



# DITSOBOTLA LOCAL MUNICIPALITY

## INVITATION TO BID

(In terms of the Supply Chain Management Regulations (Government Gazette 27636 of 30 May 2005))

### BID NO: DLM/SCM/38/2018/19

**Appointment for Panel of Mechanical Contractors for 20 months' duration: 2018/20 financial year**

**Closing Date and Time: Thursday, 04 April 2019 @10h00**

<b>NAME OF BIDDER:</b>		
<b>CLASSIFICATION OF WORKS:</b>	<b>CRS NUMBER:</b>	<b>CIDB GRADING:</b>

Please note that it is compulsory for all bidders to complete the above required information

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# 1. BID CHECKLIST

Bidders are to use this checklist to ensure that the bid documentation is complete for administrative compliance. The bidder is to indicate that the documentation is complete and included in the bid document by completing the table below.

Tick to indicate that the information is included

Item	Description	Yes	No	n/a
1.	Is your business registered as accredited prospective supplier with the DITSOBOTLA LOCAL MUNICIPALITY?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	Is the administration fee paid and a copy of the receipt attached to the bid documents?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Did you read and understand all pages of the bid documents?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	Did you complete the bid documents in black ink?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	Did you provide a copy of your company registration certificates?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	Did you provide a certified copy of the identity document in case of sole proprietorship?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.	Did you provide a covering letter?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.	Did you provide an original and valid tax clearance certificate? (MBD2)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.	Did you complete and sign the Bid Declaration Form? (section 3)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10.	Where applicable, is the resolution taken the Board of Directors/Members/Partners completed and signed? (section 4)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11.	Where applicable, is the resolution taken the Board of Directors of a Consortium or Joint Venture completed and signed? (section 5)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12.	Is invitation to bid completed and signed?(MBD1)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13.	Is the Declaration of Interest completed and signed? (MBD 4)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.	Is the Declaration of Bidder's Past Supply Management Practices completed and signed? (MBD 8)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15.	Is the Certificate of Independent Bid Determination completed and signed? (MBD 9)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16.	Did you complete and sign the Previous Work Experience of a Similar Nature section? (section 13)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17.	Is the Preference Points Claim Form in Terms of the Preferential Procurement Regulation 2001 completed and signed? (MBD 6.1)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18.	Is the Preference Points Claim Form in Terms of the Preferential Procurement Regulation 2001 – Promotion of Enterprises Located in a Specific Municipal Area completed and signed? (MBD 6.11)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19.	Does the product/service offered conform to the Bid Specifications?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20.	Did you attach a full CSD Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21.	Did you complete the Contract Form? (MBD 7.1)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## 2. SPECIAL CONDITIONS OF BID

1. The Municipality's **document must be kept** as supplied and submitted with all schedules / forms fully completed.
2. **Any other documents**, certificates etc. **must be attached as an annexure** to the official Municipal document.
3. **Where the Municipality's official document is taken apart and not submitted as supplied, the bid might be rejected.**
4. Schedules / forms not duly completed will result in a bid not being considered.
5. All Forms in bid document are to be completed by Bidders.
6. All Forms of Special Conditions in Specifications should be included.
7. The bid document must be completed in **black ink**.
8. DITSOBOTLA LOCAL MUNICIPALITY reserves the right to accept the whole or any portion of this Bid.
9. **The successful contractors will be appointed in accordance to verified functionality.**
10. Corrections may not be made by means of correction fluid such as Tip – Ex, or any other similar product. **In the event of a mistake being made, it should be crossed out in ink and be accompanied by a full signature at each and every alteration.** The Municipality reserves the right to reject the bid if corrections are not made in accordance with the above.
11. All bid documents must include the following documents:
  - **Receipt (original) for bid documents;**
  - Valid cc/co registration certificates **CK**;
  - Certified copy of Identity documents of directors/ members/ sole proprietors
  - Valid Tax clearance certificates.
  - **CSD, Full Report**
  - Proof of business address/residence (Municipal account / Traditional letter of authority)
  - Business bank account confirmation letter
  - Company Profile
  - BBBE Certificate or Sown Affidavit
  - CIDB registration
12. The **bidder may submit a comprehensive company profile**, for example the founding company statements, as well as a detailed exposition of previous work done.
13. Failure of the bidder to submit a bid document signed in ink or to complete all forms may render the bid invalid.
14. Bidders are **required to be registered on the Central Supplier Database (CSD)**.
15. No bid forwarded by e – mail, telegram, telex, facsimile or similar apparatus will be considered.
16. **Late bids shall not be admitted for consideration.**
17. Bids must be properly received and deposited in the tender box of the DITSOBOTLA LOCAL MUNICIPALITY on or before **10H00 on Thursday, 4 April 2019**. Bid offers must be submitted in a sealed envelope properly marked in terms of the bid number and bid description, at the offices of the Municipality situated at Cnr Transvaal and Nelson Mandela Streets, LICHTENBURG, 2740.
18. Copyright / Patent Rights – Copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the DITSOBOTLA LOCAL MUNICIPALITY.

