



OVERSTRAND MUNICIPALITY

TENDER NO. SC 770/2010: TENDER FOR THE LEASE OF A PORTION OF ERF 243 HERMANUS IN THE OVERSTRAND MUNICIPAL AREA FOR THE PURPOSE OF ESTABLISHING AND OPERATING A

HELICOPTER LANDING SITE

Name of Tenderer:	
Contact Person:	
Contact Number:	
Monthly Rental Amount Offered:	R (including VAT)
Signature:	

MAY 2010

Table of Contents

Tender Notices.....	1
Tender Document & Specifications.....	4
Power of Attorney.....	9
General Conditions of Tender	10
MBD 1 Invitation to Bid	11
MBD 2 Tax Clearance Certificate Requirements	13
MBD 4 Declaration of Interest.....	14
MBD 6.1 Preference Points Claim Forms, Leases.....	17
MBD 6.9 Preference Points Claim Form, Locality: Province	24
MBD 6.10 Preference Points Claim Form, Locality: Region	26
MBD 6.11 Preference Points Claim Form, Locality: Municipal Area	28
MBD 8 Declaration of Bidder's Past Supply Chain Management Practices	30
Annexure A: Locality Map	32
Annexure B: Site Map	33
Annexure C: Standard Conditions of Lease.....	34
Annexure D: General Conditions of Contract	40



P O BOX 20, HERMANUS, 7200

TENDER NO. SC 770/2010: HELICOPTER LANDING SITE

Tenders are hereby invited for the lease of a portion of Erf 243, Hermanus for the purpose of establishing and operating a Helicopter Landing Site.

Documents are obtainable at the offices of the Manager: Town Planning, Overstrand Municipality, 16 Patterson Street, Hermanus Administration, Tel. 028 313 8900 between 08:00 and 15:30 upon payment of a non refundable tender participation fee of R400.00 (Four Hundred Rand). Bank guaranteed cheques to be made payable to "Overstrand Municipality".

Alternatively the documents can be downloaded free of charge from our website: www.overstrand.gov.za.

Sealed tenders with "**TENDER NO. SC 770/2010: HELICOPTER LANDING SITE**" clearly endorsed on the envelope, must be deposited in Tender Box No 4 at the offices of the Overstrand Municipality, Magnolia Avenue, Hermanus.

The closing date and time is on 21 May 2010 at 12:00 noon and will be opened in public as soon as possible thereafter in the Committee Room, Hermanus Administration.

Tenders must be valid for 90 days after the closing date.

The Overstrand Municipality does not bind itself to accept the highest or any tender and reserves the right to accept any tender, as it may deem expedient. Tenders are subject to the Standard Conditions of Tender, the Preferential Procurement Regulations of 2001 and the Supply Chain Management Policy of the Overstrand Municipality.

Please contact Alta Marais at the 028 313 8109 for any information required.

MUNICIPAL MANAGER



POSBUS 20, HERMANUS, 7200

TENDER NR. SC 770/2010: HELIKOPTER LANDINGSTERREIN

Tenders word hiermee ingewag vir die huur van 'n gedeelte van Erf 243, Hermanus vir die doel om 'n Helikopter Landingsterrein te vestig en te bedryf.

Dokumente, in Engels, is verkrygbaar by die kantore van die Bestuurder: Stadsbeplanning, Munisipaliteit Overstrand, Pattersonstraat 16, Hermanus Administrasie, Tel. 028 313 8900 tussen 08:00 en 15:30 na betaling van 'n nie terugbetaalbare tender deelname fooi van R400.00 (Vier Honderd Rand). Bank gewaarborgde tjeks moet uitgemaak word aan "Overstrand Munisipaliteit".

Dokumente is ook gratis beskikbaar op web-werf: www.overstrand.gov.za.

Tenders duidelik gemerk "**TENDER NR. SC 770/2010: HELIKOPTER LANDINGSTERREIN**" en in 'n verseëelde koevert moet in die Tenderbus No.4 by die kantore van die Munisipaliteit Overstrand, Magnoliaaan, Hermanus, geplaas word.

Die datum en sluitingstyd van die tender is 21 Mei 2010 om 12:00. Tenders sal direk na die sluitingstyd in die openbaar oopgemaak word in die Komiteekamer, Hermanus Administrasie.

Tenders moet geldig wees vir 90 dae na sluitingsdatum.

Die Munisipaliteit Overstrand is nie verplig om die hoogste of enige tender wat ingedien word te aanvaar nie. Tenders is onderworpe aan die Standaard Tender Voorwaardes, Voorkeur Verkrygings Regulasies van 2001 en die Voorkeur Verkrygingsbeleid van Overstrand Munisipaliteit.

Vir navrae kan Alta Marais by telefoon nommer 028 313 8109 gekontak word.

MUNISIPALE BESTUURDER

**UMASIPALA WE-OVERSTRAND****ISINIKI-XABISO/UQIKELELO-XABISO NO. SC 770/2010: ISIZA SOKUHLALA I-HELIKOPTA**

Kucelwa isiniki-xabiso/ uqikelelo-xabiso sokuqeshisa ngesiqephu sesiza inombolo 243, e-Hermanus ngenjongo yokumisa nokuba sisetyenziselwe ukuhlala kwe-Helikopta.

Amaxwebhu, abhalwe ngesiNgesi, ayafumaneka kwii-ofisi zomphathi: Wesicwangciso-nkqubo sokwakha isixeko kumasipala wase-Overstrand e-16 Patterson Street kuLawulo, lwase-Hermanus, ifowuni 028 313 8900 phakathi kweye-08:00 neye-15:30 usakuhlalwula umrhumo wokuthatha inxaxheba kwiziniki-maxabiso ongabuyiswayo ongama- R400.00 (amakhulu amabini anamashumi asixhenxe eerandi. litsheki mazenziwe zihlawuleke ku "Masipala we-Overstrand".

Okanye amaxwebhu angakhutshelwa esuka kwi-webhusayithi yethu: www.overstrand.gov.za.

Iziniki-maxabiso/uqikelelo-xabiso ezitywinwe kwabhalwa, **"ISINIKI-XABISO/UQIKELELO-XABISO NO SC 7770/2010: "ISIZA SOKUHLALA IHELIKOPTA"** ibhalwe ngokucacileyo kwimvulophu, mayifakwe kwi Bhokisi yeZiniki-maxabiso No 4 kwii-ofisi zikaMasipala wase-Overstrand, Magnolia Avenue, Hermanus.

