

PROVINCE OF KWAZULU-NATAL

GENERAL CONDITIONS AND PROCEDURES

FOR PROCUREMENT

KWAZULU-NATAL GENERAL CONDITIONS AND PROCEDURES FOR PROCUREMENT

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NOTE TO DEPARTMENTS/PARLIAMENT

Departments/Parliament are to issue the General Conditions and Procedures for Procurement together with each tender document issued. Departments/Parliament are not to amend the standardized General Conditions and Procedures for Procurement. Variations and amendments to the latter document must be made by means of the Special Conditions of Tender contained in the tender document.

SECTION A

GENERAL CONDITIONS OF TENDER

1. DEFINITIONS AND INTERPRETATIONS

Unless inconsistent with or expressly indicated otherwise by the context, the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and the neuter, and the following shall apply:

- 1.1 **“Act”** means the KwaZulu-Natal Procurement Act, 2001 (Act No. 3 of 2001).
- 1.2 **“Contract”** shall mean the agreement that results from the acceptance of a tender by the Central Procurement Committee or the Tender Award Committee (i.e. Province).
- 1.3 **“Contractor”** shall mean the tenderer whose tender has been accepted by the Province.
- 1.4 **“Contract Price”** or **“Contract sum”** shall mean the price(s) tendered by the Contractor and accepted by the Province for the execution of the Contract.
- 1.5 **“Cost of Tender”** shall mean, where the Contractor is not the manufacturer of the Goods and where he based his tender price on :-
 - 1.5.1 a printed catalogue or price list, mean the manufacturer’s list price ruling at the Date of Tender less any applicable discounts other than a special discount conceded by the manufacturer for cash payment, or
 - 1.5.2 a quotation by the manufacturer, mean the price quoted by the manufacturer to the Contractor at the date and time of tender less any applicable discounts other than a special discount conceded by the manufacturer for cash payment.
- 1.6 **“Date of Delivery”** shall mean the date stipulated in the Special Contract Conditions for the delivery of goods.
- 1.7 **“Date of Tender”** shall mean the date and time on which tenders are due to be deposited in terms of the advertisement calling for tenders.
- 1.8 **“Delivery”** shall mean delivery in compliance with the terms and conditions of the Contract at the point of delivery specified in the Contract.
- 1.9 **“Department”** shall mean a department within the KwaZulu-Natal Provincial Administration as listed in the first column of Schedule 2 of the Public Service Act, 1994 (Proclamation No. 3 of 1994).

- 1.10 “**Goods**” shall mean the machinery, plant, equipment, apparatus or materials supplied under the Contract.
- 1.11 “**Month**” shall mean calendar month.
- 1.12 “**Province**” shall mean the Province of KwaZulu-Natal
- 1.13 “**Provincial Representative**” means the duly authorised official performing on behalf of the Province
- 1.14 “**Rates and Charges**” shall mean and include the published official and statutory rates for ocean freight, marine insurance, marine war risk insurance, wharfage, dock dues, landing and delivery charges, customs and import duties and railage rates.
- 1.15 “**Site**” shall mean the buildings or ground or any other place in which or on which or over which the goods are to be stored, installed or used.
- 1.16 “**Special Contract Conditions**” means any addition to, departure from or amendment of the General Conditions. Should any Special Contract Conditions conflict with the General Conditions, the Special Contract Conditions shall apply.
- 1.17 “**Sub-contractor**” shall mean the regular supplier to the contractor of materials and minor components relating to goods, or shall mean the regular supplier of services.
- 1.18 “**Tender**” shall mean a written offer on the official tender documents forming part of an invitation of tender, which invitation has been dealt with in accordance with the requirements of the general conditions and procedures contained in this document, unless otherwise determined by the Province.
- 1.19 “**Tenderer**” shall mean any natural or legal person submitting a tender, a price quotation or any offer.
- 1.20 “**Work or Works**” shall mean and include goods to be provided and works to be done by the Contractor under the Contract.
- 1.21 “**Writing**” shall include any manuscript, typewritten or printed statement, under or over signature or seal as the case may be.

2. CONDITIONS AND CIRCUMSTANCES OF TENDER

- 2.1 The tender is subject to the provisions of the Kwa-Zulu Natal Procurement Act No 3 of 2001 and the Kwa- Zulu Natal Procurement Regulations of 2001.
- 2.2 The Tenderer by tendering shall be deemed to have satisfied himself as to all of the conditions and circumstances affecting the tender and contract.

3. COMPLETE ACCEPTANCE OF THE CONTRACT

- 3.1 The Tenderer shall be deemed to know and understand the Tender Document, which must be read as a whole, and the submission of a tender shall presume complete acceptance of the Conditions contained in the Tender Document. The non-acceptance or variation of any of these Conditions or the inclusion of any other conditions will render the tender liable for rejection.
- 3.2 No qualification of Tender shall be allowed unless the Special Conditions of Tender indicate otherwise.

4. PARTICULARS TO BE SUPPLIED

- 4.1 No tender for goods will be considered unless such a tender is accompanied by sufficient information to show whether or not the goods offered comply with the specification.
- 4.2 Tenderers must state the country of origin and the name of the manufacturer of the goods offered. Documentary proof must be produced if required.

5. ALTERNATIVES AND VARIATIONS

- 5.1 The Tenderer may submit alternatives which, in his opinion, are to the Province's advantage economically and technically.
- 5.2 Alternative offers shall be submitted on a photocopy of the page in question of the tender document.
- 5.3 In the event of tenders being offered for goods differing or varying from the requirements of the Goods or Services specified, information of all such variations shall be clearly indicated and described in the tender document.
- 5.4 Sections 5.1 - 5.3 are relevant only if not excluded by means of the Special Conditions of Tender.

