

**APPOINTMENT OF PANEL OF ATTORNEYS FOR TRADE & INVESTMENT KWAZULU-NATAL
TO PROVIDE LEGAL SERVICES FOR A PERIOD OF TWENTY-FOUR (24) MONTHS.**

REFERENCE NUMBER: 3130/2020/03

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1. INTRODUCTION

Trade & Investment KwaZulu-Natal (TIKZN) is a provincial trade and investment promotion public entity, mandated by the Department of Economic Development, Tourism and Environmental Affairs (EDTEA) to promote the province as an investment destination and to promote trade by assisting KwaZulu-Natal (KZN) based companies to identify local and international markets to export their products.

1.1. PROJECT PURPOSE

The purpose of this project is to appoint a panel of reputable, suitable legal firms to provide legal services to Trade and Investment KwaZulu-Natal for a period of twenty-four (24) months.

1.2. CONSULTANT'S TERMS OF REFERENCE

It is the intention of TIKZN to enter into a formal Service Level Agreement with the successful Service Provider to provide the services described hereunder.

The Terms of Reference (TOR) would serve to guide the process of selecting and appointing a qualified service provider by ensuring a match between TIKZN's requirements and the knowledge and experience of the service provider. These TORs and the consultant's proposal will form the basis of the service level agreement to be entered between the parties.

1.3. BACKGROUND AND SCOPE OF SERVICES

1.3.1. TIKZN requires experienced, reputable legal firms that will be able to provide professional, multi-functional, legal services to TIKZN for a period of 24 months

1.3.2. The Scope of work will include the following:

- a) Drafting of contracts for service providers and perusal of service level agreements as well as quality assurance.
- b) Drafting of Memorandum of Understanding between TIKZN and relevant stakeholders and partners.
- c) Providing legal advice to the organisation should Service Providers fail to comply with the conditions of contract and delayed executions.
- d) Supporting organisation on matters of Litigation /Dispute resolution
- e) Providing advice and support on Labour relations matters and disputes.
- f) Perform Legal Compliance Audits
- g) Advise the organisation on corporate governance matters and ensure compliance with various applicable legislations.
- h) Provide any other legal service that may be required by TIKZN and other stakeholders.

1.3.3. Required fields of law

A) Administrative Civil litigation

Attorneys will attend to civil litigation on behalf of TIKZN, either in the court of law or through arbitrations. Attorneys are required to have in-depth knowledge of civil litigation procedures through arbitration or in the magistrate court and in the high court.

• **Team Composition:**

a) Team leader

- Must have an officially recognised LLB qualification; and
- Must be admitted as an attorney of the high court/Advocate;
- A minimum of 7 years post admission litigation experience;

- A minimum of 3 years' experience in the leadership of a legal team; and
- Excellent report writing and presentation skills.

b) Team

The team member must meet the following requirements:

- Must have an officially recognised LLB qualification;
- Admitted attorney of the high court; and
- Minimum of 5 years post admission litigation experience.

NB: You can access the Evaluation Grid for this category (Administration Civil Litigation) under 11.1A of this document

B) Commercial and Corporate law

Practical knowledge is required of all spheres of commercial and corporate law including but not limited to knowledge and application of the standard forms of contract, company registrations and shareholder rights.

Attorneys may be required to attend to drafting, negotiating and interpretation of commercial agreements more specifically, but not limited to:

- Lease agreements;
- Service level agreements;
- Memorandum of agreements;
- Memorandum of understanding;
- Programme /Project implementation agreements;
- International agreements

• **Team Composition**

a) Team Leader

- Must have an officially recognised LLB qualification;
- Must be admitted as an attorney of the high court/advocate;
- A minimum of 7 years post admission contract drafting experience;
- A minimum of 3 years' experience in the leadership of a legal team; and
- Excellent report writing and presentation skills.

b) Team

The team member must meet the following requirements:

- Must have an officially recognised LLB qualification;
- Admitted attorney of the high court; and
- Minimum of 5 years post admission experience in contract drafting.

NB: You can access the Evaluation Grid for this category (Commercial and Corporate Law) under 11.2B of this document

C) Labour and Employment law

Expertise in labour and employment law matters are required, more specifically but not limited to;

- Ability to prosecute all levels employees in disciplinary hearings;
- Advise on procedural and substantive issues relating to disciplinary hearings conducted;
- Advise on disciplinary codes, policies governing legislation;
- Representation at the CCMA, Labour court and Labour appeal court;

- To advise and assist in process and compliance in section 189 of Labour Relations Act 66 of 1995 procedures;
- Negotiation and settlement of labour disputes whether with individual employees or the bargaining unit represented by either union or lawyer;
- Provision of legal opinion related to labour issues;
- Investigation of alleged misconduct.

- **Team composition**

- a) **Team leader**

- Must have an officially recognised LLB qualification;
- Must be admitted as an attorney of the high court/ advocate;
- A minimum of 7 years post admission labour law experience;
- A minimum of 3 years' experience in the leadership of a legal team; and
- Excellent report writing and presentation skills.

- b) **Team**

The team member must meet the following requirements:

- Must have an officially recognised LLB qualification;
- Admitted attorney of the high court; and
- Minimum of 5 years post admission experience in labour law.

NB: You can access the Evaluation Grid for this category (Labour and employment Law) under 11.3C of this document

D) Constitutional and Public Sector law

Expertise in constitutional and public sector law is required, dealing but not Limited to;

- Tender appeals
- Completion and dispute resolution
- Freedom of information and data protection
- Intellectual property
- PPPFA and procurement regulations

- **Team Composition**

- a) **Team Leader**

- Must have an officially recognised LLB qualification;
- Must be admitted as an attorney of the high court/ advocate;
- A minimum of 7 years post admission contract drafting experience;
- A minimum of 3 years' experience in the leadership of a legal team; and
- Excellent report writing and presentation skills

- b) **Team**

The team member must meet the following requirements:

- Must have an officially recognised LLB qualification;
- Admitted attorney of the high court; and
- Minimum of 5 years post admission experience in contract drafting.

NB: You can access the Evaluation Grid for this category (Constitutional and Public Sector Law) under 11.4D of this document

Further, kindly consider the following information that is crucial as you consider making a proposal for the required services;

- ✓ The contract period for this contract is 24 months from the date of appointment.
- ✓ When a need arises for the entity to procure any of the legal services in respect of the above-mentioned categories, all the service providers falling on the specific field will be invited to submit quotations.
- ✓ The quotations will be awarded via relevant procurement structures currently in place within the entity.
- ✓ There will be no guarantee that attorneys will receive instructions if they are appointed onto TIKZN panel.
- ✓ All copyright and intellectual property rights that may result as consequences of the work done for the entity will become the property of TIKZN.
- ✓ Firms of attorneys would be obliged to hand over all documents and information in any format, including copies thereof, that they would have received from TIKZN or that they had access to during the assignment immediately after the completion of the assignment(s) to TIKZN
- ✓ Firms of attorneys shall deliver to TIKZN, on completion of an assignment(s), any security devices, passwords or protective mechanisms to the soft versions of documents that were written and TIKZN will have the right to amend and change these without obligation whatsoever to the firms of attorneys upon completion of the assignment.

The Entity requires a Maximum of 3 Firms per category and any firm of attorneys is allowed to bid for more than one category.

