

LEPELLE-NKUMPI LOCAL MUNICIPALITY



BID DOCUMENT

BID NO. LNM061/2024/2025

APPOINTMENT OF PANEL OF SERVICE PROVIDERS FOR THE PROVISION OF SPECIALISED LEGAL SERVICES FOR LEPELLE-NKUMPI MUNICIPALITY AS AND WHEN REQUIRED FOR A PERIOD OF THREE (03) YEARS – RE-ADVERTISEMENT

TECHNICAL ENQUIRIES	BIDDING RELATED ENQUERIES
Corporate Services Ms Modjadji Rampheri LEPELLE-NKUMPI LOCAL MUNICIPALITY PRIVATE BAG X 07 CHUENESPOORT 0745 Tel : (015) 633 4504 Fax: (015) 632 4594	SUPPLY CHAIN MANAGEMENT Mr. KM Mashiane LEPELLE-NKUMPI LOCAL MUNICIPALITY PRIVATE BAG X 07 CHUENESPOORT 0745 Tel : (015) 633 4602/4531/4616 Fax: (015) 633 6896

NAME OF BIDDER (BIDDING ENTITY) :

CSD NUMBER :

CLOSING DATE : 16 APRIL 2025

CLOSING TIME : 11H00

THE TOTAL OFFERED BID PRICE : QUALITY BASED SELECTION

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FORM A**BID NOTICE****BID NO. LNM061/2024/2025****APPOINTMENT OF PANEL OF SERVICE PROVIDERS FOR THE PROVISION OF SPECIALISED
LEGAL SERVICES FOR LEPELLE-NKUMPI MUNICIPALITY AS AND WHEN REQUIRED FOR A
PERIOD OF THREE (03) YEARS**

The Municipality will adjudicate and award bids in accordance with the Guidelines in **Supply Chain Management: A Guide for Accounting Officers of Municipalities and Municipal Entities** (National Treasury) using the Quality-Based Selection method.

Municipality reserves the right to negotiate further conditions of the bid and other requirements with the successful bidder. The municipality reserves the right to appoint or not to appoint.

Bid documents will be available from the municipal website (www.lepelle-nkumpi.gov.za)/E-tenders portal, downloadable for free and official closing time for submission of bids is 11H00. Bid document fully completed, priced, sealed in an envelope marked with the bid number and description should be deposited in the bid box at Municipal Offices (Civic Centre) 170 BA, Unit F Lebowakgomo, on or before closing date and time. The municipality will not take any responsibility for lost documents due to poor packaging.

Bids will remain valid for 90 days from the date of closing. In case the validity period of a bid is extended, failure to submit any withdrawal/rejection of bid validity extension on/before the stipulated time and date will be considered as acceptance of extension of validity period. No faxed/ e-mail bids will be accepted, service providers using courier services should ensure that their documents are deposited into the bid box on or before the closing date and time. It is not the responsibility of Municipal officials to accept bids from courier services and take to the bid box. All bidders must be registered on the National Treasury Central Supplier Database.

Enquiries relating to bid documents:

1. Supply Chain Management unit – Mr. Kwena Mashiane (015) 633 4602/4531/4616
2. Corporate Service Department – Ms. Modjadji Rampheri (015) 633 4504

MAPHORU L.D
DELEGATED MUNICIPAL MANAGER

MBD1

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (LEPELLE NKUMPI MUNICIPALITY)					
BID NUMBER:	LNM061/2024/2025	CLOSING DATE:	16 APRIL 2025	CLOSING TIME:	11H00
DESCRIPTION	APPOINTMENT OF PANEL OF SERVICE PROVIDERS FOR THE PROVISION OF SPECIALISED LEGAL SERVICES FOR LEPELLE-NKUMPI MUNICIPALITY AS AND WHEN REQUIRED FOR A PERIOD OF THREE (03) YEARS				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT UNIT 170 BA, CIVIC CENTRE					
LEPELLE-NKUMPI LOCAL MUNICIPALITY					
UNIT 170 BA, CIVIC CENTRE					
LEBOWAKGOMO					
0737					
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBE R		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBE R		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED? <input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]		
TOTAL NUMBER OF ITEMS OFFERED			TOTAL BID PRICE	QUALITY BASED SELECTION	
SIGNATURE OF BIDDER		DATE		
CAPACITY UNDER WHICH THIS BID IS SIGNED					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:			TECHNICAL INFORMATION MAY BE DIRECTED TO:		
CONTACT PERSON	Kwena Mashiane		CONTACT PERSON	Modjadji Rampheri	
DEPARTMENT	Supply Chain Management		DEPARTMENT	Corporate Services	
TELEPHONE NUMBER	015 633 4602/4531/4616		TELEPHONE NUMBER	(015) 633 4505	
E-MAIL ADDRESS	kwena.mashiane@lepelle-nkumpi.gov.za		E-MAIL ADDRESS	modjadji.rampheri@lepelle-nkumpi.gov.za	

PART B
TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED (NOT TO BE RE-TYPED) OR ONLINE</p> <p>1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.</p>
2. TAX COMPLIANCE REQUIREMENTS
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.</p> <p>2.3 APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.</p> <p>2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p>
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS
<p>3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.</p>

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

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

DATE:

Form “B”

BID SPECIFICATION

SCOPE OF WORK

1. LITIGATIONS

To represent the Municipality in various forums;
 To institute legal proceedings against third parties on behalf of the Municipality;
 To defend the Municipality in legal proceedings;
 To advise the Municipality in any legal proceedings;
 Any other service required by the Municipality in legal proceedings.

