



KwaZulu Natal Provincial Treasury

Treasury House
145 Commercial Road
Pietermaritzburg
3201

Supply Chain Management Office
P/B x9082
Pietermaritzburg 3200
Tel: + 27 (0) 33 897-4504
Fax: + 27 (0) 33 342-4238
Internet: www.kzntreasury.gov.za

ACCOUNTING OFFICERS CHIEF FINANCIAL OFFICERS HEADS OF PROCUREMENT

Practice Note Number: **SCM-08 of 2006**

UNIFORM BIDDING DOCUMENTS

1 Introduction

As part of the bidding procedure, Departments are required to complete bidding documents containing legal and general bidding conditions as required by Provincial Treasury. These bidding documents are to replace the existing bidding documents for Departments. The introduction of the new bidding documents is essential for uniformity of application by bidders throughout the Province. As part of the new SCM legislative requirement, Departments are required to adhere to the standard terms and conditions that have been specified in the Provincial bidding documents. Where bidding and contract conditions are required in terms of National and Industry norms, such as in the construction industry (CIDB Act), those documents should be used.

2 Bidding documents

Attached are the bidding documents that must be used with any bidding process.

3 Effective Date

This practice note takes effect from 1st February 2006.

.....
MRS C. COETZEE
ACCOUNTANT GENERAL – KWAZULU-NATAL PROVINCIAL TREASURY
01 FEBRUARY 2006

ANNEXTURE A: STANDARD BID DOCUMENTATION

SECTION A INVITATION TO BID

YOU ARE HERBY INVITED TO BID FOR THE REQUIREMENTS OF THE (NAME OF DEPARTMENT / PUBLIC ENTITY)

PLEASE NOTE

THIS BID CLOSSES AT 11:00

CLOSING DATE : _____
BID NO. : _____
DESCRIPTION : _____
CONTRACT PERIOD : _____
VALIDITY PERIOD : _____
NAME OF BIDDER : _____

PROVINCIAL SUPPLIERS DATABASE REGISTRATION NO.: _____

NB: IN ORDER TO QUALIFY FOR PREFERENCE POINTS A BIDDER MUST ENSURE THAT HE/ SHE/ IT IS REGISTERED AS A SUPPLIER ON THE KWAZULU-NATAL SUPPLIER DATABASE, AND THAT ALL INFORMATION IS ACCURATE AND UP TO DATE BEFORE THE CLOSURE OF THE BID

DOCUMENTS DELIVERED BY HAND MUST BE DEPOSITED IN THE BID BOX SITUATED IN:

Department's Address	THE BID BOX IS AVAILABLE ON THE FOLLOWING DAYS AND TIMES : MONDAY TO FRIDAY: 08:00 - 16:00
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N.B.: THE POST IS CLEARED FROM _____ POST OFFICE BEFORE _____ ON THE DUE DATE.

DOCUMENTS POSTED SHALL BE ADDRESSED TO:

Department _____
MR/ MRS/ MISS: _____
TELEPHONE NO.: _____
TECHNICAL ENQUIRIES TO BE MADE TO: _____

SECTION B SPECIAL INSTRUCTIONS AND NOTICES TO BIDDERS REGARDING THE COMPLETION OF BIDDING FORMS

PLEASE NOTE THAT THIS BID IS SUBJECT TO TREASURY REGULATIONS 16A ISSUED IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT, 1999, THE KWAZULU-NATAL SUPPLY CHAIN MANAGEMENT POLICY FRAMEWORK AND THE GENERAL CONDITIONS OF CONTRACT.