1.4. METHODOLOGY

The Service Providers' proposal must outline the methodology they intend adopting to meet the deliverables specified above. Furthermore, bidders will need to provide the list of human resources (with role and skill set) which will be dedicated to service TIKZN. The proposal should outline the following;

- (a) The expertise that the legal firm can offer.
- (b) Demonstrate a thorough understanding of the Public Finance Management Act (PFMA) and related legislations.
- (c) Expertise in Commercial law (International, Environmental law – Oil & gas where required)
- (d) Level of expertise available.
- (e) Turnaround times and clearly defined targets in line with the scope of the work.
- (f) Ability to collaborate with other attorneys locally and internationally.

KINDLY NOTE THAT FAILURE TO EXPRESSLY COVER THIS IN YOUR PROPOSAL MAY RESULT IN YOUR PROPOSAL BEING REJECTED WITHOUT FURTHER CONSIDERATION.

1.5. BRIEFING SESSION

- a) **NB: A BRIEFING SESSION WILL BE HELD ON WEDNESDAY, 9TH SEPTEMBER 2020 AT 10H00. BIDDERS ARE REQUESTED TO CONVENE AT THE RECEPTION AREA, TIKZN OFFICES. FAILURE TO ATTEND THE COMPULSORY TENDER BRIEFING SESSION WILL RESULT IN YOUR BID BEING DISQUALIFIED.**

INSTRUCTION TO SERVICE PROVIDERS

- 1.6.** The service provider must be a legal entity, person or consortium with all other necessary expertise.
- 1.7.** Be registered with the National Treasury Central Service Providers Database. Proof of registration together with the number must be provided as part of the proposal.
- 1.8.** The service provider must fully complete all the relevant sections in the bid proposal document failure to complete the relevant sections will result in bid proposal disqualification.
- 1.9.** Service providers to ensure that all Tax matters are in order.
- 1.10.** Service providers are required to declare in writing, as part of their proposal's submissions, that they have no conflict of interest in acting for the TIKZN in this assignment.
- 1.11.** TIKZN will enter into agreement with the selected service provider for the work set out in these Terms of Reference. In the event of any conflict arising between the Terms of Reference and the agreement, the agreement will prevail.
- 1.12.** The appointed service provider is prohibited from using a 3rd Party, unless the services from the 3rd Party are approved by TIKZN. Such permission / approval will only be granted in exceptional circumstances.
- 1.13.** The cost of preparing proposals and of negotiating the contract is not reimbursable.
- 1.14.** TIKZN is not bound to accept any proposals submitted and reserve the right to negotiate price with the preferred service provider and to request improvements to the service provider's team if deemed necessary.
- 1.15.** TIKZN reserves the right to interview short-listed service providers if required and /or call for the best and final offers from one or more service providers.
- 1.16.** Any effort by the service provider to influence proposal evaluation, proposal comparisons or proposal award decisions in any manner, will result in rejection of the proposal concerned.
- 1.17.** Copyright, patent rights and other similar rights in any works or products created as a result of the performance of this project / assignment shall vest in and are hereby transferred to TIKZN, unless specifically agreed to otherwise, in the form of individual written, Agreement signed by both parties.
- 1.18.** For this purpose, only, all works created in terms of this project / assignments thereof shall be deemed to have been created under control and direction of TIKZN and be the property of TIKZN.
- 1.19.** All information documents, records and books provided by TIKZN to any service provider in connection with the proposal or otherwise are strictly private and confidential.
- 1.20.** TIKZN requires no bid surety, but service providers should note that TIKZN reserves the right to review this position at contractual stages.
- 1.21.** TIKZN reserves the right to downscale the required services should the need arise; however, this will be done on a consensus basis.
- 1.22.** TIKZN reserves the right to visit the premises of the short-listed service providers prior to the assignment being awarded and after the contract has been signed.

2. REQUIRED EXPERTISE AND COMPETENCIES

The Service Providers proposal must outline the expertise and competencies on offer and should expressly detail their previous experience with legal services of this nature. This must be supported by the CV's of the team or legal practitioners. To achieve the scope of work, the service provider/s appointed to undertake this legal service, should demonstrate the following key competencies:

- a) Registration with the Law Society (proof of current registration to be submitted with the proposal).
- b) Valid Fidelity Fund Certificate in respect of all directors/partners or principal.

KINDLY NOTE THAT FAILURE TO FULLY COVER THIS IN YOUR PROPOSAL WILL RESULT IN YOUR PROPOSAL BEING REJECTED WITHOUT FURTHER CONSIDERATION.

3. SUPPORTING DOCUMENTATION

Service Providers are required to submit the following documents:

- a) An original valid Tax Clearance Certificate must be submitted with the bid proposal. (Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid proposal. Certified copies of the Tax Clearance Certificate will not be acceptable). In bids where Consortia /Joint Ventures/Subcontractors are involved each party must submit a separate valid Tax Clearance Certificate.
- b) Verifiable references.
- c) B-BBEE Verification Certificate (would be an advantage).
- d) Annexure B - DECLARATION OF INTEREST FORM (SBD4).
- e) Annexure C - PREFERENTIAL POINTS CLAIM FORM (SBD6.1).
- f) Annexure F – CONTRACT FORM – RENDERING OF SERVICES (SBD 7.2)
- g) Annexure G - CERTIFICATE OF INDEPENDANT BID DETERMINATION FORM (SBD9).
- h) Annexure I - DECLARATION OF BIDDERS PAST SUPPLY CHAIN MANAGEMENT PRACTICES (SBD8).
- i) Annexure J - PRICING SCHEDULE FOR LEGAL SERVICES (hourly rate per resource used for the project)

KINDLY NOTE THAT A FAILURE TO SUBMIT THE MANDATORY DOCUMENTS LISTED IN ANNEXURES (B, F, G, I AND J) WITH THE PROPOSAL WILL RESULT IN YOUR PROPOSAL BEING REJECTED WITHOUT FURTHER CONSIDERATION.

j)

KINDLY NOTE THAT A FAILURE TO SUBMIT THE MANDATORY DOCUMENTS WITH THE PROPOSAL WILL RESULT IN YOUR PROPOSAL BEING REJECTED WITHOUT FURTHER CONSIDERATION.

4. PREFERENTIAL PROCUREMENT /PRE-QUALIFICATION CRITERIA

In compliance with the Preferential Procurement Policy Framework Act 5 of 2000 and in particular Preferential Procurement regulations of 2017 where pre-qualification criteria can be applied to specific targeted groups for development of specific BEE targets.

NB: Companies who respond must comply with either of the following categories of targeted groups:

As a pre-qualification criterion (disqualifying requirement), only tenderers who meet one or more of the following tenderers may respond:

- a) Level 1 or 2 BBBEE status level contributor
- b) an EME or QSE

KINDLY NOTE THAT A FAILURE TO COMPLY WITH THE ABOVE MANDATORY REQUIREMENT WILL RESULT IN YOUR PROPOSAL BEING REJECTED WITHOUT FURTHER CONSIDERATION.