2. CORPORATE SERVICES

Services would be expected to include:

- a) Advising the municipality with respect to its rights and obligations under its various operating and other agreements;
- b) Advising the municipality in connection with potential disputes arising out of its various operating and other agreements;
- c) Advising the municipality with regard to possible acquisition, sales joint ventures and antitrust matters;
- d) Advising the municipality with respect to compliance and corporate governance issue;
- e) The municipality expect from time-to-time to require legal advices, assistance and representation in a corporate matters.

3. LAND MATTERS

- a) Represent the municipality in the disputes over the building property rights and land property rights and related responsibilities;
- b) Land restitution claims;
- c) Represent the municipality in a land invasion and or eviction matters;
- d) Land audit;
- e) Any other matter related to land issues.

4. DEBT COLLECTION

- a) Collecting debts on behalf of the municipality;
- b) Preparing letters to municipal debtors;
- c) Acquiring court orders to attach payments;
- d) Preparing the list of all debtors to the municipality;
- e) Advice the municipality on the applications to write off the debt or deduction thereof and advising the municipality on the legality and applicable provisions on the prescription of the debt and its effect thereof;
- f) Any other matter relating to debt collection.

5. LABOUR DISPUTES

- a) Represent the municipality at the labour disputes forums including the courts, bargaining council, CCMA, labour court and etc.;
- b) Conducting the disciplinary hearing on behalf of the municipality;
- c) Giving legal advice on the labour issues;
- d) Providing the necessary personnel/s to conduct the disciplinary hearing;
- e) Any other labour matter.

6. GENERAL LIABILITY

The municipality expect from time-to-time to require legal advices, assistance and representation in a general liability claims including but not limited to the following matters:

- a) Contractual disputes;
- b) Personal injury claims;
- c) Property damages
- d) Professional liability claims;
- e) Any other dispute relating to general liability.

7. CONVEYANCING

The service provider shall be expected to register the immovable assets of the municipality;
Any other conveyancing related matter.

8. REVIEW AND DEVELOPMENT OF BY-LAWS AND POLICIES

The service provider shall be expected to review and develop the municipal by-laws and policies to be consistent with the current laws of the country and the state of the municipality.

9. ANY OTHER LEGAL MATTER

Any other legal matter not specifically mentioned herein that the Municipality may requires assistance with.

PROFESSIONAL CARE AND SERVICES

1. The firm must exercise all reasonable skill, care and diligence in discharging its obligations in terms of the agreement and shall comply with all prevailing legislation relating to the rendering of the services.
2. The service will be rendered in a timely manner as each request for services requires, and the firm will use reasonable endeavours to adhere to the time limits agreed upon when instructions are furnished,
3. The firm will be expected to respond to any issue raised by either telephone, fax or e-mail within 24 hours and to any issue raised in any letter or similar manner within 48 hours,
4. Where no time limits are agreed to, the services will be rendered within a reasonable period and where necessary, in accordance with the prevailing legislations.
5. Failure to render services within a reasonable time shall be regarded as non-performance and may lead to termination of the mandate.
6. The service provider shall not settle any claim or litigation by or against the municipality without the necessary consultation with the municipality.

PROPOSAL REQUIREMENTS

Following is a list of the information to be provided by the proposer for the legal services sought, a proposal must include the following information required below

1. The service provider should be in the capacity to handle the volume of work that the municipality may instruct them on at any relevant point in time.
2. Description of the management and personnel structure of the firm detailing the number and identity of partners, associates, assistance and law clerk.
3. Describe the legal services which your firm could provide to the municipality.
4. The service provider must have a suitable affirmative action and employment equity plans. The provisions of local Government Municipal systems act and other prevailing legislations on gender representation should also be adhered to in his process,
5. State a brief summary of notable cases, transaction, issues or matters handled by your law firm which you feel demonstrate the nature and extend of your expertise and reputation,
6. Identify the nature of any potential conflict of interests, actual or potential, which your firm may have in providing services to the municipality,
7. Each firm/service provider must certify in writing that its representation of the municipality will not create any conflict of interest involving that firm including taking instructions against the municipality,
8. Identify any past, pending or imminent litigation or proceedings to which you or your partners are or were a party and which may affect your reputation and/ or could either materially impair your ability to perform the services envisaged herein.

FORM “C”

PRICING SCHEDULE

TARRIF STRUCTURE/ FEE STRUCTURE

The municipality will only negotiate the final fee structure with the recommended Service Provider before Final appointment.

FORM “D”

RESPONSIVENESS AND EVALUATION

The following evaluation process and criteria will be used to evaluate all bids submitted:

All bids received shall be evaluated in terms of Supply Chain Management Regulations, Lepelle - Nkumpi Local Municipality Supply Chain Management Policy, The Preferential Procurement Policy Framework Act, and other applicable legislation.

