

## NKOMAZI LOCAL MUNICIPALITY

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### **BID NO: NKO 13 /2018**

#### ***Request for Proposals: To offer training on learnership and apprenticeship programme (Marketing NQF level 5 for 15 unemployed learners (SAQA ID 61593)learnership***

Nkomazi Local Municipality cordially invites interested parties to tender/bid to assist Nkomazi LM with the training people for learnership and apprenticeship programme (councillor practice NQF level 3) Tenders will be evaluated on 80/20 points system in line with Nkomazi municipality Supply Chain Management Policy.

Tender documentation with complete details is available upon the payment of a non-refundable amount of R1, 015.00 on each tender document or can be downloaded for free on the E-tender. Website Tender document(s) will be available as from **01 February 2018** and to be obtained from Supply Chain Unit offices, Old hospital road (Municipal Workshop).

A compulsory briefing meeting shall be held on the **01 February 2018** at the Nkomazi LM civic centre boardroom, 09 Park Street at 20h00. Service Provider who shall be 15 minutes late will not be allowed to get inside and they will not be allowed to sign the attendance register.

Completed bid documentation must be deposited on/before 12h00 **21February 2018** in the Tender Box Situated at the main entrance of the Municipality (Corporate Building) 9 Park Street Malalane (Civic Centre)

Tenders/Bids must be submitted in a sealed envelope or container on which the tender/bid number and addressee is clearly marked. No bids transmitted by fax or e-mail will be accepted. It must be noted that the Municipality is not bound to accept the lowest on any other tender.

Tender/bid documentation which is incomplete or filled incorrectly not filled in the official bid documentation or which is received after the close of the bids, will be ignored. Nkomazi Local Municipality supports empowerment of the previously disadvantaged, and SMME's.

Queries can be directed to: Mr Mabuza Richard and Nomthandazo Mkhonto on 013 7900245 between 07H15 – 16H00 on working weekdays.

**The following conditions must be complied with:**

**Failure to comply with the following will render the tenderer liable to rejection:**

- All pages must be completed, and all pages form part of the tender document, therefore no page removal is allowed.
- Scratching out / painting over rates / use of correcting fluid is not allowed.
- Failure to attend compulsory site inspections / compulsory briefing sessions in case is required.
- Failure to submit documents required in this document
- Form of tender not filled and signed and all pages of bid documents not initialed.
- Enterprise particulars not provided.
- The bid has been submitted after the closing date and time.
- Failure to initial or sign all Pages of the Tender documents

**Compulsory returnable Documents: failure to return documents below is an automatic disqualification with the exception of the BBEE Status Certificate**

- Original Tax Clearance Certificate
- Company Registration (CK)
- Original or a certified copy of the original signatory of authority
- A certified BBEE Status certificate must be attached for the tenderer to claim the Preferential points, but not an eliminating factor
- All declarations and authorisations must be duly signed.
- All returnable schedules must be completed
- Copy of the original proof of the non-refundable payment not attached
- Authority for signatory

Every bid will be scored and awarded points out of a maximum of 100 points.

A fixed 20 points of the maximum of 100 points is allocated to calculate preference in terms of the BBEE status.

A bidder must not be awarded the points claimed for BBEE status level of contribution if it is indicated in the bid documents that such a bidder intends sub-contacting more than 25% of the contract value to any other enterprise that does not qualify for a least the same number of points that the bidder qualifies for, unless the intended sub-contractor is and EME that has the capacity and ability to execute the sub-contract.

A contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended sub-contractor is an EME that has the capacity and ability to execute the sub-contract

In relation to a designated sector, a contractor must not allow to sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

Any contract awarded on false information furnished by the bidder, may, without derogating from other remedies available to Nkomazi Local Municipality, be cancelled at the sole discretion of Nkomazi Local Municipality.

1. The tender document(s) have been drafted to ensure that essential information is furnished upon the correct completion of the document(s). Where there is insufficient space, or additional particulars are required to be furnished, such must be provided on a separate annexure, clearly indicated.
2. Tender document(s) may not be retyped or redrafted. Also no photocopies of the original document(s) may be used.
3. Tender document(s) may be completed by mechanical devices such as typewriters; alternatively black ink must be used to fill in the document(s).
4. Tenderer must ensure that no pages are missing from the bid document(s), and that the pages of the bid are numbered consecutively. Nkomazi Local Municipality shall not be held liable with regard to claims arising from the fact that pages are missing or duplicated.
5. Firm tender prices (rates) and delivery periods are preferred, and tenders must clearly state whether prices and delivery periods will remain firm for the duration of the contract or not.
6. Tenderer must be strictly to specification. In cases where items are not to specification, deviations must be clearly indicated. It must also be noted that supplier/tenderer may quote for other items other than the one indicated on the schedule of quantity on a separate sheet, but it would not form part of items to be evaluated for.
7. Tender prices must be quoted in South African currency and in the specified units, unless the contrary is clearly indicated.
8. All the documents herewith form part of the bid and failure to comply with any part thereof may invalidate a bid.
9. Nkomazi Local Municipality may issue Briefing Notes during the briefing session which may contain amendments or information that may assist bidders in articulating their bids.
10. Nkomazi Local Municipality require as a condition of the bid that the compulsory explanatory meeting be attended by prospective bidders. This requirement will be clearly stated in the tender advertisement as well as in the documentation.
11. Nkomazi Local Municipality requires the furnishing of a non-refundable bid deposit together with the drawing of bid documentation (if applicable). Where such a non-refundable bid deposit is requested in the bid documentation, no bid will be accepted unless such a deposit (or cash) is submitted in the form of a bank cheque payable to Nkomazi Local Municipality before submission of the bid.
12. Tenders must be submitted to the addressee before the closing time. Bids submitted after the closing time shall be considered late, and will not be admitted for consideration.
13. The contractor/Service provider shall not abandon, transfer, assign or sublet a contract or part thereof without prior written consent of the council.
14. It is an irrefutable condition of this contract that the successful tenderer will have to negotiate and conclude a service level agreement with the council