6. LATE TENDERS

- 6.1 Tenders are late if they are received at the address indicated in the tender documents after the closing date and time.
- 6.2 A late tender shall not be considered and, where practicable, shall be returned unopened to the Tenderer, accompanied by an explanation.

7. CHARGE FOR DOCUMENTS

A charge, if required in the tender document or advertisement, shall be raised for tender documents and shall be refunded on return of the documents before the date of tender or the submission of a *bona fide* tender, only if such refund is stipulated in the documents or advertisement.

8. AVAILABILITY OF SPECIFICATIONS

- 8.1 Where South African Bureau of Standards (SABS) or Committee for Standards Specifications (CKS) specifications are referred to in tender documents, requests to consult such specifications or to purchase copies thereof should be made to the local branch of the SABS.
- 8.2 Offers must be strictly to specification as called for in the tender document, unless otherwise stated. Where the SABS or CKS specifications are called for, the Tenderer must submit a certificate of compliance from the SABS, with the submission of the tender. Such certificate of compliance must not be older than six months. If the product is an SABS mark bearing product, this certificate will not be necessary.

9. SAMPLES

- 9.1 Prospective tenderers may be charged for samples supplied to them.
- 9.2 Samples made up from material supplied by the Province may not be returned to the Tenderer, nor shall the Province accept any liability for the cost of making up such samples, unless so specified in the tender documents.
- 9.3 Samples are to be submitted in accordance with the instructions contained in the Special Conditions of the tender documents.
- 9.4 If samples are not submitted as requested, the tender concerned may be declared invalid.
- 9.5 Samples shall not be submitted in support of a tender, unless called for in the tender documents.
- 9.6 Samples shall be supplied by a Tenderer at his own expense and risk and the Province shall not be obliged to pay for such samples.
- 9.7 Unless otherwise specified in the Special Conditions of the tender document, the Province is not liable for the cost of samples supplied by the Tenderer, and the Province reserves the right not to return such samples and to dispose of them at its discretion.
- 9.8 Where a tender is accepted for the supply of goods according to a sample submitted by the Tenderer, such sample becomes the contract sample and further samples as required for the purposes of the contract shall be provided by the Contractor as requested by the Province and at the Contractor's own expense and risk.
- 9.9 When samples have served their purpose and are to be returned to the Tenderers, the

Tenderers shall be given written notice to remove the samples at their own expense and risk within a specified period, failing which the Tenderer concerned forfeits ownership and the samples shall forthwith be disposed of at the discretion of the Province.

10. QUANTITIES

10.1 The minimum quantity is the fixed quantity.

10.2 The tender must be accepted by the Province for at least the minimum quantities specified. If the quantities need to be varied, this must be done by mutual consent of both parties in writing and authorised by the relevant Tender Award Committee or the Central Procurement Committee in accordance with the Procurement Delegations. If a Tenderer receives a letter of acceptance for a quantity which is less than the minimum or exceeds the maximum, the Procurement Administration Office or the relevant Provincial Internal Office Support Unit must be notified by the tenderer so that the matter can be investigated.

11. TENDER PRICE

11.1 All prices must be quoted in South African currency and registered VAT vendors must include Value Added Tax(VAT). The rate of Value Added Tax must be stated on the Form of Tender. Any discounts, or brokerage allowed to the Province must be stated on the form of tender.

11.2 Any form of levy or charge such as custom duty, excise duty and import surcharge must be included in the tender price(s). All price(s) must be nett with all discounts already deducted. Price(s) must include both the cost of supply and delivery.

11.3 Should there be any difference, or discrepancy, between the price, or particulars stated on the official form of tender and those contained in a covering letter or other documents submitted with the tender, the official form of tender shall prevail.

12. FIRM TENDER PRICES FOR GOODS

Tenderers must submit firm prices for goods, which prices shall be free from fluctuations. Firm tender prices must be clearly marked as such.

13. EXCHANGE RATE VARIATION

13.1 Tenderers bear the risk of Exchange Rate fluctuations. This risk must be factored into the Tender price.

14. PREFERENCE

- 14.1 Tenderers applying for preference points will be required to furnish the necessary documentary proof in support of their applications, if requested to do so. Applications for preference points which are not received by the Province at the Date of Tender, will not be considered.
- 14.2 The Province reserves the right to call for documentary evidence from the Tenderer to substantiate any claims or statements made with regard to preference points applied for by him.
- 14.3 Preference points are awarded in respect of local manufacture for goods only and not for services.

15. DISCREPANCIES

Should there appear to be any discrepancies, ambiguities or want of agreement in description, dimensions, qualities or quantities in respect of a tender invited, the tenderer shall be obliged to refer the matter to the Province's Representative for clarification before the closing date of tender.

16. ACCEPTANCE OF TENDER

- 16.1 All tenders duly submitted are taken into consideration by the Province.
- 16.2 The financial standing of tenderers and their ability to manufacture or to supply goods or render services may be examined before their tenders are considered for acceptance.
- 16.3 The lowest, or any, tender will not necessarily be accepted and the Province reserves the right to accept any tender, either in whole or in part.
- 16.4 In comparing tenders, the prices are brought to a comparative level by awarding preference points.

17. NOTIFICATION OF ACCEPTANCE OF A TENDER AND REASONS FOR NON-AWARD

- 17.1 Acceptance of a tender can only be in writing, signed by a duly authorised official of the Province and it must be in a letter sent by registered mail. The date of acceptance will be the date on which the letter of acceptance has been sent by registered mail.
- 17.2 A tender cannot be accepted by verbal communication or any other communication other than that which is specified in sub-clause 17.1.
- 17.3 All results will be published in the Provincial Gazette. The publication of results must not be interpreted as a written acceptance, but merely an intention to do so, if no appeals are submitted to the Tender Appeals Tribunal within the prescribed period. In terms of Section 5(1)(b) of the Kwa-Zulu Natal Procurement Act, 2001, the Province must, within seven days of the award of a tender, forward a written notice to every tenderer who participated in a

tender, at the address provided in the relevant tender documents, stating to which tenderer the tender in question has been awarded. The Province or the Tenderer must, within five days of receipt of the last mentioned notification, as further expanded upon by regulation 31(2) of the Procurement Regulations, deliver written notification of an intention to appeal to the Tender Appeals Tribunal.