The evaluation criteria consist of the following 2 phases-

Phase 1 - Administration compliance

Phase 2- Functionality

Bids in administrative compliance must meet the requirements of each phase in order to qualify for further evaluation

Bids in functionality phase must meet minimum points of 80 to qualify for further evaluation and below 80 points

bidders will be disqualified.

1. Administrative Compliance – Phase one

RESPONSIVENESS CRITERIA

1. The bid must be properly received in a sealed envelope clearly indicating the description of the service and the bid number for which the bid is submitted. The municipality will not take any responsibility of the lost documents due to poor packaging.
2. The bid must be deposited in the relevant bid box as indicated on the notice of the bid on or before the closing date and time of the bid.
3. The following MBD forms 1, 3.1, 4,5, 6.1, 8, and 9 must be completed in full. In case of a joint venture, MBD forms should be completed by an authorized JV representative. (Failure to do so will result in disqualification)
 - i. MBD 1 – Invitation to bid
 - ii. MBD 3.1- Pricing schedule (Firm price)
 - iii. MBD 4 – Declaration of interest
 - iv. MBD 5 – Declaration for Procurement above R10 million
 - v. MBD 6.1 – Preference points claim form
 - vi. MBD 8 – Declaration of bidder's past supply chain management practices
 - vii. MBD 9 – Certificate of independent bid determination
4. All pages must be initialized or signed. (failure to do so will result in disqualification)

5. Alterations must be signed or initialized. (failure to do so will result in disqualification)
6. Copy of the law firm registration certificate if applicable
7. Certified copy of the admission of the Director, Partner and or Associate, as an Attorney
8. Fidelity Fund for each director, partner and or associate
9. Letter of good standing for the Director(s), Partners and or Associates of the Law Firm from Legal Practice Council valid for 3 months from date of submission

10. THE USE OF TIPPEX WILL AUTOMATICALLY DISQUALIFY YOUR BID

11. The bid document and attached annexure must be completed in indelible ink. (failure to do so will result in disqualification)

12. The bidder must attach following with the tender:

- i. Copy of the entity/company registration certificate must be submitted with the bid, if applicable.
- ii. Certified copies of IDs for all Director(s) must be attached **(Certification not older than 3 months before the closing date)**
- iii. Tax compliance pin/ CSD number must be completed in MBD form 1.
- iv. Authority for signatory - attach resolution in case of more than one director
- v. Bidder/s (Company and director/partner or sole propriety) must attach proof of municipal rates on municipality letterhead which are not older than 90 days. If the statement of municipal rates is not in the name of the bidder an affidavit from SAPS must be attached. **OR** Letter of traditional authority not older than 90 days for bidder/s. **OR** in case of a lease agreement, a signed lease agreement by both parties indicating who is liable in terms of municipal rates (lessor & lessee) must be attached.
- vi. Annual Financial Statements (if the bidder is required by law to prepare annual financial statements for auditing, their audited/ reviewed annual financial statements for the past three (3) years or since their establishment if established during the past three years)
- vii. Firm must be registered with Legal Practice Council
- viii. In case of a Joint Venture, Association or Consortium a formal contract agreement must be signed by both parties and be attached and It is further required that all of the above under 8 must be for both entities unless indicated otherwise

NB: Failure to adhere to the above mentioned requirements will results to disqualification

2. FUNCTIONALITY (TECHNICAL) REQUIREMENTS

Technical / Functionality will be evaluated against the following detailed requirements:

Functionality Scorecard		
Criteria	Scoring guide	Maximum Weights
Company Experience in Similar project –Law Firm must demonstrate experience in providing similar services in government (Attach copies of Appointment Letters and Reference letters for specified cases with contact details where similar service has been rendered) Total	<ul style="list-style-type: none"> • Less than 7 letters = 0 • 7 to 9 Letters = 20 • 10 to 14 Letters = 30 • Above 15 Letters = 40 	40
Qualifications and Experience of the Director, Partner or Associates LLB/ B Proc degree/ B juris/ Post Graduate Degree in Law = 10 Relevant experience to execute the project. (Attach concise CV with of the Director with contactable references)	<ul style="list-style-type: none"> • Qualifications = 15 • 10 or more Years of Experience = 15 • Between 5 to 9 Years of Experience Years = 10 • Between 2-4 years of experience = 5 	30
Qualifications of key personnel- attach CVs and Copies of qualifications Professional Assistant (15 Points) Law Qualifications – LLB/ B Proc/ B juris degree = 5 Years of Experience <ul style="list-style-type: none"> • 5 or more Years of Experience = 10 • 2 to 4 years of experience = 5 Candidate Attorney (10 Points)	Qualifications = 5 Experience = 10	25

Law Qualifications – LLB/ B Proc/ B juris degree = 5 Years of Experience <ul style="list-style-type: none"> 1 to 2 years of experience = 5 	Qualifications = 5 Experience = 5	
Letter of Good Standing from Legal Practice Council (For the Director) less than Three(3) months	Letter of Good Standing from Legal Practice Council (For the Director) Less than Three(3) months	5
Functionality Threshold (Minimum score)		80
Total Points for Functionality		100

The bidder is expected to score a minimum of 80 points in order to qualify and be listed on the Panel .

