



**enterprise ilembe**  
ECONOMIC DEVELOPMENT AGENCY

**TERMS OF REFERENCE**

***FOR***

**THE APPOINTMENT OF A PANEL OF ACCREDITED TRAINING SERVICE  
PROVIDERS FOR A PERIOD OF THREE YEARS**

**Closing Date: 30 May 2022**

**Closing Time: 11h00**

**Venue: Sangweni Tourism Centre, Ballito**

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*It is the intention of Enterprise iLembe to enter into a formal agreement with the bidders that will be appointed to the panel in respect of the services described herein. These Terms of Reference and the bidder's proposal will form the basis of the agreement.*

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## **Service Provider Terms of Reference**

### **Section 1: Details**

<b>Province:</b>	KwaZulu-Natal
<b>Agency:</b>	Enterprise iLembe Economic Development Agency
<b>Project Name:</b>	Appointment of a Panel of Training Service Providers

### **Section 2: Background**

Enterprise iLembe is an economic development agency wholly-owned by the iLembe District Municipality mandated to pursue and facilitate investment, economic development and empowerment in iLembe. The objective of Enterprise iLembe is to improve the competitiveness of the iLembe Region by creating an environment that will enable local business to compete successfully on the international stage.

Enterprise iLembe works closely with SMMEs with an intention of promoting and mentoring SMMEs and Cooperatives through the provision of financial and business development support, thereby propelling into the mainstream economy. Enterprise iLembe provides Business Development Initiatives such as Training, Capacity Building, Incubation and Mentorship through partnership with accredited service providers, hence enabling our engagement with SETA's, NSF, and other. Enterprise iLembe intends to support co-operatives & SMMEs, have measurable impact and through engagements, identify skills needs and strategies to address them.

## Section 3: Work Description

### 3.1 Scope of Work

- Enterprise iLembe wishes to establish a panel of service providers to render training services on an adhoc basis, **as and when the need arises**.
- Please note that appointment to this panel will not guarantee a definite quantum of work.
- Service providers will be expected to provide quotations as and when required for the services they are accredited for.
- The scope of work for the service providers on the panel will include material development and facilitation of the modules / programmes they are accredited for.
- The service provider will be required to provide a close out report, portfolio of evidence and provide accredited certificates of competence to the trainees.
- Service providers must indicate the relevant Sector Education and Training Authority (SETA) and/or Quality Council for Trades & Occupation (QCTO) which reflect the courses for which they are accredited to provide.
- Unit standard number and the National Qualification Framework (NQF) level for each short course provided must be indicated.
- Service providers may be required to partner with Enterprise iLembe in order to secure funding during the term of contract, should the need arise.
- It must be noted that once appointed to the panel, the bidder will not be allowed to sub-contract to a new company or enter into a Consortium/ Joint Venture with a new company in order to meet the requirements of a specific request for quotations. Therefore, all Consortium/ Joint Venture/ Sub-contracting arrangements must be provided as part of your proposals in response to this tender.

### 3.2 Project Timelines

- The service providers will be appointed to the Enterprise iLembe Panel for a period of three (3) years, subject to the performance of the service provider(s). The performance of appointed service provider(s) will be reviewed on an annual basis and/or on completion of a specific training programme.

### **3.3 Expertise Requirements**

- The Facilitator to be utilized by the Service providers must possess relevant qualification and at least two (2) year practical experience in line with courses/programs to be offered.
- As and when training is required, training providers will be required to provide CV's of their facilitators with their relevant qualifications as well as track record of a minimum of two relevant facilitation rendered successfully.