1. Unless inconsistent with or expressly indicated otherwise by the context, the singular shall include the plural and visa versa and with words importing the masculine gender shall include the feminine and the neuter.
2. Under no circumstances whatsoever may the bid forms be retyped or redrafted. Photocopies of the original bid documentation may be used, but an original signature must appear on such photocopies.
3. The bidder is advised to check the number of pages and to satisfy himself that none are missing or duplicated.
4. Bids submitted must be complete in all respects.
5. Bids shall be lodged at the address indicated not later than the closing time specified for their receipt, and in accordance with the directives in the bid documents.
6. Each bid shall be addressed in accordance with the directives in the bid documents and shall be lodged in a separate sealed envelope, with the name and address of the bidder, the bid number and closing date indicated on the envelope. The envelope shall not contain documents relating to any bid other than that shown on the envelope. If this provision is not complied with, such bids may be rejected as being invalid.
7. All bids received in sealed envelopes with the relevant bid numbers on the envelopes are kept unopened in safe custody until the closing time of the bids. Where, however, a bid is received open, it shall be sealed. If it is received without a bid number on the envelope, it shall be opened, the bid number ascertained, the envelope sealed and the bid number written on the envelope.
8. A specific box is provided for the receipt of bids, and no bid found in any other box or elsewhere subsequent to the closing date and time of bid will be considered.
9. No bid sent through the post will be considered if it is received after the closing date and time stipulated in the bid documentation, and proof of posting will not be accepted as proof of delivery.
10. No bid submitted by telefax, telegraphic or other electronic means will be considered.
11. Bidding documents must not be included in packages containing samples. Such bids may be rejected as being invalid.
12. Any alteration made by the bidder must be initialed.
13. Use of correcting fluid is prohibited
14. Bids will be opened in public as soon as practicable after the closing time of bid.
15. Where practical, prices are made public at the time of opening bids.
16. If it is desired to make more than one offer against any individual item, such offers should be given on a photocopy of the page in question. Clear indication thereof must be stated on the schedules attached.

SECTION C

REGISTRATION ON THE PROVINCIAL SUPPLIERS DATABASE

1. In terms of the KwaZulu-Natal Supply Chain Management Policy Framework, all suppliers of goods and services to the Province of KwaZulu-Natal are required to register on the Provincial Suppliers Database.
2. If you wish to apply for registration, forms may be downloaded from the website, <http://www.kzntreasury.gov.za>, (click on “Document Library” and then choose “Forms”) or obtained by phoning the toll free number **0800 201 049**. This number is also available for general enquiries relating to Provincial supply chain management issues..
3. If a business is registered on the Database and it is found subsequently that false or incorrect information has been supplied, then the Department may, without prejudice to any other legal rights or remedies it may have;
 - 3.1 de-register the supplier from the Database,
 - 3.2 cancel a bid or a contract awarded to such supplier, and the supplier would become liable for any damages if a less favourable bid is accepted or less favourable arrangements are made.
4. **The same principles as set out in paragraph 3 above are applicable should the supplier fail to request updating of its information on the Suppliers Database, relating to changed particulars or circumstances.**
5. Application for registration must be submitted to the Provincial Treasury. IF THE SUPPLIER IS NOT REGISTERED AT THE CLOSING TIME OF BID, THE SUPPLIER IS REQUIRED TO SUBMIT A COPY OF THE REGISTRATION APPLICATION FORM, TOGETHER WITH THE BID DOCUMENTATION, TO THE RESPECTIVE DEPARTMENT INVITING BIDS.

SECTION D

**DECLARATION THAT INFORMATION ON PROVINCIAL SUPPLIER DATABASE IS
CORRECT AND UP TO DATE**

(To be completed by bidder)

THIS IS TO CERTIFY THAT I (name of bidder/authorised representative).....
....., WHO REPRESENTS (state name of bidder).....
.....

AM AWARE OF THE CONTENTS OF THE KWAZULU-NATAL SUPPLIER DATABASE WITH
RESPECT TO THE BIDDER'S DETAILS AND REGISTRATION INFORMATION, AND THAT
THE SAID INFORMATION IS CORRECT AND UP TO DATE AS ON THE DATE OF
SUBMITTING THIS BID.

AND I AM AWARE THAT INCORRECT OR OUTDATED INFORMATION MAY BE A CAUSE
FOR DISQUALIFICATION OF THIS BID FROM THE BIDDING PROCESS, AND/OR
POSSIBLE CANCELLATION OF THE CONTRACT THAT MAY BE AWARDED ON THE BASIS
OF THIS BID.

.....
SIGNATURE OF BIDDER OR AUTHORISED REPRESENTATIVE

DATE :.....

