



NEWCASTLE MUNICIPALITY

DEVELOPMENT PLANNING & HUMAN SETTLEMENTS – HOUSING & LAND

BID NO.: A019-2020/21

**(RE- ADVERTISEMENT): INVITATION FOR DEVELOPMENT PROPOSALS
FOR
SALE OF COMMERCIAL VACANT SITES ZONED TRANSITIONAL ZONE 2 IN NEWCASTLE
(SITE ERF NO.: 17484 – 16969 – 16970 – 16971 – 16972)**

SUBMISSION OF PROPOSAL DOCUMENT DEADLINE

Date: Friday, 05 May 2023

Time: 12h00

Venue: Municipal Civic Centre Offices (Rates Hall)
Tower Block Building, 37 Murchison Street, 1st Floor
Newcastle, 2940

| | |
|---------------------------------------|--|
| Name of Training Provider | |
| CSD Master Registration Number | |
| Physical Address | |
| | |
| | |
| Contact Person(s) | |
| Phone Number(s) | |
| E-Mail Address | |

Sealed bid document must be deposited in the **Tender Box** provided at the Municipal Civic Centre (Rates hall), 37 Murchison Street, Newcastle by no later than **12h00 on 05 May 2023** where bids will be opened in public. Please be advised that the name, address and contact details should be written at the back of the envelope.

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PART A–ADMINISTRATIVE REQUIREMENTS IN TERMS OF THE SUPPLY CHAIN MANAGEMENT POLICY

1. CHECKLIST

PLEASE ENSURE THAT THE FOLLOWING FORMS HAVE BEEN DULY COMPLETED AND SIGNED AND THAT ALL DOCUMENTS AS REQUESTED, ARE ATTACHED TO THE BID DOCUMENT:

| Description | Yes/No | | | |
|--|--------|--|----|--|
| | Yes | | No | |
| MBD 1 – Invitation to Bid Is the form duly completed and signed? | Yes | | No | |
| Authority to Sign a Bid Is the form duly completed and is a certified copy of the resolution attached? | Yes | | No | |
| MBD 4 Declaration of Interest Is the form duly completed and signed? | Yes | | No | |
| MBD 8 Declaration of Past Supply Chain Practices Is the form duly completed and signed? | Yes | | No | |
| MBD 9 Certificate of Independent Bid Determination Is the form duly completed and signed? | Yes | | No | |
| Declaration for Municipal Accounts Is the form duly completed and signed? Are the Identity numbers, residential addresses and municipal account numbers of ALL members, partners, directors, etc. provided on the form as requested? | Yes | | No | |
| Experience of Bidder Is the form duly completed with relevant experience detailed and signed? | Yes | | No | |

| | | | |
|-----------------------|--|---------------------|--|
| Name of Bidder | | | |
| Signature | | Name (print) | |
| Capacity | | Date | |

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2. BID NOTICE & INVITATION TO BID



BID NO: A019-2020/21

(RE- ADVERTISEMENT): INVITATION FOR DEVELOPMENT PROPOSALS FOR SALE OF COMMERCIAL VACANT SITES ZONED TRANSITIONAL ZONE 2 IN NEWCASTLE

Notice is hereby given in terms of the provisions of section 14(b) of the Municipal Finance Management Act 2003 (Act No 56 of 2003) and subject to the Supply Chain Regulations applicable to local government that the Newcastle Municipality intends to sell various commercial vacant sites for development within the Newcastle Municipality KZ252 area as per the following schedule:

| NO. | Erf No. | TOWNSHIP | Extent | Zoning | MARKET VALUE |
|------------|----------------|-----------------|--------------------|---------------|---------------------|
| 1. | 17484 | Newcastle | 3521m ² | Office | R 2 113 000.00 |
| 2. | 16969 | Newcastle | 2366m ² | Office | R 1 200 000.00 |
| 3. | 16970 | Newcastle | 2147m ² | Office | R 1 100 000.00 |
| 4. | 16971 | Newcastle | 1831m ² | Office | R 1 000 000.00 |
| 5. | 16972 | Newcastle | 1500m ² | Office | R 900 000.00 |

Development proposals are hereby invited for the development of the abovementioned sites situated in Hospital, Hastie and Hardwick Streets in Newcastle. These properties are zoned as Office uses in terms of the Newcastle Land Use Scheme, these sites are mostly suitable for the establishment of Professional Offices and Residential buildings purposes.