### **3.4 Mandatory Requirements**

- Bidders must comply with the requirements and submit all required document(s) indicated hereunder with the bid documents at the closing date and time of bid. This phase is not scored and bidders who fail to comply with all the mandatory criteria will be disqualified.
- Bidders are required to be registered on the Central Supplier Database (CSD) and the Enterprise iLembe shall verify the bidder's tax compliance status through the Central Supplier Database. Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database. It is therefore a condition of this bid that the tax matters of the bidder be in order at any point in time from the closing date of the bid. This bid will only be awarded to a bidder(s) whose tax status on Central Supplier Database is compliant
- Please note that no awards will be made to persons in service of the state as identified on the MBD 4 – Declaration of Interest form read together with the verification reports generated from the Central Supplier Database.
- Valid copy of Sector Education and Training Authority (SETA) and/or Quality Council for Trades & Occupation (QCTO) certificate of accreditation stating the courses for which they are accredited to provide or copy of certificate of Council on Higher Education of South Africa in case of Universities and Colleges, or valid accreditation letter or Certificates from other relevant bodies where applicable.

### **3.5 Proudly South Africa Campaign**

Enterprise iLembe reserves the right to apply the Proudly South African Campaign when quotations are requested from the members of the panel in respect of services they are accredited for. This will be clearly set out in the request for quotations, if deemed necessary.

## **Section 4: Time Frame & Reporting**

The appointment will be effective for a period of three years, on an *ad hoc* basis, as and when training services are required.

### **Reporting**

The Service Provider will be required to prepare and present progress reports coinciding with each of the agreed milestones. Where considered necessary the Service Provider will also be expected to compile reports and presentations for other bodies as required by Enterprise iLembe. The service provider will be expected to keep financial records and other appropriate records.

## **Section 5: Deliverables & Ceiling Costs**

Funding is made available by Enterprise iLembe for the project. Service Providers in their proposals are to set out their approach, methodology.

Payments will be made on invoices submitted for work completed. On submission of invoices to Enterprise iLembe, the service provider should allow at least 4 weeks for the payments to be processed.

## **Section 6: Documentation and Confidentiality**

Information and data which is generated in the context of the project; may not be made available to any third party without prior permission of the Chief Executive Officer. All project material shall be presented in both hard copy and electronic format **[workable and PDF]**

## **Section 7: Non - Appointment**

Enterprise iLembe has a right not to make an appointment should it find that proposals received do not meet the specified criteria / requirements and is not compelled to accept the lowest quotation.

## Section 8: Requirements Related to Tender

Please note the following:

- The validity period of this bid is 90 days from the date of bid closure;
- No briefing session will be held in respect of this tender;
- All proposals must be hand-submitted to the tender box. Incomplete, faxed, emailed and late applications/submissions WILL NOT be considered. Bidders arriving at the Enterprise iLembe offices outside of business hours as well as bidders using a courier service to deliver their proposals are responsible for ensuring that such documents are physically deposited into the tender box before the closing date and time.
- Proposals received after 11h00 on the closing date will not be accepted and therefore not considered.
- No proposals will be accepted from bidders listed as a person prohibited from doing business with the public sector and/ or persons in service of the state. If a bidder is identified as being restricted or in service of the state as per the MBD 4 (Declaration of Interest form) or the Central Suppliers Database (CSD) for government, the bidder will automatically be disqualified unless proof to the contrary is submitted in the bidder's proposal.
- Enterprise iLembe does not bind itself to accept the lowest or any of the proposals received and reserves the right to accept the whole or part of the proposal.

### Submission of Proposals:

Please place your completed proposal in a sealed envelope endorsed **“PROPOSAL FOR: “The Panel of Training Service Providers.”** in the Tender Box at Sangweni Tourism Centre, Cnr Link Road & Ballito Drive, Ballito on or before **30 May 2022 at 11h00.**

**No submissions will be accepted after the closing date and time, as stipulated above.**

## Section 9: Adjudication Criteria

### Procurement Policy

Proposals will be evaluated in terms of the SCM Policy of Enterprise iLembe and shall be applied as follows:-

- All proposals received shall be evaluated on functionality and only those who achieve a minimum of 60 points of the total of 100 (i.e. 60%) and a score greater than zero in categories marked with an asterisk (\*) shall be considered for appointment to this panel.
- **Please note a Price Evaluation will be performed only after the panel has been established, whenever quotations are requested from the panel members. The price evaluation will take place as follows, in line with the 80/20 Points Scoring System as follows:**