### 3. BID DECLARATION

1. I/we Mr/Mrs/Messrs \_\_\_\_\_ duly assigned to represent the bidder for the purpose of this bid, hereby bid to supply the goods and/or render services described in the attached documents to the DITSOBOTLA LOCAL MUNICIPALITY on terms and conditions stipulated in this bid and in accordance with the specifications stipulated in the bid documents (which shall be taken as part of, and incorporated into this bid) at the prices reflected in the Pricing Schedule.
2. I/we agree that this offer shall remain valid for a period of **90** days commencing from the closing date and time of this bid.
3. I/We further agree that:
  - 3.1 This bid and its acceptance shall be subject to the terms and conditions contained in the in the DITSOBOTLA LOCAL MUNICIPALITY's Supply Chain Management Policy;
  - 3.2 if I/we withdraw my/our bid within the period for which I/we have agreed that the bid shall remain open for acceptance, or fail to fulfil the contract when called upon to do so, the DITSOBOTLA LOCAL MUNICIPALITY may, without prejudice to its other rights, agree to the withdrawal of my/our bid or cancel the contract that may have been entered into between me/us and the DITSOBOTLA LOCAL MUNICIPALITY and I/we will then pay to the DITSOBOTLA LOCAL MUNICIPALITY any additional expense incurred by the DITSOBOTLA LOCAL MUNICIPALITY having either to accept any less favourable bid or, if fresh bids have to be invited, the additional expenditure incurred by the invitation of fresh bids and by the subsequent acceptance of any less favourable bid; the DITSOBOTLA LOCAL MUNICIPALITY shall also have the right to recover such additional expenditure by set-off against moneys which may be due or become due to me/us under this or any other bid or contract or against any guarantee or deposit that may have been furnished by me/us or on my/our behalf for the due fulfilment of this or any other bid or contract and pending the ascertainment of the amount of such additional expenditure to retain such moneys, guarantee or deposit as security for any loss the DITSOBOTLA LOCAL MUNICIPALITY may sustain by reason of my/our default;
  - 3.3 If my/our bid is accepted the acceptance may be communicated to me/us by letter or order by certified mail or registered mail. Such posting shall be deemed to be proper service of such notice with effect from the date of posting/dispatch of such notice;
  - 3.4 The law of the Republic of South Africa shall govern the contract created by the acceptance of my/our bid and that I/we choose *domicilium citandi et executandi* in the Republic of South Africa, where any and all legal notices may be served at (full street address of this place):  
  
\_\_\_\_\_

4. I/we furthermore confirm that I/we have satisfied myself/ourselves as to the correctness and validity of my/our bid; that the price(s) and rate(s) quoted cover all the work/item(s) specified in the bid documents and that the price(s) and rate(s) cover all my/our obligations under a resulting contract and that I/we accept that any mistakes regarding price(s) and calculations will be at my/our risk.
5. I/we hereby accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me/us under this agreement as the Principal(s) liable for the due fulfilment of this contract.
6. I/we agree that any action arising from this contract may in all respects be instituted against me/us and I/we hereby undertake to satisfy fully any sentence or judgment which may be pronounced against me/us as a result of such action.
7. I/we declare that I/we have participation/no participation\* in the submission of any other offer for the supplies/services described in the attached documents. \*If in the affirmative, state name(s) of bid(s) involved.  
  
\_\_\_\_\_  
  
\_\_\_\_\_

Name of Bidder: \_\_\_\_\_

Signature \_\_\_\_\_

## 4. RESOLUTION TAKEN BY THE BOARD OF DIRECTORS / MEMBERS / PARTNERS

RESOLUTION of a meeting of the Board of Directors / Members / Partners of

\_\_\_\_\_ (Name of Bidder)

Held at \_\_\_\_\_ On \_\_\_\_\_  
(Place) (Date)

**RESOLVED THAT:**

1. The enterprise submits a Bid to the DITSOBOTLA LOCAL MUNICIPALITY in respect of the following project:

**DLM/SCM/38/2018/19 : Appointment for Panel of Mechanical Contractors for 20 months' duration: 2018/20 financial year**

2. Mr/Mrs/Ms \_\_\_\_\_

In his/her capacity as \_\_\_\_\_ and who will sign as follows:

\_\_\_\_\_  
 (Specimen Signature)

be, and is hereby, authorised to sign the Bid and/or all other documents and/or correspondence in connection with and relating to the Bid, as well as to sign any contract, and/or all documentation resulting from the award of the bid to the enterprise mentioned above.

Note: The resolution must be signed by all the directors or members/partners of the bidding enterprise. Should the space provided below not be sufficient for all directors to sign, please provide a separate sheet in the same format as below.