1. No bid will be accepted from persons in the service of the state:
2. Any person or having kinship with a person in the service of state, or persons who act on behalf of Nkomazi Local Municipality, including a blood relationship, may make an offer or offers in terms of this bid invitation. In view of possible allegations of favouritism or bias, should the resulting bid, or part thereof, be awarded to persons employed by State, or to persons who act on behalf of Nkomazi Local Municipality, or to persons connected with or related to them, it is required that the bidder or his authorised representative shall declare any interest of whatever nature and/or relationship (including blood relationship) to any employees, or persons who act on behalf of, or persons connected with or related to Nkomazi Local Municipality.
3. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid:

- 3.1. Full Name of the bidder or his representative: .....
- 3.2. Identify Number: .....
- 3.3. Position occupied in the Company (director, trustee shareholder):  
.....
- 3.4. Company Reference Number: .....
- 3.5. Tax Reference Number: .....
- 3.6. VAT Registration Number: .....
- 3.7. The names of all directors/trustees/ shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.
- 3.8. Are you presently in the service of the state? YES/NO
- 3.8.1 If yes, furnish particulars: .....

❖ 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

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

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

If yes, furnish particulars: .....

.....

3.10. Do you, have any relationship (family, friend, other) with a person employed by state/Nkomazi Local municipality, who may be involved in the evaluation and adjudication of this bid? \*YES / NO

3.20.1 If yes, furnish particulars:

.....

.....

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

3.11.1 If yes, furnish particulars:

.....

.....

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

3.12.1 If yes, furnish particulars.

.....

.....

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

13.13.1 If yes, furnish particulars.

.....

.....

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

13.14.1 If yes, furnish particulars.

YES/NO
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.....

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

Full Name	Position filled in the " State "	ID number	State employee number

.....

Signature Bid Number Date

.....

Capacity Name of the Company

## **1. Background**

Nkomazi Local municipality is a rural municipality with high levels of poverty and unemployment rate and low level of education. According to the municipal IDP young people constitutes the majority of the municipal population and most of them are unemployed with low level of education and skills. The municipality has been identified as a CRDP site which provides infrastructural development opportunities within the municipality. It is anticipate that the roll out of the learnership programme will assist the community members of Nkomazi to acquire skills in the construction field, which would assist the municipality to achieve its development objective

## **2. Nature of the Contract**

This would be a once off training session for learnership contract, of which the contract will be valid from the day the two parties (Service provider and council) sign the contract agreement. The winning tenderer/supplier would be required to offer the training on learnership and apprenticeship.

### **1. TERMS OF REFERENCE / SPECIFICATION**

- 1.1 The course must be aligned with the Unit Standards: SAQA qualification.
- 1.2 All training providers will have to sign a code of conduct and service level agreement.
- 1.3 Training providers will play an administrative role of loading all learners onto the relevant MIS system and forward required documentation to the relevant Seta for the registration of learners.
- 1.4 Training providers must provide CV's of their facilitators, Assessors and Moderators with their relevant tertiary qualifications and proof of registration with the relevant accredited bodies.
- 1.5 Training providers must have the capacity to load learner information and achievements in the MIS system and ensure internal and external moderation takes place.
- 1.6 Training provider will be responsible for communicating with the Skills Development Office with regards to dates and time of training including organizing availability of their Facilitators.

- 1.7 Training Provider must notify the Municipality of the scheduled dates for training in order to afford enough time to select a venue and organize accommodation and transport for the learners.
- 1.8 The Training Provider must ensure that external moderation is conducted by the relevant SETA for certification or endorsement purposes.
- 1.9 The Training Provider must provide a letter of endorsement for each learner or provide an exit moderation report from relevant SETA will prove competency of the learners.

## **1.10 Course Objective**

**As per SAQA ID 61593**

### **1.10.1 Target Audience**

15 unemployed learners

### **1.10.2 Duration**

- (a) Training shall be conducted within thirty days from the date of the appointment of the service provider
- (b) The training should be completed within Twelve months. (12)
- (c) Submission of Portfolio of evidence for assessment within 30 days from inception of the training program

### **1.10.3 Language**

Training must be presented in English

### **1.10.4 Methodology**

- (a) Facilitation and Lectures
- (b) Case Studies
- (c) Role Play
- (d) Group-work
- (e) Submission of a portfolio of evidence

### **1.10.5 Seta Certificate Accreditation**

A certified copy of the bidder's SETA Accreditation Certificate must accompany the bid documents. If the requested certified copy does not accompany the bid document of the bidder, the Municipality reserves the right to reject the bid.