COMPONENT	80/20
B-BBEE Status Level	20
Price	80
Total	100

The points for price will be calculated as per the formula below:

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

***Bidders wishing to claim points must attach a valid B-BBEE certificate/ Affidavit.***

Up to 20 points will be allocated based on B - BBEE status level of contribution of the bidder and shall be allocated as per table below: -

Status Level of Contributor	Points on scorecard (80/20 System)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-contributor	0

### 5.1 Functionality Evaluation

The functionality evaluation points will be applied as per the table that follows:

#	CRITERIA	SUBMISSION REQUIREMENTS	WEIGHT
1	Accreditation(*)	<ul style="list-style-type: none"> <li>• Proof of Accreditation certificate by Relevant SETAs/ and/or Quality Council for Trades &amp; Occupation (QCTO) and listed SAQA of the training provider for all unit standards</li> <li>• The Accreditation certificate/s must be current and valid</li> </ul>	<b>30</b>
2	Learner Portfolio	<ul style="list-style-type: none"> <li>• Provide a copy of a sample of portfolio of evidence and learner guide used in the training</li> <li>• Learner portfolio must not be older than 2 years</li> </ul>	<b>10</b>
3	Registered Facilitator, Assessor and Moderators (*)	<ul style="list-style-type: none"> <li>• Provide a list of registered Facilitators, Assessors and Moderators linked to their respective organisations</li> </ul>	<b>10</b>
4	Capacity to Deliver	<p>Demonstrate the ability to provide and facilitate training by submitting a <b>brief</b> summary schedule of the following:</p> <ul style="list-style-type: none"> <li>▪ Total learners enrolled per annum per approved Unit Standards</li> <li>▪ Total portfolio of evidence submitted per Unit Standard per annum</li> <li>▪ Total learners declared competent per Unit Standard Per annum</li> </ul>	<p><b>10</b></p> <p><b>10</b></p> <p><b>10</b></p>



#	CRITERIA	SUBMISSION REQUIREMENTS	WEIGHT
5	Experience(*)	<p>Must provide traceable client reference letters from SETA/ or Quality Council for Trades &amp; Occupation (QCTO) accredited training programme/s provided</p> <ul style="list-style-type: none"> <li>• 1 (one) reference letter = 2</li> <li>• 2 (two) reference letters = 5</li> <li>• 3 (three) reference letters =10</li> <li>• 4 (four) reference letters =15</li> <li>• 5 (five) reference letters =20</li> </ul> <p><i>The letter should not be older than 3 years and must contain the following: Contact name, telephone number, email address and should be on the referee's letterhead</i></p>	<b>20</b>

**Only bidders who achieve a total of 60 points of the total of 100 (i.e. 60%) and a score greater than zero in categories marked with an asterisk (\*) will be considered for appointment to the panel.**

## DOCUMENTS RELATING TO TENDER:

### 1. **Annexure A: Compulsory Information Sheet (see below)**

### 2. **Service Providers Proposal**

- It is compulsory for bidders to ensure that their proposals are bound or stapled securely together. If the proposal is too thick to be bound or stapled, bidders are allowed to split the document into sections, however, each section must be bound or stapled and must be individually labelled with the name of the bidder. Under NO circumstances will loose submissions be accepted. (Compulsory)