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			

Enterprise Stamp

## 5. RESOLUTION TAKEN BY THE BOARD OF DIRECTORS OF A CONSORTIUM OR JOINT VENTURE

RESOLUTION of a meeting of the Board of Directors / Members / Partners of

\_\_\_\_\_  
(Name of Bidder)

Held at \_\_\_\_\_ On \_\_\_\_\_  
(Place) (Date)

**RESOLVED THAT:**

- The enterprise submits a Bid to the DITSOBOTLA LOCAL MUNICIPALITY in respect of the following project:

**DLM/SCM/38/2018/19 : Appointment for Panel of Mechanical Contractors for 20 months' duration: 2018/20 financial year.**

**As a Consortium/Joint Venture comprising** (list all the legally correct full names and registration numbers, if applicable, of the Enterprises forming the Consortium/Joint Venture)

\_\_\_\_\_  
(Enterprise full Name and Registration Number)

\_\_\_\_\_  
(Enterprise full Name and Registration Number)

- Mr/Mrs/Ms \_\_\_\_\_

In his/her capacity as \_\_\_\_\_ and who will sign as follows:

\_\_\_\_\_  
(Specimen Signature)

be, and is hereby, authorised to sign the Bid and/or all other documents and/or correspondence in connection with and relating to the Bid, as well as to sign any contract, and/or all documentation resulting from the award of the Bid to the **Consortium/Joint Venture** enterprise mentioned above.

- The enterprise in the form of a consortium or joint venture accept jointly and several liability with parties under item 1 above for the fulfilment of the obligations of the joint venture deriving from, and in any way connected with the contract to be entered into with the DITSOBOTLA LOCAL MUNICIPALITY in respect of the project described above under item 1.
- The **Consortium/Joint venture** enterprise chooses as its *domicilium citandi et executandi* for all purposes arising from this joint venture agreement and contract with the DITSOBOTLA LOCAL MUNICIPALITY in respect of the project under item 1:

\_\_\_\_\_  
(Physical Address)

Note: The resolution must be signed by all the directors or members / partners of the bidding enterprise. Should the space provided below not be sufficient for all directors to sign, please provide a separate sheet in the same format as below.

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			

Enterprise Stamp

## 6. INVITATION TO BID (MBD 1)

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

**BID NUMBER:** DLM/SCM/38/2018/19  
**CLOSING DATE AND TIME:** Thursday, 4 April 2019 @ 10h00  
**BID DESCRIPTION:** Appointment for Panel of Mechanical Contractors for 20 months' duration: 2018/20 financial year

**The Successful bidder will be required to fill in and sign a written Contract Form (MDB 7)**

NB: Bids must be properly received and deposited in the tender box of the DITSOBOTLA LOCAL MUNICIPALITY on or before the closing date and time. No late Bid offers will be accepted under any circumstances. Bid offers must be submitted in a sealed envelope properly marked in terms of the Bid number and bid description as indicated above, at the offices of the Municipality situated at Civic Centre Building, Cnr Transvaal and Nelson Mandela Streets, LICHTENBURG, 2740. No Bid offers will be accepted via e-mail, facsimile (fax) or telegram.

**The tender box is available during office hours (Monday to Friday, 07H30 to 16H00).**

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

THIS BID IS SUBJECT TO THE GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT (GCC) OF JULY 2010 AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.

THIS BID WILL BE EVALUATED AND ADJUDICATED ACCORDING TO THE FOLLOWING CRITERIA:

Relevant functionality (Capability to execute the contract)  
 PPPFA, BBBEE & associated regulations  
 DITSOBOTLA LOCAL MUNICIPALITY Supply Chain Management Policy

**NB: NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE (see definition on MBD 4 attached)**

THE FOLLOWING PARTICULARS MUST BE FURNISHED  
**(FAILURE TO DO SO WILL RESULT IN YOUR BID BEING DISQUALIFIED (Please indicate N/A where applicable))**

NAME OF BIDDER .....  
 POSTAL ADDRESS .....  
 STREET ADDRESS .....  
 TELEPHONE NUMBER CODE.....NUMBER.....  
 CELLPHONE NUMBER .....  
 FACSIMILE NUMBER CODE .....NUMBER.....  
 VAT REGISTRATION NUMBER .....

HAS A VALID TAX CLEARANCE CERTIFICATE BEEN ATTACHED (MBD 2)? **YES/NO**

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

SIGNATURE OF BIDDER .....

DATE .....

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

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**ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:**

**Municipality:** DITSOBOTLA LOCAL MUNICIPALITY

**Department:** Supply Chain

**Contact Person:** Aobakwe Sekese

**Tel:** (060) 982 3634

**Fax:** (018) 632 5247

**Email:** ansekese@gmail.com

**ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:**

**Department:** Project Management Unit

**Contact Person:** Thami Mtshali

**Tel:** (082) 936 8097

**Fax:** (018) 632 5247

**Email:** rmtshali24@gmail.com

## 7. TAX CLEARANCE REQUIREMENTS (MBD 2)

### IT IS A CONDITION OF BIDDING THAT:

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

APPLICATION FOR TAX CLEARANCE CERTIFICATE  
(in respect of BIDDERS)

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

2. Trade name: .....

3. Identification number:

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

4. Company / Close Corporation registration number:

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

5. Income tax reference number:

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

6. VAT registration number (if applicable):

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

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

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

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

Name: .....