Annexure A

MBD 3.1

PRICING SCHEDULE – FIRM PRICES (PURCHASES)

NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of Bidder.....	Bid Number.....
Closing Time	Closing Date

OFFER TO BE VALID FOR.....DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY**(ALL APPLICABLE TAXES INCLUDED)

- Required by:.....

- At:.....

- Brand and Model

- Country of Origin

- Does the offer comply with the specification(s)? *YES/NO

- If not to specification, indicate deviation(s)

- Period required for delivery

*Delivery: Firm/Not firm

- Delivery basis

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

**** “all applicable taxes” includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.**

*Delete if not applicable

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
1. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.

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

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

3.2 Identity Number:

3.3 Position occupied in the Company (director, trustee, hareholder²):.....

3.4 Company Registration Number:

3.5 Tax Reference Number:.....

3.6 VAT Registration Number:

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

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

3.8.1 If yes, furnish particulars.

.....

¹MSCM Regulations: “in the service of the state” means to be –

- (a) a member of –
 - (i) any municipal council;
 - (ii) any provincial legislature; or
 - (iii) the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

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

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

3.9.1 If yes, furnish particulars.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with

the evaluation and or adjudication of this bid? **YES / NO**

3.10.1 If yes, furnish particulars.

.....

.....

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

3.11.1 If yes, furnish particulars

.....

.....

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

3.12.1 If yes, furnish particulars.

.....

.....

3.13	Are any spouse, child or parent of the company's directors trustees, managers, principle shareholders or stakeholders in service of the state?	YES / NO
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3.13.1 If yes, furnish particulars.

.....

.....

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

3.14.1 If yes, furnish particulars:

.....

.....

Full details of directors / trustees / members / shareholders.

[illegible]

.....
Signature

.....
Date

.....
Capacity

.....
Name of Bidder

DECLARATION FOR PROCUREMENT ABOVE R10 MILLION (ALL APPLICABLE TAXES INCLUDED)

For all procurement expected to exceed R10 million (all applicable taxes included), bidders must complete the following questionnaire:

- 1 Are you by law required to prepare annual financial statements for auditing? *YES/NO
 - 1.1 If yes, submit audited annual financial statements for the past three years or since the date of establishment if established during the past three years.

- 2 Do you have any outstanding undisputed commitments for municipal services towards any municipality for more than three months or any other service provider in respect of which payment is overdue for more than 30 days? *YES/NO
 - 2.1 If no, this serves to certify that the bidder has no undisputed commitments for municipal services towards any municipality for more than three months or other service provider in respect of which payment is overdue for more than 30 days.
 - 2.2 If yes, provide particulars.

 * Delete if not applicable
1. Has any contract been awarded to you by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract? *YES/NO
 - 3.1 If yes, furnish particulars

2. Will any portion of goods or services be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality / municipal entity is expected to be transferred out of the Republic? *YES/NO
 - 4.1 If yes, furnish particulars

CERTIFICATION

I, THE UNDERSIGNED (NAME)..... CERTIFY THAT
THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS CORRECT.

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to invitations to tender:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
 - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- a) The applicable preference point system for this tender is the 80/20 preference point system.
- b) 80/20 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.
- 1.2 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:
- (a) Price; and
 - (b) Specific Goals.

- 1.3 To be completed by the organ of state:
- The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS	20
Total points for Price and SPECIFIC GOALS	100

- 1.4 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.5 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

2. DEFINITIONS

- (a) “tender” means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

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

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

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

Where

P_s = Points scored for price of tender under consideration

P_t = Price of tender under consideration

P_{\min} = Price of lowest acceptable tender

3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

3.2.1. POINTS AWARDED FOR PRICE

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

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

Where

P_s = Points scored for price of tender under consideration

P_t = Price of tender under consideration

P_{\max} = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be

allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
 - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system, then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

Table 1: Specific goals for the tender and points claimed are indicated per the table below.

(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.

Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
100% Black Person owned as per CSD	04	
People or Businesses residing with Lepelle-Nkumpi Local Municipality as per proof of residence	04	
Woman for 100% Woman owned company as per CSD	04	
People with disability for 100% disability owned company as per CSD	04	
Youth(18 to 35 years) for 100% youth owned company as per CSD	04	

DECLARATION WITH REGARD TO COMPANY/FIRM

- 4.3. Name of company/firm.....
- 4.4. Company registration number:
- 4.5. TYPE OF COMPANY/ FIRM
- ☐ Partnership/Joint Venture / Consortium
 - ☐ One-person business/sole propriety
 - ☐ Close corporation
 - ☐ Public Company
 - ☐ Personal Liability Company
 - ☐ (Pty) Limited
 - ☐ Non-Profit Company

☐ State Owned Company
[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution, if deemed necessary.

.....
SIGNATURE(S) OF TENDERER(S)

SURNAME AND NAME:
DATE:
ADDRESS:
.....
.....
.....