SECTION E DECLARATION OF INTEREST

1. Any legal person, including persons employed by the Province, or persons who act on behalf of the Province or persons having a kinship with persons employed by the Province, including a blood relationship, may make an offer or offers in terms of this bid invitation. In view of the possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the Province, or to persons who act on behalf of the Province, or to persons connected with or related to them, it is required that the bidder or his/her/their authorized representative shall declare his/her/their position vis-à-vis the evaluating authority and/or take an oath declaring his/her/their interest, where

1.1 the bidder is employed by the Province or acts on behalf of the Province; and/or

1.2 the legal person on whose behalf the bid document is signed, has a relationship with a person/persons who are involved with the evaluation of the bid(s), or where it is known that such a relationship exists between the person or persons for whom or on whose behalf the declarant acts and persons who are involved with the evaluation of the bid

IN ORDER TO GIVE EFFECT TO THE ABOVE, THE FOLLOWING QUESTIONNAIRE SHALL BE COMPLETED AND SUBMITTED WITH THE BID:

2. Are you or any person connected with the bid employed by the Province? **YES / NO**

2.1 If "YES", state particulars.....

3. Do you or any person connected with the bid, have a relationship (family, friend, other) with a person employed by the Province, concerned with any Bid Committee or Supply Chain Management Unit, and who may be involved with the evaluation or adjudication of this bid. **YES / NO**

3.1 If "YES", state particulars.....

4. Are you or any person connected with the bid aware of any relationship (family, friend, other) between another bidder and any person employed by the Province, concerned with any Committee or Supply Chain Management Unit, who may be involved with the evaluation or adjudication of this bid? **YES / NO**

4.1 If "YES", state particulars.....

.....
SIGNATURE OF DECLARANT

.....
BID NUMBER

.....
DATE

.....
POSITION OF DECLARANT

.....
NAME OF BIDDER

SECTION F
(To be completed by bidder)

BID NUMBER.....

1. BID PRICE INCLUDING VAT: R.....
2. AMOUNT IN WORDS:
.....
3. TIME FOR COMPLETION/ DELIVERY:.....calendar days/months

NAME OF BIDDER:	SIGNATURE	DATE:
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FOR OFFICE PURPOSES ONLY			
<table border="1" style="margin: auto;"><tr><td style="text-align: center;"><i>IMPORTANT</i></td></tr><tr><td style="text-align: center;">Mark appropriate block with "X"</td></tr></table>		<i>IMPORTANT</i>	Mark appropriate block with "X"
<i>IMPORTANT</i>			
Mark appropriate block with "X"			
1. HAVE ANY ALTERATIONS BEEN MADE?	YES NO		
2. HAS AN ALTERNATIVE BID BEEN SUBMITTED?	YES NO		
3. IF APPLICABLE: DID THE BIDDER ATTEND THE OFFICIAL BRIEFING SESSION/ COMPULSORY SITE INSPECTION?	YES NO		

SECTION G QUESTIONNAIRE REPLIES

N. B: THIS FORM IS ONLY TO BE INCLUDED AND COMPLETED WHEN APPLICABLE TO THE BID

1. Are the prices/rates quoted firm?
2. Is the delivery period stated firm?
3. How will delivery be affected?
4. Is the equipment guaranteed for a minimum period of six months?
5. Are you the accredited agents in the RSA for the manufacture/supply of the goods offered by you?
6. What is the address in the RSA (preferably in the Province of KwaZulu-Natal) where a machine/ goods as offered by you can be inspected under working conditions?
7. What is the approximate value of spares carried in stock in the RSA for this particular make and model of machine?
8. Where is stock held?
9. What facilities exist for the servicing of the machine/goods offered?
10. Where are these facilities available?
11. What are the names and addresses of the factories where the goods will be manufactured and, if required, inspected?
12. Is a special import permit required?

