

CALL FOR SUBMISSION OF PROPOSALS FOR OCCUPATION AND OPERATION UMZIMVUBU NURSERY FOR A PERIOD OF 3 YEARS
UMZ/2021-22/LED/ 010/NURSERY

67 Church Street, Mt Ayliff, 4735
Tel: +27 (0)39 254 6000
Fax: +27 (0) 39 255 0167
Web : www.umzimvubu.gov.za



813 Main Street , Mount Frere
P/ Bag 9020, M t Frere , 5090
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PROVINCE OF THE EASTERN CAPE

CALL FOR SUBMISSION OF PROPOSALS FOR OCCUPATION AND OPERATION UMZIMVUBU NURSERY FOR A PERIOD OF 3 YEARS

CONTRACT NO: UMZ/2021-22/LED/ 010/NURSERY

PROPOSALS TO BE SUBMITTED TO THE BID BOX PLACED AT THE RECEPTION AREA OF THE UMZIMVUBU LOCAL MUNICIPALITY 813 MAIN STREET, MT FRERE, 5090 BEFORE 12H00 ON 12th November 2021

NO LATE SUBMISSIONS WILL BE CONSIDERED

Name of bidder:

Prepared and Issued by:
Umzimvubu Local Municipality
Local Economic Development & Environmental Management
Erf. 813 Main Street
Private Bag x 9020
Mt Frere
5090
Municipal Manager: Mr. G.P.T. NOTA

Contact Person: Mr A Makanda
Tel: 039 – 255 8541
Fax: 039 255 0167

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UMZ/2021-22/LED/ 010/NURSERY

Umzimvubu Local Municipality Individual bid documents will have the typical bid check list as an attachment. This list is to assist all bidders to submit complete bids.

Tick

BID CHECK LIST

Umzimvubu Local Municipality Individual bid documents will have the typical bid check list as an attachment. This list is to assist all bidders to submit complete bids.

Bidders are to check the following points before the submission of their bid:

1. All pages of the bid document have been read and initialled by the bidder.
2. All pages requiring information have been completed in black ink.
3. The Pricing Schedule has been checked for arithmetic correctness.
4. All sections requiring information have been completed.
5. The bidder has submitted the following documentation:
 - valid tax clearance (with SARS PIN printout)
 - municipal billing clearance certificate (with the list of Municipal Accounts)
 - company registration / CK document (certified copy)
 - B-BBEEE certified (original or certified)
 - Certified ID Copies (not more than 3 months old)
6. All documents required to support functionality points have been attached

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CALL FOR SUBMISSION OF PROPOSALS FOR OCCUPATION AND OPERATION UMZIMVUBU NURSERY FOR A PERIOD OF 3 YEARS
UMZ/2021-22/LED/ 010/NURSERY

ADVERT DATE: 28 October 2021

CALL FOR SUBMISSION OF PROPOSALS FOR OCCUPATION AND OPERATION UMZIMVUBU NURSERY FOR A PERIOD OF 3 YEARS
BID NUMBER: UMZ/2021-22/LED/ 010/NURSERY

Umzimvubu Local Municipality hereby invite credible parties to submit proposals for the occupation and operation of Umzimvubu Local Municipality's Nursery for a period of three (3) years. The Nursery is located at ward 17 at Lubhacweni location, Kwabhaca.

MANDATORY DOCUMENTS TO BE SUBMITTED, FAILURE TO DO SO WILL RESULT IN THE BID BEING DEMEED TO BE NON RESPONSIVE.

Umzimvubu Local Municipality Supply Chain Management policy will apply. A confirmation from SARS with a verification pin, Copy of company Registration/Founding Statement/CIPC Document. Certified BBBEE or sworn affidavits, exempt certificate and a combined BBBEE for a joint venture (non-elimination item). JV Agreement for Joint venture. Certified ID Copies of Managing Directors/ Owners. Compulsory submission MBD forms 4, 8 and 9 and Billing Clearance certificate or Statement of Municipal Accounts or affidavit or lease agreement or confirmation letter with declaration that a company does not owe municipal services for more than 30 days. No couriered, faxed, e-mailed and late tenders will be accepted. Certification of documents must be within a period of 90 days. Bidders must be registered on CSD and provide confirmation of registration. Umzimvubu Local Municipality reserves the right not to appoint and value for money will be the key determinant of appointment. All proposals must be deposited in the tender box situated at Umzimvubu Local Municipality Offices at 813 Main Street, Mt Frere not later than **12h00** noon on **12th November 2021**, where they will be opened in public. All proposals must be clearly marked "Name of the project indicated above. The municipality will not make any award to a person or persons working for the state.