CONTRACT FORM - PURCHASE OF GOODS/SERVICES

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SUCCESSFUL BIDDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SUCCESSFUL BIDDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

PART 1 (TO BE FILLED IN BY THE BIDDER)

1. I hereby undertake to supply all or any of the goods and/or services described in the attached bidding documents to (name of institution)..... in accordance with the requirements and specifications stipulated in bid number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the purchaser during the validity period indicated and calculated from the closing time of bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:

(i) Bidding documents, viz
 - Invitation to bid;
 - Proof of Tax Compliance Status;
 - Pricing schedule(s);
 - Technical Specification(s);
 - Preference claim form for Preferential Procurement in terms of the Preferential Procurement Regulations;
 - Declaration of interest;
 - Declaration of bidder's past SCM practices;
 - Certificate of Independent Bid Determination;
 - Special Conditions of Contract;

(ii) General Conditions of Contract; and

(iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES	
1
2.
DATE:	

CONTRACT FORM - PURCHASE OF GOODS/SERVICES

PART 2 (TO BE FILLED IN BY THE PURCHASER)

1. I..... in my capacity as.....
accept your bid under reference numberdated.....for the supply of goods/services indicated
hereunder and/or further specified in the annexure(s).
2. An official order indicating delivery instructions is forthcoming.
3. I undertake to make payment for the goods/services delivered in accordance with the terms and conditions of the contract,
within 30 (thirty) days after receipt of an invoice accompanied by the delivery note.

ITEM NO.	PRICE (ALL APPLICABLE TAXES INCLUDED)	BRAND	DELIVERY PERIOD	TOTAL PREFERENCE POINTS CLAIMED	POINTS CLAIMED FOR EACH SPECIFIC GOAL

4. I confirm that I am duly authorized to sign this contract.

SIGNED ATON.....

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1.

.

2.

.

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
Item	Question	Yes	No

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

CERTIFICATION

**I, THE UNDERSIGNED (FULL NAME)
CERTIFY THAT THE INFORMATION FURNISHED ON THIS
DECLARATION FORM TRUE AND CORRECT.**

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Municipal Bidding Document (MBD) must form part of all bids¹ invited.

- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.

- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - a take all reasonable steps to prevent such abuse;
 - b reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - c cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.

- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.

- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Municipality / Municipal Entity)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

- 1 I have read and I understand the contents of this Certificate;
- 2 I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
- 3 I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
- 4 Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
- 5 For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - i has been requested to submit a bid in response to this bid invitation;
 - ii could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - iii provides the same goods and services as the bidder and/or is in the same line of business as the bidder
- 6 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
- 7 In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - a. geographical area where product or service will be rendered (market allocation)
 - b. methods, factors or formulas used to calculate prices;
 - c. the intention or decision to submit or not to submit, a bid;

- d. the submission of a bid which does not meet the specifications and conditions of the bid; or
- (f) bidding with the intention not to win the bid.

- 8 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 9 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Objections and complaints

Persons aggrieved by decisions or actions taken in the appointment of this tender or affected by the entire process of supply chain management system, may lodge within 14 days of the decision or action, a written objection or complaint against the decision or action to: The Municipal Manager, Private Bag X 07, Chuenespoort, 0745. To report any fraud; irregularities or corruption related incidents you may call our Anti-Fraud Hotline number: 0800 20 50 53

ANNEXURE “G”

GENERAL UNDERTAKINGS BY THE BIDDER

Definitions

- 1.1.1 **“Acceptable bid”** means any bid, which in all respects, complies with conditions of bid and specifications as set out in the bid document, including conditions as specified in the Preferential Procurement Policy Framework Act (Act 5 of 2000) and related regulations.
- 1.1.2 **“Chairperson”** means the chairperson of the Lepelle-Nkumpi Municipality Bid Adjudication Committee.
- 1.1.3 **“Municipal Manager”** means the Municipal Manager of the Municipality.
- 1.1.4 **“Committee”** refers to the Bid Evaluation and Adjudication Committee.
- 1.1.5 **“Council”** refers to Lepelle-Nkumpi Municipality.
- 1.1.6 **“Equity Ownership”** refers to the percentage ownership and control, exercised by individuals within an enterprise.
- 1.1.7 **“HDI equity ownership”** refers to the percentage of an enterprise, which is owned by individuals, or in the case of a company, the percentage shares that are owned by individuals meeting the requirements of the definition of a HDI.
- 1.1.8 **“Member”** means a member of the Bid Adjudication Committee.
- 1.1.9 **“Service providers”** refers to the bidders who have been successful in being awarded Council contracts.
- 1.1.10 **“SMME’s”**(Small, medium and Micro Enterprises) refers to separate and distinct business entities, including co-operative enterprises and NGO’s, managed by one owner or more, as defined in the National Small Business Act 102 of 1996.
- 1.1.11 **“Contract”** refers to legally binding agreement between Lepelle-Nkumpi Municipality and the service provider.
- 1.1.12 **“Bid”** means a written offer in a prescribed or stipulated form in response to an invitation by the Municipality for the provision of services or goods.
- 1.1.13 **“Contractor”** means any natural or legal person whose bid has been accepted by the Council.
- 1.1.15 **“Closing time”** means the date and hour specified in the bid documents for the receipt of bids.
- 1.1.16 **“Order”** means an official written order issued for the supply of goods or the rendering of a service in accordance with the accepted tender or price quotation.
- 1.1.17 **“Written” or “in writing,”** means hand written in ink or any form of mechanical writing in printed form.
- 1.1.18 **“Functionality”** means technical capability, financial and other resource availability that the service provider needs, to successfully and efficiently render the service and/or deliver in accordance with the specifications.