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

Address: .....  
.....  
.....

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

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

## 8. DECLARATION OF INTEREST (MBD 4)

1. **No bid will be accepted from persons in the service of the state\*.**
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest.
3. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid:
  - 3.1 Full Name: .....
  - 3.2 Identity Number: .....
  - 3.3 Company Registration Number: .....
  - 3.4 Tax Reference Number: .....
  - 3.5 VAT Registration Number: .....
  - 3.6 Are you presently in the service of the state? **YES / NO**
  - 3.6.1 If so, furnish particulars.
 

.....

.....
  - 3.7 Have you been in the service of the state for the past twelve months? **YES / NO**
  - 3.7.1 If so, furnish particulars.
 

.....

.....
  - 3.8 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**
  - 3.8.1 If so, furnish particulars.
 

.....

.....
  - 3.9 Are you aware of any relationship (family, friend, other) between a bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? **YES / NO**
  - 3.9.1 If so, furnish particulars
 

.....

.....

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

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

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

3.10.1 If so, furnish particulars.  
.....  
.....

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

3.11.1 If so, furnish particulars.  
.....  
.....

**CERTIFICATION**

**I, THE UNDERSIGNED (NAME)** .....

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

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

..... Signature	..... Date
..... Position	..... Name of Bidder

## 9. DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES (MBD 8)

1. This serves as a declaration 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.
2. The bid of any bidder may be rejected if that bidder or any of its directors have:
  - a. abused the municipality's supply chain management system or committed any improper conduct in relation to such system;
  - b. been convicted for fraud or corruption during the past five years;
  - c. wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 3 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

Item	Question	Yes	No
3.1	Is the bidder or any of its directors listed on the National Treasury's database as a company or person prohibited from doing business with the public sector?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3.1.1	If so, furnish particulars:		
3.2	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)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3.2.1	If so, furnish particulars:		
3.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3.3.1	If so, furnish particulars:		
3.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3.4.1	If so, furnish particulars:		
3.5	Was any contract between the bidder and the municipality or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3.5.1	If so, furnish particulars:		

**CERTIFICATION**

**I, THE UNDERSIGNED (FULL NAME) .....  
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM TO BE 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

## 10. CERTIFICATE OF INDEPENDENT BID DETERMINATION (MBD 9)

1. 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\*). Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
2. Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
  - a. Take all reasonable steps to prevent such abuse;
  - b. Reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
  - c. Cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
3. This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
4. In order to give effect to the above, the below Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

---

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

**CERTIFICATE OF BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

**DLM/SCM/38/2018/19: Appointment for Panel of Mechanical Contractors for 20 months' duration: 2018/20 financial year**  
 In response to the invitation for the bid made by:

**DITSOBOTLA LOCAL MUNICIPALITY**

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

I certify, on behalf of: \_\_\_\_\_ that:  
 (Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
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

## 11. PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2001 (MBD 6.1)

### PURCHASES

Bids will be adjudicated according to DITSOBOTLA LOCAL MUNICIPALITY'S Supply Chain Management Policy, the Preferential Procurement Policy Framework Act (Act 5 of 2011) and the Preferential Procurement Regulations, 2011, as well as Broad Based Black Economic Empowerment Act (Act 53 of 2003)

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF EQUITY OWNERSHIP BY HISTORICALLY DISADVANTAGED INDIVIDUALS (HDIs), AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2001.**

#### Closing time

**11.1** The closing time for submission of tender offers is as stated in the Tender Notice and Invitation to Tender. Telephonic, telegraphic, telex, facsimile or e-mailed tender offers will not be accepted.

#### Tender offer validity

**11.2** The tender offer validity period is 90 days

#### Clarification of tender offer after submission

A tender may be rejected as non-responsive if the tenderer fails to provide any clarification requested by the employer within the time for submission stated in the employer's written request.

#### Certificates

##### 11.3 Tax Clearance Certificate

Tenderers shall be registered and in good standing with the South African Revenue Services (SARS) and shall submit/append documentary evidence/proof in the form of an original valid Tax Clearance Certificate issued by SARS. Failure to provide a valid Tax Clearance Certificate may prejudice the tender and it may be rejected for such reason.

**Each party to a Consortium/Joint Venture shall submit a separate valid Tax Clearance Certificate.**

#### Tenders exceeding R10 million

##### 11.4 Where the tendered amount inclusive of VAT exceeds R 10 million:

- Audited annual financial statement for 3 years, or for the period since establishment if established during the last 3 years, if required by law to prepare annual financial statements for auditing;
- A certificate certifying that the tenderer has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
- Particulars of any contracts awarded to the tenderer by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
- A statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic.