PRE – QUALIFICATION

All bids will be subjected to a pre-qualification and will be required to achieve a minimum of 60 points in order to be evaluated further.

Criteria	Points to be scored
Methodology	40
Company Experience	30
Expertise	30
Total	100

Enquiries: All technical enquiries may be directed to Local Economic Development Department: Mr A Makanda 039 255 8500 and SCM Mr. T Mbukushe 0392558555. Other enquiries regarding this Bid may be directed to the office of the Municipal Manager: Mr. GPT Nota.

GPT NOTA
MUNICIPAL MANAGER

**CALL FOR SUBMISSION OF PROPOSALS FOR OCCUPATION AND OPERATION UMZIMVUBU NURSERY FOR A PERIOD OF 3 YEARS
UMZ/2021-22/LED/ 010/NURSERY**

INVITATION TO BID – MBD 1

YOU ARE HEREBY INVITED TO SUBMIT PROPOSALS AS PER THE REQUIREMENTS OF UMZIMVUBU LOCAL MUNICIPALITY

BID NUMBER:	UMZ/2021-22/LED/ 010/NURSERY	CLOSING DATE:	12th November 2021	CLOSING TIME:	12:00
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DESCRIPTION	CALL FOR SUBMISSION OF PROPOSALS FOR OCCUPATION AND OPERATION UMZIMVUBU NURSERY FOR A PERIOD OF 3 YEARS
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THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).

**BID RESPONSE DOCUMENTS TO BE DEPOSITED IN THE BID BOX
SITUATED AT :**

The Reception Area
Umzimvubu Local Municipality
813 Main Street
Mount Frere
5090

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					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	

CALL FOR SUBMISSION OF PROPOSALS FOR OCCUPATION AND OPERATION UMZIMVUBU NURSERY FOR A PERIOD OF 3 YEARS
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B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No	B-BBEE STATUS LEVEL SWORN AFFIDAVIT	<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 PART B:3]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT	Budget and Treasury-SCM	CONTACT PERSON	Mr. A. Makanda
CONTACT PERSON	Mr T Mbukushe	TELEPHONE NUMBER	039 255 8500
TELEPHONE NUMBER	039 255 8555	FACSIMILE NUMBER	N/A
FACSIMILE NUMBER	N/A	E-MAIL ADDRESS	Azola. Makanda@Umzimvubu.gov.za
E-MAIL ADDRESS	Mbukushe.themba@Umzimvubu.gov.za		

TERMS AND CONDITIONS FOR BIDDING

- | |
|--|
| 1. BID SUBMISSION: |
| 4.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION. |
| 4.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR ONLINE |
| 4.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT. |
| 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 VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
- 2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- 3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? YES
 NO
 - 3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA? YES
 NO
 - 3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? YES
 NO
 - 3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? YES
 NO
 - 3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? YES
 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 ABOVE

**NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID
NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE.**

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

DATE:

PART 1 CONDITIONS OF BID

1. GENERAL REQUIREMENTS

- 1.1 The Council wishes to request a CALL FOR SUBMISSION OF PROPOSALS FOR OCCUPATION AND OPERATION UMZIMVUBU NURSERY FOR A PERIOD OF 3 YEARS
- 1.2 The bidder is requested to furnish all relevant information not entertained on the form of bids under separate cover which shall form part of the bid
- 1.3 Proposals must be deposited in the tender box.
- 1.4 The use of correction fluid/tape is not allowed.
- 1.5 The bidder is requested to furnish all relevant information not entertained on the form of bids under separate cover which shall form part of the bid.
- 1.6 In the event of a mistake having been made, it shall be crossed out in ink and be accompanied by an initial at each and every alteration.
- 1.7 Proposals may not be telefaxed to the Municipality and therefore any tenders received by fax will not be considered
- 1.8 All proposals must be submitted in writing on the official forms supplied (not to be re-typed)
- 1.9 Proposals should be submitted in a sealed envelope clearly marked and written outside "Proposals for LED funding must be deposited in the tender box indicated at the offices of the Umzimvubu Local Municipality as specified in MBD 1.

2. CONTACT PERSON FOR TECHNICAL QUERIES

Name : Mr. A Makanda
Telephone : 039 255 8500
Email : Makanda.Azola@umzimvubu.gov.za

3. TERMS AND CONDITIONS

3.1 Confidentiality

All materials, specifications, service level requirements detailed information and everything else supplied with this request for the bid remains the property of the Umzimvubu LM and may be recalled if deemed necessary.