.....
SIGNATURE OF BIDDER

.....
DATE

SECTION H
OFFICIAL BRIEFING SESSION/SITE INSPECTION CERTIFICATE

N. B.: THIS FORM IS ONLY TO BE INCLUDED AND COMPLETED WHEN APPLICABLE TO THE BID.

Site/building/institution involved:

Bid No:

Service:

THIS IS TO CERTIFY THAT (NAME)

ON BEHALF OF

VISITED AND INSPECTED THE SITE ON(DATE)

AND IS THEREFORE FAMILIAR WITH THE CIRCUMSTANCES AND THE SCOPE OF THE SERVICE TO BE RENDERED.

.....
SIGNATURE OF BIDDER OR AUTHORISED REPRESENTATIVE
(PRINT NAME)

DATE:

.....
SIGNATURE OF DEPARTMENTAL REPRESENTATIVE
(PRINT NAME)

.....
DEPARTMENTAL STAMP :
(OPTIONAL)

DATE:

SECTION I TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of a 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 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. Copies of 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.
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. 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.

**SECTION J
AUTHORITY TO SIGN A BID**

A. COMPANIES

If a Bidder is a company, a certified copy of the resolution by the board of directors, personally signed by the chairperson of the board, authorising the person who signs this bid to do so, as well as to sign any contract resulting from this bid and any other documents and correspondence in connection with this bid and/or contract on behalf of the company must be submitted with this bid, that is before the closing time and date of the bid

AUTHORITY BY BOARD OF DIRECTORS

By resolution passed by the Board of Directors on.....20....., Mr/Mrs.....

..... (whose signature appears

below) has been duly authorised to sign all documents in connection with this bid on behalf of

(Name of Company)

IN HIS/HER CAPACITY AS:

SIGNED ON BEHALF OF COMPANY:
(PRINT NAME)

SIGNATURE OF SIGNATORY: **DATE:**

WITNESSES: 1

2

B. SOLE PROPRIETOR (ONE - PERSON BUSINESS)

I, the undersigned..... hereby confirm that I am the sole owner of the business trading as

.....
.....

.....
SIGNATURE

.....
DATE

C. PARTNERSHIP

The following particulars in respect of every partner must be furnished and signed by every partner:

Full name of partner	Residential address	Signature
.....
.....
.....
.....

We, the undersigned partners in the business trading as.....
hereby authoriseto sign this bid as well as any
contract resulting from the bid and any other documents and correspondence in connection
with this bid and /or contract on behalf of

..... SIGNATURE SIGNATURE SIGNATURE
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..... DATE DATE DATE
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D. CLOSE CORPORATION

In the case of a close corporation submitting a bid, a certified copy of the Founding Statement of such corporation shall be included with the bid, together with the resolution by its members authorising a member or other official of the corporation to sign the documents on their behalf.

By resolution of members at a meeting on 20..... at
.....Mr/Ms....., whose
signature appears below, has been authorised to sign all documents in connection with this bid
on behalf of (Name of Close Corporation)
.....

SIGNED ON BEHALF OF CLOSE CORPORATION:
(PRINT NAME)

IN HIS/HER CAPACITY AS **DATE:**

SIGNATURE OF SIGNATORY:

WITNESSES: 1

2

E CO-OPERATIVE

A certified copy of the Constitution of the co-operative must be included with the bid, together with the resolution by its members authoring a member or other official of the co-operative to sign the bid documents on their behalf.

By resolution of members at a meeting on 20..... at

Mr/Ms....., whose signature appears below, has been authorised to sign all documents in connection with this bid on behalf of (Name of co-operative).....

SIGNATURE OF AUTHORISED REPRESENTATIVE/SIGNATORY:

.....

IN HIS/HER CAPACITY AS:.....

DATE:

SIGNED ON BEHALF OF CO-OPERATIVE:.....

NAME IN BLOCK LETTERS:.....

WITNESSES: 1

2

SECTION K CONDITIONS OF BID

1. I/We hereby bid to supply all or any of the supplies and/or to render all or any of the services described in the attached documents to the KwaZulu-Natal Provincial Administration (hereinafter called the "Province") on the terms and conditions and be in accordance with the specifications stipulated in the bid documents (and which shall be taken as part of and be incorporated into this bid) at the prices and on the terms regarding time for delivery and/or execution inserted therein.