### **1.10.6 Certification; Certification of delegates when competent**



### 1.10.7 Other

- (a) For purposes of comparison and in order to ensure a meaningful evaluation bidders are requested to furnish detailed information in substantiation of compliance to the evaluation criteria mentioned in paragraph 1.1.12 below.
- (b) The successful bidder will be required to sign a Service Level Agreement with the Municipality.

**Note:** Special contract would be formulated and would be sign by the winning tenderer and the municipality. The document to be sign would stipulate all the conditions of the contract.

## **1 Preference point system**

The 80/20point system would be used for the evaluation of this tender with the points distributed as per the BBBEE status level

$$\mathbf{Np = 80[1 - (Pt - Pmin)]}$$

**Pmin**

- i. Where: Np = the number of bid/tender adjudication points awarded for price.
- ii. Pt = the bid/tender sum (corrected if applicable) of the responsive bid under consideration.
- iii. Pmin = the bid/tender sum (corrected if applicable) of the lowest responsive tender/bid.

## **2 Completion of the tender**

- 2.10 All forms as shown in the tender document are to be completed;
- 2.11 Black ink or black print is to be used for completing this tender;
- 2.12 Correction fluid is not allowed to be used. Where the tenderer has done a mistake, one line needs to be drawn over the mistake and it be initialized!
- 2.13 Under no circumstances will copies of the original document be accepted.
- 2.14 All tenders must be returned in their original package format or better!

## **3 Fixed priced contract**

All prices for the contract would be taken as fixed for the duration of the contract.

- (a) A unit rate per trainee should be provided
- (b) A total price for (30) trainees should be provided
- (c) Total price should be inclusive of VAT if a service provider is tax register.
- (d) All prices in (a) and (b) should include all costs (i.e. training material, stationary, etcetera).

#### 4 Functionality

**NOTE: The points of the functionality are accumulative. For example if the facilitator has more than five years' experience he/she will obtained the entire 15 pints**

FUNCTIONALITY COMPARISON				
Functionality criteria	Sub criteria			Maximum number of points
Facilitator	Experience in years attach proof-CV	1<3	8	<b>15</b>
		4<5	5	
		+5	2	
	Qualification (attach certified proof – certificate) the points are accumulative	Facilitation certificate		15
National diploma		10		
B Tech or Degree		10		
<b>Company Profile:</b>	Experience with projects of a similar nature (attach proof of completion certificate or appointment letter)	Projects		<b>20</b>
		30,000.00-200,000.00	10	
		201, 000.00-400,000.00	5	
		401,000.00-600,000.00	5	
Financial References	Certified copy of the Proof of Bank rating	C	3	<b>5</b>
		Above C	2	
Methodology	Detailed proposal and daily programme outline		10	<b>15</b>
	Module of learner handbook		5	
Maximum possible score for functionality				<b>100</b>

**NB: A bidder must score a minimum of 75 points to qualify for the next round of the evaluation (to be considered for pricing and preference points). I the bidder receive any points less than 75, the Bidder will be disqualified.**

**CERTIFICATE OF AUTHORITY FOR SIGNATURE**

**3.1. SUPPLIERS / CONTRACTORS**

3.1.1. "certificate of authority to sign all documents in connection with this tender and any contract or agreement which may arise there from", duly signed and dated, shall be provided by the Board of Directors of the firm and shall be attached to this page. An example is given below.

**3.2. JOINT VENTURE**

3.2.1. The document of formation of the Joint Venture shall be attached to this page.

3.2.2. A "certificate of authority to sign all documents in connection with this tender and any contract or agreement which may arise there from", duly signed and dated, shall be provided by the Boards of Directors of each member of the Joint Venture and shall be attached to this page.

**EXAMPLE OF A CERTIFICATE OF AUTHORITY FOR SIGNATORY**

"By resolution of the board of directors passed at a meeting held on  
 .....

Mr. /Ms..... whose signature appears below, has been duly authorized  
 to sign all documents in connection with the tender for Contract no.....  
 and any contract which may arise there from on behalf of (block  
 capitals).....

SIGNED ON BEHALF OF THE COMPANY.....

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

DATE: .....

SIGNATURE OF SIGNATORY: .....

WITNESS:                    1 .....

                                     2. ....

Preference Certificate	T 5
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NOTE:

BEFORE COMPLETING THIS CERTIFICATE, BIDDER(S) MUST STUDY THE STANDARD TERMS AND CONDITIONS OF BID AS WELL AS THE CONDITIONS CONTAINED IN THIS CERTIFICATE.

General conditions:

1. A fixed 80/20 point preference system will apply to all tenders/bids.
2. Nkomazi Local Municipality may require any bidder to provide reasonable proof of any preference claimed.
3. In the event that Nkomazi Local Municipality detects that any information provided, is incorrect or has been provided fraudulently or is in any way unsubstantiated, Nkomazi Local Municipality may declare that bid non-compliant.
4. Nkomazi Local Municipality reserves the right to take appropriate further action against any party involved or implicated in any fraudulent action involving the provision of any fraudulent or unsubstantiated information.
5. A bidder must not be awarded the points claimed for BBBEE status level of contribution if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract
6. A contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher BBBEE status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract
7. In relation to a designated sector, a contractor must not be allowed to sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold

## **General definitions:**

**"Consortium or Joint Venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a bid;

**"Control"** the position and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial authority and power in determining the policies and directing the operations of the business;