Offers that fall below the **current market-related value** will not be considered by the Newcastle Municipality. Competitive offers above this value are expected.

Bids will be evaluated in two (2) stages:

- Development Proposals (Stage One) for the Development and;
- Financial Proposals (Stage Two) for the purchase of Commercial vacant sites.

Please Note: The installation of services and access road to the subject properties are currently being undertaken by Newcastle Municipality.

Bid documents are obtainable from **30 March 2023**, at the office of the Strategic Executive Director: Budget and Treasury Office, Municipal Civic Centre Tower Block – Office B218 2nd Floor, 37 Murchison Street, Newcastle, 2940 during office hours between 08h00 to 15h00 upon a payment of a **non-refundable document fee of R 300.00. Alternatively the document may be downloaded free of charge from the National Treasury website (www.etenders.gov.za).**

Banking Details - The Newcastle Municipality, Nedbank – Account No: 1162 6600 66, Br Code: 133 724 (the proof of payment must reflect the bid number and bidder's name as reference).

The bids will remain valid for 120 days. The Council reserves the right to accept all, some, or none of the bids submitted, either wholly or in part and it is not obliged to accept the lowest bid.

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Enquiries to be directed to Mr. B Mseleku at 034 328 7916 during office hours.

Completed bid documents complying with the conditions of bid must be sealed and endorsed "**BID NO. A019-2020/21 – (RE- ADVERTISEMNT): INVITATION FOR DEVELOPMENT PROPOSALS FOR SALE OF COMMERCIAL VACANT SITES ZONED TRANSITIONAL ZONE 2 IN NEWCASTLE**" bearing the name and address of the bidder at the back of the envelope to be deposited in the official bid box provided in the foyer of Newcastle Municipality – Municipal Civic Offices (Rates Hall), 37 Murchison Street, 1st floor, Newcastle by no later than **12:00 on Friday, 05 May 2023** where bids will be opened in public. Late quotations or tenders received by way of facsimile or e-Mail will under no circumstances be considered.

Evaluation and adjudication of the bid will be done in line with the Newcastle Municipality's Supply Chain Management Policy.

NB: The Condition/Clause of "Development within 2 years" will be incorporated in the "Deed of Sale" as per Municipal Disposal Policy.

**Mr Z.W Mcineka
Municipal Manager
Newcastle Municipality
37 Murchison Street
Newcastle
2940**

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**MBD 1: INVITATION TO BID
PART A**

| YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE NEWCASTLE MUNICIPALITY | | | | | |
|---|--|---------------------|-------------|---------------------|-------|
| Bid Number | A019 – 2020/21 | Closing Date | 05 May 2023 | Closing Time | 12h00 |
| Description | (RE- ADVERTISEMENT) INVITATION FOR DEVELOPMENT PROPOSALS FOR SALE OF COMMERCIAL VACANT SITES ZONED TRANSITIONAL ZONE 2 IN NEWCASTLE | | | | |
| 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

**FIRST (1st) FLOOR OF THE NEWCASTLE MUNICIPALITY
MUNICIPAL CIVIC CENTRE OFFICES (RATES HALL)
37 MURCHISON STREET
NEWCASTLE
2940**

SUPPLIER INFORMATION

| | | | | | |
|-------------------------|----------|--|--------|---------|--|
| Name of Bidder | | | | | |
| Postal Address | | | | | |
| Street Address | | | | | |
| Telephone Number | Code | | Number | | |
| Cellphone Number | | | | | |
| Facsimile Number | Code | | Number | | |
| E-Mail Address | | | | | |
| Vat Registration Number | | | | | |
| Tax Compliance Status | TCS PIN: | | OR | CSD No: | |

| | | | | | |
|---|-----------------|----------------------------|-------------|-----------|-----------------------|
| Preferential points (80/20) or (90/10) | Price = 80 / 90 | Preferent points = 20 / 10 | Total = 100 | | |
| | | | 20 | 10 | Tick for claim |
| Specific Contract Participation Goals | | | | | |
| Black people (Equity HDI's) | | | 8 | 4 | |
| Black people with disability/youth | | | 4 | 2 | |
| Black people who are women | | | 4 | 2 | |
| Locality (within Amajuba district) | | | 4 | 2 | |
| TOTAL HDI SCORE | | | 20 | 10 | |

| | | | |
|--------------------------------------|--|-------------------------|--|
| Total Number of Items Offered | | Total Bid Price: | |
| Signature of Bidder | | Date: | |