**Each party to a Consortium/Joint Venture shall submit separate certificates/statements in the above regard.**

#### The Employer's undertakings

##### 11.5 Not to open tender submissions

**Tenders will not be opened immediately after the closing time.**

#### Test for responsiveness

##### 11.6 Tenders will be considered non-responsive if, inter alia:

- the tenderer does not comply with the eligibility criteria listed below,

- 11.6.1 **Receipt (original)** for bid documents
- 11.6.2 Valid cc/co registration certificates CK
- 11.6.3 Certified copy of Identity documents of directors/ members/ sole proprietors
- 11.6.4 Valid Tax clearance certificates
- 11.6.5 CSD, **Full Report**
- 11.6.6 Proof of business address/residence (Municipal account / Traditional letter of authority)
- 11.6.7 CIDB proof of Registration
- 11.6.8 Business bank account confirmation letter

### 11.6.9 Company profile

- the tenderer has failed to clarify or submit any supporting documentation within the time for submission stated in the employer's written request.

## 2. GENERAL DEFINITIONS

- 2.1 **"Acceptable bid"** means any bid which, in all respects, complies with the specifications and conditions of bid as set out in the bid document.
- 2.2 **"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, works or services.
- 2.3 **"Comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration.
- 2.4 **"Consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract.
- 2.5 **"Contract"** means the agreement that results from the acceptance of a bid by an organ of state.
- 2.6 **"Specific contract participation goals"** means the goals as stipulated in the Preferential Procurement Regulations 2001.
- 2.6.1 In addition to above-mentioned goals, the Regulations [12.(1)] also make provision for organs of state to give particular consideration to procuring locally manufactured products.
- 2.7 **"Control"** means the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial authority and power in determining the policies and directing the operations of the business.
- 2.8 **"Disability"** means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.
- 2.9 **"Equity Ownership"** means the percentage ownership and control, exercised by individuals within an enterprise.
- 2.10 **"Historically Disadvantaged Individual (HDI)"** means a South African citizen:
- (1) who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993, (Act No 200 of 1993) ("the interim Constitution"); and/or
  - (2) who is a female; and/or
  - (3) who has a disability
- provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be a HDI;
- 2.11 **"Management"** means an activity inclusive of control and performed on a daily basis, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether or not that person is a director.
- 2.12 **"Owned"** means having all the customary elements of ownership, including the right of decision-making and sharing all the risks and profits commensurate with the degree of ownership interests as demonstrated by an examination of the substance, rather than the form of ownership arrangements.
- 2.13 **"Person"** includes reference to a juristic person.
- 2.14 **"Rand value"** means the total estimated value of a contract in Rand denomination that is calculated at the time of bid invitations and includes all applicable taxes and excise duties.
- 2.15 **"Small, Medium and Micro Enterprises (SMMEs)"** bears the same meaning assigned to this expression in the National Small Business Act, 1996 (No 102 of 1996).
- 2.16 **"Sub-contracting"** means the primary contractor's assigning or leasing or making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.
- 2.17 **"Trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person.
- 2.18 **"Trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.
- ## 3. ESTABLISHMENT OF HDI EQUITY OWNERSHIP IN AN ENTERPRISE
- 3.1 Equity ownership shall be equated to the percentage of an enterprise which is owned by individuals classified as HDIs, or in the case of a company, the percentage shares that are owned by individuals classified as HDIs, who are actively involved in the management and daily business operations of the enterprise and exercise control over the enterprise, commensurate with their degree of ownership.

3.2 Where individuals are not actively involved in the management and daily business operations and do not exercise control over the enterprise commensurate with their degree of ownership, equity ownership may not be claimed.

**4. BID DECLARATION**

Bidders who claim points in respect of equity ownership must complete the Bid Declaration at the end of this form.

**5. EQUITY OWNERSHIP CLAIMED IN TERMS OF PARAGRAPH 2.10 ABOVE. POINTS TO BE CALCULATED FROM INFORMATION FURNISHED IN PARAGRAPH 9.8.**

	<b>Ownership</b>	<b>Percentage owned</b>	<b>Points claimed</b>
5.2	Equity ownership by persons who had no franchise in the national elections:	_____ %	_____
5.3	Equity ownership by women:	_____ %	_____
5.4	Equity ownership by disabled persons:*	_____ %	_____

\*If points are claimed for disabled persons, indicate nature of impairment (see paragraph 2.8 above)

.....

**6. DECLARATION WITH REGARD TO EQUITY**

6.1 Name of firm: .....

6.2 VAT registration number: .....

6.3 Company registration number: .....

**6.4 TYPE OF FIRM**

- Partnership
- One person business/sole trader
- Close corporation
- Company
- (Pty) Limited

[Tick applicable box]

**6.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

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

**6.6 COMPANY CLASSIFICATION**

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

[Tick applicable box]

**6.7 MUNICIPAL INFORMATION**

Municipality where business is situated: .....

Registered Account No: .....

Stand No:.....

**6.8 TOTAL NUMBER OF YEARS THE FIRM HAS BEEN IN BUSINESS? .....**

List all Shareholders by Name, Position, Identity Number, Citizenship, HDI status and ownership, as relevant. Information to be used to calculate the points claimed in paragraph 8.