Umhla, nexesha lokuvala kufako lwezini maxabiso ngumhla we 21 Meyi 2010 ngentsimbi ye 12:00 kwaye emva koko ziyakuvulwa ngokukhawuleza kwigumbi lekomiti, Kulawulo lwase Hermanus.

Iziniki-maxabiso mazibesemthethweni kangangentsuku ezingamashumi asithoba (90) emva komhla wokuvala.

UMasipala we-Overstrand akazibopheleli ekwamkeleni ixabiso elilelona liphantsi okanye nasiphi isiniki-xabiso kwaye unelungelo lokwamkela nasiphi na isiniki-xabiso, njengoko ebona kufanelekile. Iziniki-maxabiso ziphantsi koMgangatho woLawulo lweZiniki-maxabiso, uMmiselo oKhethekileyo wokuFumana ka-2001 neNkqubo yoLawulo lweTyathanga loKubonelela kaMasipala we-Overstrand.

Nceda nxibelelana no Alta Marais kule nombolo ilandelayo (028 313 8109) ngazo naziphi iinkcukacha ezingacacanga ozifunayo.

UMPHATHI KAMASIPALA

1. INTRODUCTION

- 1.1. The Overstrand Municipality has decided to call for tenders to lease a portion of land north of Gateway being a portion of Erf 243, Hermanus owned by the Municipality. This site has been proposed for the development of a Heliport in accordance with the Design Guidelines for Heliports as prescribed by the South African Civil Aviation Authority (SACAA). The site is currently undeveloped.
- 1.2. The objective is to enable the Bid Adjudication Committee to select the best submission in terms of financial, track record, compliance with the relevant Design Guidelines and appropriateness of the proposed site with reference to desirability of the location, operational safety such as fire protection, effect on the surrounding community and the possibility of permanency.
- 1.3. The document is self-explanatory and interested parties are encouraged to read through it carefully, so as to familiarise themselves with both the overall intent of Council, as well as with the procedures for the award.

2. THE TENDER PROCESS

The process to be followed in this tender shall be as follows:

- 2.1. The submission of the tender must be in accordance with **paragraph 9** of this document.
- 2.2. The submission of plans, sketches, a written description of the envisaged development, the details of the developer, the financial offer made as well as information regarding the source of development funds must be clearly set out in the applicants submission as per the requirements set out in **paragraph 7** of this document.
- 2.3. The submissions will be evaluated and adjudicated by a duly constituted evaluation and adjudication committee. It should be noted that the Municipality is not obliged to accept any of the tenders submitted.
- 2.4. The property concerned forms part of the town commonage and will have to be rezoned **Transport Zone I** the cost of the successful tenderer. The successful tenderer will also be required to do an Environmental Impact Assessment in terms of National Environmental Management Act, 1988 (Act 107 of 1998).

- 2.5. Although the Civil Aviation Authorities has granted approval in principle for the use of the subject portion of Erf 243, Hermanus for a heliport it will be a condition of the lease agreement that the successful tenderer shall have to obtain the final relevant license before any construction or operation commence on the property. A Site Development Plan should indicate how the proposed development conforms to the Design Guidelines for Heliports as prescribed by the South African Civil Aviation Authority.
- 2.6. The successful tenderer shall indemnify the Municipality from any claims which may arise from the use of the immovable property.

3. THE ROLE OF THE PROPERTY WITHIN THE OVERSTRAND

- 3.1. The site is located just north of the Hermanus Gateway Shopping Centre between the Main Road into Hermanus and borders the Fernkloof Nature Reserve. (See Annexures A and B)
- 3.2. The site may only be used for establishing and operating a helicopter landing site in accordance with the Design Guidelines for Heliports as prescribed by the SACAA.
- 3.3. The site will not be alienated and will remain the property of the Overstrand Municipality.

4. PROPERTY DESCRIPTION AND DETAILS

- 4.1. The property is known as portion of Erf 243, Hermanus and is registered in the name of Overstrand Municipality.
- 4.2. The size of the subject portion of Erf 243 allocated for this purpose is approximately 2500m² in extent.
- 4.3. The property is currently undeveloped.

5. DEVELOPMENT DIRECTIVES

- 5.1. Development will be limited to the construction of an area to be used for landing and take-off of helicopters including the facilities useful to helicopter operations, such as parking, waiting room, a hanger, offices, fuelling and maintenance equipment. A Development Proposal including a Site Development Plan must be submitted in the prescribed manner along with the tender documentation.

- 5.2. The Development Proposal should consider the constraints of the site bearing in mind the desirability of the proposed location, operation safety such as fire protection, the effect it will have on the surrounding built environment and the visual sensitivity of the site. The Development Proposal should contain references to the relevant Design Guidelines as prescribed by SACAA indicating compliance therewith.
- 5.3. After the tender has been awarded and the lease agreement has been duly signed the successful tenderer will be responsible for the required rezoning of the lease area to **Transport Zone I** the cost of the successful tenderer.
- 5.4. The successful tenderer will also be required to do an Environmental Impact Assessment in terms of National Environmental Management Act, 1988 (Act 107 of 1998).
- 5.5. The property must be appropriately fenced and security control measures must be put in place.
- 5.6. Particular attention must be given to the landscaping around the development.
- 5.7. Vehicular and pedestrian access to the site shall be by means only of such roads or approaches indicated on the site map attached per Annexure B.

6. SERVICES

- 6.1. The successful tenderer will be responsible for payment of the standard fees for connection to the water and electricity services and the consumption of such services. The municipality will provide connection points at the cost of the successful tenderer.
- 6.2. The successful tenderer will take financial responsibility for the relocation of the overhead electrical powerline existing on the site, if required.
- 6.3. Council's Infrastructure and Planning Directorate, Manager: Engineering Services, Dennis Hendricks, must be contacted at 0283163724 for any further information required with regard to the services to the site.

7. SUBMISSION REQUIREMENTS

- 7.1. Submissions are invited from interested parties with the financial means and experience to submit a tender for the lease of the site for the intended purpose and in accordance with the Development Directives described in **paragraph 5** above.