Capacity under which this bid is signed:

ENQUIRIES MAY BE DIRECTED TO:

| Bidding Procedure Enquiries | | Technical enquiries |
|------------------------------------|--------------------------------|--|
| Contact person | Mrs D Marais | Mr B Mseleku |
| Telephone number | 034 328 7769 | 034 328 7916 |
| E-mail address | Dalene.marais@newcastle.gov.za | Bafana.Mseleku@newcastle.gov.za |

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Terms and Conditions for Bidding

1. BID SUBMISSION:

- 1.1. Bids must be delivered by the stipulated time to the correct address. Late bids will not be accepted for consideration.
- 1.2. **All bids must be submitted on the official forms provided–(not to be re-typed) or online**
- 1.3. This bid is subject to the Preferential Procurement Policy Framework Act and the Preferential Procurement Regulations, 2022, the General Conditions of Contract (GCC) and, if applicable, any other special conditions of contract.

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 Bidders must ensure compliance with their tax obligations.
- 2.2 Bidders are required to submit their unique Personal Identification Number (Pin) issued by SARS to enable the organ of state to view the taxpayer's profile and tax status.
- 2.3 Application for the Tax Compliance Status (TCS) certificate or Pin may also be made via e-filing. In order to use this provision, taxpayers will need to register with SARS as e-filers through the **website www.sars.gov.za**.
- 2.4 Foreign suppliers must complete the Pre-Award Questionnaire in part B:3.
- 2.5 Bidders may also submit a printed TCS certificate together with the bid.
- 2.6 In bids where consortia / joint ventures / sub-contractors are involved, each party must submit a separate TCS certificate / Pin / CSD number.
- 2.7 Where no TCS is available but the bidder is registered on the Central Supplier Database (CSD), a CSD number must be provided.

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- 3.1. Is the entity a resident of the Republic of South Africa (RSA)? Yes No
- 3.2. Does the entity have a branch in the RSA? Yes No
- 3.3. Does the entity have a permanent establishment in the RSA? Yes No
- 3.4. Does the entity have any source of income in the RSA? Yes No
- 3.5. Is the entity liable in the RSA for any form of taxation? Yes No

If the answer is “no” to all of the above, then it is not a requirement to register for a Tax Compliance Status System Pin Code from the South African Revenue Service (SARS) and if not register as per 2.3 above.

**NB: Failure to provide any of the above particulars may render the bid invalid.
No bids will be considered from persons in the service of the state.**

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

DATE:

3. GENERAL CONDITIONS OF BID

1. General conditions of Contract

- 1.1. This Bid is subject to the General Conditions of Contract (GCC) 2010 and, if applicable, any other Special Conditions of Contract. Whenever there is a conflict between the GCC and SCC, the provisions in the SCC shall prevail.

2. Pricing

- 2.1. Rates and prices offered by the bidder must be written onto the pricing schedule or form of offer of this document by hand, completed in full and signed by the duly authorised signatory.
- 2.2. All prices shall be quoted in South African currency, and be **INCLUSIVE of VAT**. Bid prices that do not include VAT shall not be considered.
- 2.3. Bid prices must include all expenses, disbursements and costs (e.g. transport, accommodation etc.) which may be required for the execution of the bidder's obligations in terms of the Contract. Bid prices shall cover the cost of all general risks, liabilities and obligations set forth or implied in the Contract, as well as overhead charges and profit (in the event that the bid is successful), unless otherwise specified.
- 2.4. All bid prices will be final and binding.
- 2.4.1. A bid will not be invalidated if the amount in words and the amount in figures do not correspond,
- 2.4.2. in which case the amount in words shall be read out at the bid opening and shall be deemed to be the bid amount; therefore, where there is a discrepancy between the amount in figures and the amount in words, the amount in words shall apply.