5. SERVICE LEVEL AGREEMENT

- a) The acceptance of any proposal shall only be confirmed with the conclusion of a written service level agreement between Trade & Investment KwaZulu-Natal and the Successful Service Provider, in terms of which the rights and duties of the parties are recorded, which agreement shall regulate the relationship between Trade & Investment KwaZulu-Natal and the Successful Service Provider.
- b) Until such time that an appropriate service level agreement has been concluded between Trade & Investment KwaZulu-Natal and successful Service Provider, no rights shall be conferred nor shall any

legitimate expectations be conferred to the successful Service Provider to carry out the works or services provided for in this call for proposals.

6. EVALUATION CRITERIA

Bid for the appointment of the Service Provider will be evaluated on the pre-qualification criteria, PRICE and functionality in accordance with the Supply Chain Management Procurement policies, the Treasury Regulations, the Preferential Procurement Policy Framework Act 5 of 2000 and the B-BBEE Act and with its regulations amendments.

7. PANEL SELECTION CRITERIA

- 7.1. The selection of the service providers to be placed on the panel will be subject to the criteria set out herewith the document.
 - 7.2. TIKZN reserves the right to determine the number of service providers appointed into the panel. A company also has a right to apply for all specialisation if they meet the specified requirements of the bid proposal.
 - 7.3. Service providers must indicate whether they would like to serve in more than one field of the panel. Should the service provider desire to be in more than one field they must provide their proposals for each field. Failure to indicate a field, will lead to an automatic disqualification.
 - 7.4. The selection of suitable service providers will be undertaken on the following basis: -
Pre-qualification criteria, price and technical proposal).
Price IS a determining factor for the purpose of the establishment of the panel. Each bidder is requested to provide an hourly rate for each of the resources that will be used for the project.
8. This Bid will follow the **two-envelope bidding system**. Bidders are required to submit two envelopes:
- 1) Marked Technical proposal
 - 2) Marked Financial proposal

9. FUNCTIONALITY

The below mentioned criteria will guide the evaluation of functionality / technical phase. The service provider must score a minimum of 70 points in order to be part of the panel of legal attorneys. Where more than 3 firms scored more than 70 points in a particular category, the first 3 highest scored firms will be considered.

9.1. EVALUATION GRID FOR FUNCTIONALITY

A: ADMINISTRATIVE AND CIVIL LITIGATION LAW	Points
<p>Company Profile: Understanding of the regulatory framework applicable to the related area (s) of specialization and experience of providing administrative and litigation law to organs of state (the Firm/Company)</p> <ul style="list-style-type: none"> • Bidder who demonstrate an extensive experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialization. <i>(15 years and above relevant experience) – Score = (30)</i> • Bidder who demonstrate reasonable experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialization. <i>(more than 5 years but less than 15 years experience) Score = (15)</i> • Bidder who demonstrate limited experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialization. <i>(less than 5 years experience) Score = (5)</i> <p><i>(These may be supported by a list of verifiable references and reference letters)</i></p>	<p style="text-align: center;">Maximum points 30</p>
<p>Experience of Key Staff Lead Attorney (Team Leader) in the related area(s) of specialization (CV/Profiles to be attached) (15)</p> <ul style="list-style-type: none"> • Admitted attorney of the High Court/Advocate (more than 10 years’ experience -total duration of professional activity 	<p style="text-align: center;">Maximum points 30 points</p>

<p>Score = (15)</p> <ul style="list-style-type: none"> Admitted attorney of the High Court/Advocate (more than 5 years' experience but less than 10 years' experience -total duration of professional activity) <p>Score = (10)</p> <ul style="list-style-type: none"> Admitted attorney of the High Court/Advocate (less than 5 years' experience -total duration of professional activity) <p>Score = (5)</p> <p>Experience of Support team (15)</p> <ul style="list-style-type: none"> Admitted attorney of the High Court (more than 10 years' experience -total duration of professional activity) <p>Score = 15</p> <ul style="list-style-type: none"> Admitted attorney of the High Court (more than 5 years' experience but less than 10 years' experience -total duration of professional activity) <p>Score = 10</p> <ul style="list-style-type: none"> Admitted attorney of the High Court (less than 2 years' experience -total duration of professional activity) <p>Score = 5</p>	
<p>Experience in comparative projects (bidders must supply details of specific relevant assignments undertaken within organs of state, and preferably with a Trade and Investment Sector)</p> <ul style="list-style-type: none"> Provision of 5 or more reference letters on comparative projects <p>Score = (30)</p> <ul style="list-style-type: none"> Provision of 3-4 reference letters on comparative projects <p>Score = (15)</p> <ul style="list-style-type: none"> Provision of 1-2 reference letter on a comparative project <p>Score = (5)</p>	<p>Maximum points (30)</p>
<p>Location of law firm (the physical address of the offices)<i>Utility bill or Lease Agreement to be attached</i></p> <ul style="list-style-type: none"> Law firm with offices in Durban <p>Score = (10)</p>	<p>Maximum points (10)</p>

<ul style="list-style-type: none"> • Law firm with offices outside Durban but within KwaZulu Natal Score = (5) • Law firm with no offices in Durban or KwaZulu Natal Score = (2) 	
TOTAL	100

11.2 EVALUATION GRID FOR FUNCTIONALITY

B: COMMERCIAL & CORPORATE LAW	Points
	Maximum points 30
<p>Company Profile: Understanding of the regulatory framework applicable to the related area (s) of specialization and experience of providing Commercial and Corporate Law to organs of state (the Firm/Company)</p> <ul style="list-style-type: none"> • Bidder who demonstrate an extensive experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialization. <i>(15 years and above relevant experience) – Score = (30)</i> • Bidder who demonstrate reasonable experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialization. <i>(more than 5 years but less than 15 years experience) Score = (15)</i> • Bidder who demonstrate limited experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialization. <i>(less than 5 years experience) Score = (5)</i> <p><i>(These may be supported by a list of verifiable references and reference letters)</i></p>	

<p>Experience of Key Staff Lead Attorney (Team Leader) in the related area(s) of specialization (CV/Profiles to be attached) (15)</p> <ul style="list-style-type: none"> Admitted attorney of the High Court/Advocate (more than 10 years' experience -total duration of professional activity Score = (15) Admitted attorney of the High Court/Advocate (more than 5 years' experience but less than 10 years' experience -total duration of professional activity Score = (10) Admitted attorney of the High Court/Advocate (less than 5 years' experience -total duration of professional activity Score = (5) <p>Experience of Support team (15)</p> <ul style="list-style-type: none"> Admitted attorney of the High Court (more than 10 years' experience -total duration of professional activity Score = 15 Admitted attorney of the High Court (more than 5 years' experience but less than 10 years' experience -total duration of professional activity Score = 10 Admitted attorney of the High Court (less than 2 years' experience -total duration of professional activity Score = 5 	<p>Maximum points 30 points</p>
<p>Experience in comparative projects (bidders must supply details of specific relevant assignments undertaken within organs of state, and preferably with a Trade and Investment Sector)</p> <ul style="list-style-type: none"> Provision of 5 or more reference letters on comparative projects Score = (30) Provision of 3-4 reference letters on comparative projects Score = (15) 	<p>Maximum points (30)</p>