- 7.2. The evaluation of the tenders and the final decision of the Tender Adjudication Committee of the Municipality will be scored according to the following criteria:

<ul style="list-style-type: none"> Lease amount Based on the monetary offer made and calculated as lease amount (highest price). 	30	30
<ul style="list-style-type: none"> Proposed Development: The Development Proposal should address: <ul style="list-style-type: none"> (i) visual impact on the approaching scenic routes (ii) impact on natural environment (footprint in m²) (iii) structure to be erected (cost and material to be used – permanency) 	10 10 10	30
<ul style="list-style-type: none"> Financial: Proof of financial backing / financial resources. Projected timeframe for the completion of the proposed development. 	5 5	10
<ul style="list-style-type: none"> Applicants experience and expertise: Years in operation in South Africa (<5y = 1, >5y<10y = 2, >10y = 5). Capacity of the company (total number of pilots in service = 2,5 and total number of helicopters owned = 2,5) 	5 5	10
<ul style="list-style-type: none"> PPPFA Regulations 2001: HDI – MBD 6.2 (Annexure A) Women – MBD 6.2 (Annexure A) Disabled – MBD 6.2 (Annexure A) Locality of Tenderer MBD 6.9, 6.10 and 6.11 (Annexure E) (4, 8 or 12) 	4 2 2 12	20
TOTAL		100

- 7.3. Each and every tenderer will pay a non refundable tender participation fee of **R400,00** per set of tender documents required for the purpose of tendering. The tender participation fee is payable at the cashiers of the Municipality and tender documents will be provided only if proof of payment (receipt) can be produced. Bank guaranteed cheques to be made out to the “Overstrand Municipality”.

8. AGREEMENT OF LEASE

- 8.1. The lease will commence on the date of occupation and the rental amount shall be payable accordingly notwithstanding weather the lease agreement has been signed or not. The Municipality will proceed with the steps necessary for timeously finalising the lease of the site to the successful tenderer after the tender has been awarded.
- 8.2. The conditions of lease are set out in a document attached as Annexure C. The lease will be for a period of 9 years and 11 months.
- 8.3. Annual escalation of the lease amount will be reckoned from the date the tender was awarded by the Tender Adjudication Committee.

- 8.4. At expiration or in the event of cancellation of the lease, the land shall revert to and vest with the Overstrand Municipality without payment of any compensation whatsoever, and the lessee shall remove at his own expense and within a period of 3 (THREE) months from the date of expiration or cancellation of the agreement, any semi-permanent buildings and/or structures which may have been erected by the lessee from its own funds on the land. No permanent buildings and/or structures shall be removed. Any buildings and/or structures which are not removed accordingly shall vest in and become the property of the Overstrand Municipality free of any compensation whatsoever. The lessee shall be liable to the Municipality for any loss which may be sustained by the reason of the lessee's failure to remove, if so required, any complete and/or incomplete buildings or structures from the land which may be deemed by the Municipality to be a hindrance to its use of the land.
- 8.5. The Municipality reserves the right to impose any additional conditions or scrap any condition as necessary.

9. METHOD OF SUBMISSION

- 9.1. The submission must be submitted in a sealed envelope and endorsed
- 9.2. **"TENDER SC 770/2010: LEASE OF A PORTION OF ERF 243 HERMANUS FOR THE PURPOSE OF OPERATION A HELICOPTER LANDING SITE".**
- 9.3. The submission must be deposited in **Tender Box Number 4** in the foyer of the Municipal Offices, Magnolia Avenue, Hermanus, before 12 noon on Friday **21 May 2010** and will be opened in the Supply Chain Committee Room, Hermanus Administration immediately after the closing time.
- 9.4. **Tenders which are not submitted in a sealed envelope or tenders received after closing time and date, will not be considered.**
- 9.5. **Tenders that are deposited in the incorrect box will not be considered.**
- 9.6. **The tender box deposit slots are 28 X 2,5 cm.**
- 9.7. **Mailed, telegraphic or faxed tenders will not be accepted.**
- 9.8. Council is not obliged to accept the highest bid or any of the tenders submitted.

10. ACCEPTANCE

The tender shall remain irrevocably open for acceptance by the Municipality for a period of 120 days calculated from the date of the closing of tender.

TENDER NUMBER: **SC 770/2010**

DESCRIPTION: **LEASE OF A PORTION OF ERF 243 HERMANUS FOR THE
PURPOSE OF OPERATION A HELICOPTER LANDING SITE**

SIGNING POWER: RESOLUTION OF BOARD OF DIRECTORS

Name of Company

It was resolved at a meeting of the Board of Directors held on that

FULL NAME(S)	CAPACITY	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

In his/her capacity as indicated above is/are hereby authorised to enter into, sign, execute and complete any documents relating to Tenders, Proposals and/or Contracts for the supply of Services.

FULL NAME _____

SIGNATURE CHAIRMAN

FULL NAME _____

SIGNATURE SECRETARY

Respondent's Signature

Date and Company Stamp

OVERSTRAND MUNICIPALITY
(hereinafter referred to as the Municipality)
GENERAL CONDITIONS OF TENDER

- (a) The tender must be submitted in a sealed envelope addressed to the Municipal Manager and endorsed by indicating the tender number and description.
- (b) The tender must be lodged by the Tenderer in tender box in the Main Cash Hall, Hermanus Municipal Offices, Magnolia Road, Hermanus.

Please Note:

- **Tenders that are deposited in the incorrect box will not be considered.**
- **Tender box deposit slot is 28cm x 2.5cm.**
- **Mailed, telegraphic or faxed tenders will not be accepted.**
- (c) Any Tender received after the appointed time for the closing of Tenders shall not be considered but shall be filed unopened with the other Tenders received or may be returned to the Tenderer at his request.
- (d) Tenders may **not** be telefaxed to the Municipality and therefore any tenders received by fax will **not** be considered.
- (e) A separate Tender box is provided for the reception of Tenders and no Tender will be considered which, subsequent to the closing hour for Tenders, may be found in another box.
- (f) Tenders shall be opened in public at the Hermanus Municipal Offices as soon as possible after the closing time for the receipt of tenders.
- (g) Alterations or deletions not signed by the Tenderer may render the tender invalid.
- (h) the Municipality shall have the right summarily to disqualify any Tenderer who, either 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;**

That an agreement be signed whereby the Tenderer agrees that a percentage or fixed amount at the discretion of the Municipality, be deducted from payments due to him for this tender, until the debt is paid in full.

The tenderer shall declare **all** the Municipal account numbers in the Overstrand Area for which the enterprise or the proprietors or directors in their personal capacity is/ are responsible or co-responsible.

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- (i) All prices shall be quoted in South African currency and be **inclusive** of VAT.
- (j) The successful tenderer will be responsible for Environmental Authorisation, rezoning of the property and obtaining the necessary authorisation and license form the South African Civil Aviation Authority.