17.4 Any other information as approved by the Province can be issued by the relevant institution, for example, the comparative prices of tenders after preference points were awarded, but other additional information will only be issued provided that it does not infringe on any person's right of confidentiality.

18. EQUAL TENDERS

In the event that two or more tenders have equal total points, the successful tender will be the one scoring the highest number of preference points for specified goals. Should two or more tenders be equal in all respects, the award shall be decided by the drawing of lots.

19. SUBMISSION OF APPEALS TO THE TENDER APPEALS TRIBUNAL

Entities aggrieved by the decision of the Province may appeal to the Tender Appeals Tribunal in the prescribed manner in Chapter 3, of the KwaZulu-Natal Procurement Act, 2001 (Act no.3 of 2001)

20. ENTERING INTO LEGAL CONTRACT

Information contained in the General Conditions and Procedures for Procurement (ZNT 6) forms an integral part of the tender documentation and must be adhered to.

21. DELIVERY

21.1 The date of delivery must be stated in the contract.

21.2 Definite periods such as "1 day"; "1 week" as the case may be, must be stated. Indefinite periods such as "when stock is available", will not be accepted

22. COMMUNICATION

All correspondence with regard to this document must be addressed or hand delivered to

General Manager: Procurement
Private Bag x 9082
PIETERMARITZBURG
3200

or

Procurement Administration Office
6th Floor Treasury House
145 Commercial Road
PIETERMARITZBURG
3201

SECTION B

GENERAL CONDITIONS OF CONTRACT

1. CESSION OF CONTRACTS

- 1.1 The Contract is personal to the Contractor who shall not sub-let, assign, cede or make over the Contract or any part thereof, or any share of interest therein, to any other person without the written consent of the Province, and on such conditions as it may approve.
- 1.2 This sub-clause shall not apply to sub-contracts given to regular suppliers of the Contractor for materials and minor components relating to the goods or services supplied. The Province reserves the right to require the Contractor to submit, for noting, the names of such sub-contractors in order to ascertain their registration on the Provincial Suppliers Database and they must be legal entities.

2. DISCREPANCIES

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

3. QUALITY AND GUARANTEE

- 3.1 All Goods supplied shall be equal in all respects to samples, patterns or specifications where such are provided. Any changes to quality or brands will have to be approved by the Province, as this is a change to the conditions of the contract.
- 3.2 Should the Province, after the award of the Contract and/or during the manufacture of the goods specified, decide on a variation or alteration to the specification, either at the suggestion of the Contractor or otherwise, which will be to the Province's advantage, such variation or alteration shall be performed to the Province's satisfaction. Any variation in the Contract Price arising therefrom shall be subject to agreement between the Province and the Contractor.
- 3.3 The Contractor shall not be relieved of his obligations with respect to the sufficiency of the materials and workmanship and the quality of the Goods supplied by the reason of no objection having been taken thereto by the Province's Representative at the time the Goods were delivered.
- 3.4 If at any time, but not exceeding six (6) months after delivery, or such other time as may be stipulated in the Contract, the Province shall prove that the Goods or any part thereof are defective on account of materials being faulty or of inferior quality of workmanship or bad design, or are not strictly in accordance with the Contract, the Contractor shall immediately remedy the said defect free of cost to the Province. Should the Contractor delay remedial work in excess of time stipulated by the Province's representative, the Province may have

such remedial work executed at the Contractor's expense. Should the Province decide that the defect is such that it cannot be remedied, the Goods may be rejected. Such rejected goods shall be held at the risk and expense of the Contractor and shall, on request of the Province, be removed by him immediately on receipt of notification of rejection. The Contractor shall be responsible for any loss the Province may sustain by reason of such action as the Province may take, in terms of this clause.

- 3.5 The risk in respect of the Goods purchased by the Province under the Contract shall remain with the Contractor until such goods have been delivered to the Province.
- 3.6 The principle feature of the Goods and Work are described in the Goods or Services Information, but the Goods or Services Information does not purport to indicate every detail of construction, fabrication or arrangements of Goods and Works necessary to meet the requirements. Omission from the Goods or Services information of reference to any part or parts shall not relieve the Contractor of his responsibility for carrying out the Work as required under the Contract.
- 3.7 If any dispute arises between the Province and the Contractor in connection with the quality and guarantee of the Goods, either party may give the other notice in writing of the existence of such dispute, and the same shall thereupon be referred to arbitration in South Africa by a person mutually agreed upon by both parties. The submission shall be deemed to be a submission to arbitration within the meaning of the terms of the arbitration laws in force in the Republic of South Africa.

4. FAILURE TO COMPLY WITH CONDITIONS AND DELAYED EXECUTION

- 4.1 If a tenderer amends or withdraws his/her/their tender after the closing time but before the tenderer is notified that his/her/their tender has been accepted, or when notified that his/her/their tender has been accepted, he/she/they fail/fails, within the period stipulated in the conditions of tender or such extended period as the Tender Award Committee or Central Procurement Committee may allow, to sign a contract or to provide security when requested to do so, he/she/they shall, unless the Tender Award Committee or Central Procurement Committee decides otherwise, and without prejudice to any other right which the Province may have under paragraphs 4.2 and 4.4, including the right to claim damages if a less favourable tender is accepted or less favourable arrangements are to be made, forfeit any deposit which may have been made with the tender.
- 4.2 Should the contractor fail to comply with any of the conditions of the contract, the Province shall be entitled, without prejudice to any of its other rights, to cancel the contract.
- 4.3 Upon any delay beyond the contract period in the case of a supplies contract, the Province shall, without canceling the contract, be entitled forthwith to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any supplies delivered later at the contractor's expense and risk, or forthwith to cancel the contract and buy such supplies as may be required to complete the contract, and without prejudice to its rights, be entitled to claim damages from the contractor.