<ul style="list-style-type: none"> • Provision of 1-2 reference letter on a comparative project Score = (5) 	
<p>Location of law firm (the physical address of the offices)<i>Utility bill or Lease Agreement to be attached</i></p> <ul style="list-style-type: none"> • Law firm with offices in Durban Score = (10) • Law firm with offices outside Durban but within KwaZulu Natal Score = (5) • Law firm with no offices in Durban or KwaZulu Natal Score = (2) 	Maximum points (10)
TOTAL	100

11.3 EVALUATION GRID FOR FUNCTIONALITY

C: LABOUR AND EMPLOYMENT LAW	Points
	Maximum points 30
<p>Company Profile: Understanding of the regulatory framework applicable to the related area (s) of specialization and experience of providing Labour and Employment Law to organs of state (the Firm/Company)</p> <ul style="list-style-type: none"> • Bidder who demonstrate an extensive experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialization. <i>(15 years and above relevant experience) – Score = (30)</i> • Bidder who demonstrate reasonable experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialization. <i>(more than 5 years but less than 15 years experience) Score = (15)</i> 	

<ul style="list-style-type: none"> • Bidder who demonstrate limited experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialization. (less than 5 years experience) Score = (5) <p><i>(These may be supported by a list of verifiable references and reference letters)</i></p>	
<p>Experience of Key Staff Lead Attorney (Team Leader) in the related area(s) of specialization (CV/Profiles to be attached) (15)</p> <ul style="list-style-type: none"> • Admitted attorney of the High Court/Advocate (more than 10 years’ experience -total duration of professional activity) Score = (15) • Admitted attorney of the High Court/Advocate (more than 5 years’ experience but less than 10 years’ experience -total duration of professional activity) Score = (10) • Admitted attorney of the High Court/Advocate (less than 5 years’ experience -total duration of professional activity) Score = (5) <p>Experience of Support team (15)</p> <ul style="list-style-type: none"> • Admitted attorney of the High Court (more than 10 years’ experience -total duration of professional activity) Score = 15 • Admitted attorney of the High Court (more than 5 years’ experience but less than 10 years’ experience -total duration of professional activity) Score = 10 • Admitted attorney of the High Court (less than 2 years’ experience -total duration of professional activity) Score = 5 	<p>Maximum points 30 points</p>

<p>Experience in comparative projects (bidders must supply details of specific relevant assignments undertaken within organs of state, and preferably with a Trade and Investment Sector)</p> <ul style="list-style-type: none"> • Provision of 5 or more reference letters on comparative projects Score = (30) • Provision of 3-4 reference letters on comparative projects Score = (15) • Provision of 1-2 reference letter on a comparative project Score = (5) 	<p>Maximum points (30)</p>
<p>Location of law firm (the physical address of the offices)<i>Utility bill or Lease Agreement to be attached</i></p> <ul style="list-style-type: none"> • Law firm with offices in Durban Score = (10) • Law firm with offices outside Durban but within KwaZulu Natal Score = (5) • Law firm with no offices in Durban or KwaZulu Natal Score = (2) 	<p>Maximum points (10)</p>
<p>TOTAL</p>	<p>100</p>

11.4 EVALUATION GRID FOR FUNCTIONALITY

D: CONSTITUTIONAL AND PUBLIC SECTOR LAW	Points
<p>Company Profile: Understanding of the regulatory framework applicable to the related area (s) of specialization and experience of providing Constitutional and Public Sector Law to organs of state (the Firm/Company)</p> <ul style="list-style-type: none"> • Bidder who demonstrate an extensive experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialization. <i>(15 years and above relevant experience) – Score = (30)</i> 	<p>Maximum points 30</p>

<ul style="list-style-type: none"> • Bidder who demonstrate reasonable experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialization. <i>(more than 5 years but less than 15 years experience)</i> Score = (15) • Bidder who demonstrate limited experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialization. <i>(less than 5 years experience)</i> Score = (5) <p><i>(These may be supported by a list of verifiable references and reference letters)</i></p>	
<p>Experience of Key Staff Lead Attorney (Team Leader) in the related area(s) of specialization (CV/Profiles to be attached) (15)</p> <ul style="list-style-type: none"> • Admitted attorney of the High Court/Advocate (more than 10 years’ experience -total duration of professional activity) Score = (15) • Admitted attorney of the High Court/Advocate (more than 5 years’ experience but less than 10 years’ experience -total duration of professional activity) Score = (10) • Admitted attorney of the High Court/Advocate (less than 5 years’ experience -total duration of professional activity) Score = (5) <p>Experience of Support team (15)</p> <ul style="list-style-type: none"> • Admitted attorney of the High Court (more than 10 years’ experience -total duration of professional activity) Score = 15 • Admitted attorney of the High Court (more than 5 years’ experience but less than 10 years’ experience -total duration of professional activity) Score = 10 	<p>Maximum points 30 points</p>

<ul style="list-style-type: none"> Admitted attorney of the High Court (less than 2 years' experience -total duration of professional activity) <p>Score = 5</p>	
<p>Experience in comparative projects (bidders must supply details of specific relevant assignments undertaken within organs of state, and preferably with a Trade and Investment Sector)</p> <ul style="list-style-type: none"> Provision of 5 or more reference letters on comparative projects <p>Score = (30)</p> <ul style="list-style-type: none"> Provision of 3-4 reference letters on comparative projects <p>Score = (15)</p> <ul style="list-style-type: none"> Provision of 1-2 reference letter on a comparative project <p>Score = (5)</p>	<p>Maximum points (30)</p>
<p>Location of law firm (the physical address of the offices)Utility bill or Lease Agreement to be attached</p> <ul style="list-style-type: none"> Law firm with offices in Durban <p>Score = (10)</p> <ul style="list-style-type: none"> Law firm with offices outside Durban but within KwaZulu Natal <p>Score = (5)</p> <ul style="list-style-type: none"> Law firm with no offices in Durban or KwaZulu Natal <p>Score = (2)</p>	<p>Maximum points (10)</p>

10. SUBMISSION OF PROPOSALS

The sealed envelopes must be placed in the tender box at the Reception of the ***Trade and Investment House, 1 Arundel Close, Kingsmead Office Park, and Durban by no later than 25 September 2020 before 12 noon.*** Any proposal not in the tender box at the time of the proposal closing, such a proposal will be regarded as a late proposal. Late proposal will not be considered. No proposal received by telegram, telex, e-mail, facsimile or similar medium will be considered. Bids may be addressed to the following:

**The Procurement Officer
Trade and Investment House
1 Arundel Close
Kingsmead Office Park
Durban
4000
South Africa**

SECTION B

Table 1: Compulsory Returnable

ANNEXURE	ITEM DESCRIPTION
SECTION C	REGISTRATION ON THE NATIONAL TREASURY CENTRAL SUPPLIERS DATABASE
SECTION D	INVITATION TO BID DOCUMENTATION FORM (SBD1)
SECTION E	DECLARATION OF INTEREST FORM (SBD 4)
SECTION F	PREFERENTIAL POINTS CLAIM FORM (SBD 6.1)
SECTION G	CERTIFICATE OF INDEPENDANT BID DETERMINATION FORM (SBD 9)
SECTION H	AUTHORITY TO SIGN A BID FORM
SECTION I	DECLARATION OF BIDDERS PAST SUPPLY CHAIN MANAGEMENT PRACTICES (SBD 8)
SECTION J	VALID BBBEE CERTIFICATE / SWORN AFFIDAVIT

Table 2 : Non-Compulsory Returnable

SECTION K	PROOF OF RESIDENCE/UTILITY BILL
SECTION L	CENTRAL SUPPLIER DATABASE SUMMARY REPORT
SECTION M	COMPANY REGISTRATION CERTIFICATE/AGREEMENT/ID DOCUMENT

Table 3 : Conditions of Contract

SECTION N	GENERAL CONDITIONS OF CONTRACT
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SECTION C

REGISTRATION ON THE NATIONAL TREASURY CENTRAL SUPPLIERS DATABASE

1. In terms of the National Treasury SCM Instruction No 4A of 2016/2017, all suppliers of goods and services are required to register on the National Treasury Central Suppliers Database, before any procurement related activities can commence.
2. If you wish to apply for online registration, use the following website, <https://secure.csd.gov.za/>,
3. The supplier/service provider must register on the National Treasury Central Supplier's Database.