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE OVERSTRAND MUNICIPALITY

TENDER NUMBER: **SC 770/2010**

CLOSING DATE: **21 MAY 2010**

CLOSING TIME: **12:00**

DESCRIPTION: **LEASE OF A PORTION OF ERF 243 HERMANUS FOR THE PURPOSE OF OPERATION A HELICOPTER LANDING SITE**

The successful bidder will be required to fill in and sign a written Contract Form (MBD 7).

BID DOCUMENTS MAY BE DEPOSITED IN THE BID BOX NUMBER: 4 SITUATED AT:

**THE MUNICIPAL OFFICES
OVERSTRAND MUNICIPALITY
MAGNOLIA STREET
HERMANUS**

Bidders should ensure that bids are delivered timeously to the correct address. If the bid is late, it will not be accepted for consideration.

The bid box is generally open 24 hours a day, 7 days a week.

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

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

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

1. Lease Amount
2. Development Proposal
3. Financial
4. Applicants Experience & Expertise
5. PPPFA & associated regulations

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

***THE FOLLOWING PARTICULARS MUST BE FURNISHED
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)***

NAME OF BIDDER

POSTAL ADDRESS

STREET ADDRESS

TELEPHONE NUMBER CODE.....NUMBER.....

CELL PHONE NUMBER

FACSIMILE NUMBER CODE.....NUMBER.....

VAT REGISTRATION NUMBER

HAS AN ORIGINAL TAX CLEARANCE CERTIFICATE BEEN ATTACHED (MBD 2)? **YES / NO**

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE

GOODS/SERVICES OFFERED BY YOU? **YES / NO**
(IF **YES** ENCLOSE PROOF)

SIGNATURE OF BIDDER

DATE

CAPACITY UNDER WHICH THIS BID IS SIGNED

MONTHLY LEASE AMOUNT OFFERED (in words)

.....

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

Department:	PROPERTY ADMINISTRATION
Contact Person:	ALTA MARAIS
Tel:	028 313 8102
Fax:	028 312 1894

TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

1. In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
2. SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
3. The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
4. In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
5. Copies of the **TCC 001 "Application for a Tax Clearance Certificate"** form are available from any SARS branch office nationally or on the website www.sars.gov.za.
6. Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sars.gov.za.

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

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the Municipality.
2. Any person, having a kinship with persons in the service of the Municipality, 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 Municipality, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest.
3. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

3.1 Full Name:

3.2 Identity Number:

3.3 Company Registration Number:

3.4 Tax Reference Number:

3.5 VAT Registration Number:

3.6 Are you presently in the service of the Municipality* **YES / NO**

3.6.1 If so, furnish particulars.

.....

.....

3.7 Have you been in the service of the Municipality for the past twelve months? **YES / NO**

3.7.1 If so, furnish particulars.

.....

.....

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

1. a member of –
 - 1.1 any municipal council;
 - 1.2 any provincial legislature; or
 - 1.3 the national Assembly or the national Council of provinces;
2. a member of the board of directors of any municipal entity;
3. an official of any municipality or municipal entity;
4. 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);
5. a member of the accounting authority of any national or provincial public entity; or
6. an employee of Parliament or a provincial legislature.

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

3.8.1 If so, furnish particulars.

.....
.....

3.9 Are you, aware of any relationship (family, friend, other) between a bidder and any persons in the service of the Municipality who may be involved with the evaluation and or adjudication of this bid? YES / NO

3.9.1 If so, furnish particulars

.....
.....

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

3.10.1 If so, furnish particulars.

.....
.....

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

3.11.1 If so, furnish particulars.

.....
.....

CERTIFICATION

I, the undersigned (name)

Certify that the information furnished on this declaration form is correct.

I accept that the MUNICIPALITY may act against me should this declaration prove to be false.

.....
SIGNATURE

.....
DATE

.....
POSITION

.....
NAME OF BIDDER

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2001

LEASES

This preference form must form part of all bids invited. It contains general information and serves as a claim form for Historically Disadvantaged Individual (HDI) preference points as well as a summary for preference points claimed for attainment of other specified goals.

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

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- 1.1.1 the 80/20 system for requirements with a Rand value of up to R500 000; and
- 1.1.2 the 90/10 system for requirements with a Rand value above R500 000.

The value of this bid is estimated to not exceed R500 000 and therefore the 80/20 system shall be applicable.

1.2 Preference points for this bid shall be awarded for:

- 1.2.1 Price; and
- 1.2.2 Specific contract participation goals, as specified in the attached forms.

1.3.1 The points for this bid are allocated as follows:

	POINTS
1.3.1.1 PRICE, DEVELOPMENT CONCEPT, EXPERIENCE, ETC	80
1.3.1.2 SPECIFIC CONTRACT PARTICIPATION GOALS	
(a) Historically Disadvantaged Individuals:	
(i) who had no franchise in national elections before the 1983 and 1993 Constitutions	4
(ii) who is a female	2
(iii) who has a disability	2
(b) Other specific goals (goals of the RDP- plus local manufacture):	
(i) Location of Tenderers: Province (MBD 6.9)	4
(ii) Location of Tenderers: Region (MBD 6.10)	8
(iii) Location of Tenderers: Municipal Area (MBD 6.11)	12
Total points for Price, HDIs and other RDP-goals must not exceed	100

Separate Preference Points Claim Forms will be used for the promotion of the specific goals for which points have been allocated in paragraph 1.3.1.2 (b) above.

1.4 Failure on the part of a bidder to fill in and/or to sign this form may be interpreted to mean that preference points are not claimed.

1.5 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. GENERAL DEFINITIONS

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

3. ESTABLISHMENT OF HDI EQUITY OWNERSHIP IN AN ENTERPRISE

- 3.1 Equity ownership shall be equated to the percentage of an enterprise which is owned by individuals classified as HDIs, or in the case of a company, the percentage shares that are owned by individuals classified as HDIs, who are actively involved in the management and daily business operations of the enterprise and exercise control over the enterprise, commensurate with their degree of ownership.
- 3.2 Where individuals are not actively involved in the management and daily business operations and do not exercise control over the enterprise commensurate with their degree of ownership, equity ownership may not be claimed.

4. ADJUDICATION USING A POINT SYSTEM

- 4.1 The bidder obtaining the highest number of points will be awarded the contract.
- 4.2 Preference points shall be calculated after prices have been brought to a comparative basis.
- 4.3 Points scored will be rounded off to 2 decimal places.
- 4.4 In the event of equal points scored, the bid will be awarded to the bidder scoring the highest number of points for specified goals.