3. Forward Exchange Rate Cover

- 3.1. In the event of price(s) based on the exchange rate, the successful bidder(s) will be required to obtain exchange rate cover in order to protect the Municipality against exchange rate variations.
- 3.2. The bidder must provide proof of forward exchange rate cover within 14 days after an order was placed.
- 3.3. If proof that forward exchange rate cover was taken out within 14 days after the order was placed but is not submitted to the Municipality along with the invoice, the contract price adjustment will not be accepted and the contract may be cancelled.

4. Submission of Bids

- 4.1. Sealed bids, with the **"Bid Number and Title"** clearly endorsed on the envelope, and must be deposited in the bid box on or before the closing date and time of the bid.
- 4.2. The bid box is in Municipal Civic Offices, 37 Murchison Street, Rates Hall, 1st Floor, Newcastle.
- 4.3. All literature must be securely attached to the bid. The Council shall not be held liable for any loss or damages sustained due to the service provider's failure to comply with this condition.
- 4.4. If a courier service company is being used for delivery of the bid document, the bidder description must be endorsed on the delivery note/courier packaging and the courier must ensure that documents are placed / deposited into the bid box. The Newcastle Municipality will not be held responsible for any bid document which is not timeously delivered, mislaid or incorrectly delivered due to the negligence of the courier company or any other party involved in the delivery of the bid document.

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Please note:

- Bids that are deposited in the incorrect box will not be considered.
- Mailed, telegraphic or faxed tenders will not be accepted.
- Documents may only be completed in **black ink**.
- The use of correction fluid/tape on the bid documents is not allowed. If there is an error, draw a line through it, initial next to it and make the correction directly above /below/next to it.
- All bids must be submitted in writing on the official forms supplied (not to be re-typed).

5. Opening, Recording and Publications of Bids Received

- 5.1. Bids will be opened on the closing date immediately after the closing time specified in the bid documents. If requested by any bidder present, the names of the bidders, and if practical, the total amount of each bid and of any alternative bids will be read out aloud.
- 5.2. Details of bids received in time will be recorded in a register which is open to public inspection.
- 5.3. Any bid received after the appointed time for the closing of bids **will not be considered** but shall be filed unopened with the other bids received, which bid(s) can be returned to the bidder at his request and cost.

6. Validity Period

Bids shall remain valid for **one hundred and twenty (120) days** after the tender closure date.

7. Incorrect Information

Where a contract has been awarded on the strength of the information furnished by the bidder which after the conclusion of the relevant agreement, is proven to have been incorrect, the municipality may, in addition to any other legal remedy it has or may have, recover from the contractor all costs, losses or damages incurred or sustained by the municipality as a result of the award of the contract.

8. Withdrawal of Bid during and After the SCM Process:

- 8.1. When a bidder withdraws his/her bid during the SCM bidding process, it must be in writing, prior to the award of the bid, of which Newcastle holds the right to accept or reject with or without a claim for any damages.
- 8.2. When a bidder withdraws or cancels the contract after award of the bid to the particular winner of the bid, the awarded bidder will be held responsible for any damages or administrative expenses incurred prior to the award of the bid.

9. Invoices

All invoices must be forwarded to the following address:

Newcastle Municipality
Private Bag x6621, Newcastle, 2940

9.1. Legal requirements for invoices

9.1.1. Please ensure that your tax invoices complies with the requirements as stipulated by SARS (VAT Act No 89 of 1991), i.e.:

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9.1.1.1. Ordinary invoice (not VAT Registered)

- a) The word „**INVOICE** " in a prominent place
- b) Official invoice number and date of transaction
- c) Trade name, legal name, registration number (if any) and address of supplier
- d) The Official order number of Newcastle Municipality is compulsory – non-compliance – no payment
- e) The Municipality's name and postal address (Private Bag X6621, Newcastle, 2940)
- f) Accurate description of goods and / or services supplied / provided.
- g) Unit of measurement of goods or services supplied
- h) Price

9.1.1.2. VAT/Tax invoice (VAT registered)

- a) Word „**TAX INVOICE** ' in a prominent place
- b) Trade, legal name and registration number (if any) of supplier
- c) Address and VAT number of supplier
- d) The official invoice number and date of invoice
- e) The Official order number of Newcastle Municipality is compulsory – non-compliance – no payment
- f) The Municipality's name and postal address (Private Bag X6621, Newcastle, 2940) and VAT registration number (4000791824)
- g) Accurate description of goods and / or services supplied / provided.
- h) Unit of measurement of goods or services supplied
- i) Price and VAT amount

10. Payment Terms (Not applicable for the Leasing or Sale of Property)

- 10.1. It is the policy of the Newcastle Municipality to pay all creditors by means of electronic bank transfers.
- 10.2. Creditors will be paid within 30 days after receipt of an invoice and statement for the month in question, detailing all invoices during that month and reflecting the total amount due by the Municipality. In exceptional circumstances, the Municipality may, at its discretion, deviate from the above.