INTERPRETATION:

- 1.2.1 In this agreement clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention.
- 1.2.2 An expression which denotes:-

- 1.2.2.1 Any reference to any statute, regulation or other legislation or official policy shall be a reference to that statute, regulation or other legislation or national policy as at the signature date, and as amended or re-enacted from time to time;
- 1.2.3 When any number of day is prescribed, such shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding day which is a business day;
- 1.2.4 Where any term is defined within a particular clause, other than the interpretation clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in this agreement.

I/we hereby tender:

To supply all or any of the supplies and/or to render all or any of the services described in the attached documents {Forms, Schedule(s) and/or Annexure(s)} to the Lepelle-Nkumpi Municipality.

On the terms and conditions and in accordance with the specifications stipulated in the bid documents (and which shall be taken as part of and incorporated into this bid);

At the prices and on the terms regarding time for delivery and/or execution inserted therein.

I/we agree further that:

The offer herein shall remain binding upon me/us and open for acceptance by the Lepelle-Nkumpi Municipality during the validity period indicated and calculated from the closing time of the bid.

This bid and its acceptance shall be subject to the terms and conditions contained in the Forms, Scheduled(s) and/or Annexure(s) attached hereto with which I am /we are fully acquainted.

Notwithstanding anything to the contrary in the Form(s), Schedule(s) and /or Annexure(s) attached hereto:

If I/we withdraw my/our 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 Lepelle-Nkumpi Municipality may, without prejudice to its other rights, agree to the withdrawal of my/our tender or cancel the contract that may have been entered into between me/us and the Municipality;

In such event, I/we will then pay to the Municipality any additional expenses incurred by the Municipality for having either to accept any less favourable bid or, if new bids have to be invited, the additional expenditure incurred by the invitation of new bids and by the subsequent acceptance of any less favourable bid;

The Municipality shall also have the right in these circumstances, to recover such additional expenditure by set-off against monies which may be due or become due to me/us under this or any other bid or contract or against any guarantee or deposit that may have been furnished by me/us or on my/our behalf for the due fulfilment of this or any other bid or contract;

Pending the ascertainment of the amount of such additional expenditure the Municipality may retain such monies, guarantee or deposit as security for any loss the Municipality may sustain, as determined hereunder, by reason of my/our default.

Any legal proceedings arising from this bid may in all respects be launched or instituted against me/us and if/we hereby undertake to satisfy fully any sentence or judgment which may be obtained against me/us as a result of such legal proceedings and I/we undertake to pay the Lepelle-Nkumpi Municipality legal costs on an attorney and own client;

If my/our bid is accepted that acceptance may be communicated to me/us by letter or facsimiles and that proof of delivery of such acceptance to SA Post Office Ltd or the production of a document confirming that a fax has been sent, shall be treated as delivery to me/us.

The law of the Republic of South Africa shall govern the contract created by the acceptance to this tender.

I/we have satisfied myself/ourselves as to the correctness and validity of this tender, that the price(s) and rate(s) quoted cover all the work/items(s) specified in the tender documents and that the price(s) and rate(s) cover all my/our obligations under a resulting contract and that I/we accept that any mistakes regarding price(s) and calculations will be at my/our risk.

I/we accept full responsibility for the proper execution and conditions defaulting on me/us under this agreement as the principal(s) liable for the fulfilment of this contract.

ANNEXURE “H”

GENERAL CONDITIONS OF CONTRACT

Definitions

(1) The following terms shall be interpreted as indicated:

“Closing time” means the date and hour specified in the bidding documents for the receipt of bids.

“Contracts” means the written agreement entered into between the purchaser and the provider, as recorded in the contract form signed by the parties, including all attachments and appendixes thereto and all documents incorporated by reference therein.

“Contract price” means the price payable to the provider under the contract for the full and proper performance of his contractual obligations.

“Corrupt practice,” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

“Countervailing duties” are imposed in cases where an enterprise abroad is subsidised by its government and encouraged to market its products internationally.

a) **“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.

b) **“Day”** means calendar day.

c) **“Delivery”** means delivery in compliance of the conditions of the contract or order.

d) **“Delivery ex stock”** means immediate delivery direct from stock actually on hand.

e) **“Delivery into consignees store or to his site”** means delivered and unloaded in the specified store or depot on the specified site in compliance with the conditions of the contract or order, the provider bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

f) **“Dumping”** occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of country of origin and which have the potential to harm the local industries in the RSA.

g) **“Force Majeure”** means an event beyond the control of provider and not involving the provider's fault or negligence and is not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

h) **“Fraudulent practice”** means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of 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 bidders of the benefits of free and open competition.

i) **“GCC”** means the General Conditions of Contract.

j) **“Goods”** means all of the equipment, machinery, and/or other materials that the provider is required to supply to the purchaser under the contract.