5. POINTS AWARDED FOR PRICE

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

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

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) & \mathbf{or} & P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)
 \end{array}$$

Where

- Ps = Points scored for price of bid under consideration
- Pt = Rand value of bid under consideration
- Pmin = Rand value of lowest acceptable bid

6. POINTS AWARDED FOR HISTORICALLY DISADVANTAGED INDIVIDUALS

- 6.1 In terms of Regulation 13 (2) preference points for HDI's are calculated on their percentage shareholding in a business, provided that they are actively involved in and exercise control over the enterprise. The following formula is prescribed in Regulation 13 (5) (c):

$$NEP = NOP \times \frac{EP}{100}$$

Where

NEP	=	Points awarded for equity ownership by an HDI
NOP	=	The maximum number of points awarded for equity ownership by an HDI in that specific category
EP	=	The percentage of equity ownership by an HDI within the enterprise or business, determined in accordance with the definition of HDI's.

- 6.2 Equity claims for a trust will only be allowed in respect of those persons who are both trustees and beneficiaries and who are actively involved in the management of the trust.
- 6.3 Documentation to substantiate the validity of the credentials of the trustees contemplated above must be submitted.
- 6.4 Listed companies and tertiary institutions do not qualify for HDI preference points.
- 6.5 A consortium or joint venture may, based on the percentage of the contract value managed or executed by their HDI-members, be entitled to preference points in respect of an HDI.
- 6.6 A person awarded a contract as a result of preference for contracting with, or providing equity ownership to an HDI, may not subcontract more than 25% of the value of the contract to a person who is not an HDI or does not qualify for the same number or more preference for equity ownership.

7. BID DECLARATION

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

8. EQUITY OWNERSHIP CLAIMED IN TERMS OF PARAGRAPH 2.10 ABOVE. POINTS TO BE CALCULATED FROM INFORMATION FURNISHED IN PARAGRAPH 9.9.

Ownership	Percentage owned	Points claimed
8.1 Equity ownership by persons who had no franchise in the national elections%
8.2 Equity ownership by women%
8.3 Equity ownership by disabled persons*%

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

.....

9. DECLARATION WITH REGARD TO EQUITY

9.1 Name of firm:

9.2 VAT registration number:

9.3 Company registration number:

9.4 TYPE OF FIRM

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

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

9.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

9.7 MUNICIPAL INFORMATION

State where business is situated:

Registered Account No:

Stand No:

9.8 TOTAL NUMBER OF YEARS THE FIRM HAS BEEN IN BUSINESS?

.....

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

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

*Indicate YES or NO

9.10 Consortium / Joint Venture

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

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

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

- (i) The information furnished is true and correct.
- (ii) The Equity ownership claimed is in accordance with the General Conditions as indicated in paragraph 1 of this form.
- (iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 8, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct.
- (iv) If the claims are found to be incorrect, the purchaser may, in addition to any other remedy it may have -
 - (a) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct; and
 - (b) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

WITNESSES:

1.

2.

.....
SIGNATURE (S) OF BIDDER (S)

DATE:.....

ADDRESS:.....

.....

.....

.....

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT
REGULATIONS 2001
PROMOTION OF ENTERPRISES LOCATED IN A SPECIFIC PROVINCE**

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

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

3. SPECIFIC GOAL POINTS ALLOCATED

The stimulation of the Provincial economy by procuring locally ...4...

Preference points may only be claimed by enterprises located within the borders of the **Western Cape Province**. (See paragraph 2 above).

4. BID DECLARATION

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

5. POINTS CLAIMED

Bidder to indicate whether the point(s) allocated for enterprises situated within the borders of the **Western Cape Province** is/are claimed.

Yes/No

6. DECLARATION WITH REGARD TO LOCALITY

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

Address of **local enterprise**:

Physical:

Postal:

Telephone: Fax:

Address of **Head Office**:

Physical:

Postal:

Telephone: Fax:

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

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

WITNESSES:

1.

2.

.....
SIGNATURE (S) OF BIDDER (S)

DATE:

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT
REGULATIONS 2001
PROMOTION OF ENTERPRISES LOCATED IN A SPECIFIC REGION**

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

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

3. SPECIFIC GOAL POINTS ALLOCATED

The stimulation of the Provincial economy by procuring locally from enterprises located in the **Overberg Region** ...8...

Preference points may only be claimed by enterprises located within the **Overberg Region**. (See paragraph 2 above).

4. BID DECLARATION

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

5. POINTS CLAIMED

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

6. DECLARATION WITH REGARD TO LOCALITY

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

Address of **local enterprise**:

Physical:

Postal:

Telephone: Fax:

Address of **Head Office**:

Physical:

Postal:

Telephone: Fax:

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

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

WITNESSES:

1.

2.

.....
SIGNATURE (S) OF BIDDER (S)

DATE:

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT
REGULATIONS 2001**

PROMOTION OF ENTERPRISES LOCATED IN A SPECIFIC MUNICIPAL AREA

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

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

3. SPECIFIC GOAL POINTS ALLOCATED

The stimulation of the local economy by procuring from enterprises located within the borders of the **Overstrand Municipality**. ...12...

Preference points may only be claimed by enterprises located within the **Overstrand Municipality**. (See paragraph 2 above).

4. BID DECLARATION

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

5. POINTS CLAIMED

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

6. DECLARATION WITH REGARD TO LOCALITY

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

Address of local enterprise: Physical:

Postal:.....

Telephone: Fax:

Municipal Account No: Stand No:

Address of Head Office: Physical:

Postal:.....

Telephone: Fax:

Municipal Account No: Stand No:

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

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

WITNESSES:

- 1.
- 2.

.....
SIGNATURE (S) OF BIDDER (S)

DATE:

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.**

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's database as a company or person prohibited from doing business with the public sector? (Companies or persons who are listed on this database were informed in writing of this restriction by the National Treasury after the <i>audi alteram partem</i> rule was applied).	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? (To access this Register enter the National Treasury's website, www.treasury.gov.za, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445).	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:		

Item	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

I, THE UNDERSIGNED (FULL NAME)