2. I/we agree that:
 - (a) the offer herein shall remain binding upon me and open for acceptance by the Province during the validity period indicated and calculated from the closing time of the bid;
 - (b) this bid and its acceptance shall be subject to Treasury Regulations 16A issued in terms of the Public Finance Management Act, 1999, the KwaZulu-Natal Supply Chain Management Policy Framework, the Provincial Treasury issued Practice Notes, and the KwaZulu-Natal General Conditions of Contract, with which I/we am fully acquainted;
 - (c) if I/we withdraw my bid within the period for which I/we have agreed that the bid shall remain open for acceptance, or fail to fulfil the contract when called upon to do so, the Province may, without prejudice to its other rights, agree to the withdrawal of my bid or cancel the contract that may have been entered into between me and the Province. I/we will then pay to the Province any additional expenses incurred by the Province having either to accept any less favourable bid or, if fresh bids have to be invited, the additional expenditure incurred by the invitation of fresh bids and by the subsequent acceptance of any less favourable bid. The Province shall have the right to recover such additional expenditure by set-off against monies which may be due to me under this or any other bid or contract or against any guarantee or deposit that may have been furnished by me or on my behalf for the due fulfilment of this or any other bid or contract and pending the ascertainment of the amount of such additional expenditure to retain such monies, guarantee or deposit as security for any loss the Province may sustain by reason of my default;
 - (d) if my bid is accepted, the acceptance may be communicated to me by registered post, and that the South African Post Office Limited shall be treated as delivery agent to me;
 - (e) the law of the Republic of South Africa shall govern the contract created by the acceptance of my bid and I choose *domicilium citandi et executandi* in the Republic at (full physical address) :
.....
.....

3. I/we furthermore confirm that I/we have satisfied myself as to the correctness and validity of my bid: that the price(s), rate(s) and preference quoted cover all of the work/item(s) and my obligations under a resulting contract, and I accept that any mistakes regarding the price(s) and calculations will be at my risk.

4. I/we hereby accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement, as the Principal(s) liable for the due fulfilment of this contract.

SECTION L
SPECIAL CONDITIONS OF CONTRACT
(This section is to be used whenever it is applicable)

SECTION O

NB: This section applies if a bid exceeds R 10 million.

Failure to submit this document with your bid
may result in the invalidation of your bid

THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

INTRODUCTION

The principle of Industrial Participation (IP) became obligatory with effect from 1 September 1996. The IP policy and guidelines was fully endorsed by Cabinet on 30 April 1997. In essence this means that all state and parastatal purchases / lease contracts (goods, works and services) entered into after this date are subject to an IP obligation. **No contract will be awarded to a bidder if the latter has not satisfied the Industrial Participation requirement.**

1. PILLARS OF THE PROGRAMME

- 1.1 The IP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million will have an IP obligation. This threshold can be reached as follows:
- (i) Any single contract exceeding US \$10 million; or
 - (ii) multiple contracts for the same products or services each exceeding US \$3 million awarded to one seller over a 2 year period which in total exceeds US \$10 million; or
 - (iii) a contract with a renewable option clause, where should the option be exercised the total value will exceed US \$10 million.
- 1.2. The obligation will amount to 30 % of the imported content. That is, if the imported content is \$10 million, the obligation will amount to \$3 million. IP arrangements to satisfy the obligation include investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and Research and Development (R&D) collaboration, that can be negotiated with partners or suppliers.
- 1.3. A period of seven years has been identified as the time frame in which to discharge the obligation.
- 1.4. IP is obligatory and therefore must be addressed.

2. Requirements of the Department of Trade and Industry

2.1 To enable the Department of Trade and Industry to determine whether the total amount of various contracts awarded by the relevant organs of State to a specific contractor, exceeds the prescribed threshold of R 10 million, the accounting officer / authority must obtain clearance from the Department of Trade and Industry regarding the National Industrial Participation Programme prior to the award of any bid in excess of R10 million (**ten million rands**).