**"Management"** in relation to an enterprise or business, means an activity inclusive of control and performed on a daily basis, by any person who is a principal executive officer of the enterprise or business, by whatever name the person may be designated;

**"Owned"** the act of owning which has all the customary elements of ownership, including the right of decision-making and sharing all the risks and profits commensurate with the degree of ownership interest as demonstrated by an examination of the substance, rather than the form of ownership arrangements;

**"Small, Medium and Micro Enterprises (SMME's)"** bears the same meaning as assigned to this expression in the Small Business Act 202 of 1996;

**"Trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person;

**"Trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another;

**"ACT"** means the Preferential Procurement Policy Framework Act, 1000 (Act No. 5 of 1000)

"All applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies,

**"BBBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black economic empowerment Act,

**"Broad-Based Black economic empowerment Act"** means the Broad-Based Black economic Empowerment Act, 1003 (Act No. 53 of 1003)

**"Comparative Price"** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration,

**"Contract"** means the agreement that results from the acceptance of a tender by an organ of state,

**"Firm Price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the

contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract,

**“Designated Sector”** means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated threshold for local production and content,

**“Functionality”** means the measurement according to predetermined norms, as set out in the tender documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a tenderer,

**“Important 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 its subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation cost, such as landing cost, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry,

**“Local Content”** means that portion of the tender price which is not included in the imported content, provided that local manufacture does take place,

**“Non-firm prices”** means all prices other than “firm” prices,

**“Person”** includes a juristic person,

**“Stipulated minimum threshold”** means that portion of local production and contents as determined by the Department of Trade and Industry;

**“Rand Value”** means the local total estimated value of a contract in South African currency, calculated at the time of tender invitations, and includes all applicable taxes and excise duties,

**“Sub-Contract”** means the primary contractors assigning, leasing making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract,

**“Tender”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive tendering or proposals.

### **Preference Points award system**

Preference points will be allocated as follows:

Revised Preferential Procurement Regulation

Calculation of points for BBBEE status level contributor status level of contributor in accordance with the Table below

BBBEE status level contributor	Number of points (80/20)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

Bid shall not be disqualified from the bidding process if the bidder does not submit a certificate substantiating the BBBEE status level contribution nor is a non-compliant contributor. Such a bidder will score 0 out of a maximum of 20. To claim the points, service provider must submit a certified copy of the original BBBEE status or an original. No points shall be awarded on a copy of the certified copy

### **The 80/20 preference point systems**

$$N_p = 80 \left[ 1 - \frac{(P_t - P_{min})}{P_{min}} \right]$$

Where:  $N_p$  = the number of bid/tender adjudication points awarded for price.

$P_t$  = the bid/tender sum (corrected if applicable) of the responsive bid under consideration.

$P_{min}$  = the bid/tender sum (corrected if applicable) of the lowest responsive tender/bid.

The following standard terms and conditions of bid have been accepted and laid down by the Council of Nkomazi Local Municipality and are applicable to all bids, contracts and orders, unless otherwise directed by the Council prior to the invitation of bids.

## **1. GENERAL DIRECTIVES**

### **1.1. Formal contracts**

Formal contracts shall only be concluded with bidders where this requirement is stated in the bid documents. In the absence of a formal contract, the duly completed and signed bid accepted by a letter of acceptance by Nkomazi Local Municipality and signed by both parties, shall be the contract between the parties, and this shall include the tender document.

### **1.2. Expenses**

Unless otherwise indicated in the bid documents, Nkomazi Local Municipality shall not be liable for any expenses incurred in the preparation or submission of any bid.

### **1.3. Briefing Notes**

Nkomazi Local Municipality may issue Briefing Notes from time to time during the bid submission phase so that prospective bidders will timeously be made aware of any and all information that might assist them in articulating their bids.

Briefing Notes will be sequentially numbered to facilitate easy reference.

### **1.4. Governing laws**

Laws of the Republic of South Africa shall govern contracts arising from the acceptance of bids.

### **1.5. Site inspections and explanatory meetings**

1.5.1 Nkomazi Local Municipality may require the attendance of a Compulsory site inspection or explanatory meeting. Where this is a condition of bid, bidders must attend the site inspection or explanatory meeting in order to submit a valid bid. Failure to attend or coming late for the said meeting will result in the bid being non-compliant.

1.5.2 Particulars of the place and time of the site inspection or explanatory meeting will be indicated in the advertisement and the bid documentation.

1.5.3 Minutes will be taken of all information disclosed during the site inspection or explanatory meeting, and copies of these minutes will be made available on request to all interested parties that attended the relevant inspection or meeting.



- 1.5.4 Where the attendance of the site inspection or explanatory meeting is an absolute requirement to the bid, bidders must be required to certify that they attended the site meeting or explanatory meeting and that they are fully aware of the scope of the bid.

## **2. INVITATIONS TO TENDER/BID**

### **2.1. Service Provider Database**

Nkomazi Local Municipality may issue invitations to bid for specific supplies or services to service providers listed on the Nkomazi Local Municipality service provider database.

Without derogating from the above, Nkomazi Local Municipality reserves the right to go to open bid for the obtainment of supplies or services.

Requests for listing on the service provider database of Nkomazi Local Municipality will be issued from time to time in the local media.

