TAX CLEARANCE CERTIFICATE REQUIREMENTS

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

1. In order to meet this requirement bidders are required to complete in full the form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
2. Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website www.sars.gov.za.
3. SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
4. The original Tax Clearance Certificate must be submitted together with the bid. Copies of the Tax Clearance Certificate will only be valid if the bidder is registered on the Central Karoo District Municipality's accredited supplier database, which will contain the original Tax Clearance Certificate. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid.
5. In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
6. Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sars.gov.za.

THE CERTIFICATE MUST NOT BE OLDER THAN 12 MONTHS.

MBD 4

DECLARATION OF INTEREST

- 1. No bid will be accepted from persons in the service of the state*.
- 2. Any legal person, having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. 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 the service of the state, it is required that the bidder 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 bid.

- 3.1 Full Name
- 3.2 Identity number.....
- 3.3 Company Registration Number.....
- 3.4 Tax Reference Number.....
- 3.5 VAT Registration Number.....
- 3.6 CIDB Registration Numbern/a.....Grading:.....n/a

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

3.7.1 If so, furnish particulars.
.....
.....

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

3.8.1 If so, furnish particulars.
.....

.....

3.9 Are you connected with any persons in the service of the state? **YES / NO**

3.9.1 If so, state particulars.

.....

.....

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

3.10.1 If so, state particulars.

.....

.....

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

3.11.1 If so, state particulars.

.....

.....

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

YES / NO

3.12.1 If so, furnish particulars.

.....

.....

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

YES / NO

3.13.1 If so, furnish particulars.

.....

.....

DECLARATION

I, THE UNDERSIGNED (NAME)

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

I ACCEPT THAT THE STATE MAY ACT AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature	Date
.....
Position	Name of bidder

*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.

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL
PROCUREMENT REGULATIONS 2017**

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

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 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 not to exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender

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:

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

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) | Status level certificate issued by an authorized body or person; | B-BBEE |
| 2) | affidavit as prescribed by the B-BBEE Codes of Good Practice; | A sworn |
| 3) | requirement prescribed in terms of the B-BBEE Act; | Any other |
- (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

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

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-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
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	<input type="checkbox"/>	NO	<input type="checkbox"/>
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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		
OR		
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

DECLARATION OF BIDDER’S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury’s database as a company or person 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 National Treasury after the <i>audi alteram partem</i> rule was applied).</p>	<p>Yes</p> <p><input type="checkbox"/></p>	<p>No</p> <p><input type="checkbox"/></p>
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>access this Register enter the National Treasury's website, www.treasury.gov.za, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445).</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	If so, furnish particulars:		
Item	Question	Yes	No
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME)

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

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

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

DETFIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Municipality / Municipal Entity)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

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

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
 - (g)
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.

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

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

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

CONTRACT FORM - PURCHASE OF GOODS/WORKS

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SUCCESSFUL BIDDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SUCCESSFUL BIDDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

PART 1 (TO BE FILLED IN BY THE BIDDER)

1. I hereby undertake to supply all or any of the goods and/or works described in the attached bidding documents to **Central Karoo District Municipality** in accordance with the requirements and specifications stipulated in bid number **SCM005 – 2017/18** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the purchaser during the validity period indicated and calculated from the closing time of bid.

2. The following documents shall be deemed to form and be read and construed as part of this agreement:
 - (i) Bidding documents, viz
 - Invitation to bid;
 - Tax clearance certificate;
 - Pricing schedule(s);
 - Technical Specification(s);
 - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2017;
 - Declaration of interest;
 - Declaration of bidder's past SCM practices;
 - Certificate of Independent Bid Determination;
 - Special Conditions of Contract;
 - (ii) General Conditions of Contract; and
 - (iii) Other (specify)

3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.

4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.

5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.

6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES	
1

CONTRACT FORM - PURCHASE OF GOODS/WORKS

PART 2 (TO BE FILLED IN BY THE PURCHASER)

1. I, **S JOOSTE** in my capacity as Municipal Manager
Accept your bid under reference number **SCM005 – 2017/18**
dated.....for the supply of goods/works indicated hereunder and/or
further specified in the annexure(s).
2. An official order indicating delivery instructions is forthcoming.
3. I undertake to make payment for the goods/works 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.

<i>ITEM NO.</i>	PRICE (ALL APPLICABLE TAXES INCLUDED)	BRAND	DELIVERY PERIOD	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)
PER DOCUMENT					

4. I confirm that I am duly authorized to sign this contract.

SIGNED ATON.....

NAME (PRINT) **S JOOSTE**

SIGNATURE

PROCUREMENT:

GENERAL CONDITIONS OF CONTRACT

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General Conditions of Contract

1. Definitions 1. The following terms shall be interpreted as indicated:

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

compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods are so delivered and a valid receipt is 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 goods covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.

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

3. General

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

4. Standards

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

- 5. Use of contract documents and information inspection**
- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent Rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 6.2 When a supplier developed documentation / projects for the municipality / municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the municipality / municipal entity.
- 7. Performance security**
- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided

in the bidding documents or another form acceptable to the purchaser; or

(b) a cashier's or certified cheque 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30)

days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

**8. Inspections,
tests and
analyses**

8.1 All pre-bidding testing will be for the account of the bidder.

8.2 If it is a bid condition that goods to be produced or services to be rendered should at any stage be subject to inspections, tests and analyses, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or organization acting on behalf of the purchaser.

8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period, it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

8.5 Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

8.6 Goods and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

8.7 Any contract goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods, which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.

- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.
- 9. Packing**
- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size 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 fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized or in the purchaser's request for bid validity extension, as the case may be.
- 18. Variation orders**
- 18.1 In cases where the estimated value of the envisaged changes in purchase does not vary more than 15% of the total value of the original contract, the contractor may be instructed to deliver the goods or render the services as such. In cases of measurable quantities, the contractor may be approached to reduce the unit price, and such offers may be accepted provided that there is no escalation in price.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under these contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

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

- 23.1 The purchaser, without prejudice to any other remedy for **for default** breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
 - (b) if the supplier fails to perform any other obligation(s) under the contract; or
 - (c) if the supplier, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner, as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.
- 23.5 Any restriction imposed on any person by the purchaser will, at the discretion of the purchaser, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercise or exercise control over the enterprise of the first mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the purchaser actively associated
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) The name and address of the supplier and / or person restricted by the purchaser;
 - (ii) the date of commencement of the restriction
 - (iii) the period of restriction; and
 - (iv) the reasons for the restriction

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

- 23.7 If a court of law convicts a person on 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 has been 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 the 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. Antidumping and countervailing duties and rights** 24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such 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 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

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

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

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

(b) the purchaser shall pay the supplier any monies due the supplier for goods delivered and / or services rendered according to the prescripts of the contract.

28.1 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.
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 SARS must have certified that the tax matters of the preferred bidder are in order.
	32.4	No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.
33. Transfer of contracts	33.1	The contractor shall not abandon, transfer, cede assign or sublet a contract or part thereof without the written permission of the purchaser
34. Amendment of contracts	34.1	No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.
35. Prohibition of restrictive practices	35.1	In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 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 a reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the of 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 contractors(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 a whole of 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.