Name	Date/Position occupied in Enterprise	ID Number	Date RSA Citizenship obtained	* HDI Status			% of business / enterprise owned
				No franchise prior to elections	Women	Disabled	

\*Indicate YES or NO

**6.10 Consortium / Joint Venture**

6.10.1 In the event that preference points are claimed for HDI members by consortia / joint ventures, the following information must be furnished in order to be entitled to the points claimed in respect of the HDI member:

Name of HDI member (to be consistent with paragraph 9.9)	Percentage (%) of the contract value managed or executed by the HDI member

6.11 I/we, the undersigned, who warrants that he/she is duly authorised to do so on behalf of the firm certify that points claimed, based on the equity ownership, indicated in paragraph 8 of the foregoing certificate, qualifies the firm for the preference(s) shown and I / we acknowledge that:

- (i) The information furnished is true and correct.
- (ii) The Equity ownership claimed is 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 paragraph 8, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct.
- (iv) If the claims are found to be incorrect, the purchaser may, in addition to any other remedy it may have -
  - (a) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct; and
  - (b) 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.

**WITNESSES:**

- 1. ....
- 2. ....

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

## 12. PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2001 - PROMOTION OF ENTERPRISES LOCATED IN A SPECIFIC MUNICIPAL AREA (MBD 6.11)

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES SPECIFIED IN CLAIM FORM MBD 6.1 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2001.**

1. Regulation 17(3) (g) of the Preferential Procurement Regulations makes provision for the promotion of enterprises located in a specific municipal area for work to be done or services to be rendered in that municipal area.
2. The promotion of this goal can be achieved by acquiring goods and services from enterprises located within the DITSOBOTLA LOCAL MUNICIPALITY. This includes an enterprise whose head office may be situated in elsewhere, but has established a fully-fledged branch within this Municipality. Enterprises located outside the borders of this Municipality and who only appoint agents and/or commission warehouses in this Municipality are expressly excluded from claiming points for this goal.

**SPECIFIC GOAL**

The stimulation of the local economy by procuring from enterprises located within the borders of the DITSOBOTLA LOCAL MUNICIPALITY

3. Preference points may only be claimed by enterprises located within the DITSOBOTLA LOCAL MUNICIPALITY. (See scoring for functionality).

**4. BID DECLARATION**

Bidders who wish to claim total points in respect of this specific goal must complete the declaration part of this form.

**5. POINTS CLAIMED**

Bidder to indicate whether the point(s) allocated for enterprises situated within the DITSOBOTLA LOCAL MUNICIPALITY is/are claimed. **Yes / No**

**6. DECLARATION WITH REGARD TO LOCALITY**

State full particulars of locality of enterprise as well as that of Head Office:

Address of local enterprise:	Physical: .....	Postal: .....
	.....	.....
	.....	.....
Telephone:	.....	Fax: .....
Municipal Account No.:	.....	Stand No.: .....
Address of Head Office:	Physical: .....	Postal: .....
	.....	.....
	.....	.....
Telephone:	.....	Fax: .....

I/we, the undersigned, who warrants that he/she is duly authorised to do so on behalf of the enterprise certify that the enterprise is entitled to the points allocated in paragraph 2 of this form and I / we acknowledge that:

- (i) The information furnished is true and correct.
- (ii) In the event of a contract being awarded as a result of points claimed, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claim is correct.
- (iii) If the claim is found to be incorrect, the purchaser may, in addition to any other remedy it may have:
  - (a) recover all costs, losses or damages it has incurred or suffered as a result of wrong information furnished; and
  - (b) 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.

WITNESSES:

- 1. ....
- 2. ....

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

### 13. PREVIOUS WORK EXPERIENCE OF A SIMILAR NATURE

List main work experience of a **similar nature to this bid** successfully executed and completed (or on-going) in the last five (5) years:

No	Institution / client / employer	Project description	Date started	Date completed (indicate projected completion if on-going)	Project value in Rand	Name and contact details of contact person / reference at institution
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

Representatives of the DITSOBOTLA LOCAL MUNICIPALITY are hereby authorized to contact the above contact persons / references of the various institutions to verify the correctness of the information as supplied.

..... Signature	..... Date
..... Position	..... Name of Bidder

## 14. BID SPECIFICATIONS

### TERMS OF REFERENCE

Bid number: **DLM/SCM/38/2018/19**  
 Closing day and time: **Wednesday , 4 April 2019 @10h00**  
 Bid description: **Appointment for Panel of Mechanical Contractors for 20 months' duration: 2018/20 financial year**

DITSOBOTLA LOCAL MUNICIPALITY intends to engage the services of an accredited, well established construction companies to provide the municipality with the construction and project management of all Infrastructure Projects for 20 Months 2018/20 period. It will be expected of the successful firm to render the following services for each identified projects for the financial year:

Closed Tendering for Bid documentation for the following activities.  
 - Mechanical Works

**Experience in similar type of projects and project financing arrangements will be a very key consideration.**

Failure to submit an authentic set of the following important documents will render the submission invalid:

- Original valid tax clearance certificate
- **FULL** CSD Report
- Copies of company registration forms (CK)
- ID copies of all members/directors appearing on the CK registration forms.
- Valid JV agreement (if applicable)
- Fully and correctly completed returnable's
- CIDB Grading level 1 and above
- Bank Confirmation letter
- Company profile
- Proof of residence (municipal account)

#### 1. LABOUR INTENSIVE METHODS

- The Contractors shall not perform any significant portion of a project involving labour-intensive works under the direction of a staff member who has not completed, or, for the period 1 April 2004 to 30 July 2005, is not registered for training towards, the NQF level 5 or level 4 unit standard "Develop and Promote labour Intensive Construction Strategies" [Details of this skills programmers' may be obtained from the CETA ETQA manager [ e-mail : [Gerard@ceta.co.za](mailto:Gerard@ceta.co.za) tel : 011 265 5900].
- The staff member of the contractors who is responsible for the administration of any works contract involving labour intensive works must have completed or, for the period 1 April 2004 to 30 July 2005, be registered for training towards the NQF level 5 or level 4 unit standard "Manager labour Intensive Construction Projects" [Details of this skills programmers may be obtain from the CETA ETQA Manager –e-mail: [gerard@ceta.co.za](mailto:gerard@ceta.co.za) TEL :011-265 5900].
- The Contractors must provide the Client with satisfactory evidence that staff members satisfy the requirements above.
- The Contractor must implement the construction works in accordance with the Guidelines for the Implementation of the Labour Intensive Projects under the Expanded Public Works Programme [the Guideline] published by the national Department of Public Works.
- The Contractors shall for monitoring purposes, transmit to the Client data obtained from the contractor on the number of people employed, broken down into the amounts spent on women, youth, and persons with disability on the project, the number of person days of employment created and the number of days of formal training provided.
- All services relating to the implementation of the works which are to be provided in terms of the Guidelines are normal services in terms of ECSA's Board Notice No. 18 of 2003. Any changes in the design of the works to incorporate labour intensive works shall not constitute a change in scope or an additional service.
- The Contractors shall certify that the works have been completed in accordance with the requirements of the Guidelines and the Contract

- a] whenever a payment certificate is presented to the Client for payment; and
- b] immediately after the issuing of a practical completion certificated that signifies that the whole of the works have reached a state of readiness for occupation or use for the purposes intended although some minor work may be outstanding.

**2. EMPLOYMENT POLICY**

Contractors will employ only unskilled local labour. Criteria which will receive special consideration for employment are single-parent households, gender equity and households without an income. Women will be employed to perform those tasks that are especially suitable to them.

**3. WAGES AND LABOUR STANDARDS**

Wages and labour standards will be in accordance with the guidelines proposed by the Framework Agreement for the Implementation of Labour Intensive Projects and the National Public Works Program or civil work standards.

**4. THE ENVIRONMENT**

The Committee will ensure that the environment is satisfactorily protected. The street reserve will be finished off as the construction proceeds to ensure access to all households at all times.

**5. SCOPE OF WORKS WORK STANDARDS**

The general standards and criteria to be used in the Ditsobotla Municipality area will be as follows:

**Appointment for Panel of Mechanical Contractors for 20 months’ duration: 2018/20 financial year**

**ENVIRONMENTAL ISSUES**

An environmental impact assessment will also be conducted by an experienced scientist[s] to ensure minimum negative impact on the environment, such as erosion of storm water discharge, pollution caused by storm water, mining of road building material, disposal of construction waste material, etc.

**GENERAL**

The services shall be provided in accordance with the provisions of the GUIDELINES FOR HUMAN SETTLEMENT PLANNING AND DESIGN Volume 1 & 2.

**Contract Documentation for the works**

***Conditions of tender***

**Eligibility requirements**

A contract will only be entered into with a tenderer who has management and supervisory staff satisfying the requirements of the scope of work for labour intensive competencies for supervising and managing staff.

**Information to be submitted with the tender**

The tenderer shall, when requested by the Employer to do so, submit the names of all management and supervisory staff that will be employed to supervise the labour- intensive portion of the works together with satisfactory evidence that such staff members satisfy the eligibility requirements.

**1. SERVICE LEVEL AGREEMENT/FORM OF CONTRACT**

Successful Contractors will be required to sign a Service Level Agreement / Contract Form (MBD 7.1) with the DITSOBOTLA LOCAL MUNICIPALITY.

The following documents shall be deemed to form and be read and construed as part of this agreement:

- (i) Quotation documents
  - Invitation to Quotation
  - Tax clearance certificate
  - Pricing schedule(s)
  - Technical Specification(s)
  - Preference claims in terms of the Preferential Procurement Regulations 2001
  - Declaration of interest
  - Special Conditions of Contract;
- (ii) General Conditions of Contract (July 2010); and
- (iii) DITSOBOTLA LOCAL MUNICIPALITY's Supply Chain Management Policy.

**2. PAYMENT**

Payment arrangements will be discussed with the successful Service provider/s to be in line with the milestones as per the Service Level Agreement / Form of Contract.