- 4.4 Upon any delay beyond the contract period in the case of a service contract, the Province shall, without prejudice to any other right and without canceling the contract, be entitled forthwith to arrange the execution of the service not rendered in conformity with the contract or to cancel the contract, and without prejudice to its other rights, be entitled to claim damages from the contractor.
- 4.5 In the event of the Province availing itself of the remedies provided for in paragraph 4.2 -
- 4.5.1 the contractor shall bear any adverse difference in price of the said supplies services and these amounts plus any other damages which may be suffered by the Province, shall be paid by the contractor to the Province immediately on demand, or the Province may deduct such amounts from moneys (if any) otherwise payable to the contractor in respect of supplies or services rendered or to be rendered under the contract or under any other contract or any other amounts due to the contractor; or
- 4.5.2 if the contractor fails to supply the goods or render the service within the period stipulated in the contract, the Province shall have the right, in its sole discretion, to claim any damages or loss suffered.
- 4.6 No damages shall be claimed in respect of any period of delay which the contractor can prove to be directly due to a state of war, sanctions, strikes, lockouts, damage to machinery as a result of accidents, fire, flood or tempest or act of God, which could not be foreseen or overcome by the contractor, or to any act or omission on the part of persons acting in any capacity on behalf of the Province.
- 4.7 If the delivery of the supplies or the rendering of the service is likely to be delayed or is in fact being delayed on account of any of the reasons mentioned in paragraph 4.6, full particulars of the circumstances shall be reported forthwith in writing to the Province and at the same time the contractor shall indicate the extension of the delivery period which is desired.

5. PATENTS

The Contractor shall pay all royalties and expenses and be liable for all claims in respect of the use of patent rights, trademarks or other protected rights, and hereby indemnifies the Province against any claims arising there from.

6. PACKAGING, MARKING AND DELIVERY

- 6.1 All goods shall be crated, packed or battened securely in such a manner as to prevent damage

during loading, transport and off-loading. Unless otherwise specified, packing cases and packing materials are included in the Contract Price, and shall be and remain the property of the Province.

- 6.2 All goods shall be clearly marked in the manner stated in the Goods or Services Information.
- 6.3 Goods shall be delivered to the address within the Province's area of jurisdiction as set out in the Special Conditions of the Contract or Goods and Services Information.
- 6.4 Goods shall be delivered on Weekdays between 08:00 and 16:00, free of all charges, only when ordered upon an official letter or form of order issued by the Province. No goods will be received on Saturdays, Sundays and public holidays.
 - 6.4.1 Paragraph 6.4 above is applicable only when not excluded in the Special Conditions of Tender
- 6.5 Goods delivered shall in all cases be accompanied by delivery notes in duplicate, one which will be retained by the Province. The Contractor shall be responsible for the safe delivery as to the quality, quantity and condition of the goods.
- 6.6 Delivery, unless otherwise provided for in the Special Conditions of Tender, shall be effected within seven (7) days from receipt of the order. The Contractor shall advise the Province upon receipt of an order in writing of any anticipated delays, citing reasons therefor and put forward a new anticipated delivery date. The Province may then extend the delivery date, if and as it deems fit.
- 6.7 Should the Contractor fail to supply the material within the time stated in his tender, or within the extended time allowed to him in terms of clause 6.6 hereof, the Province reserves the right (after giving the Contractor seven days notice in writing) to cancel the contract and purchase the materials elsewhere and the Tenderer shall refund to the Province any extra cost incurred over and above the contract price. No liability shall, however, be attached to the Contractor if delivery of materials is rendered impossible or delayed by reason of circumstances beyond the Contractor's control.
- 6.8 If the Contractor cannot produce proof satisfactory to the Province that the delay was due to circumstances beyond his control, no price increase after the due date will be recognized.
- 6.9 If at any time the Province ascertains that, due to negligence of the Contractor or for reasons beyond his control:
 - 6.9.1 No work on the order has been commenced and in the opinion of the Province, there is little or no prospect of work being commenced in reasonable time;
 - 6.9.2 Delivery of any materials is being or is likely to be delayed beyond the delivery date promised, and/or
 - 6.9.3 There is little or no prospect of the order being completed within a reasonable time after the promised date; the Province may, by notice to the Contractor in writing, cancel as from the future date specified in such notice, the whole or any part of the order in respect of which material has not been delivered by that date without incurring any liability by reasons of such cancellation. The cases where circumstances beyond the control of the Contractor have delayed commencement

or completion of the order, cancellation of the order will be effected by mutual arrangement or where this is not possible by the decision of the Province. The Contractor shall then as soon as possible after such date deliver to the Province that part of the order which has been completed, and payment is to be effected is for the part performance on a proportional basis, subject to the uncompleted part not being an integral or essential part of the contract.

7. CONSIGNMENT OF GOODS

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

8. PAYMENT

Payments for goods are made by the Province concerned only. Any disputes regarding late or delayed payments must be taken up with the department and if a problem persists, the Procurement Administration Office can be requested to investigate the delays.