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

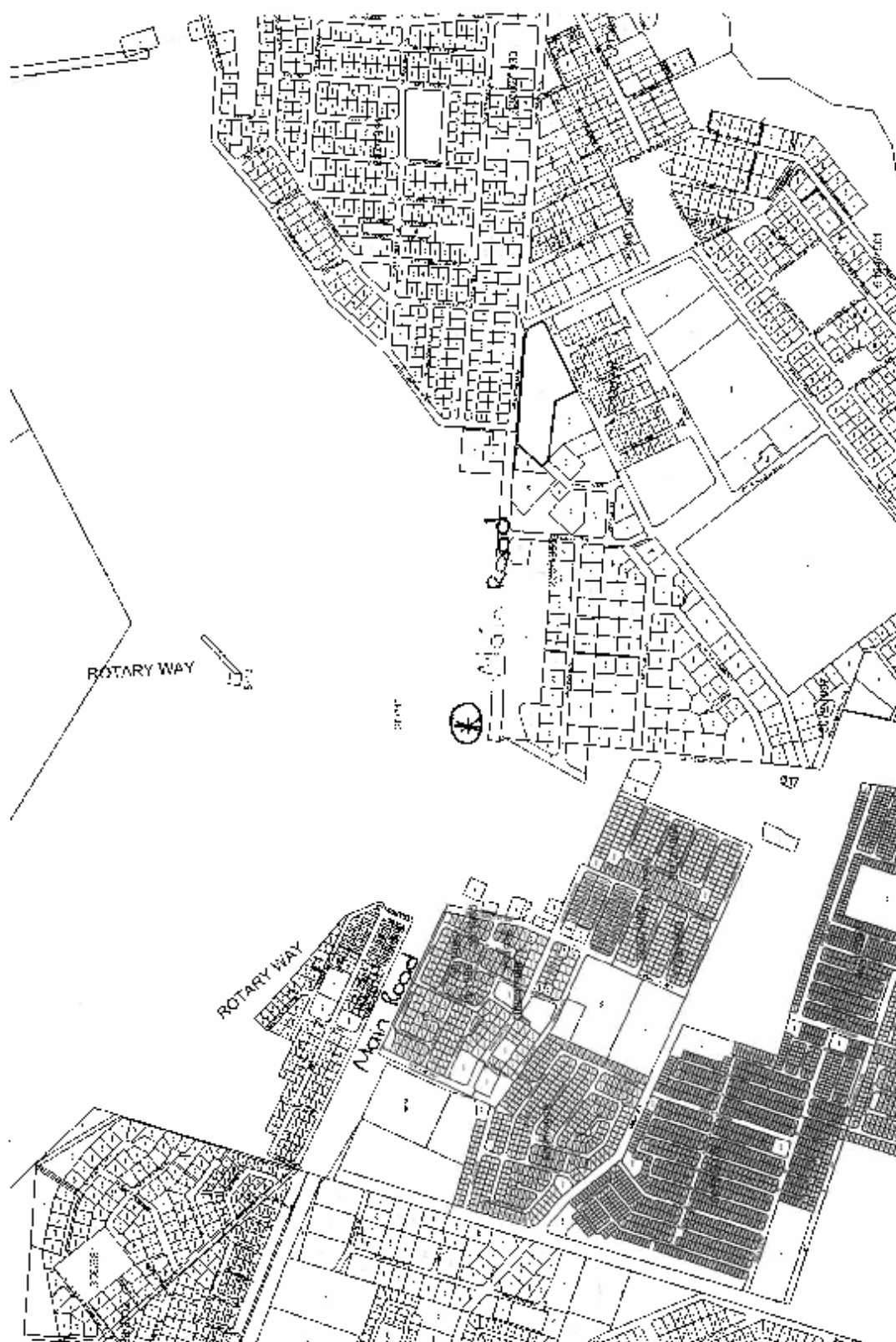
I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

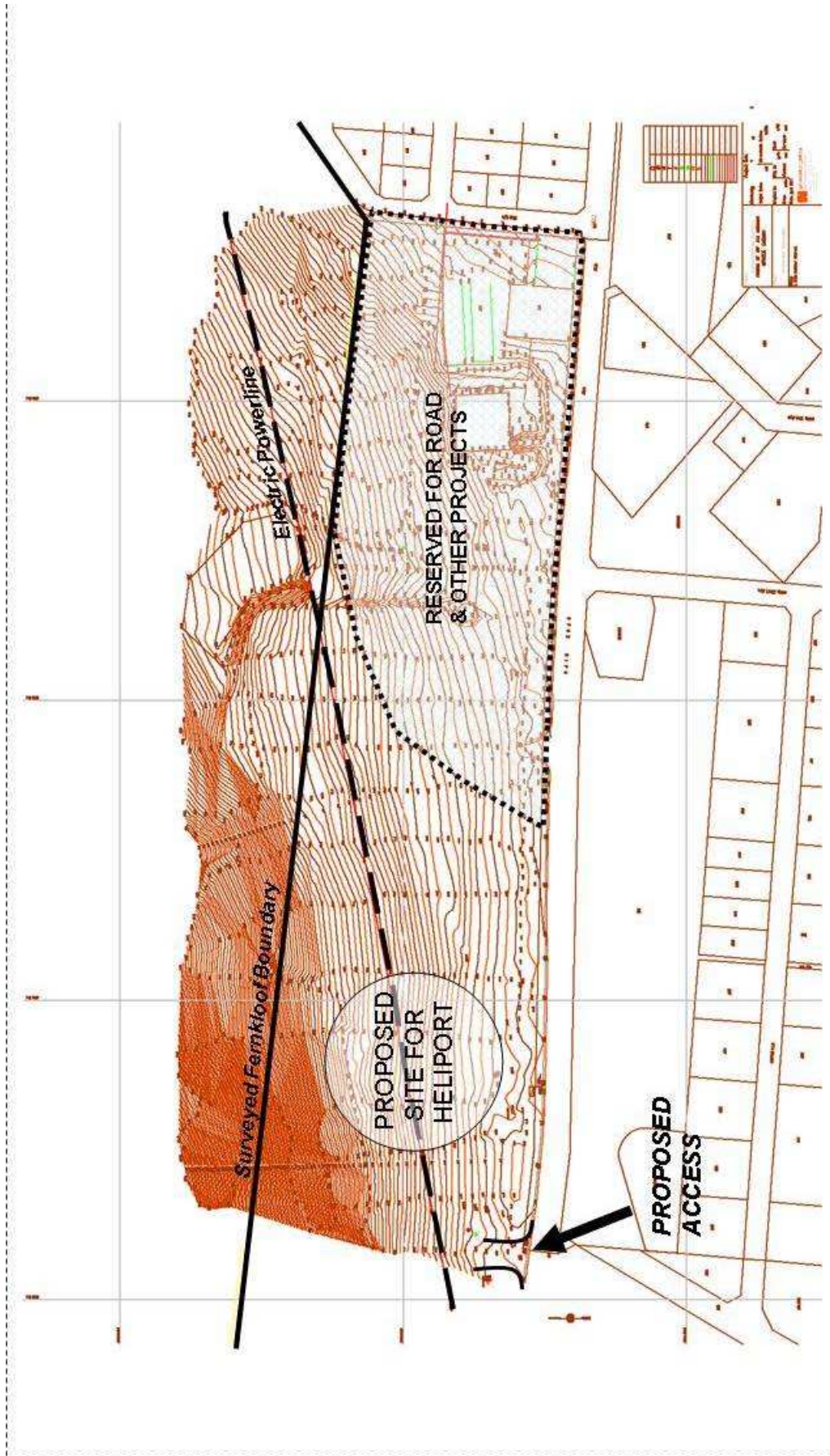
.....
SIGNATURE

.....
DATE

.....
POSITION

.....
NAME OF BIDDER





STANDARD CONDITIONS OF LEASE**1. THE PREMISES**

A portion of Erf 243, Hermanus known as "North of Gateway".