**3. RECOMMENDATIONS****4. REFERENCE TO QUOTATION INVITATION**

Refer to the information and criteria as per the bid invitation pertaining to this bid.

## 15. CONTRACT FORM - PURCHASE OF GOODS/WORKS (MBD 7.1)

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

PART 1 (TO BE FILLED IN BY THE BIDDER):

1. I/We hereby undertake to supply all or any of the goods and/or works described in the attached bidding documents to the DITSOBOTLA LOCAL MUNICIPALITY in accordance with the requirements and specifications stipulated in bid number **DLM/SCM/38/2018/19** at the price/s quoted. My/Our offer/s remains binding upon me/us and open for acceptance by the purchaser during the validity period indicated and calculated from the closing date of bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (iv) Bidding documents
    - Invitation to bid
    - Tax clearance certificate
    - Declaration of interest
    - Special Conditions of Contract;
  - (v) General Conditions of Contract; and
  - (vi) DITSOBOTLA LOCAL MUNICIPALITY's Supply Chain Management Policy.
3. I/We confirm that I/we have satisfied myself/ourselves as to the correctness and validity of my/our bid; that the price(s) and rate(s) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I/we accept that any mistakes regarding price(s) and rate(s) and calculations will be at my/our own risk.
4. I/We accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me/us under this agreement as the principal liable for the due fulfilment of this contract.
5. I/We declare that I/we have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I/We confirm that I/we am/are duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

WITNESSES	
1	.....
2.	.....
DATE	.....

PART 2 (TO BE FILLED IN BY THE PURCHASER)

1. I **A METSWAMERE** in my capacity as **ACTING MUNICIPAL MANAGER** of the DITSOBOTLA LOCAL MUNICIPALITY accept your bid under reference number **DLM/SCM/38/2018/19**, dated.....for the supply of goods/works indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating delivery instructions is forthcoming.
3. I undertake to make payment for the goods/works delivered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice accompanied by the delivery note.
4. I confirm that I am duly authorized to sign this contract.

SIGNED AT .....ON.....

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

WITNESSES

1. ....

2. ....

DATE .....

**16. Annexure A: Government Procurement: General Conditions of Contract  
(July 2010)**

**THE NATIONAL TREASURY  
Republic of South Africa**

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**GOVERNMENT PROCUREMENT:  
GENERAL CONDITIONS OF CONTRACT**

July 2010

**TABLE OF CLAUSES**

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

## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:

1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.

1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.

1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.

1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

1.7 "Day" means calendar day.

1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.

1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.

1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods are so delivered and a valid receipt is obtained.

1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

1.14 "GCC" means the General Conditions of Contract.

1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the goods covered by the bid will be manufactured.

1.17 "Local content" means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.

1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.

1.20 "Project site," where applicable, means the place indicated in bidding documents.

1.21 "Purchaser" means the organization purchasing the goods.

1.22 "Republic" means the Republic of South Africa.

1.23 "SCC" means the Special Conditions of Contract.

1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

1.25 "Supplier" means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.

1.26 "Tort" means in breach of contract.

1.27 "Turnkey" means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.

1.28 "Written" or "in writing" means hand-written in ink or any form of electronic or mechanical writing.

## **2. Application**

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

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

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

## **3. General**

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

3.2 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.

#### **4. Standards**

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

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

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

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

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

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

#### **6. Patent Rights**

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

6.2 When a supplier developed documentation / projects for the municipality / municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the municipality / municipal entity.

#### **7. Performance security**

7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

7.3 The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
- (b) a cashier's or certified cheque.

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

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

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

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

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

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

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

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

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

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

## **9. Packing**

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

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

## **10. Delivery and documents**

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

## **11. Insurance**

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

## **12. Transportation**

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

## **13. Incidental Services**

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

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

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

## **14. Spare parts**

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

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

## **15. Warranty**

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

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract,

or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise.

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

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

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

## **16. Payment**

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

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated.

## **17. Prices**

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

## **18. Variation orders**

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

## **19. Assignment**

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

## **20. Subcontracts**

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

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

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

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

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

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

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

## **22. Penalties**

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

## **23. Termination for default**

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

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

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

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

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within

the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.

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

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

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

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

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

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

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

## **25. Force Majeure**

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

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

## **26. Termination for insolvency**

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

## **27. Settlement of Disputes**

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

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

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

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

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

## **28. Limitation of Liability**

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

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

## **29. Governing language**

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

## **30. Applicable law**

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

## **31. Notices**

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in

his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.

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

### **32. Taxes and duties**

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

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

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid SARS must have certified that the tax matters of the preferred bidder are in order.

32.4 No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.

### **33. Transfer of contracts**

33.1 The contractor shall not abandon, transfer, cede assign or sublet a contract or part thereof without the written permission of the purchaser

### **34. Amendment of contracts**

34.1 No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.

### **35. Prohibition of restrictive practices**

35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding.

35.2 If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 Of 1998.

35.3 If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.