9. INVOICES

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

10. CONTRACT PRICE ADJUSTMENT

- 10.1 Firm Contract Prices shall not be subject to adjustment. Contract Prices which are not firm shall be increased or reduced by the amount of variation between the Cost to Tenderer and the actual cost to the Contractor, such variations to be subject to the following conditions:-
 - 10.1.1 Where the Cost to Tenderer was based on a printed catalogue or list price, the variation shall be the difference between that price list and the price list actually charged. Should it transpire that the Cost to Tenderer was not based on the latest available price list at the Date of Tender, the Province shall have the right to elect the price list on which any variation shall be based.
 - 10.1.2 Where the Cost to Tenderer was based on a quotation by the manufacturer, or where the Contractor is the manufacturer, and the Contract Price was based on the cost of materials and labour ruling at a certain date, the variation in the Contract Price shall be calculated by means of the Steel and Engineering Industries Federation of South Africa (SEIFSA) formula if this

is stipulated in the Contract, or if the Province's representative considers it to be appropriate. Where the use of the SEIFSA formula is not appropriate, the variation shall be calculated by means of another formula acceptable to the Province, which shall be indicated in the Special Conditions of Contract. Only those cost increases due to wage increases prescribed by regulating measures having the force of law, or increases in the cost of materials and railage as may be proven by documentary evidence, or published data, will be considered in determining Contract Price variation.

- 10.1.3 Any difference between Rates and Charges ruling at the time of tender and those actually paid by the Contractor will be for the account of the Province. The Contract Price adjustment arising from any variation in Rates and Charges shall, in every instance, be applied to the appropriate value, or tonnage, of the Goods shipped. Where a variation in the Cost to Tenderer has been allowed, the Contract Price shall be adjusted by the product of such variation and every component of Rates and Charges which is based on the value of the Goods, whether or not the costs of such components have varied.
- 10.1.4 No claim for increased costs will be entertained if the Contractor is unable to produce documentation to substantiate Cost to Tenderer and Rates and Charges on which the Contract Price was based and documentation to support his claim. Such documentation must, in the opinion of the Province, adequately support the Contractor's claim. No claim for increased costs to the Contractor arising from negligence on his part, or that of the manufacturer, will be considered.
- 10.1.5 The Contractor shall, in respect of every consignment or shipment of Goods delivered, supply to the Province's Representative documentary evidence of variation, if any, in Cost to Tenderer and Rates and Charges.
- 10.1.6 Claims for increased cost shall be submitted with the invoice for the Goods in respect of which the claim is made, or as soon thereafter as possible. Claims shall not be considered if received more than 90 days after the expiry of the Contract unless notice of intention to claim has been given to the Province before such date.
- 10.1.7 In the event of there being no claim by the Contractor for increased costs, the Contractor shall not be entitled to full payment under the Contract before he has submitted to the Province, in his own name or in the name of the manufacturer, a certificate declaring that there have been no adjustments in the cost of manufacture which entitle the Employer to a reduction in the Contract Price as provided for in this clause.

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

- 11.1 In the event of the death of a contractor or the provisional or final sequestration of his/her/their estate or of his/her/their cession or transfer of a contract without the approval of the Central Procurement Committee or of the surrender of his/her/their estate or of his/her/their reaching a compromise with his/her/their creditors or of the

provisional or final liquidation of a contractor's company/closed corporation or the placing of its affairs under judicial management, the Province may, without prejudice to any other rights it may have, exercise any of the following options :

- 11.1.1 cancel the contract and accept any of the tenders which were submitted originally with that of the contractor or any offer subsequently received to complete the contract. In such a case the estate of the contractor shall not be relieved of liability for any claim which has arisen or may arise against the contractor in respect of supplies not delivered or work not carried out by the contractor, under the contract.
 - 11.1.2 Allow the executor, trustee, liquidator or judicial manager, as the case may be, for and on behalf of and at the cost and expense of the estate of the contractor to carry on with and complete the contract.
 - 11.1.3 For and on behalf of and at the cost and expense of the estate of the contractor, itself carry on with and complete the contract and in that event the Province may take over and utilize, without payment, the contractor's tools, plant and materials in whole or in part until the completion of the contract.
- 11.2 Should the Province elect to act in terms of paragraph 11.1.3 it shall give notice of its requirements to the executor, trustee, liquidator or judicial manager of the contractor's estate and should the said executor, trustee, liquidator or judicial manager fail within 14 days of the despatch of such notice to make provision to the satisfaction of the Province for the fulfillment of such requirements, or should no trustee, liquidator or judicial manager be appointed within 14 days of the occurrence mentioned in paragraph 11.1, the Province may apply any remedy open to it in terms of the contract as if a breach thereof had taken place.
- 11.3 Should the Province act in terms of paragraph 11.1.3 the contractor must leave the premises immediately and may not occupy such premises on account of retention or any other right.

12. LAW TO APPLY

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

13. OFFERING OF COMMISSION OR GRATUITY

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

14. PREFERENCES

- 14.1 Should the Contractor apply for preferences in the submission of his tender, and it is

found at a later stage that these applications were incorrect or made under false pretenses, the Province may, at its own right:-

- 14.1.1 Recover from the Contractor all costs, losses or damages incurred or sustained by the Province as a result of the award of the Contract; and / or
- 14.1.2 Cancel the contract and claim any damages which the Province may suffer by having to make less favourable arrangements after such cancellation.
- 14.1.3 The Province may impose penalties, however, only if provision therefor is made in the Special Conditions of Tender.

15. WEIGHTS AND MEASURES

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

16. SECURITY

- 16.1 Special Conditions of Tender relating to Surety/Guarantee requirement must be dealt with in strict compliance with the Conditions of Tender set out herein.
- 16.2 In respect of contracts less than R 500 000, the guarantees and sureties required may be based on a risk evaluation conducted by the Province inviting the tender.
- 16.3 No deposits are required for tender applications for contracts below R 500 000.

17. ORDERS

- 17.1 Goods shall be delivered and services rendered only upon receipt of a written official order or the signing of a contract with the Province, and accounts shall be rendered as indicated on the official order or in the contract, as the case may be.
- 17.2 The Province reserves the right to call upon any Contractor during the contract period to make known the following details:
 - 17.2.1 Name of Institution placing order;
 - 17.2.2 Provincial official order number;
 - 17.2.3 Quantity ordered; and
 - 17.2.4 List of items ordered.