3.2 Contractual obligations

- 3.2.1 The request for bid does not constitute a contract nor does it create an obligation on the part of the Umzimvubu LM to purchase services, products or equipment from any vendor submitting a bid.
- 3.2.2 The bidder will work with the Co- Operative organisation that is currently operating in the nursery
- 3.2.3 The bidder will be responsible for maintaining the building
- 3.2.4 The bidder shall be liable for cleaning the facilities and the surrounding space
- 3.2.5 The bidder shall provide its own security for the duration of the contract
- 3.2.6 The bidder will sign Service Level Agreement with the municipality and the Co Operative
- 3.2.7 The financial proceeds realised on nursery will be proportioned with the Co- Operative on 60:40 basis for 3 years

3.3 Response to Questions

Where appropriate, questions should be answered explicitly by providing specific details requested.

Bidders selecting to omit any of the required information or who do not follow the specified format will be disqualified from the bid process.

Should additional information be required by Umzimvubu LM, bidders may be approached to provide more details, including aspects not specifically covered in this request for bids.

Please ensure that the documentation required is completed in full and signed.

4. General Conditions of Tender

Proposals should be submitted in a sealed envelope clearly marked and written outside "CALL FOR SUBMISSION OF PROPOSALS FOR OCCUPATION AND OPERATION UMZIMVUBU NURSERY FOR A PERIOD OF 3 YEARS" & must specify the unit you are applying for must be deposited in the tender box indicated at the offices of the Umzimvubu Local Municipality as specified in MBD 1.

PLEASE NOTE:

4.1

The Municipality shall have the right to summarily disqualify any Tenderer who, either

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at the date of submission of this tender or at the date of its award, is indebted to the Municipality in respect of any rental, levies, rates and/or service charges; ALTERNATIVELY; responsible or co-responsible.

This bid will be evaluated and adjudicated according to the following criteria:

- 4.1. Relevant specifications
- 4.2. Value for money
- 4.3. Capability to execute the contract

Bid Declaration

- 1 I/We hereby Bid to supply all of the supplies and/or to render all or any of the services described in the attached documents to the Umzimvubu Local Municipality on the items and conditions and in accordance with the specifications stipulated in the Bid documents (and which shall be taken as part of, and incorporated into, this Bid) at the prices and on the terms regarding time for delivery and/or execution inserted therein.
- 2 I/We agree that:
 - (a) the offer herein shall remain binding upon me/us and open for acceptance by the Bid Adjudication Committee during the validity period indicated and calculated from the closing time of the Bid;
 - (b) this Bid and its acceptance shall be subject to the terms and conditions contained in the General Conditions of contract and Preference Certificate with which I am/we are fully acquainted;
 - (c) if I/we withdraw my/our Bid within the period for which I/we have agreed that the Bid should remain open for acceptance, or fail to fulfil the contract when called upon to do so, the Umzimvubu LM may without prejudice to its other rights, agree to the withdrawal of my/or Bid or cancel the contract that may have been entered into between me/us and the Umzimvubu LM and I/we will then pay to the Umzimvubu LM any additional expense incurred either to accept any less favourable Bid or fresh Bidders have to be invited, the additional expenditure incurred by the invitation of fresh Bid and by the subsequent acceptance of any less favourable Bid, the Umzimvubu LM shall also have the right to recover such additional expenditure by set-off against moneys which may be due or become to me/us under this or any other Bid or contract or against any guarantee or deposit that 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 Umzimvubu LM may sustain by reason of my/our default;
 - (d) 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 (full address).
- 3 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/items(s) in these documents; and that the price(s) and rate(s) cover all my/our obligations under a resulting contract. I/we accept that any mistakes regarding price(s) and calculations will be at my/our risk.
- 4 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.
- 5 I/We agree that any action from this contract 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.
- 6 I/We declare that I/we have participation / no participation in the submission of any other offer for the supplies/service described in the attached documents. If in the affirmative, state name(s) or Bid (s) involved.

.....

7 Are you duly authorized to sign the Bid? *YES / NO

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8 Has the Declaration of Interest been duly completed and included with the other Bid forms?

*YES / NO

**Delete whichever is not applicable*

SIGNATURE (S) OF BIDDER OR ASSIGNEE(S):
DATE:

Please complete the following in block letters

Capacity and particulars of the authority under which this Bid is signed:

Name of Bidder:

Postal Address:

Telephone number(s):

Facsimile number(s):

Bid Number:

Name of contact person

PART 2 – BID SPECIFICATIONS

1. PURPOSE OF THE PROJECT

To recommend / appoint a Company / individual who will enter into a partnership with Umzimvubu Commercial Nursery on a 3 year bases to assist, operate the nursery as business at a commercial level, while mentoring the nursery beneficiaries, do the skills transfer to the beneficiaries and link them with the relevant markets.