### **2.2. Documents to be used**

- 2.2.1 Bids must make use of the prescribed bid documents, and supply all necessary and required information called for therein.
- 2.2.2 Failure of a bidder to submit a bid duly signed in black ink, or to provide all required documentation or to complete bid documentation and certificates in all respects, may invalidate the bid.
- 2.2.3 Bidders should not qualify their bids by their own conditions, and such bidders run the risk of having their bid declared invalid.
- 2.2.4 Nkomazi Local Municipality may request the furnishing of a non-refundable bid deposit together with the submission of bids. This is to defray in part the cost of non-responsive bids, and to prevent nuisance bids being submitted.

## **3. Samples**

- 3.1.1. Prospective bidders may be charged for samples provided to them by Nkomazi Local Municipality. Failure to do so may render the bid invalid. Nkomazi Local Municipality shall not be liable for any cost involved in the supply of samples by a tenderer/ bidder;
- 3.1.2. Where samples are called for in the bid documents, samples must be clearly marked with the bid numbers, item number and name of the bidder. Samples must reach the designated address for the submission of bids no later than the closing time;
- 3.1.3. Nkomazi Local Municipality may accept goods offered on loan for trial purposes, but is under no obligation to purchase the loaned goods, or any similar goods, and Nkomazi Local Municipality accepts no responsibility in the event of breakage of damage, or for the depreciation of depreciable goods.

#### **4. Closing of tenders/bids**

- 4.1. Bids close at 12:00 AM on the closing date as indicated in the bid documents.
- 4.2. Extension of the closing date may be granted in certain circumstances where such extension is justified. Any extension will however be published before the original closing date or can be communicated during briefing session.
- 4.3. Tenders/bids shall be considered late if they are received at the address indicated in the bid documents after the closing time on the closing date. A late bid shall not be admitted for consideration, and where practicable, shall be returned unopened to the bidder.

#### **5. Submission of tenders/bids**

- 5.1. Tender/bid documents must be deposited in the bid box at the address indicated in the bid documentation, failing which at a clearly indicated alternative site (where applicable).
- 5.2. Tenders/bids must be deposited in a sealed envelope or container, which envelope or container must clearly indicate the bid number and description of bid (where applicable).
- 5.3. Tenders/bids must be submitted in English.
- 5.4. Tenders/bids received by facsimile, telegram, telex, e-mail or other similar media will not be accepted as validly submitted bids (where applicable).
- 5.5. Only original tenders/bids or photocopies of the original documentation which is submitted in the prescribed manner may be accepted as valid bids.
- 5.6. All tenders/bids received prior to the closing date shall be kept in safe custody until the closing time of bids.

#### **6. Opening of tenders/bids**

- 6.1. Tenders/bids will be opened in public (where applicable) as soon as practicable after the closing time.
- 6.2. Tenders/bids will be given a registration mark and a list of bids received will be placed on record.

#### **7. Validity periods**

The period for which bids are to remain valid and binding shall be indicated in the bid documents. The validity period is calculated from the closing time and will continue until the close of business on the last day of the period, and where this day falls on a Saturday, Sunday or public holiday, the bid will remain valid and binding until the close of business on the following business day.

## **8. Tender/bid prices and delivery periods**

- 8.1. Firm tender/bid prices and delivery periods are preferred.
- 8.2. "Firm" prices are deemed to be prices which, are only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of any tax, levy or duty, which in terms of a law or regulation is binding on the bidder and will demonstrably have an influence on the prices of supplies or on the cost of rendering services.
- 8.3. "Non-firm" prices are deemed to be all prices which are not "firm."
- 8.4. Where non-firm prices are offered, Nkomazi Local Municipality may require the submission of proof regarding labour and material costs, or other factors which are specified by the bidder, and should these costs be seen to be unrealistic, it may negatively affect the consideration of the bid.
- 8.5. Where applicable, the value of certificates (payment) issued in terms of the contract, shall be increased or decreased by applying a "contract price adjustment factor" calculated according to the formula and the conditions set out in the Contract Price Adjustment Schedule referring to the General Conditions of Contract for works of engineering construction.
- 8.6. Expressions relating to the delivery of supplies or services which are unspecified such as "soonest" or "earliest" etc. are not acceptable. Where it has not been indicated whether prices or delivery periods are firm or not, bided prices and delivery periods shall be deemed to be firm and the contractor shall be bound thereby.

## **3. CONSIDERATION OF TENDER/BIDS**

- 3.1. All bids validly submitted will be taken into consideration. Each tender/bid will be reviewed and evaluated for its ability to deliver the specific requirements of the bid in line with set criteria of paragraph 3.3.
- 3.2. Nkomazi Local Municipality is under no obligation to accept any tender/bid, or to accept the lowest tender/bid.
- 3.3. All tenders/bids will be reviewed and evaluated in accordance with the following criteria:
  - Functionality
  - General Information supplied by the bidder
  - Compliance with bid requirements
  - Pricing
  - Preferential Procurement points
- 3.4. Nkomazi Local Municipality may elect to invite verbal presentations from bidders for clarification of the content of their bids.