HOW TO SATISFY THE IP REQUIREMENTS

1. Bidders are advised to initiate discussions with the Department of Trade and Industry (Industrial Participation Secretariat) regarding business proposals.
2. Business proposals must reflect new or incremental economic activity that is to be to the mutual benefit of both the South African economy and to the bidder. Projects must be submitted to the Industrial Participation Secretariat for approval before implementation.
3. Conditional contracts, subject to winning the bid, are signed with all potential bidders. An agreement only becomes effective upon winning the bid. Only one contract will therefore become effective. This agreement is between the Industrial Participation Secretariat and the bidder and therefore does not involve the purchasing entity.

For further details about the programme, contact -

The Department of Trade and Industry (DTI)	Telephone numbers:	(012) 310-9667
Private Bag X84		0861 843384
PRETORIA	Fax number:	(012) 322-4523
0001		

A conditional agreement for the purpose of this bid has been reached between the bidder and the Industrial Participation Secretariat.	
<p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Signed on behalf of DTI</i></p> <p>Name (in print):</p> <p>Date:</p>	<p>Name of company / bidder:</p> <p>.....</p> <p>.....</p> <p style="text-align: center;"><i>Signature: Bidder</i></p> <p>Name (in print):</p> <p>Telephone number:</p> <p>Fax number:</p>

	<p>Postal Address:</p> <p>.....</p> <p>..</p> <p>.....</p> <p>..</p> <p>Date:</p> <p>.....</p>
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ANNEXURE B: GENERAL CONDITIONS OF CONTRACT

DEFINITIONS: The following terms shall be interpreted as indicated:

- (a) “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
- (b) “Contract” means the written agreement entered into between the Province and the Contractor, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (c) “Contract price” means the price payable to the Contractor under the contract for the full and proper performance of his contractual obligations.
- (d) “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.
- (e) “Countervailing duties” are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- (f) “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 recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- (g) “Day” means calendar day.
- (h) “Delivery” means delivery in compliance with the conditions of the contract or order.
- (i) “Delivery ex stock” means immediate delivery directly from stock actually on hand.
- (j) “Delivery into consignees store or to his site” means delivery and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the Contractor bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

- (k) “Dumping” occurs when a private enterprise abroad market its goods and services 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.
- (l) “Force majeure” means an event beyond the control of the Contractor and not involving the Contractor’s fault or negligence and not foreseeable. Such event may include, but is not restricted to, acts of the Province in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- (m) “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.
- (n) “GCC” means the General Conditions of Contract.
- (o) “Goods” means all the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- (p) “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 Contractor 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 supplies covered by the bid will be manufactured.
- (q) “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- (r) “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- (s) “Order” means an official written order issued for the supply of goods or works or the rendering of a service.

- (t) "Project site" where applicable, means the place indicated in bidding documents.
- (u) "Province" means the procuring Department, incorporating the KwaZulu-Natal Provincial Legislature.
- (v) "Republic" means the Republic of South Africa.
- (w) "SCC" means the Special Conditions of Contract.
- (x) "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 Contractor covered under the contract.
- (y) "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

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 Provinces' 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 there from 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 The Contractor 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 Contractor 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 Contractor, that may develop under normal use of the supplied goods in the conditions prevailing in the country of the final destination.
- 3.5 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 the Special Conditions of Contract.
- 3.6 The Province shall promptly notify the Contractor in writing of any claims arising under this warranty. 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.
- 3.7 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.
- 3.8 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.

- 3.9 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 bidder amends or withdraws his/her/their bid after the closing time but before the bidder is notified that his/her/their bid has been accepted, or when notified that his/her/their bid has been accepted, he/she/they fail/fails, within the period stipulated in the conditions of bid or such extended period as the Province may allow, to sign a contract or to provide security when requested to do so, he/she/they shall, unless the Province 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 bid is accepted or less favourable arrangements are to be made, forfeit any deposit which may have been made with the bid.
- 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

5.1 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.

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

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 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. This paragraph (6.4) is applicable only when not excluded in the Special Conditions of Contract.
- 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 Contract, shall be affected 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 therefore 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 bid, 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 bidder 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.

- 6.10 Should a price other than an all-inclusive price be required, this shall be specified in the SCC.