18. EXPORT LICENCES

- 18.1 When orders are placed for goods in respect of which an export licence from the country of origin of supplies is required, the Contractor shall:
 - 18.1.1 Not incur any direct or indirect costs in connection with the supply or despatch of such supplies before he has obtained such licence;

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

19. INSURANCE

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

20. INSPECTION, TESTS AND ANALYSES

- 20.1 In terms of the KwaZulu-Natal Procurement Act, 2001 (Act No. 3 of 2001), inspections of a Tenderer's goods and services are permitted. Tenderers and Contractors must allow reasonable access to premises to officials from the Procurement Administration Office or person specially appointed by the Province to carry out inspection or tests. There are two main categories: Firstly, where the tender conditions call for goods to be inspected during the contract period. Secondly, where the inspection results are to be submitted with the tender document.
- 20.2 If it is a tender condition that goods to be produced should at any stage during production or on completion be subject to inspection, the premises of the Contractor shall be open, at all reasonable hours, for inspection by a representative of the Province or of an organisation acting on its behalf.
- 20.3 Inspections tests and analyses may be carried out prior to despatch in regard to such contract goods as may be deemed necessary by the Province, and the Contractor shall provide, if required, all the required facilities for the inspection, tests and analyses of the goods free of charge and shall, if required, provide all the materials, samples and labour and available apparatus which may be required for the purposes of such inspection, tests and analyses free of charge, unless otherwise specified.
- 20.4 If there are no inspection requirements in the tender documents and no mention thereof is made in the letter of acceptance, but during the contract it is decided that inspections shall be carried out, the Province shall itself make the necessary arrangements, including payment arrangements, with the testing authority concerned. The premises of the Tenderer or Contractor must be open and accessible at all reasonable times for the purposes of these tests.
- 20.5 If the inspection, tests and analyses show the goods or service to be in accordance with contract requirements, the cost of the inspection, tests and analyses shall be defrayed by the Province calling for such tests or analyses. Where the supplies or services do not comply with the contract, the costs shall be defrayed by the Contractor and the Province shall have the right, without prejudice to any other legal remedy it may have, to deduct such costs from payments due to the Contractor under the contract or under any other contract.
- 20.6 Goods and services which do not comply with the contract requirements may be rejected.

- 20.7 Any goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract, and such rejected goods shall be held at the cost and risk of the Contractor who shall, when called upon, remove them immediately at his own cost and forthwith substitute them for goods which do comply with the requirements of the contract, failing which such rejected goods shall be returned at the Contractor's cost and risk. Should the Contractor fail to provide the substitute goods forthwith, the Province may, without giving the Contractor a further opportunity to substitute the rejected goods, purchase such supplies as may be necessary at the expense of the Contractor, for example, the transport costs and other expenses regarding the rejected goods must be refunded by the Contractor.
- 20.8 Where imported goods are to be inspected before delivery, the Contractor shall notify his suppliers abroad of the conditions applicable to inspections.
- 20.9 Provisions contained in sub-clause 20.1 and 20.8 shall not prejudice the right of the Province to cancel the contract on account of a breach of the conditions thereof.

21. RESTRICTION OF TENDERING

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

22. CONTRACTOR'S LIABILITY

- 22.1 In the event of the contract being cancelled by the Province in the exercise of its rights in terms of the KwaZulu-Natal Procurement Act, 2001, (Act No. 3 of 2001) or Regulations or these conditions, the Contractor shall be liable to pay to the Province any losses sustained and/ or additional costs or expenditure incurred as a result of such cancellation, and the Province shall have the right to recover such losses, damages or additional costs by means of set-off from moneys due or which may become due in terms of the contract or any other contract or from guarantee provided for the due fulfillment of the contract and, until such time as the amount of such losses, damages or additional costs have been determined, to retain such moneys or guarantee or any deposit as security for any loss which the Province may suffer or may have suffered.
- 22.2 The Contractor may be held responsible for any consequential damages and loss sustained which may be caused by any defect, latent or otherwise, in supply or service rendered or if the goods or service as a result of such defect, latent or otherwise, does not conform to any condition or requirement of the contract.

23. PRICE LISTS

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

24. SUBMISSION OF CLAIMS

- 24.1 Claims must be submitted within 90 days of the delivery date of items, but the delivery date will be calculated according to the delivery period stipulated in terms of the

contract, unless an extension for late delivery has been granted by the Province.

- 24.2 For period contracts, no price increase will be granted within the first 180 days of the contract period. No price increase applications which are submitted later than 90 days after the contract period expired, will be considered. The claims shall be accompanied by documentary proof and, if required, an auditor's report sustaining the claim shall be provided.
- 24.3 Claims referring to formulae and indices must be clearly set out in terms of indices or formulae values used to calculate the tender price, and the adjusted indices or values.

25. PROVINCIAL PROPERTY IN POSSESSION OF A CONTRACTOR

- 25.1 Province's property supplied to a Contractor for the execution of a contract remains the property of the Province and shall at all times be available for inspection by the Province or its representatives. Any such property in the possession of the Contractor on the completion of the contract shall, at the Contractor's expense, be returned to the Province forthwith.
- 25.2 The Contractor shall be responsible at all times for any loss or damages to the Province's property in his possession and, if required, he shall furnish such security for the payment of any such loss or damages as the Province may require.

26. RIGHTS TO PROCURE OUTSIDE THE CONTRACT

- 26.1 The Province reserves the right to procure goods outside the contract in cases of urgency or emergency or if the quantities are too small to justify delivery costs, or if the goods are obtainable from another organ of Province or if the Contractor's point of supply is not situated at or near the place where the goods are required or if the Contractor's goods are not readily available.
- 26.2 No provision in a contract shall be deemed to prohibit the obtaining of goods or services from a Province or local authority.