- 3.5. Nkomazi Local Municipality may, where a bid relates to more than one item, accept such tender/bid in respect of any specific item or items, and may also accept part of the specified quantity of any specific item or items.
- 3.6. Any decision by Nkomazi Local Municipality shall be final and Nkomazi Local Municipality shall only on request provide reasons for the acceptance or passing over of a bid.
- 3.7. Where a bid has been granted on the strength of information furnished by the bidder, which later proves to be incorrect, Nkomazi Local Municipality may, in addition to any other remedy it may have, recover all costs and damages suffered or sustained by Nkomazi Local Municipality as a result of the award of the bid from the bidder, and/or cancel the agreement and claim damages from the bidder.
- 3.8. Nkomazi Local Municipality will award a preference to bids in accordance with the Preference Certificate in the form of BBBEE status level certificate [T 5].
- 3.9. In the event of equal bids, the following order of priority will normally be applied in the consideration of equal bids:

#### **Evaluation of bids that scored equal points**

- 3.9.1. In the event that two or more bids have scored equal total points, the successful bid must be the one that scored the highest points for BBBEE,
- 3.9.2. IF two or more bids have equal points, including equal preference points for BBBEE, the successful bid must be the one scoring the highest score for functionality if functionality is part of the evaluation process,
- 3.9.3. In the event that two or more bids are equal in all respects, the award must be decided by the drawing of lots
- 3.20. Successful bidders will be notified in writing of the acceptance of their bids.

## **4. TERMS AND CONDITIONS**

### **4.1 Information provided**

Nkomazi Local Municipality provides the bid documentation or any other information, in good faith. Any party or parties considering entering into a contract with Nkomazi Local Municipality on the basis of such information should conduct their own investigations and obtain the necessary professional advice and council, at their cost, necessary to formulate their own opinion regarding all matters related to the bid. Nkomazi Local Municipality cannot be held liable for any costs or damages flowing from a failure to do so by any bidder.

## **4.2 Legal and regulatory framework**

- 4.2.1. All bids must function and be implemented within the general legal and regulatory framework relating to the supply or service, and requires compliance with all law by any bidder.
- 4.3.2. The onus is on the bidder to ensure compliance of its bid as well as during the implementation of the bid with the applicable legal and regulatory requirements, and Nkomazi Local Municipality reserves the right to reject any bid on the basis of non-compliance by the bidder with the applicable legal and regulatory framework.
- 4.4.3. Where relevant Nkomazi Local Municipality may request the Respondent to submit proof of compliance with any aspect of the legal and regulatory framework.

## **4.3 No representations or warranties**

All information contained in or provided as part of the bid documentation is offered in good faith and for the guidance of bidders. Nkomazi Local Municipality does not make any representation (express or implied), or provide any warranty as to the accuracy, completeness or correctness of bid documentation. Nkomazi Local Municipality shall not be liable for any claim for loss or damage to any bidder arising from any error, misstatement or omission contained in the bid documentation or any reliance thereon.

## **4.4 Declaration of interest**

In order to prevent allegations of favouritism or nepotism in the procurement process, bidders must complete the Declaration of Interest & Interest in the State. (T4)

## **4.5 Reservation of rights**

- 4.5.1. Nkomazi Local Municipality reserves the right to consider all possible options during the evaluation of bids. This includes the right not to proceed with the bid, suspend or temporarily defer the bid, or not to award the bid to any bidder. No liability shall attach to Nkomazi Local Municipality in the exercising of any of these rights.
- 4.5.2. If Nkomazi Local Municipality elects not to award the bid to any bidder, it may at its sole discretion, solicit bids in such manner as it may deem necessary in its absolute and sole discretion.
- 4.5.3. Copyright of all documents, data, designs, electronic aids, programmes etc. forming part of the bid documentation or developed by Nkomazi Local Municipality, shall remain to vest in Nkomazi Local Municipality.

## **4.6. Queries relating to the bid**

- 4.6.1. Any queries relating to a bid or any process should be addressed in writing (registered mail, facsimile or e-mail), marked for the attention to:

**The person and address stated in the bid documentation**

4.6.2. Queries will be responded to in writing, and the written query and response may be distributed to all prospective bidders who have collected the bid documentation. The names of bidders raising queries will not be made known.

#### **4.7. Information to be provided by bidders**

The onus is on the bidder to ensure that all requirements contained in the bid documentation are complied with and all information requested from the bidder is supplied.

#### **4.8. Independent submission**

By submitting a bid, each bidder certifies that –

- 4.8.1. Its bid has been submitted independently, without consultation, communication or agreement for restricting competition, with any other bidder or to any other competitor; and
- 4.8.2. No attempt has been made or will be made by the bidder to induce any other person or firm to submit a bid for the purpose of restricting competition.

#### **4.9. Sole property of Nkomazi Local Municipality**

- 4.9.1. All materials, information and data submitted by bidders shall become the sole property of Nkomazi Local Municipality, with the exception of –
  - 4.9.1.1. Confidential financial statements of the bidder; and
  - 4.9.1.2. Copyright material, trade secrets or other proprietary information clearly identified as such by the bidder.

#### **4.10. Confidentiality**

- 4.10.1. Nkomazi Local Municipality undertakes to keep confidential all information received from any bidder which is clearly identified as confidential in the bid and which is not already public knowledge or available in the public domain or in the hands of Nkomazi Local Municipality or required to be disclosed by legal or regulatory requirements, and the bidder accordingly indemnifies Nkomazi Local Municipality against any claim or liability for its refusal to disclose the relevant information/data to any person seeking access thereto. Failure to honour such indemnity shall be deemed to be a waiver by the bidder of its right to exemption from disclosure and shall Nkomazi Local Municipality be authorised to provide a copy of the relevant information/data or any part thereof to the requester.
- 4.10.2. Information disclosed by Nkomazi Local Municipality is deemed as confidential and it is expected that bidders treat it as such. This includes all information which is not public knowledge or available in the public domain or required to be disclosed by legal or regulatory requirements. Bidders will be held liable for non-compliance in this regard.
- 4.10.3. No information of bidder shall be made available to another bidder or any person unless requested by the court of law. Bidder can be allowed to request to see his/her bid document or to seek clarity of his/her failure, but not to have access to other bidder's information.