SECTION D

PART A

SBD1

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE TRADE & INVESTMENT KWAZULU-NATAL

BID NUMBER:		CLOSING DATE:		CLOSING TIME:	12PM
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DESCRIPTION	
-------------	--

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT *Trade & Investment House, 1 Arundel Close, Kingsmead Office Park, Durban*

SUPPLIER INFORMATION

NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	

[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
---	--	--	--

QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO

IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.

**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER’S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
- 2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE.”

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

(Proof of authority must be submitted e.g. company resolution)

DATE:

SECTION E: DECLARATION OF INTEREST FORM (SBD 4)

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

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

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

1. Full Name of bidder or his or her representative:
2. Identity Number:
3. Position occupied in the Company (director, trustee, shareholder, member):
4. Registration number of company , enterprise, close corporation, partnership agreement or trust:
5. Tax Reference Number:
6. Vat Registration Number:

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

"State" means —

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

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

8. Are you or any person connected with the bidder presently employed by the state? **YES/NO**
If so, furnish the following particulars:

- (a) Name of person / director / trustee/shareholder/ member:
- (b) Name of state institution to which the person is connected:
- (c) Position occupied in the state institution:
- (d) Any other particulars:

9. If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector?

YES/NO

If yes, did you attach proof of such authority to the bid document?

YES/NO

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

if no, furnish reasons for non-submissions of such proof:

10. Did you or your spouse, or any of the company's directors/ trustees/shareholders / members of their spouses conduct business with the stat in the previous twelve months?

YES/NO

If so, furnish particulars:

11. Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid?

YES/NO

If so, furnish particulars:

12. Are you, or any person connected with the bidder, aware of any relationship, family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?

YES/NO

If so, furnish particulars:

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

YES/NO

If so, furnish details of directors /trustees /members /shareholders:

Full Name	Identity	Personal Income Tax Reference	State Employee Number / Perusal

DECLARATION

I, THE UNDERSIGNED CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT. I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Name of Bidder

.....
Signature of Bidder

.....
Position

.....
Date

SECTION F

SBD 6.1

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 to **not exceed** R50 000 000 (all applicable taxes included) and therefore the preference point system shall be applicable; or
 - b) 80/20 preference point system will be applicable to this tender (*delete whichever is not applicable for 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	
B-BBEE STATUS LEVEL OF CONTRIBUTOR	
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) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

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

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

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

80/20
or
90/10

Where

- Ps = Points scored for price of bid under consideration
- Pt = 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

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]

DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

8.5 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

8.7 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.

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

<p>.....</p> <p>SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE:</p> <p>ADDRESS</p> <p>.....</p> <p>.....</p>
--

SECTION G: CERTIFICATE OF INDEPENDENT BID DETERMINATION FORM (SBD 9)

1. This Standard Bidding Document (SBD) must form part of all bids' 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. Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a) Disregard the bid of any bidder if that bidder or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b) Cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
4. This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
 - a) In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:
 - Includes price quotations, advertised competitive bids, limited bids and proposals.
 - 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.

I, the undersigned, in submitting the accompany bid (Bid number and Description):
In response to the invitation for the bid made by Trade and Investment KwaZulu-Natal, do hereby make the following statements that certify to be true and complete in every respect. I certify, on behalf (Name of Bidder):

that:

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

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

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

SECTION H: AUTHORITY TO SIGN A BID FORM

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

AUTHORITY BY BOARD OF DIRECTORS by resolution passed by the Board of Directors on20....

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

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

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

SIGNATURE OF SIGNATORY: **DATE:**

WITNESSES:

1.
2.

2. If a Bidder is a sole proprietor (One-Person Business) the person who signs the bid to do so, as well as to sign any contract resulting from this bid and any other documents and correspondence in connection with this bid and/or contract on behalf of the sole proprietor must be submitted with this bid, that is before the closing time and date of the bid in the following format:

I, the undersigned

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

SIGNATURE OF SIGNATORY: **DATE:**

WITNESSES:

1.
2.

3. If a Bidder is a partnership, the following particulars in respect of every partner must be furnished and signed by every partner:

Name of Partner	Residential Address	Signature

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

.....
SIGNATURE

.....
DATE

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

By resolution of members at a meeting on20.....at.....Mr/Ms, whose signature appears below, has been authorised to sign all documents in connection with this bid on behalf of (Name of Close Corporation).....

SIGNED ON BEHALF OF CLOSE CORPORATION: (PRINT NAME) IN HIS/HER CAPACITY AS.....

DATE:.....

SIGNATURE OF SIGNATORY:

WITNESSES:

1.

2.

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

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

SIGNATURE OF AUTHORISED REPRESENTATIVE/SIGNATORY:

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

SIGNED ON BEHALF OF CO-OPERATIVE:

NAME IN BLOCK LETTERS:

WITNESSES:

1.

2.

6. If a bidder is a joint venture, a certified copy of the resolution/agreement passed/reached signed by the duly authorised representatives of the enterprises, authorising the representatives who sign this bid to do so, as well as to sign any contract resulting from this bid and any other documents and correspondence in connection with this bid and/or contract on behalf of the joint venture must be submitted with this bid, before the closing time and date of the bid.

AUTHORITY TO SIGN ON BEHALF OF THE JOINT VENTURE

By resolution / agreement passed / reached by the joint venture partners on:20.....

Mr/Mrs,.....

Mr/Mrs.....

Mr/Mrs.....and

Mr/Mrs.....

(whose signatures appear below) have been duly authorised to sign all documents in connection with this bid on behalf of: (Name of Joint Venture):

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

SIGNED ON BEHALF OF (COMPANY NAME):

SIGNATURE:.....**DATE:**.....

IN HIS/HER CAPACITY AS:

SIGNED ON BEHALF OF (COMPANY NAME):

SIGNATURE:.....**DATE:**.....

IN HIS/HER CAPACITY AS:

SIGNED ON BEHALF OF (COMPANY NAME):

SIGNATURE:.....**DATE:**.....

7. If a bidder is a consortium, a certified copy of the resolution/agreement passed/reached signed by the duly authorised representatives of concerned enterprises, authorising the representatives who sign this bid to do so, as well as to sign any contract resulting from this bid and any other documents and correspondence in connection with this bid and/or contract on behalf of the consortium must be submitted with this bid, before the closing time and date of the bid.