27. AMENDMENT OF CONTRACT

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

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SECTION C

CRITERIA UTILISED FOR THE AWARDING OF PREFERENCE POINTS

(Annexure 1 and 2 of Kwa-Zulu Natal Procurement Regulations, 2001)

ANNEXURE 1.1

1. APPLICATION OF PREFERENCE POINTS FOR TENDERS/PROCUREMENT WITH A RAND VALUE EQUAL TO OR ABOVE R30 000 AND UP TO A VALUE OF R500 000

2. PREFERENCE POINTS ARE CALCULATED AS FOLLOWS:

- Goal 1:**
- a) Preference points may be allocated to an HDI, with reference to Tables 1, 2 and 3 below;
 - b) The percentage of HDI equity ownership referred to in Table 1 must be determined in relation to total equity ownership of the tenderer under regulation 1(j)(i) of the Procurement Regulations and with reference to Table 1 preference points applicable must then be determined.
 - c) The percentage of HDI equity ownership referred to in Table 2, which is not covered by Table 1, must be determined in relation to total equity ownership of the tenderer under regulation 1(j)(ii) of the Procurement Regulations and with reference to Table 2 preference points applicable must then be determined.
 - d) The percentage of HDI equity ownership referred to in Table 3, which is not covered by Tables 1 and 2, must be determined in relation to total equity covered by Tables 1 and 2, must be determined in relation to total equity ownership of the tenderer under regulation 1(j)(iii) of the Procurement Regulations and with reference to Table 3, preference points applicable must then be determined.
 - e) Add the preference points obtained by following procedures (b), (c) and (d) above, together to obtain the total preference points in respect of HDI equity ownership.

Goal 2: If the tenderer is an SMME, 5 points must be allocated.

Goal 3: If the products tendered are South African manufactured, 5 points must be allocated. (This goal is not applicable to the rendering of services)

Add the preference points allocated under Goals 1,2 and 3 together, to obtain the total number of preference points to be award, with 20 points being the maximum that may be obtained.

Example: A tenderer has the following composition of equity ownership:
 20 % Males referred to in regulation 1(j)(i)
 40 % Females referred to in regulation 1(j)(i)
 30 % Females with a disability not covered by regulation 1(j)(i)
 10 % Males not covered by regulation 1(j)(i) or 1(j)(iii)
100 % Total

Apply Table 1: 20 % + 40 % = 60 % = 6 points
 Table 2: 30 % = 3 points
 Table 3: 0 % = 0 points
 = 9 points

3.PREFERENCE POINTS THAT MAY BE ALLOCATED: POTENTIAL MAXIMUM = 20

Goal 1: Advancement of HDI's = maximum of 10 Points

Table 1

Percentage of equity ownership of HDI's referred to in regulation 1(j)(i)

	Points allocated
More than 0 % up to 10 %	1
More than 10 % up to 20 %	2
More than 20 % up to 30 %	3
More than 30 % up to 40 %	4
More than 40 % up to 50 %	5
More than 50 % up to 60 %	6
More than 60 % up to 70 %	7
More than 70 % up to 80 %	8
More than 80 % up to 90 %	9
More than 90 % up to 100 %	10

Table 2

Percentage of equity ownership of HDI's referred to in regulation 1(j)(ii)

	Points allocated
More than 0 % up to 10 %	1
More than 10 % up to 20 %	2
More than 20 % up to 30 %	3
More than 30 % up to 40 %	4
More than 40 % up to 50 %	5
More than 50 % up to 60 %	6
More than 60 % up to 70 %	7
More than 70 % up to 80 %	8
More than 80 % up to 90 %	9
More than 90 % up to 100 %	10

Table 3

Percentage of equity ownership of HDI's referred to in regulation 1(j)(iii)

	Points allocated
More than 0 % up to 10 %	1
More than 10 % up to 20 %	2
More than 20 % up to 30 %	3
More than 30 % up to 40 %	4
More than 40 % up to 50 %	5
More than 50 % up to 60 %	6
More than 60 % up to 70 %	7
More than 70 % up to 80 %	8
More than 80 % up to 90 %	9
More than 90 % up to 100 %	10

Goal 2: Promotion of SMME's = 5 points

Goal 3: South African Manufactured = 5 points

ANNEXURE 1.2

1. **APPLICATION OF PREFERENCE POINTS FOR TENDER/PROCUREMENT WITH A RAND VALUE ABOVE R 500 000**
2. **PREFERENCE POINTS ARE CALCULATED AS FOLLOWS:**

- Goal 1:**
- a) Preference points may be allocated to an HDI, with reference to Tables 1,2 and 3 below;
 - b) The percentage of HDI equity ownership referred to in Table 1 must be determined in relation to total equity ownership of the tenderer under regulation 1(j)(i) of the Procurement Regulations and with reference to table 1, preference points applicable must then be determined.
 - c) The percentage of HDI equity ownership referred to in Table 2, which is not covered by Table 1, must be determined in relation to total equity ownership of the tenderer under regulation 1(j)(ii) of the Procurement Regulations and with reference to Table 2 preference points applicable must then be determined.
 - d) The percentage of HDI equity ownership referred to in Table 3, which is not covered by Tables 1 and 2, must be determined in relation to total equity ownership of the tenderer under regulation 1(j)(iii) of the Procurement Regulations and with reference to Table 3, preference points applicable must then be determined.
 - e) Add the preference points obtained by the following procedures (b), (c) and (d) above, together to obtain the total preference points in respect of HDI equity ownership.

Goal 2: If the tenderer is an SMME, 2.5 points must be allocated.

Goal 3: If the products tendered are South African manufactured, 2.5 points must be allocated. (This goal is not applicable to the rendering of services)

Add the preference points under Goals 1, 2 and 3 together, to obtain the total number of preference point to be awarded, with 10 points being the maximum that may be obtained.