Bidder information	T 7
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1. Name of firm: .....
2. Postal address.....
3. Physical address: .....
4. Telephone: .....
5. Fax no.: .....
6. E-mail: .....
7. Contact person: .....
8. Enterprise/ company Income Tax no.: .....  
(Insert personal income tax number if a one person business and personal income tax numbers of partners, if a partnership)
9. VAT registration no: .....
10. Tax clearance certificate attached (must be an original document & valid on the closing of the tender)
11. Bank account number and bank where account is held:  
.....
12. Proof of payment of municipal services attached (or a letter from your local municipality which exempt you/company from payment of services)
13. Corporate entity registration no.....
14. Type of enterprise.....  
(e.g. partnership, company, cc, one person business etc.)  
(Certified copy of enterprise certificate)
15. Country of registration or incorporation .....
16. Manner of participation: .....  
(e.g. main contractor, supplier, professional service provider, joint venture, consortium etc.)
17. Business Sector.....



18. Total number of employees:

Full time.....

Part time: .....

Did your firm exist under a previous name?

- Yes
- No

If yes, what was its previous name?

.....

Who were the owners/partners/directors?

.....

10. List all the partners, proprietors and shareholders by name, identity number, citizenship and shareholding:

Name	ID number	Citizen-Ship	Date of Ownership	% Holding/Ownership	Share-

Note: Where owners are themselves a corporate entity or partnership, please identify such.

11. List the major items of equipment, plant and vehicles owned by the firm or the owner, but utilised or to be utilise by the by the company (e.g Vehicles):

	Description	Number
1		
2		
3		
4		
5		
6		

12. Provide proof of organisational capability and practice profile to deliver the required supplies or services. (If insufficient space, the information may be provided as a separate annexure)

.....  
 .....

13. List the four largest contracts/assignments completed or in the process of being completed by your enterprise in years. (N.B.: Provide additional information on a separate paper if necessary)

Schedule of previous work carried out by Bidder

Scope of work/Nature of work carried out previously	Contracted by whom/Employer name, tel & fax	Contract fee amount/value of work	Year of Completion

The undersigned is duly authorised to do so on behalf of the bidder and affirms that the information furnished is true and correct.

Signature .....

Duly authorised to sign on behalf of .....

\_\_\_\_\_  
 COMMISSIONER OF OATH

\_\_\_\_\_  
 DATE

1. I/We hereby bid to supply all or any of the supplies and/or to bid all or any of the services as described and required in the bid documentation to Nkomazi Local Municipality, on the terms and conditions and in accordance with the specifications as stipulated in the bid documentation (which bid documentation shall be taken as part of, and incorporated into, this bid) at the prices and delivery periods as required therein.
2. I/We agree that –  
the offer herein contained shall remain binding on me/us and open for acceptance by Nkomazi Local Municipality during the validity period indicated in the bid documentation, which period shall be calculated from the closing time of the bid;
3. this bid and its acceptance shall be subject to the Standard Terms and Conditions of Bid [T 5] which are contained in this bid documentation and with which contents I am/we are fully acquainted with;
4. if I/we withdraw my/our bid within the validity period of the bid for which I/we have agreed that the bid shall remain open for acceptance, or fail to fulfil the contract when called upon to do so, Nkomazi Local Municipality may, without prejudice to any other remedies at its disposal, agree to the withdrawal or cancellation of the bid or contract that may have been entered into and I/we will then pay to Nkomazi Local Municipality any additional expense incurred by Nkomazi Local Municipality having to either accept any less favourable bid, or if fresh bids have to be invited, the additional expenditure incurred by the invitation of fresh bids and by the subsequent acceptance of any less favourable bid;
5. if my/our bid is accepted the acceptance may be communicated to me/us by letter by ordinary post or registered post and that the Post Office shall be regarded as my/our agent, and delivery of such acceptance to the Post Office shall be treated as a delivery to me/us;
6. The law of the Republic of South Africa shall govern the contract created by the acceptance of my/our bid and that I/we choose our *domicilium citandi et executandi* in the Republic at :  
.....
7. I/We furthermore confirm that I/we have satisfied myself/ourselves as to the correctness and validity of my/our bid and that the prices and scope of work bided cover all my/our obligations in terms of the bid documentation and that I/we accept that any mistakes regarding prices or calculations will be at my/our risk.
8. I/We hereby accept full responsibility for the proper execution and due fulfilment of all obligations and conditions devolving on me/us under this contract as the principal bidder liable for the contract.
9. I/We agree that any action arising from this contract may in all respects be instituted against me/us and I/we hereby undertake to satisfy fully any judgment obtained against me/us as a result of such action.

Signature ..... Tender/Bid no.....  
 Capacity .....Duly authorised  
 to sign on behalf of .....