11. Poor Performance

Where the supplier fails to render the services within the stipulated period, or should services rendered be deemed not to the satisfaction of the Newcastle Municipality, the tenderer will receive written notice of poor performance. Failure to address performance issues could result in the entire contract being reviewed or cancelled.

12. Central Supplier Database (not applicable to individuals)

No awards will be made to a tenderer who is not registered on the Central Supplier Database.

13. Disbursements, Travel and Subsistence

- 13.1. No bidder will be refunded any cost or disbursements incurred in respect of the project, save where the prior written approval of Newcastle Municipality has been obtained in respect of such expenditure.
- 13.2. Any authorized disbursements will be refunded at the reasonable and actual cost determined by Newcastle Municipality. Any expenditure incurred by the successful bidder in respect of authorized travel for the project will be refunded in accordance with the Newcastle Municipality travel policy

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as applicable from time to time. The rates payable for the use of private vehicles will be the prevailing rates quoted by the Automobile Association of South Africa.

- 13.3. All claims in respect of authorized disbursements (travel and subsistence costs) must be substantiated by documentary evidence such as receipts and logs of kilometres travelled.
- 13.4. All expenses incurred by the bidder for the proposal and presentations are the responsibility of the bidder and will not be reimbursed by Newcastle Municipality.

14. Joint Venture Agreement or Consortiums

Tenderers intending to tender in the form of joint venture or consortium must submit the following documentation together with the bid:-

- 1) A valid Tax Compliance Status verification Pins issued by SARS of all parties of the Joint Venture or Consortium, and
- 2) all parties of the Joint Venture or Consortium must submit signed copies of :-
 - a) The Declaration of Interest Form,
 - b) The Declaration of Bidder's Past Supply Chain Management Practices Form,
 - c) The Certificate of Independent Bid Determination Form, and
- 3) An undertaking duly signed by all parties of the Joint Venture or Consortium indicating their intention to enter into an agreement for the purposes of this contract, and
- 4) A consolidated valid and original or certified copy of their B-BBEE Status Level Verification Certificate.

Further to the above, the name of the Joint Venture or Consortium must appear on the relevant pages of the document. Failure to comply with these requirements shall lead to disqualification.

15. Samples for Quality Control

- 15.1 If the samples are required in terms of the specification, such samples shall be supplied by the service provider at his/her own cost.
- 15.2 All samples approved will be retained by the Newcastle Municipality as standards for the duration of the contract.

16. Tax Compliance Pin

- 16.1 The bidder must submit a valid Tax Compliance Pin with the bid. Bidders should note that their tax compliance status shall be verified through the Central Supplier Database and SARS.
- 16.2 Where a Tax Compliance Pin is not submitted with the bid, the Department shall use the Central Supplier Database to verify the tax matters of the bidder.

17. Sale and Letting of Assets

- 17.1 The preference point system prescribed in the PPPFA and the Preferential Procurement Regulations, 2022 are not applicable to the sale and letting of assets.

4. GENERAL CONDITIONS OF CONTRACT

1. Definitions

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

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artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

- 1.14 “**GCC**” means the General Conditions of Contract.
- 1.15 “**Goods**” means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 “**Imported content**” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the vendor or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the goods covered by the bid will be manufactured.
- 1.17 “**Local content**” means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.
- 1.18 “**Manufacture**” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 “**Order**” means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 “**Project site**” where applicable, means the place indicated in bidding documents.
- 1.21 “**Purchaser**” means the Institution purchasing the goods/works and/or service.
- 1.22 “**Republic**” means the Republic of South Africa.
- 1.23 “**SCC**” means the Special Conditions of Contract.
- 1.24 “**Services**” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the vendor covered under the contract.
- 1.25 “**Written**” or “**in writing**” means handwritten in ink or any form of electronic or mechanical writing.