- k) **“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 provider or his subcontractors) and which costs are inclusive of the costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- l) **“Local Content”** means that portion of the bidding price, which is not included in the imported content provided that local manufacturing does take place.
- m) **“Manufacture”** means the products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- n) **“Order”** means an official written order issued for the supply of goods or works or the rendering of a service
- o) **“Project site,”** where applicable, means the place indicated in bidding documents.
- p) **“Purchaser”** means the Lepelle-Nkumpi Municipality.
- q) **“Republic”** means the Republic of South Africa.
- r) **“SCC”** means the Special Conditions of Contracts.
- s) **“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 provider covered under the contract.
- t) **“Written”** or “in Writing” means hand-written in ink or any form of electronic or mechanical writing.

(2) **Application**

1. These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services (including professional services related to the building and construction industry), sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
2. Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
3. Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

(3) **General**

1. Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
2. Invitations to bid are usually published in locally distributed news media and in the institution's website.

(4) Standards

1. The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

(5) Uses of contract documents and information inspection

1. The provider shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the provider in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.
2. The provider shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
3. Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchase and shall be returned (all copies) to the purchaser on completion of the provider's performance under the contract if so required by the purchaser.
4. The provider shall permit the purchaser to inspect the provider's records relating to the performance of the provider and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

(6) Patent rights

1. The provider shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
2. When a provider developed documentation / projects for the municipality or municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the municipality or municipal entity.

(7) Performance Security

1. Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in Special Conditions of Contract.
2. The process of the performance security shall be payable to the purchaser as compensation for any loss resulting from the provider's failure to complete his obligations under the contract.
3. The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

1. A bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
2. A cashier's or certified cheque

7.4 The performance security will be discharged by the purchaser and returned to the provider not later than thirty (30) days following the date of completion of the provider's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

1 Inspections, tests and analyses

1.6 All pre-bidding testing will be for account of the bidder.

1.7 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the purchaser or an organisation acting on behalf of the purchaser.

1.8 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements with the testing authority concerned.

1.9 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

(a) 5. Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services accepted or not, the cost in connection with these inspections, tests or analysis shall be defrayed by the provider.

8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

8.1 Any contract supplies may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the provider, who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies, which do comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at the provider's cost and risk. Should the provider fail to provide the substitute supplies forthwith, the purchaser may, without giving the provider further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the provider.

8.2 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

(b) Packing

a The provider shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during

transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

b The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any subsequent instructions ordered by the purchaser.

(c) **Delivery and documents**

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

(d) **Insurance**

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

(e) **Transportation**

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

(f) **Incidental services**

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

8. Performance or supervision of on-site assembly and/or commissioning of the supplied goods;

9. Furnishing of tools required for assembly and/or maintenance of the supplied goods;

10. Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

11. Performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this services shall not relieve the provider of any warranty obligations under this contract; and

12. Training of the purchaser's personnel, at the provider's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Price charged by the provider 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 provider for similar services.

14. Spare parts

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

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

15. Warranty

The provider 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 provider 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 provider, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

a This warranty shall remain valid for twelve (12) months, or any portion thereof as the case may be, after goods 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.

b The purchaser shall promptly notify the provider in writing of any claims arising under this warranty.

c Upon receipt of such notice, within the period specified and with all reasonable speed, repair or replace the defective goods or parts thereof, without cost to the purchaser.

d If the provider, having been notified, fails to remedy the defect(s) within the period specified, the purchaser may proceed to take such remedial action as may be necessary, at the provider's risk and expense and without prejudice to any other rights which the purchaser may have against the provider under the contract.

16. Payment

a The method and conditions of payments to be made to the provider under this contract shall be specified.

b The provider shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilments of other obligations stipulated in the contract.

c Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the provider.

d Payments will be made in Rand unless otherwise stipulated.

17. Prices

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

18. Increase/ decrease of quantities

18.1 In cases where the estimated value of the envisaged changes in purchase does not exceed 15% of the total value of the original contract, the contractor may be instructed to deliver the revised quantities. The contractor may be approached to reduce the unit price, and such offers may be accepted provided that there is no escalation in price.

19. Contract amendments

19.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

20. Assignment

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

1 Subcontracts

21.1 The provider shall notify the purchaser in writing of all subcontracts awarded under this contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the provider from any liability or obligation under the contract

2 Delays in the provider's performance

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

16.2 If at time during performance of the contract, the provider or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the provider shall promptly notify the purchaser in writing of the act of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the provider's notice, the purchaser shall evaluate the situation and may at his discretion extend the provider's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

16.3 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the provider's point of supply is not situated at or near the place where the supplies are required, or the provider's services are not readily available.

16.4 Except as provided under GCC clause 25, a delay by the provider in the performance of its delivery obligations shall render the provider liable to the imposition of penalties, pursuant to GCC clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

16.5 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quantity and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return

any goods not delivered later at the provider's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the provider.