2. LEASE PERIOD

This lease shall endure for a period of 9 years and 11 months and shall commence as soon as possible after the tender has been awarded. At expiration the **LESSOR** reserves the right at its own discretion and without prejudice to either, in terms of the relevant legislation, extend the lease period or enter into a new lease agreement following a public competition process.

3. RENTAL

The rental amount shall be the amount proposed by the successful tenderer escalating annually by a percentage equal to the consumer price index averaged over the three months prior to the date of escalation in respect of the premises, such rental to be payable monthly in advance at the municipal cashiers, Hermanus or by way of direct deposit or by way of electronic funds transfer.

4. SUBJECTIONS OF LEASE

- 4.1. This lease shall be subject in all respects to the provisions of the Asset Management Policy of the Overstrand Municipality with regard to the Management and Administration of Immovable Property adopted by the Council of the Municipality in November 2004.
- 4.2. This lease shall be subject to all servitudes and conditions, if any, binding on the Council in respect of the land hereby leased.

5. UTILISATION

- 5.1. The said premises, together with such buildings and other structures as may be erected in accordance with the provisions of the tender document shall be used exclusively for operating a heliport.
- 5.2. No caravans, tents or other camping will be permitted on the site and buildings and/or structures erected in terms of this agreement shall not be used for human habitation. In particular, the **LESSEE** undertakes and agrees not to use the said premises or any portion thereof as a dwelling house on whatever account.
- 5.3. Access to the land by the **LESSEE** or persons using the same with its authority shall be had by means only of such roads or approaches or at such other points as may be agreed in writing between the **LESSOR** and the **LESSEE**.

6. RIGHTS AND DUTIES OF LESSEE

- 6.1. The **LESSEE** shall, enclose the whole of the land hereby leased with suitable fences and implement security control measures to the satisfaction of the **LESSOR**.
- 6.2. The **LESSEE** shall not use or cause or permit to be used any fence, building and/or structure which is or which may hereafter be erected on the land for the display of advertisements of any description whatsoever without the prior written consent of the **LESSOR** with the proviso that this clause is not intended to prohibit the erection of warning signs for security and/or safety purposes.
- 6.3. The **LESSEE** shall not erect or cause or permit to be erected any buildings and/or structures on the land or structural alterations to any buildings or structures except with the prior written consent of the **LESSOR** given under the hand of the Municipal Manager, such approval not be unreasonably withheld.
- 6.4. No buildings and/or structures shall be erected until such time as the plans therefore have been approved by the **LESSOR** and shall be completed within a period of 6 (SIX) months of the date of approval mentioned in 6.3 above.
- 6.5. The **LESSEE** shall not for whatever reason during the currency of the agreement cede, assign, transfer, or make over its rights under this agreement nor shall it sublet the land in whole or in part, except with the prior written consent of the **LESSOR** given under the hand of the Municipal Manager, such approval not be unreasonably withheld.
- 6.6. The **LESSEE** shall be responsible at all times for the maintenance of good order, behaviour and government on the land and within any buildings and/or structures thereon and shall not allow the same to be frequented by persons of ill repute or bad character.

7. MAINTENANCE

- 7.1. The **LESSEE** agrees at all times to keep and maintain the land and all buildings, fences and structures thereon in good and effective order and condition.
- 7.2. No indigenous trees growing on the land shall be cut down or interfered with without the prior written consent of the **LESSOR** given under the hand of the Municipal Manager and the **LESSEE** shall promote the clearing and control of invasive vegetation.
- 7.3. The **LESSEE** shall not remove or cause or permit to be removed from the land any soil, clay, gravel, sand or other matter upon or below the surface of the land without the prior written consent of the **LESSOR** given under the hand of the Municipal Manager.
- 7.4. Any damage caused to the premises as a result of any dismantling or removal of equipment or as a result of the **LESSEE'S** failure to maintain the premises in such good order and condition, shall be made good by the **LESSEE** at the **LESSEE'S** own cost and expense within 30 (THIRTY) days after written notice is received from the **LESSOR**.

- 7.5. The **LESSOR** may at all convenient times through its officers and servants enter upon the land or any buildings or structures erected thereon and inspect the same, and may make an inventory of all defects or matters calling for repair found thereon or therein for which the **LESSEE** is responsible as herein provided and within 30 (THIRTY) days of the receipt of a notice in writing from the Municipal Manager calling upon it so to do, the **LESSEE** shall make good any defects or matters requiring repair as aforesaid and if the **LESSEE** shall fail to do so the **LESSOR** may enter upon the land, buildings and structures aforesaid and remedy such defects or make and effect the repairs aforesaid and recover the cost from the **LESSEE**.
- 7.6. The **LESSOR** reserves the right of free access, without notice, to the land hereby leased for as many of its officers and servants as may be necessary for the purpose of inspection, maintenance, renewal, cleansing, repairs and reconstruction of, or in connection with, existing foul sewers, rising mains, storm water drains, water mains, electric cables, or any works appurtenant thereto, or in regard to any such or other municipal services which the **LESSOR** may in future lay in or across the land, the **LESSOR** reserving to itself the right to establish such services without notice.
- 7.7. The **LESSEE** shall not build over, alter, or in any manner disturb such services except under the express permission in writing of the Operational Manager of the municipality or his authorised representative in respect of the service concerned, and upon due compliance with any specified precautionary measures.
- 7.8. Should work involving maintenance, clearing, construction, reconstruction or repairs become necessary at any time the **LESSOR** shall, in performing such work cause as little inconvenience as possible to the **LESSEE**, regard being had to the nature of the work performed, and the **LESSOR** shall reinstate as nearly as reasonably possible in its original condition the surface of any ground disturbed, provided that the **LESSOR** shall not be liable for any damage whatsoever which may be sustained by the **LESSEE** or any other person or body of persons as a result of the performance by the **LESSOR** of the work aforesaid.