2. PROJECT OUTCOMES/ OUTPUTS/ DELIVERABLES

The following outcomes and deliverables are required:

- To occupy the municipal nursery and operate a viable, commercial business.
- To provide employment to the nursery beneficiaries for the duration of his/her occupation.
- To improve the quality of nursery products.
- Giving technical support to the nursery beneficiaries, in a form of mentoring them and building their capacity to run their nursery at the end of his/her contract.
- Empowerment of rural communities on nursery management.
- To link the nursery growers with market and other relevant Institutions so as to optimize profits/ sales.
- Improving the nursery production and be able to link nursery growers with Umzimvubu Local Municipality fresh produce Market.

Accountability and Reporting Structure

The successful bidder will account to Umzimvubu Local Municipality LED department.

3. EVALUATION CRITERIA

4.1 Responsiveness on compliance with bid (compulsory bid returnable documents)

4.2 Proposals will be evaluated on the criteria as set out below. Bidder that score highest points will be awarded the contract. Unclear, vague, fragmented or incomplete information provided will result in no points being allocated.

4.3 The following criteria will be used to calculate points for the functionality of proposals and companies should ensure that they submit all information in order to be evaluated on the criteria mentioned below:

PRE – QUALIFICATION

All bids will be subjected to a pre-qualification and will be required to achieve a minimum of **60 points** in order to be evaluated further.

Criteria	Points to be scored
Methodology	40
Company Experience	30
Expertise	30
Total	100

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Selection Criteria	Evaluation	Points
Company Experience	<ul style="list-style-type: none"> • 5 & above years' Experience in crop production, plants and distribution. =30 points • 1-4 years' Experience in crop production, plants and distribution. =20 points <p>(Attach project appointment letters and reference letters)</p>	30
Expertise	<ul style="list-style-type: none"> • Official qualification Degree/ Diploma in Agriculture, Horticulture and farm management • 5 years' Experience of the Project/ Team Manager in crop production =30 • Official qualification Degree/ Diploma in Agriculture, Horticulture and farm management • 3 years' Experience of the Project/ Team Manager in crop production =25 <p>(Attach CV and proof of qualifications)</p>	30
Methodology	<p>Proposal should include:</p> <ul style="list-style-type: none"> • Methodology or plan on how to revive the nursery production to be functional and open to market. • The proposal should also include, • operations management plan • financial management cash flow management plan • skills transfer plan and • organogram inclusive of the current Co- Operative in place 	40

PART 3 – BID DECLARATIONS

SCHEDULE A- DECLARATION OF INTEREST MBD 4

DECLARATION OF INTEREST

MBD 4

- 1. No Bid will be accepted from persons in the service of the state¹.
- 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.

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

3.1. Full Name of Bidder or his or her representative:

3.2. Identity Number:

3.3. Position occupied in the Company (director, trustee, shareholder²):

3.4. Company Registration Number:

3.5. Tax Reference Number:

3.6. VAT Registration Number:

3.7. The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

3.8. Are you presently in the service of the state? **YES / NO**

3.8.1. If yes, furnish particulars.

.....

¹MSCM 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.

² Shareholder” means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

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

3.9.1 If yes, furnish particulars.....

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

3.10.1 If yes, furnish particulars.....

.....

3.11 Are you, aware of any relationship (family, friend, other) between any other 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**

3.11.1 If yes, furnish particulars

.....

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

3.12.1 If yes, furnish particulars.....

.....

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

3.13.1 If yes, furnish particulars.....

.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are Bid for this contract. **YES / NO**

3.14.1 If yes, furnish particulars.....

MBD 4

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

Full Name	Identity Number	State Employee Number

CERTIFICATION OF CORRECTNESS

I, THE UNDERSIGNED (NAME)

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

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

Signature.....

Date.....

.....

.....

Position

Name of Bidder

Initials

SCHEDULE B - DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES MBD 8

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

MBD 8

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

Item	Question	Yes	No
4.1	<p>Is the Bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p>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.</p>	<p>Yes</p> <p><input type="checkbox"/></p>	<p>No</p> <p><input type="checkbox"/></p>
4.1.1	If so, furnish particulars:		

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4.2	Is the Bidder or any of its directors listed on the Register for Bid Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Bid 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 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"/>
4.3.1	If so, furnish particulars:		

Question		Yes	No
4.4	Does the Bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the Bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

CERTIFICATION OF CORRECTNESS

I, THE UNDERSIGNED (FULL NAME):

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Initials

SCHEDULE C - CERTIFICATE OF INDEPENDENT BID DETERMINATION (MBD 9)