Example: A tenderer has the following composition of equity ownership:

20 % Males referred to in regulation 1(j)(i)
 40 % Females referred to in regulation 1(j)(i)
 30 % Females with a disability not covered by regulation 1(j)(i)
10 % Males not covered by regulation 1(j)(i) or 1(j)(iii)
100 % Total

Apply Table 1: 20 % + 40 % = 60 % = 3 points
 Table 2: 30 % = 1.5 points
 Table 3: 0 % = 0 points
 = 4.5 points

3.PREFERENCE POINTS THAT MAY BE ALLOCATED: POTENTIAL MAXIMUM = 10

Table 1

Percentage of equity ownership of HDI's referred to in regulation 1(j)(i)

	Points allocated
More than 0 % up to 10 %	0.5
More than 10 % up to 20 %	1
More than 20 % up to 30 %	1.5
More than 30 % up to 40 %	2
More than 40 % up to 50 %	2.5
More than 50 % up to 60 %	3
More than 60 % up to 70 %	3.5
More than 70 % up to 80 %	4
More than 80 % up to 90 %	4.5
More than 90 % up to 100 %	5

Table 2

Percentage of equity ownership of HDI's referred to in regulation 1(j)(ii)

Points allocated

More than 0 % up to 10 %	0.5
More than 10 % up to 20 %	1
More than 20 % up to 30 %	1.5
More than 30 % up to 40 %	2
More than 40 % up to 50 %	2.5
More than 50 % up to 60 %	3
More than 60 % up to 70 %	3.5
More than 70 % up to 80 %	4
More than 80 % up to 90 %	4.5
More than 90 % up to 100 %	5

Table 3

Percentage of equity ownership of HDI's referred to in regulation 1(j)(iii)

	Points allocated
More than 0 % up to 10 %	0.5
More than 10 % up to 20 %	1
More than 20 % up to 30 %	1.5
More than 30 % up to 40 %	2
More than 40 % up to 50 %	2.5
More than 50 % up to 60 %	3
More than 60 % up to 70 %	3.5
More than 70 % up to 80 %	4
More than 80 % up to 90 %	4.5
More than 90 % up to 100 %	5

Goal 2: Promotion of SMME's = 2.5 points

Goal 3: South African Manufactured = 2.5 points

SECTION D

-SUPPLEMENTARY INFORMATION-

A. PRIMARY DEFINITION

1. “ **Affirmable Business Enterprise**”(ABE) is a business which adheres to statutory labour practices, is a legal entity, registered with the South African Revenue Service and a continuing and Independent Enterprise for profit, providing a Commercially Useful Function and whose management and daily business operations are in the control of one or more of the Historically Disadvantaged Individuals who own it.

(b) SUPPLEMENTARY DEFINITIONS:

2. “**Affiliated Entity**” a business entity which has control of or the power to control another business entity, albeit indirectly, eg where a third person has control of or has the power to control both entities. Indicators of control shall, without limitation, include interlocking management or ownership, identity of interests among family members, shared facilities and equipment or common use of employees.

NOTE: in order to prevent ABE’s from breaking themselves down into smaller entities so as to keep within the prescribed turnover limits and in so doing maintain their ABE status, the annual average turnover of Affiliated Businesses must be considered. A business will be deemed to be an affiliated entity should the ABE under consideration have a 50% or more ownership in such an enterprise, or a HDI who has ownership of 33% or more within the ABE under consideration, also have an ownership of 33% or more in the other entity.

3. “**Commercially Useful Function**” the performance of real and actual work, or the provision of services, in the discharge of any contractual obligation which shall include but not be limited to the performance of a distinct element of work, which the business has the skill and expertise to undertake and the responsibility for management and supervision.
4. “**Control**” 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.
5. “ **Disability**” means, in respect of a person, a permanent impairment of a physical, intellectual, or a 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.
6. “**Executive Director**” a partner in a partnership, a sole proprietor, a director of a company established in terms of the Companies Act, 1973 (Act 61 of 1973) or

a member of a close corporation registered in terms of the Close Corporation Act, who jointly and severally with his other partners, co-directors or co-members, as the case may be, bears the risk of business and takes responsibility for the management and liabilities of the partnership company or close corporation.

7. **“Historically Disadvantaged Individuals (HDI)”** means a South African citizen-
- 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 interrim Constitution); and/or
 - who is a female; and/or
 - who has a disability.

provided that a person who obtained South African citizenship on or after(27 April 1994) the coming into effect of the Interrim Constitution, is deemed not to be an HDI.

8. **“Independent Enterprise”** an enterprise which is free of any degree of direct or indirect ownership, or control by any firm which engages in activities similar to those in respect of which credit toward the Contract Participation Goal is sought, or by any Executive Director of such a firm,who is not a Historically Disadvantaged Individual.

NOTE: Any enterprise whose owners include firms which engage in the majority of activities that are performed by that enterprise cannot claim Affirmable Business Enterprise status. Likewise any enterprise which has any non HDI Executive Directors who have interests in such firms cannot claim Affirmable Business Enterprise status.

9. **“Priority Population Groups(PPG)”** Historically Disadvantaged Individuals who fall into population groups that were not offered a franchise in national elections before or after the introduction of the 1984 tricameral parliamentary system and only received their franchise during 1994.

10. **“ Small Business”** means a separate and distinct business entity, including co-operative enterprises and non-governmental organisations, managed by one owner or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or subsector of the economy as provided

for in the Small Business Act, 1996 (Act No. 102 of 1996), and which can be classified as a micro, a very small, a small or a medium enterprise in terms of the aforementioned Act.

11. “**SMME**” Please refer to the definition of “Small Business “ above.
12. “**Trust** “ means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer that property for the benefit of another person (beneficiary).
13. “**Trustee**” means any person, including the founder of a trust, to whom property is bequeathed in order for the property to be administered for the benefit of another person (beneficiary).