2. Application

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but **excluding immovable property**, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, Special Conditions of Contract are also laid down to cover specific vendors, services or works.
- 2.3 Where such Special Conditions of Contract are in conflict with these general conditions, the special conditions shall apply.

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3. General

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.

4. Standards

- 4.1 The goods/works and/or service supplied shall conform to the standards mentioned in the bidding documents and specifications.

5. Use of contract documents and information inspection

- 5.1 The vendor 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 vendor in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The vendor shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The vendor shall permit the purchaser to inspect the vendor's records relating to the performance of the vendor and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 5.5 The vendor shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

6. Patent Rights

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

7. Performance security

- 7.1 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the vendor's failure to complete his obligations under the contract.
- 7.2 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:

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

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

8. Inspections, tests and analyses

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

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

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

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

8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the vendor.

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

8.7 Any contract supplies may on or after delivery be inspected, tested or 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 vendor 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 vendor's cost and risk. Should the vendor fail to provide the substitute supplies forthwith, the purchaser may, without giving the vendor further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the vendor.

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

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9. Packing

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

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental Services

- 13.1 The vendor may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the vendor of any warranty obligations under this contract;
 - e) training of the purchaser's personnel, at the vendor's plant and/or
 - f) on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the vendor 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 vendor for similar services.

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14. Spare parts

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

15. Warranty

- 15.1 The vendor 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 vendor 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 vendor, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 15.3 The purchaser shall promptly notify the vendor in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the vendor shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the vendor, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the vendor's risk and expense and without prejudice to any other rights which the purchaser may have against the vendor under the contract.

16. Payment

- 16.1 The method and conditions of payment to be made to the vendor under this contract shall be specified in SCC.
- 16.2 The vendor shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

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

16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

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

18. Variation Orders

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

19. Assignment

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

20. Subcontractors

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

21. Delays in the vendor's performance

21.1 Delivery of the goods/works and/or performance of services shall be made by the vendor in accordance with the time schedule prescribed by the purchaser in the contract.

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

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

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

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- 21.5 Except as provided under GCC Clause 25, a delay by the vendor in the performance of its delivery obligations shall render the vendor 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.
- 21.6 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 quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the vendor'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 vendor.

22. Penalties

- 22.1 Subject to GCC Clause 25, if the vendor 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/works and/or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

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

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any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- i. the name and address of the vendor and / or person restricted by the purchaser;
 - ii. the date of commencement of the restriction
 - iii. the period of restriction; and
 - iv. the reasons for the restriction.

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

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

24. Antidumping and countervailing duties and rights

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

25. Force Majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the vendor 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 as a result of an event of Force Majeure.
- 25.2 If a force majeure situation arises, the Vendor shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Vendor 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.

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26. Termination on insolvency

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

27. Settlement of Disputes

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

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

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

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

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

- a. the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- b. the purchaser shall pay the vendor any monies due the vendor.

28. Limitation of Liability

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

(a) the vendor 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 vendor to pay penalties and/or damages to the purchaser; and

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

29. Governing language

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable law

30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise Specified in SCC.

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31. Notices

- 31.1 Every written acceptance of a bid shall be posted to the vendor concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties

- 32.1 A foreign vendor shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local vendor shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the purchaser must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

33. Transfer of contracts

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

34. Amendment of contracts

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

35. Prohibition of restrictive practices

- 35.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is/are or a contractor(s) was/were involved in collusive bidding (or bid rigging).
- 35.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 35.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

5. SPECIAL CONDITIONS OF CONTRACT

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 Newcastle Municipality 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 Newcastle Municipality during the validity period indicated and calculated from the closing time of the bid;

 - b) this bid and its acceptance shall be subject to Supply Chain Management Regulations, the Municipal Finance Management Act, No 56 of 2003, the Newcastle Municipality Supply Chain Management Policy and the General and Special 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 fulfill the contract when called upon to do so, the Municipality 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 the Municipality and myself. I/we will then pay to the Municipality any additional expenses incurred by the Municipality having either to accept any less favorable 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 favorable bid. The Municipality 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 fulfillment 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 Municipality 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):
.....
.....