CERTIFICATE OF INDEPENDENT BID DETERMINATION (MBD 9)

MBD 9

1. This Municipal Bid Document (MBD) must form part of all Bids¹ invited.
2. Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive Bid (or Bid rigging).² Collusive Bid is a pe se prohibition meaning that it cannot be justified under any grounds.
3. Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - a) take all reasonable steps to prevent such abuse;
 - b) reject the Bid of any Bidder if that Bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - c) Cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the Bid process or the execution of the contract.
4. This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when Bids are considered, reasonable steps are taken to prevent any form of Bid-rigging.
5. In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the Bid:

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

² Bid rigging (or collusive Bid) 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 Bid process. Bid rigging is, therefore, an agreement between competitors not to compete

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MBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying Bid: UMZ/2021-22/LED/ 010/NURSERY

In response to the invitation for the Bid made by:

UMZIMVUBU 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:

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying Bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the Bidder to sign this Certificate, and to submit the accompanying Bid, on behalf of the Bidder;
4. Each person whose signature appears on the accompanying Bid has been authorized by the Bidder to determine the terms of, and to sign, the Bid, on behalf of the Bidder;
5. For the purposes of this Certificate and the accompanying Bid, I understand that the word "competitor" shall include any individual or organization, other than the Bidder, whether or not affiliated with the Bidder, who:
 - (a) has been requested to submit a Bid in response to this Bid invitation;
 - (b) could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and
 - (c) Provides the same goods and services as the Bidder and/or is in the same line of business as the Bidder.
6. The Bidder has arrived at the accompanying Bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive Bid.
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

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- (f) Bid 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.

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

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

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

CALL FOR SUBMISSION OF PROPOSALS FOR OCCUPATION AND OPERATION UMZIMVUBU NURSERY FOR A PERIOD OF 3 YEARS

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PART 4- CONTRACT FORMS – SCHEDULE D- F

SCHEDULE D COMPULSORY ENTERPRISE QUESTIONNAIRE

The following particulars must be furnished. In the case of a joint venture, separate enterprise questionnaires in respect of each partner must be completed and submitted.

Section 1: Name of enterprise:

Address of enterprise:

Postal:

.....

.....

Physical:

.....

.....

Telephone:

Facsimile:

E-mail:

Section 2: VAT registration number, if any:

Section 3: CIDB registration number, if any:

Section 4: Particulars of sole proprietors and partners in partnerships

Name*	Identity number*	Personal income tax number*

* Complete only if sole proprietor or partnership and attach separate page if more than 3 partners

Section 5: Particulars of companies and close corporations

(Attach a certified copy of the company/companies founding statement(s) to this page)

Company registration number

Close corporation number

Tax reference number

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

UMZIMVUBU LOCAL MUNICIPALITY

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SCHEDULE F - GENERAL CONDITIONS OF CONTRACT

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26. Termination for insolvency
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33. Transfer of contracts
34. Amendments of contracts
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GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

THE NATIONAL TREASURY: Republic of South Africa

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 Bid 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

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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.

GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

THE NATIONAL TREASURY: Republic of South Africa

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the to, acts of the purchaser in its sovereign capacity, wars or evolutions, 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.
- 1.16 "Imported content" means that portion of the Bid 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 Bid 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.

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- 1.20 "Project site," where applicable, means the place indicated in Bid 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 **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT THE NATIONAL TREASURY: Republic of South Africa** 5 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 Bid 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 Bid 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 Bid 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 **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT THE NATIONAL TREASURY: Republic of South Africa 6** extends only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the Performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent Rights

- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 6.2 When a supplier developed documentation / projects for the 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:

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(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 Bid 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. **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT THE NATIONAL TREASURY: Republic of South Africa 7**

8. Inspections, tests and analyses

- 8.1 All pre-Bid 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 Bid 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.

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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 **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT THE NATIONAL TREASURY: Republic of South Africa** 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.

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- 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: **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT THE NATIONAL TREASURY: Republic of South Africa 9** (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.

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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. **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT THE NATIONAL TREASURY: Republic of South Africa 10**

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 contracts if not already specified in the Bid. Such notification, in the original Bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

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

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, it's 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. **GOVERNMENT**

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- 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 posts 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

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for a period not exceeding 10 years. **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT THE NATIONAL TREASURY: Republic of South Africa**

- 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 Bid 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 **THE NATIONAL TREASURY: Republic of South Africa**

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

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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. **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT
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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

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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. **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT THE NATIONAL TREASURY: Republic of South Africa**

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.

Initials

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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

- 35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of **restrictive practices** 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 Bid.
- 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.

Revised July 2010