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

- 8.1 The Contractor shall furnish the Province with an invoice accompanied by a copy of the delivery note upon fulfilment of other obligations stipulated in the contract.
- 8.2 Payments shall be made promptly by the Province, but in no case later than thirty days (30) days after submission of an invoice or claim by the Contractor.
- 8.3 Payments will be made in Rand unless otherwise stipulated.
- 8.4 Payments for goods are made by the Province only. Any disputes regarding late or delayed payments must be taken up with the department and if a problem persists, the Supply Chain Management 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 Bidder and the actual cost to the Contractor, such variations to be subject to the following conditions:-
- 10.1.1 Where the Cost to Bidder 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 Bidder was not based on the latest available price list at the Date of Bid, 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 Bidder 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 bid 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 bidder 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 Bidder 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 Bidder 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 Province 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 bids 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 dispatch 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 bid, and it is found at a later stage that these applications were incorrect or made under false pretences, 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 therefore is made in the Special Conditions of Bid.

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 Contract relating to Surety/Guarantee requirement must be dealt with in strict compliance with the Conditions of Bid 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 bid.
- 16.3 No deposits are required for bid 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

- 19.1 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.
- 19.2 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 Provincial policy, inspections of a Bidder's goods and services are permitted. Bidders and Contractors must allow reasonable access to premises to officials from the department inviting the bid, or person specially appointed by the Province to carry out inspection or tests. There are two main categories: Firstly, where the bid conditions call for

goods to be inspected during the contract period. Secondly, where the inspection results are to be submitted with the bid document.

- 20.2 If it is a bid 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 bid 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 Bidder 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 BIDDING

Without prejudice on any other legal remedies, the Province may impose restrictions on a Bidder in terms of which bids 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 bid or contract. The Province may also make a restriction on a bidder 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 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 fulfilment 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 SCC 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 bid 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.

28. NOTICES

28.1 Every written acceptance of a bid shall be posted to the supplier/bidder concerned by registered or certified mail and any other notice to him/her/it shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him/her/it in writing and such posting shall be deemed to be proper service of such notice.

28.2 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 such notice.

29. INCIDENTAL SERVICES

29.1 The Contractor may be required to provide any or all of the following services, including additional services, if any, specified in the Special Conditions of Bid:

- (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 Contractor of any warranty obligations under this contract; and
- (e) training of the Province's personnel, at the Contractor's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

29.2 Prices charged by the Contractor 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 Contractor for similar services.

30. USE OF CONTRACT DOCUMENTS AND INFORMATION INSPECTION

30.1 The Contractor shall not, without the Province'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 Province in connection therewith, to any person other than a person employed by the Contractor 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.

30.2 The Contractor shall not, without the Province's prior written consent, make use of any document or information mentioned in GCC clause 30.1 except for purposes of performing the contract.

30.3 Any document, other than the contract itself mentioned in GCC clause 30.1 shall remain the property of the Province and shall be returned (all copies) to the Province on completion of the Contractor's performance under the contract or so required by the Province.

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

31. SPARE PARTS

- 31.1 If specified in SCC, the Contractor may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Contractor:
- (a) such spare parts as the Province may elect to purchase from the Contractor, provided that this election shall not relieve the Contractor of any warranty obligations under the contract.
 - (b) In the event of termination of production of the spare parts:
 - (i) Advance notification to the Province of the pending termination, in sufficient time to permit the Province to procure needed requirements; and
 - (ii) Following such termination, furnishing at no cost to the Province, the blueprints, drawings, and specifications of the spare parts, if requested.

32. PENALTIES

- 32.1 Subject to GCC Clause 4, if the Contractor fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the Province 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 delayed goods or unperformed services, using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The Province may also consider termination of the contract in terms of the GCC.

33. ANTI-DUMPING AND COUNTERVAILING DUTIES AND RIGHTS

- 33.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the 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.

34. GOVERNING LANGUAGE

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.

35. TAXES AND DUTIES

- 35.1 A foreign Contractor shall be entirely responsible for all taxes, stamp duties, licence fees, and other such levies imposed outside the Province's country.
- 35.2 A local Contractor shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the Province.
- 35.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Province 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.