### 3. **Registration details & Compliance**

- All interested bidders must be registered on the Central Supplier Database for Government. Proof of registration on the CSD must be included in the bidder's proposal (i.e. either the CSD Supplier Number or the CSD Report). **(Compulsory)**. Please visit <https://secure.csd.gov.za/> to register on the **Central Supplier Database**. The CSD will be used to verify tax compliance status of the bidder. NB: Bidders who are in service of the state as per CSD will be disqualified from further evaluation unless supporting documents proving the supplier is not a government employee is submitted as part of the proposal.
- All bidders must submit a Tax Compliance Status (TCS) Pin Number (Compulsory). In line with the latest circular from SARS (South African Revenue Services), bidders can now submit a **UNIQUE PIN** to enable the entity to verify the bidder's tax compliance status online via E-filing or via the CSD. No awards will be made to bidder's whose tax matters are not in order and who fail to rectify their tax status at the time of adjudication of the bid.
- Valid copy of Sector Education and Training Authority (SETA) and/or Quality Council for Trades & Occupation (QCTO) certificate of accreditation stating the courses for which they are accredited to provide or copy of certificate of Council on Higher Education of South Africa in case of Universities and Colleges, or valid accreditation letter or Certificates from other relevant bodies where applicable. (Compulsory)
- Annexure A, MBD 1, 4, 8 and 9 Forms which can be found from page 25 of this document **(Compulsory)**. Please note that the SBD forms will not be accepted.
- All documents as per the competency table on pages 8-9 of this document.
- Bank confirmation letter.
- Company registration documents showing all active members/ directors/ shareholders/ owners etc.

- Power of Attorney/ Signing authority where applicable
- B-BBEE Verification Certificate / Affidavit (Please attach the approved B-BBEE accreditation certificate/ affidavit if available in order to claim points for this.)

**Points to note regarding the B-BBEE Status Level:**

- Bidders other than EMEs must submit valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- A trust, consortium, or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

**The following rules are applicable ONLY to consortia / joint ventures / sub-contracting and MUST be adhered to:**

- In bids where Consortia / Joint Ventures / Sub-contractors are involved; each party must **submit separate** MBD 4 forms, B-BBEE Certificate/ Affidavits, SARS tax compliance status (TCS) pins AND Central Supplier Database (CSD) registration number (**compulsory**).
- In addition, the relevant agreement between all parties involved, which clearly outlines the roles and responsibilities specific to this tender must be submitted (**compulsory**).
- A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an Exempt Micro Entity that has the capability and ability to execute the sub-contract.
- A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

## GENERAL CONDITIONS OF CONTRACT (ISSUED BY NATIONAL TREASURY)

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## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:

- 1.1 "Closing time" means the date and hour specified in the tender documents for the receipt of Tenders.
- 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7 "Day" means calendar day.
- 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
- 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods are so delivered and a valid receipt is obtained.
- 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among Bidders (prior to or after Tender submission) designed to establish Tender 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 tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or 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 Tender will be manufactured.
- 1.17 "Local content" means that portion of the tender 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 tender 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 Tenders, contracts and orders including Tenders 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 tender 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 tender documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a Tender. Where applicable a non-refundable fee for documents may be charged.

3.2 Invitations to Tender 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 tender documents and specifications.

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

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

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

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

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

6. **Patent Rights**

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

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 tender 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-tender testing will be for the account of the bidder.

8.2 If it is a Tender 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 tender documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.



- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Goods and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods, which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.

## **9. Packing**

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, and in any subsequent instructions ordered by the purchaser.

## **10. Delivery and documents**

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

## **11. Insurance**

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

## **12. Transportation**

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

## **13. Incidental Services**

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

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

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

## **14. Spare parts**

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

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

## **15. Warranty**

- 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise.
- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

## **16. Payment**

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon 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 Tender, with the

exception of any price adjustments authorized or in the purchaser's request for Tender validity extension, as the case may be.

**18. Variation orders**

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

**19. Assignment**

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

**20. Subcontracts**

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under these contracts if not already specified in the Tender. Such notification, in the original Tender 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.

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

- 24.1 When, after the date of Tender, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or antidumping 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.

**28. Limitation of Liability**

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

28.2 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.

28.3 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 Tender 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 Tender 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 Tender 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 restricted 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.