8. RISK OF CONTENTS AND INSURANCE

- 8.1. All goods, property and effects of whatsoever nature owned by the **LESSEE** or any other person which at any time might be in/on/at the said premises shall be there at the sole risk of the **LESSEE** and the **LESSOR** shall not be liable to make good any loss or damage to such goods from any cause whatsoever.
- 8.2. The **LESSEE** undertakes for the currency of the lease to pay to the **LESSOR** the monthly insurance premium in respect of the subject portion of Erf 243, Hermanus. The buildings and/or structures will be insured against damage or loss by the **LESSOR** in terms of this lease.

9. BREACH

9.1. The **LESSEE** hereby covenants with the **LESSOR** that the **LESSEE** will pay the rent as proposed and agrees also faithfully to observe and fulfil each and all the conditions of this lease.

9.2. In the event of:

9.2.1. the rental not being paid within 30 (THIRTY) days from the date when the same becomes due and payable; or

9.2.2. the said land, fence, buildings, and structures aforesaid not being kept and maintained in an efficient state of repair and in good structural condition; or

9.2.3. any or all of the conditions of this lease not being duly observed and fulfilled in accordance with the true intent and meaning thereof, and after the **LESSEE** has been given 21 (TWENTY ONE) days notice by registered mail,

the **LESSOR** shall be entitled to cancel and annul this lease and to re-enter upon and resume possession of the land, fence, buildings and structures aforesaid and any other improvements effected thereto or thereon without prejudice to the right of recovery of any rent due, and to recover from the **LESSEE** such amount in respect of loss or damage as the **LESSOR** may have sustained or expenses which may be entailed upon the **LESSOR** by reason of the failure of the **LESSEE** to observe and fulfil the conditions of this lease. In such event the **LESSEE** shall not have the right to remove any building and/or structures which may have been erected from its own funds on the premises in terms of this lease.

10. TERMINATION AND CANCELLATION

10.1. In the event of the **LESSEE** dissolving or ceasing to exist at any time within the period of this lease, the lease shall terminate henceforth.

10.2. At expiration or in the event of cancellation of this lease, the land shall revert to and vest in the **LESSOR** without payment of any compensation whatsoever, and the **LESSEE** shall remove at his own expense and within a period of 3 (THREE) months from the date of expiration or cancellation of the agreement, any buildings and/or structures which may have been erected by the **LESSEE** from his own funds on the land in terms of the agreement. Any buildings and/or structures referred to above which are not removed accordingly, shall vest in and become the property of the **LESSOR** free of any compensation whatsoever. The **LESSEE** shall be liable to the **LESSOR** for any loss which may be sustained by the reason of the **LESSEE'S** failure to remove, if so required, any complete and/or incomplete buildings or structures from the land which may be deemed by the **LESSOR** to be a hindrance to its use of the land.

- 10.3. The **LESSEE** shall at the expiration of this lease restore and deliver up to the **LESSOR** the said premises, together with such buildings and other structures in a condition satisfactory to the **LESSOR**. The **LESSEE** shall compensate the municipality for any damages caused to the property for whatever reason.
- 10.4. Notwithstanding anything in this agreement contained the **LESSOR** may resume possession of the whole or any portion of the land at any time on giving three months' notice in writing to that effect and may cancel or amend the lease accordingly. Provided that if portion only of the land be resumed and it is of such an extent that the remainder is not in the opinion of the **LESSEE** of sufficient size for the purpose for which the land is leased, the **LESSEE** shall have the option of cancelling the lease without claiming compensation.

11. GENERAL

- 11.1. The **LESSEE** undertakes that it will be responsible for payment at the normal tariffs for rates and any municipal services provided to the land hereby leased, whether at the request of the **LESSEE** or not.
- 11.2. The **LESSEE** shall at all times well and sufficiently indemnify the **LESSOR** and keep the **LESSOR** indemnified against all liability howsoever caused or arising that may be the direct or indirect result of the use of the land in question, and against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against the **LESSOR** or incurred or become payable by the **LESSOR** at the suit of any person.
- 11.3. It shall at no time be considered that the **LESSEE** has by virtue of this Agreement of Lease acquired any right or lawful claim to a grant of the premises.
- 11.4. No act of relaxation of indulgence or grace on the part of the **LESSOR** shall in any way be deemed to be a waiver by the **LESSOR** of any of its rights under this Agreement.
- 11.5. All conditions shall remain in force and shall not be amended unless amended in writing and signed by both parties.

12. DOMICILIUM

- 12.1. The parties herewith involved hereby appoints their respective address to be the *domicilia citandi et executandi* of the respective parties for all purposes of and connected with this lease to be the following:

for the **LESSOR**: The Municipal Offices, 8 Magnolia Avenue, Hermanus;

and

for the **LESSEE**: _____(Physical Address);

or any such other address as may be mutually agreed upon in writing by both parties.

- 12.2. Service of any notice or any process addressed accordingly by either party to the other shall be deemed to have been sufficiently served. Any legal proceedings against the **LESSEE** may at the option of the **LESSOR** be brought and conducted in the court of the Magistrate at Hermanus and assent to any increased jurisdiction required for that purpose is hereby given by the **LESSEE**.

NOTE: The municipality reserves the right to impose any additional conditions or scrap any condition it deems necessary.

GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)

General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 “Day” means calendar day.
 - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
 - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
 - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
 - 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable.

Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

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

- 1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.
- 2. Application**
- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.
- 3. General**
- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information; inspection.**
- 5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

- 6. Patent rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance security**
- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.
- 8. Inspections, tests and analyses**
- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

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

10. Delivery and documents

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

- 11. Insurance** 11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
- 12. Transportation** 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
- 13. Incidental services** 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
 - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.
- 14. Spare parts** 14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
 - (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

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

16. Payment

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

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

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| 18. Contract amendments | 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned. |
| 19. Assignment | 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent. |
| 20. Subcontracts | 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract. |
| 21. Delays in the supplier's performance | <p>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.</p> <p>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.</p> <p>21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.</p> <p>21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.</p> <p>21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.</p> <p>21.6 pon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract</p> |

and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

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

23. Termination for default

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
 - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
 - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.
- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly

exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

25. Force Majeure

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent

that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

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

26. Termination for insolvency

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

27. Settlement of Disputes

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

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

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

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

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

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

(b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

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

(a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any

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