AUTHORITY TO SIGN ON BEHALF OF THE CONSORTIUM

By resolution/agreement passed/reached by the consortium:

on:.....20.....Mr/Mrs.....

(whose signature appear below) have been duly authorised to sign all documents in connection with this bid on behalf of:.....(Name of Consortium)

IN HIS/HER CAPACITY AS:

SIGNATURE:.....**DATE:**.....

SECTION I: DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES (SBD 8)

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

Item	Question	Yes	No
4.1.	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1.	If so, furnish particulars:		
4.2.	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1.	If so, furnish particulars:		
4.3.	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1.	If so, furnish particulars:		
4.4.	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1.	If so ,furnish particulars:		

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME).....
 CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS TRUE AND CORRECT.
 I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
 Signature

.....
 Date

.....
 Position

.....
 Name of Bidder

SECTION J: PROOF OF BBB-EE SWORN AFFIDAVIT OR CERTIFICATE

SECTION K: PROOF OF RESIDENCE OR UTILITY BILL

SECTION L: CENTRALISED SUPPLIER DATABASE SUMMARY REPORT

SECTION M: COMPANY REGISTRATION CERTIFICATE/AGREEMENT/ID DOCUMENT

SECTION N: GENERAL CONDITIONS OF CONTRACT

DEFINITIONS: The following terms shall be interpreted as indicated:

- a) "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- b) "Contract" means the written agreement entered into between the Province and the Contractor, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- c) "Contract price" means the price payable to the Contractor under the contract for the full and proper performance of his contractual obligations.
- d) "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- e) "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- f) "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- g) "Day" means calendar day.
- h) "Delivery" means delivery in compliance with the conditions of the contract or order.
- i) "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- j) "Delivery into consignees store or to his site" means delivery and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the Contractor bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- k) "Dumping" occurs when a private enterprise abroad markets its goods and services on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- l) "Force majeure" means an event beyond the control of the Contractor and not involving the Contractor's fault or negligence and not foreseeable. Such event may include, but is not restricted to, acts of the Province in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

- m) "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- n) "GCC" means the General Conditions of Contract.
- o) "Goods" means all the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- p) "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the Contractor or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic, where supplies covered by the bid will be manufactured.
- q) "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- r) "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- s) "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- t) "Project site" where applicable, means the place indicated in bidding documents.
- u) "Province" means the procuring TIKZN, incorporating the KwaZulu-Natal Provincial Legislature.
- v) "Republic" means the Republic of South Africa.
- w) "SCC" means the Special Conditions of Contract.
- x) "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the Contractor covered under the contract.
- y) "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

12 CESSION OF CONTRACTS

12.2 The Contract is personal to the Contractor who shall not sub-let, assign, cede or make over the Contract or any part thereof, or any share of interest therein, to any other person without the written consent of the Province, and on such conditions as it may approve.

12.3 This sub-clause shall not apply to sub-contracts given to regular suppliers of the Contractor for materials and minor components relating to the goods or services supplied. The Province reserves the right to require the Contractor to submit, for noting, the names of such sub-contractors in order to ascertain their registration on the Provincial Suppliers Database and they must be legal entities.

13 DISCREPANCIES

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

14 QUALITY AND GUARANTEE

14.2 All Goods supplied shall be equal in all respects to samples, patterns or specifications where such are provided. Any changes to quality or brands will have to be approved by the Province, as this is a change to the conditions of the contract.

14.3 Should the Province, after the award of the Contract and/or during the manufacture of the goods specified, decide on a variation or alteration to the specification, either at the suggestion of the Contractor or otherwise, which will be to the Province's advantage, such variation or alteration shall be performed to the Province's satisfaction. Any variation in the Contract Price arising there from shall be subject to agreement between the Province and the Contractor.

14.4 The Contractor shall not be relieved of his obligations with respect to the sufficiency of the materials and workmanship and the quality of the Goods supplied by the reason of no objection having been taken thereto by the Province's Representative at the time the Goods were delivered.

14.5 The Contractor warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design materials unless provided otherwise in the contract. The Contractor further warrants that all goods supplied under this contract shall have no defect, arising from design, materials or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or

omission of the Contractor, that may develop under normal use of the supplied goods in the conditions prevailing in the country of the final destination.

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

14.7 The Province shall promptly notify the Contractor in writing of any claims arising under this warranty. The Contractor shall immediately remedy the said defect free of cost to the Province. Should the Contractor delay remedial work in excess of time stipulated by the Province's representative, the Province may have such remedial work executed at the Contractor's expense. Should the Province decide that the defect is such that it cannot be remedied, the Goods may be rejected. Such rejected goods shall be held at the risk and expense of the Contractor and shall, on request of the Province, be removed by him immediately on receipt of notification of rejection. The Contractor shall be responsible for any loss the Province may sustain by reason of such action as the Province may take, in terms of this clause.

14.8 The risk in respect of the Goods purchased by the Province under the contract shall remain with the Contractor until such goods have been delivered to the Province.

14.9 The principle feature of the Goods and Work are described in the Goods or Services Information, but the Goods or Services Information does not purport to indicate every detail of construction, fabrication or arrangements of Goods and Works necessary to meet the requirements. Omission from the Goods or Services information of reference to any part or parts shall not relieve the Contractor of his responsibility for carrying out the Work as required under the Contract.

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

4. FAILURE TO COMPLY WITH CONDITIONS AND DELAYED EXECUTION

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

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

5. PATENTS

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

6. PACKAGING, MARKING AND DELIVERY

- 6.1 All goods shall be crated, packed or battened securely in such a manner as to prevent damage during loading, transport and off-loading. Unless otherwise specified, packing cases and packing materials are included in the Contract Price, and shall be and remain the property of the Province.
- 6.2 All goods shall be clearly marked in the manner stated in the Goods or Services Information.
- 6.3 Goods shall be delivered to the address within the Province's area of jurisdiction as set out in the Special Conditions of Contract or Goods and Services Information.
- 6.4 Goods shall be delivered on Weekdays between 08:00 and 16:00, free of all charges, only when ordered upon an official letter or form of order issued by the Province. No goods will be received on Saturdays, Sundays and public holidays. This paragraph (6.4) is applicable only when not excluded in the Special Conditions of Contract.
- 6.5 Goods delivered shall in all cases be accompanied by delivery notes in duplicate, one which will be retained by the Province. The Contractor shall be responsible for the safe delivery as to the quality, quantity and condition of the goods.