## ANNEXURE A – MANDATORY INFORMATION

Name of Company: \_\_\_\_\_

Contact Person/s: \_\_\_\_\_

Contact Number/s: \_\_\_\_\_

E-mail address:  
\_\_\_\_\_

Details	Response (Please indicate where the information can be found in your proposal)
Proof of valid & current Accreditation certificate/s by relevant SETAs and listed SAQA of the training provider for all unit standards	
A sample Learner Portfolio not older than two years (portfolio of evidence and learner guide used in the training to be submitted)	
Please submit a list of registered Facilitators, Assessors and Moderators linked to your organisation	
<u>Brief summary schedule of the following:</u> <ul style="list-style-type: none"> <li>▪ Total learners enrolled per annum per approved Unit Standards</li> <li>▪ Total portfolio of evidence submitted per Unit Standard per annum</li> <li>▪ Total learners declared competent per Unit Standard Per annum</li> </ul>	
Up to five (5) traceable client reference letters from SETA accredited training programme/s provided in the last three (3) years	

**Above information certified correct:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**NB: By signing this annexure, the bidder accepts the clauses contained within these Terms of Reference.**

MBD1: INVITATION TO BID (COMPULSORY SUBMISSION)

**PART A**

**YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF ENTERPRISE iLembe**

<b>Bid Number</b>	<b>T09-2022</b>	<b>Closing Date</b>		<b>Closing Time</b>	<b>11h00</b>
<b>Description</b>					

**THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).**

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT

**ENTERPRISE ILEMBE  
SANGWENI TOURISM CENTRE  
CNR. LINK ROAD & BALLITO DRIVE  
BALLITO  
4420**

**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:	
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 POINTS FOR B-BBEE]**

Are you the Accredited Representative in <b>South Africa for the Goods /Services /Works Offered?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No (if yes enclose proof)	Are you a Foreign Based Supplier for <b>the Goods /Services /Works Offered?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No (if yes, answer part B:3)
<b>Total Number of Items Offered</b>		<b>Total Bid Price:</b>	
<b>Signature of Bidder</b>		<b>Date:</b>	
<b>Capacity under which this bid is signed:</b>			

**PART B**  
**Terms and Conditions for Bidding**

**1. BID SUBMISSION:**

- 1.1. Bids must be delivered by the stipulated time to the correct address. Late bids will not be accepted for consideration.
- 1.2. **All bids must be submitted as prescribed in the terms of reference**
- 1.3. This bid is subject to the Preferential Procurement Policy Framework Act, the Municipal Supply Chain Management Regulations the GCC contract
- 1.4. 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](http://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: .....

**MBD 4: DECLARATION OF INTEREST**

1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
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.

<b>3.1</b>	<b>Full Name of bidder/ Representative</b>	
<b>3.2</b>	<b>Identity Number</b>	
<b>3.3</b>	<b>Position occupied in the Company (director, trustee, shareholder<sup>2</sup>)</b>	
<b>3.4</b>	<b>Company Registration Number</b>	
<b>3.5</b>	<b>Tax Reference Number</b>	
<b>3.6</b>	<b>Tax Reference Number</b>	

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.

<b>3.8</b>	<b>Are you presently in the service of the state*?</b>	<b>Yes</b>	<b>No</b>
<b>3.8.1</b>	<b>If yes, furnish particulars.</b>		

**<sup>1</sup>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 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.**

**<sup>2</sup>"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 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
3.11.1	If yes, furnish particulars.		
3.12	Are any of the company's directors, managers, principal 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, managers, principal 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, principal shareholders or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract.	Yes	No
3.14.1	If yes, furnish particulars.		

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

Full Name	Identity Number	State Employee Number

<b>Name of Bidder</b>			
<b>Signature</b>		<b>Name (print)</b>	
<b>Capacity</b>		<b>Date</b>	

**DECLARATION OF BIDDER’S PAST SUPPLY CHAIN MANAGEMENT PRACTICES**

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

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

4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p><b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b></p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	<p>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?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	<p>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?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	<p>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?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		



**CERTIFICATION**

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

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

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

.....

**Signature**

.....

**Date**

.....

**Position**

.....

**Name of Bidder**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

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

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

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

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

\_\_\_\_\_

(Bid Number and Description)

in response to the invitation for the bid made by:

\_\_\_\_\_

(Name of Municipality / Municipal Entity)

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

I certify, on behalf of: \_\_\_\_\_ that:

(Name of Bidder)

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

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or 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.

**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