LETTER OF TENDER	T9
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The Municipal Manager  
Nkomazi Municipality  
Private Bag X 201  
Malalane  
1320

Sir/Madam

CONTRACT NO: NKO 13/2018 Training of people on Learnership and Apprenticeship program for Nkomazi LM

DATE OF PUBLICATION OF TENDERS	CLOSING DATE AND TIME FOR SUBMISSION OF TENDERS	THIS TENDER HOLDS GOOD FOR ACCEPTANCE UNTIL
26/01/2018	21/02/2018	90 days

1. Having examined the documents for the execution of the above-mentioned Project as well as any addenda subsequently issued, I/we the undersigned offer for training of people on learnership and apprenticeship for Nkomazi NQF Level in conformity with the above-said documents and addenda, for the sum of -

.....  
.....

(R.....\*) \* Excluding VAT

or such other sum as may be determined in accordance with the general conditions of contract and the tender rules applicable to this contract, as well as the conditions included in this form of tender.

2. I/We acknowledge that all the certificates, schedules and forms included in this document for completion by the Tenderer have been fully completed by me/us and form part of my/our tender.
3. I/We undertake to complete and deliver the whole of the Project comprised in this contract within 24 months including the holidays during December and January and any other specified non-working days, calculated from the commencement day of supervision.
3. In the event of my/our not completing the whole of the works within the period tendered by me/us in paragraph 3 hereof, I/we agree to pay the Employer, as a penalty for such default, the sum stated in the Appendix to Tender for each calendar day or part thereof in excess of my/our tendered time for completion and the Employer may, without prejudice to any other method of recovery, deduct such sum monthly from any monies due or to become due to me/us.

5. If my/our tender is accepted, I/we undertake -

To sign the form of agreement included in this document within a period of twenty-one (21) days of receipt of written acceptance of my/our tender subject to the prior provision of the approved contract guarantee by me/us.

6. I/We agree to abide by this tender for a period of ninety (90) days from the closing date fixed for the submission of tenders, and it shall remain binding upon me/us and may be accepted at any time before expiry of that period.

7. Unless and until a formal agreement is prepared and executed, this tender, together with the written acceptance thereof, shall constitute a binding contract between us and shall be deemed for all purposes to be the contract agreement.

8. In the event of there being any arithmetical errors in the priced bill of quantities, I/we agree to their being corrected, the rates being taken as correct.

9. I/We understand that you are not bound to accept the lowest or any particular tender you may receive, and that you shall not defray any expenses incurred by me/us in tendering.

10. I/We agree and undertake to commence the abovementioned Project within seven (7) days from the date on which the Project has been handed over to me/us by a written instruction from the Employer.

11. I/We declare that, notwithstanding anything contained in a covering letter to this tender, this tender is submitted entirely without qualifications.

12. I/We choose *domicilium citandi et executandi* at -

.....  
in the Republic of South Africa.

Yours faithfully

SIGNED ON BEHALF OF TENDERER .....

NAME OF SIGNATORY (IN CAPITALS): .....

SIGNED ON THIS THE .....DAY OF .....IN THE YEAR OF.....

ON BEHALF OF: .....

ADDRESS.....

TELEPHONE NUMBER .....

FAX NUMBER: .....

WITNESS 1: .....

NAME IN CAPITALS: .....

WITNESS 2: .....

NAME IN CAPITALS: .....

Schedule of Quantities	T10
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**Pricing Schedule:**

<b>Training Description: Marketing : SAQA ID 61593 Learnership</b>		<b>Unit Standard</b>			<b>Duration of the</b>
	Description	Cost	VAT	Number of Students	Total Amount inclusive of VAT
1.	Cost per delegate	R	R	15	R
2.	Cost per group	R	R	15	R
	Group size 1 – 14				
	Group size 15 – 29	R	R	15	R
	Group size 30 – 45	R	R		R
3.	Group discounts given	R			R
<b>Any other additional cost:</b>					
Total					R

# **THE NATIONAL TREASURY**

**Republic of South Africa**



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## **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT**

**July 2010**



**GOVERNMENT PROCUREMENT**  
**GENERAL CONDITIONS OF CONTRACT**  
**July 2010**

**NOTES**

The purpose of this document is to:

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

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

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

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## General Conditions of Contract

### 1. Definitions

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 supplies are so delivered and a valid receipt is obtained.
  - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

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

obligations of the supplier covered under the contract.

1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

## **2. Application**

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

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

## **3. General**

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

## **4. Standards**

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

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

5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

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

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

## **6. Patent rights**

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

**7. Performance security**

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

**8. Inspections, tests and analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

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

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

**9. Packing**

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

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

**10. Delivery and documents**

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

10.2 Documents to be submitted by the supplier are specified in SCC.

**11. Insurance**

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

**12. Transportation**

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

**13. Incidental services**

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

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

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

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

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

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

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

#### **15. Warranty**

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

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

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

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

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take



such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon 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 in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

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

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

## **22. Penalties**

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

## **23. Termination for default**

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

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

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

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

23.4 If a purchaser intends imposing a restriction on a supplier or any

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

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

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

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

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

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

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

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

may be due to him

**25. Force Majeure**

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

**26. Termination for insolvency**

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

**27. Settlement of Disputes**

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
  - (b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of liability**

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation Programme (NIP)** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** 34.1 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 (or bid rigging).
- 34.2 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 the Competition Act No. 89 of 1998.

- 34.3 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.