- 6.6 Delivery, unless otherwise provided for in the Special Conditions of Contract, shall be affected within seven (7) days from receipt of the order. The Contractor shall advise the Province upon receipt of an order in writing of any anticipated delays, citing reasons therefore and put forward a new anticipated delivery date. The Province may then extend the delivery date, if and as it deems fit.
- 6.7 Should the Contractor fail to supply the material within the time stated in his bid, or within the extended time allowed to him in terms of clause 6.6 hereof, the Province reserves the right (after giving the Contractor seven days' notice in writing) to cancel the contract and purchase the materials elsewhere and the bidder shall refund to the Province any extra cost incurred over and above the contract price. No liability shall, however, be attached to the Contractor if delivery of materials is rendered impossible or delayed by reason of circumstances beyond the Contractor's control.
- 6.8 If the Contractor cannot produce proof satisfactory to the Province that the delay was due to circumstances beyond his control, no price increase after the due date will be recognized.
- 6.9 If at any time the Province ascertains that, due to negligence of the Contractor or for reasons beyond his control:
- 6.9.1 No work on the order has been commenced and in the opinion of the Province, there is little or no prospect of work being commenced in reasonable time;
 - 6.9.2 Delivery of any materials is being or is likely to be delayed beyond the delivery date promised, and/or
 - 6.9.3 There is little or no prospect of the order being completed within a reasonable time after the promised date; the Province may, by notice to the Contractor in writing, cancel as from the future date specified in such notice, the whole or any part of the order in respect of which material has not been delivered by that date without incurring any liability by reasons of such cancellation. The cases where circumstances beyond the control of the Contractor have delayed commencement or completion of the order, cancellation of the order will be effected by mutual arrangement or where this is not possible by the decision of the Province. The Contractor shall then as soon as possible after such date deliver to the Province that part of the order which has been completed, and payment is to be effected is for the part performance on a proportional basis, subject to the uncompleted part not being an integral or essential part of the contract.
- 6.10 Should a price other than an all-inclusive price be required, this shall be specified in the SCC.

7. CONSIGNMENT OF GOODS

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

8. PAYMENT

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

9. INVOICES

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

10. CONTRACT PRICE ADJUSTMENT

- 10.1 Firm contract prices shall not be subject to adjustment. contract prices which are not firm shall be increased or reduced by the amount of variation between the Cost to Bidder and the actual cost to the Contractor, such variations to be subject to the following conditions:-
- 10.1.1 Where the Cost to Bidder was based on a printed catalogue or list price, the variation shall be the difference between that price list and the price list actually charged. Should it transpire that the

Cost to Bidder was not based on the latest available price list at the Date of Bid; the Province shall have the right to elect the price list on which any variation shall be based.

10.1.2 Where the Cost to Bidder was based on a quotation by the manufacturer, or where the Contractor is the manufacturer, and the Contract Price was based on the cost of materials and labour ruling at a certain date, the variation in the Contract Price shall be calculated by means of the Steel and Engineering Industries Federation of South Africa (SEIFSA) formula if this is stipulated in the Contract, or if the Province's representative considers it to be appropriate. Where the use of the SEIFSA formula is not appropriate, the variation shall be calculated by means of another formula acceptable to the Province, which shall be indicated in the Special Conditions of Contract. Only those cost increases due to wage increases prescribed by regulating measures having the force of law or increases in the cost of materials and railage as may be proven by documentary evidence, or published data, will be considered in determining Contract Price variation.

10.1.3 Any difference between Rates and Charges ruling at the time of bid and those actually paid by the Contractor will be for the account of the Province. The Contract Price adjustment arising from any variation in Rates and Charges shall, in every instance, be applied to the appropriate value, or tonnage, of the Goods shipped. Where a variation in the Cost to bidder has been allowed, the contract price shall be adjusted by the product of such variation and every component of Rates and Charges which is based on the value of the Goods, whether or not the costs of such components have varied.

10.1.4 No claim for increased costs will be entertained if the Contractor is unable to produce documentation to substantiate Cost to Bidder and Rates and Charges on which the contract price was based and documentation to support his claim. Such documentation must, in the opinion of the Province, adequately support the Contractor's claim. No claim for increased costs to the Contractor arising from negligence on his part, or that of the manufacturer, will be considered.

10.1.5 The Contractor shall, in respect of every consignment or shipment of Goods delivered, supply to the Province's Representative documentary evidence of variation, if any, in Cost to Bidder and Rates and Charges.

10.1.6 Claims for increased cost shall be submitted with the invoice for the Goods in respect of which the claim is made, or as soon thereafter as possible. Claims shall not be considered if received more than 90 days after the expiry of the Contract unless notice of intention to claim has been given to the Province before such date.

10.1.7 In the event of there being no claim by the Contractor for increased costs, the Contractor shall not be entitled to full payment under the Contract before he has submitted to the Province, in his own name or in the name of the manufacturer, a certificate declaring that there have been no adjustments in the cost of manufacture which entitle the Employer to a reduction in the Contract Price as provided for in this clause.

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

11.1 In the event of the death of a contractor or the provisional or final sequestration of his/her/their estate or of his/her/their cession or transfer of a contract without the approval of the Province or of the surrender of his/her/their estate or of his/her/their reaching a compromise with his/her/their creditors or of the provisional or final liquidation of a contractor's company/closed corporation or the placing of its affairs under judicial management, the Province may, without prejudice to any other rights it may have, exercise any of the following options :

11.1.1 Cancel the contract and accept any of the bids which were submitted originally with that of the contractor or any offer subsequently received to complete the contract. In such a case the estate of the contractor shall not be relieved of liability for any claim which has arisen or may arise against the contractor in respect of supplies not delivered or work not carried out by the contractor, under the contract.

11.1.2 Allow the executor, trustee, liquidator or judicial manager, as the case may be, for and on behalf of and at the cost and expense of the estate of the contractor to carry on with and complete the contract.

11.1.3 For and on behalf of and at the cost and expense of the estate of the contractor, itself carry on with and complete the contract and in that event the Province may take over and utilize, without payment, the contractor's tools, plant and materials in whole or in part until the completion of the contract.

11.1.4 Should the Province elect to act in terms of paragraph 11.1.3 it shall give notice of its requirements to the executor, trustee, liquidator or judicial manager of the contractor's estate and should the said executor, trustee, liquidator or judicial manager fail within 14 days of the dispatch of such notice to make provision to the satisfaction of the Province for the fulfilment of such requirements, or should no trustee, liquidator or judicial manager be appointed within 14 days of the occurrence mentioned in paragraph 11.1, the Province may apply any remedy open to it in terms of the contract as if a breach thereof had taken place.

11.1.5 Should the Province act in terms of paragraph 11.1.3 the contractor must leave the premises immediately and may not occupy such premises on account of retention or any other right.

12. LAW TO APPLY

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

13. OFFERING OF COMMISSION OR GRATUITY

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

14. PREFERENCES

14.1 Should the Contractor apply for preferences in the submission of his bid, and it is found at a later stage that these applications were incorrect or made under false pretenses, the Province may, at its own right: -

14.1.1 Recover from the Contractor all costs, losses or damages incurred or sustained by the Province as a result of the award of the Contract; and / or

14.1.2 Cancel the contract and claim any damages which the Province may suffer by having to make less favourable arrangements after such cancellation.

14.2 The Province may impose penalties, however, only if provision therefore is made in the Special Conditions of Bid.

15. WEIGHTS AND MEASURES

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

16. SECURITY

16.1 Special Conditions of Contract relating to Surety/Guarantee requirement must be dealt with in strict compliance with the Conditions of Bid set out herein.

16.2 In respect of contracts less than R 500 000, the guarantees and sureties required may be based on a risk evaluation conducted by the Province inviting the bid.

16.3 No deposits are required for bid applications for contracts below R 500 000.

17. ORDERS

17.1 Goods shall be delivered and services rendered only upon receipt of a written official order or the signing of a contract with the Province, and accounts shall be rendered as indicated on the official order or in the contract, as the case may be.