23. Penalties

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

1 Termination for default

a The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the provider, may terminate this contract in whole or in part:

- i If the provider fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC clause 21.2
- ii If the provider fails to perform any other obligation(s) under the contract;
- iii If the provider, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract

b In the event of the purchaser terminating the contract in whole or in part, the purchaser may procure, upon such terms and in such manner, as it deems appropriate, goods, works or services similar to those undelivered, and the provider shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the provider shall continue performance of the contract to the extent not terminated.

2 Anti-dumping and countervailing duties and rights

a 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 rights are increased in respect of any dumped or subsidised import, the Municipality 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 are abolished, or where the amount of such provisional payments or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the provider to the purchaser or the purchaser may deduct such amounts from moneys (if any) which may otherwise be due to the provider in regard to supplies or services which he delivered or rendered, or is to be delivered or rendered in terms of the contract or any other contract or any other amount which may be due to him.

3 Force Majeure

a Notwithstanding the provisions of GCC clause 22 and 23, the provider shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

b If a force majeure situation arises, the provider shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the provider shall

continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

4 Termination for insolvency

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

5 Settlement of disputes

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

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

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

d Notwithstanding any reference to mediation and/or court proceedings herein:

1 The parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

2 The purchaser shall pay the provider any monies due to the provider for goods delivered and / or services rendered according to the prescripts of the contract.

6 Limitation of liability

a Except in case of criminal negligence or wilful misconduct, and in the case of infringement pursuant to clause 6:

a The provider shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the provider to pay penalties and/or damages to the purchaser; and

b The aggregate liability of the provider purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

7 Governing language

a 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.

8 Applicable laws

a The contract shall be interpreted in accordance with South African laws, unless otherwise specified.

9 Notices

a Every written acceptance of a bid shall be posted to the provider concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address noticed later by him in writing and such posting shall be deemed to be proper services of such notice.

b The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

10 Taxes and duties

a A foreign provider shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

b A local provider shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

c No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid SARS must have certified that the tax matters of the preferred bidder are in order.

11 Transfer of contracts

a The contract shall not abandon, transfer, assign or sublet a contract or part thereof without the written permission of the purchaser.

12 Amendment of contracts

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

ANNEXURE “I”

SPECIAL CONDITIONS OF THE CONTRACT:

- a. It is emphasized that a contract will not necessarily result from the responses received to this request for proposal. LEPELLE-NKUMPI MUNICIPALITY reserves the right to enter into negotiations with any one or more of the respondents, should it be decided to proceed with the contract.
- b. LEPELLE-NKUMPI MUNICIPALITY reserves the right to withdraw this call for proposals at its own discretion at any time.
- c. LEPELLE-NKUMPI MUNICIPALITY reserves the right not to evaluate and /or consider any proposal that does not comply strictly with the requirements as set out in this request.
- d. LEPELLE-NKUMPI MUNICIPALITY reserves the right to make a decision/ selection based solely on the information received in the proposal to this request.
- e. LEPELLE-NKUMPI MUNICIPALITY reserves the right the relax and or condone any special conditions as stipulated by the Municipality.
- f. The bid price must remain valid for a period of 90 days calculated from the closing date.
- g. The employer will not compensate the bidder for any costs incurred in the preparation and submission of a bid offer, including the costs to demonstrate that aspects of the offer satisfy requirements.
- h. LEPELLE-MKUMPI MUNICIPALITY reserves the rights to verify any information and/or documents submitted to the Municipality in supports of the bid.
- i. Appointment to the panel does not in any way guarantee that legal practitioners will receive instructions.
- j. The Municipality may accept or reject any variation, deviation, bid offer or alternative bid offer, and may cancel the bid process and reject all bid offers at any time before the formation of a contract. The employer shall not accept or incur any liability to a bidder for such cancellation and rejection but will give written reasons for such action upon written request to do so.
- k. Bidders must attach a valid Fidelity Fund Certificate(s) for Directors / Partners or Associates.
- l. Bidders must attach a letter of good standing from the Legal Practice Council for Directors, Partners or Associates.

2. The Municipal Manager may reject the bid or quote of any person if that person or any of its directors has:

- i. Failed to pay municipal rates and taxes or municipal service charges and such rates, taxes and charges are in arrears for more than three months;
- ii. Failed, during the last five years, to perform satisfactorily on a previous contract with the Lepelle-Nkumpi Municipality or any other organ of State after written notice was given to that bidder that performance was unsatisfactory;
- iii. Abused the supply chain management system of the Municipality or have committed any improper conduct in relation to this system;
- iv. Been convicted of fraud or corruption during the past five years;
- v. Willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or

- vi. Been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004) or has been listed on National Treasury's database as a person prohibited from doing business with public sector.
- vii. Failed to attach a comprehensive fee structure.

3. The Municipal Manager may cancel a contract awarded to a person if:

- The person committed a corrupt or fraudulent act during the procurement process or in the execution of the contract, or
- An official or other role player committed any corrupt or fraudulent act during the procurement process or in the execution of the contract that benefited that person.

4. No bids will be considered from persons in the service of the state (as defined in regulation 1 of the local government: municipal supply chain management regulations)