17.2 The Province reserves the right to call upon any Contractor during the contract period to make known the following details:

17.2.1 Name of Institution placing order;

17.2.2 Provincial official order number;

17.2.3 Quantity ordered; and

17.2.4 List of items ordered.

18. EXPORT LICENCES

18.1 When orders are placed for goods in respect of which an export license from the country of origin of supplies is required, the Contractor shall:

18.1.1 Not incur any direct or indirect costs in connection with the supply or dispatch of such supplies before he has obtained such license;

18.1.2 If the government of the country from which the supplies are to be exported refuses, or fails to grant such license within three months of the placing of the order, the order shall be considered to be cancelled and no liability will be accepted for any loss or expenses irrespective of the nature thereof, including loss or expenditure suffered or incurred by the Contractor or any other person in respect of the production, supply, transportation or delivery of such supplies.

19. INSURANCE

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

19.2 Any insurance policies taken out by a Contractor to cover goods delivered for a contract must be taken out with a company registered in South Africa in terms of relevant insurance and companies acts.

20. INSPECTION, TESTS AND ANALYSES

20.1 In terms of Provincial policy, inspections of a Bidder's goods and services are permitted. Bidders and Contractors must allow reasonable access to premises to officials from the TIKZN inviting the bid, or person specially appointed by the Province to carry out inspection or tests. There are two main categories: Firstly, where the bid conditions call for goods to be inspected during the contract period. Secondly, where the inspection results are to be submitted with the bid document.

20.2 If it is a bid condition that goods to be produced should at any stage during production or on completion be subject to inspection, the premises of the Contractor shall be open, at all reasonable hours, for inspection by a representative of the Province or of organisation acting on its behalf.

20.3 Inspections tests and analyses may be carried out prior to dispatch in regard to such contract goods as may be deemed necessary by the Province, and the Contractor shall provide, if required, all the required facilities for the inspection, tests and analyses of the goods free of charge and shall, if required, provide all the materials, samples and labour and available apparatus which may be required for the purposes of such inspection, tests and analyses free of charge, unless otherwise specified.

20.4 If there are no inspection requirements in the bid documents and no mention thereof is made in the letter of acceptance, but during the contract it is decided that inspections shall be carried out, the Province shall itself make the necessary arrangements, including payment arrangements, with the testing authority concerned. The premises of the Bidder Contractor must be open and accessible at all reasonable times for the purposes of these tests.

20.5 If the inspection, tests and analyses show the goods or service to be in accordance with contract requirements, the cost of the inspection, tests and analyses shall be defrayed by the Province calling for such tests or analyses. Where the supplies or services do not comply with the contract, the costs shall be defrayed by the Contractor and the Province shall have the right, without prejudice to any other legal remedy it may have, to deduct such costs from payments due to the Contractor under the contract or under any other contract.

20.6 Goods and services which do not comply with the contract requirements may be rejected.

20.7 Any goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract, and such rejected goods shall be held at the cost and risk of the Contractor who shall, when called upon, remove them immediately at his own cost and forthwith substitute them for goods which do comply with the requirements of

the contract, failing which such rejected goods shall be returned at the Contractor's cost and risk. Should the Contractor fail to provide the substitute goods forthwith, the Province may, without giving the Contractor a further opportunity to substitute the rejected goods, purchase such supplies as may be necessary at the expense of the Contractor, for example, the transport costs and other expenses regarding the rejected goods must be refunded by the Contractor.

20.8 Where imported goods are to be inspected before delivery, the Contractor shall notify his suppliers abroad of the conditions applicable to inspections.

20.9 Provisions contained in sub-clause 20.1 and 20.8 shall not prejudice the right of the Province to cancel the contract on account of a breach of the conditions thereof.

21. RESTRICTION OF BIDDING

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

22. CONTRACTOR'S LIABILITY

22.1 In the event of the contract being cancelled by the Province in the exercise of its rights in terms of these conditions, the Contractor shall be liable to pay to the Province any losses sustained and/ or additional costs or expenditure incurred as a result of such cancellation, and the Province shall have the right to recover such losses, damages or additional costs by means of set-off from monies due or which may become due in terms of the contract or any other contract or from guarantee provided for the due fulfillment of the contract and, until such time as the amount of such losses, damages or additional costs have been determined, to retain such monies or guarantee or any deposit as security for any loss which the Province may suffer or may have suffered.

22.2 The Contractor may be held responsible for any consequential damages and loss sustained which may be caused by any defect, latent or otherwise, in supply or service rendered or if the goods or service as a result of such defect, latent or otherwise, does not conform to any condition or requirement of the contract.

23. PRICE LISTS

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

24. SUBMISSION OF CLAIMS

24.1 Claims must be submitted within 90 days of the delivery date of items, but the delivery date will be calculated according to the delivery period stipulated in terms of the contract, unless an extension for late delivery has been granted by the Province.

24.2 For period contracts, no price increase will be granted within the first 180 days of the contract period. No price increase applications which are submitted later than 90 days after the contract period expired will be considered. The claims shall be accompanied by documentary proof and, if required, an auditor's report sustaining the claim shall be provided.

24.3 Claims referring to formulae and indices must be clearly set out in terms of indices or formulae values used to calculate the bid price, and the adjusted indices or values.

25. PROVINCIAL PROPERTY IN POSSESSION OF A CONTRACTOR

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

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

26. RIGHTS TO PROCURE OUTSIDE THE CONTRACT

25.1 The Province reserves the right to procure goods outside the contract in cases of urgency or emergency or if the quantities are too small to justify delivery costs, or if the goods are obtainable from another organ of Province or if the Contractor's point of supply is not situated at or near the place where the goods are required or if the Contractor's goods are not readily available.

25.1 No provision in a contract shall be deemed to prohibit the obtaining of goods or services from a Province or local authority.

27. AMENDMENT OF CONTRACT

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

into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing.

28. NOTICES

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

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

29. INCIDENTAL SERVICES

29.1 The Contractor may be required to provide any or all of the following services, including additional services, if any, specified in the Special Conditions of Bid:

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

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

30. USE OF CONTRACT DOCUMENTS AND INFORMATION INSPECTION

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

30.2 The Contractor shall not, without the Province's prior written consent, make use of any document or information mentioned in GCC clause 30.1 except for purposes of performing the contract.

30.3 Any document, other than the contract itself mentioned in GCC clause 30.1 shall remain the property of the Province and shall be returned (all copies) to the Province on completion of the Contractor's performance under the contract or so required by the Province.

30.4 The Contractor shall permit the Province to inspect the Contractor's records relating to the performance of the Contractor and to have them audited by auditors appointed by the Province, if so required by the Province.

31 SPARE PARTS

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

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

32. PENALTIES

32.1 Subject to GCC Clause 4, if the Contractor fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the Province shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of delayed goods or unperformed services, using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The Province may also consider termination of the contract in terms of the GCC.

33. ANTI-DUMPING AND COUNTERVAILING DUTIES AND RIGHTS

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

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

34. GOVERNING LANGUAGE

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

35. TAXES AND DUTIES

35.1 A foreign Contractor shall be entirely responsible for all taxes, stamp duties, licence fees, and other such levies imposed outside the Province's country.

35.2 A local Contractor shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the Province.

35.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Province must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

36. PROHIBITION OF RESTRICTIVE PRACTICES

36.1 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 collective bidding (or bid rigging).

36.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice 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.

36.3 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.