- I/we furthermore confirm that I/we have satisfied myself/ourselves as to the correctness and validity of the 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.

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

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4. I/we agree that any action arising from this contract may in all respects be instituted against me and I/we hereby undertake to satisfy fully any sentence or judgment which may be pronounced against me as a result of such action.

5. Are you duly authorized to sign the bid?* YES NO

6. I/we confirm that I/we have declared all and any interest that I or any persons related to my business has with regard to this bid or any related bids by completion of the Declaration of Interest Section.

7. Has the Declaration of Interest been duly completed and included with the bid forms?
* YES NO

- Delete whichever is not applicable

8. CERTIFICATION OF CORRECTNESS OF INFORMATION SUPPLIED IN THIS DOCUMENT

9.1 I/we, THE UNDERSIGNED, WHO WARRANT THAT I AM DULY AUTHORIZED TO DO SO ON BEHALF OF THE BIDDER, CERTIFY THAT THE INFORMATION SUPPLIED IN TERMS OF THIS DOCUMENT IS CORRECT AND TRUE, THAT THE SIGNATORY TO THIS DOCUMENT IS DULY AUTHORIZED AND ACKNOWLEDGE THAT:

9.2 The bidder will furnish documentary proof regarding any bidding issue to the satisfaction of the Municipality, if requested to do so.

9.3 If the information supplied is found to be incorrect and/or false then the Municipality, in addition to any remedies it may have, may:-

- a) Recover from the contractor all costs, losses or damages incurred or sustained by the Municipality as a result of the award of the contract, and/or
- b) Cancel the contract and claim any damages which the Municipality may suffer by having to make less favorable arrangements after such cancellation.

BIDDER`S NAME : _____

BIDDER'S REPRESENTATIVE : _____

SIGNATURE : _____

DATE : _____

WITNESSES

1. **Name** : _____ **Signature** : _____

Date : _____

2. **Name** : _____ **Signature** : _____

Date : _____

NEWCASTLE MUNICIPALITY

CONTINUATION OF SPECIAL CONDITIONS OF CONTRACT

RULES IN RESPECT OF BID DOCUMENTS

'Council' shall mean the Newcastle Municipality

'Committee' shall mean that Committee of the Council whose responsibility it is to consider tenders and advise Council on acceptance or otherwise.

'Municipal Manager' shall mean the Municipal Manager of the Local Council of Newcastle or such person appointed by Council to act in that capacity.

'Head of Department' shall mean the head of the Council department concerned with the particular tender or such person appointed by Council to act in that capacity.

All bidders are hereby advised that in the event that the bid is accepted by the Council all conditions and stipulations set out this bid and in all forms, schedule and/or annexure hereto, will be the contract between the Bidder and the Municipality.

1. Bidders must acquaint themselves fully on the Rules, General Conditions and Special Conditions of bid documents.
2. Failure on the part of the Bidder to sign this bid form and thus to acknowledge and accept the conditions in writing or to complete the attached forms, questionnaires and specifications and proposals in all respects, may in the sole discretion of the Municipality invalidate the bid.
3. Failure to sign the **MBD 1 Form** will invalidate the bid, provided that it is the only acceptable bid received, Council may recommend it be considered as an offer after signature by the bidder.

Bidders shall ensure that they have been provided with all the documents and drawings. Bidders must advise the Department concerned immediately if there is any duplication or obscure typing or if there is any doubt as to the meaning of any words, clause, sentence, paragraph, drawing or any other particulars and have the matter rectified, otherwise it will be assumed correct and no liabilities whatsoever will be admitted in respect of errors in the bid due to the foregoing.

4. Bidders shall quote delivery periods for the products specified and shall supply all the information called for on the attached data schedules.
5. GUARANTEE
Where applicable, Bidders shall provide at the time of bidding, details of the guarantee given with the products offered together with the period for which the guarantee is effective from date of delivery.
6. **No bid will be accepted unless made out on the forms provided.**
7. A signed copy of these conditions and specifications must accompany the bid.
8. Bids received after 12:00 on the closing date of this bid will not be accepted.

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9. After the bids have been opened, a bid may not be withdrawn by the person or firm submitting it except with the concurrence of the Council.
10. Council reserves the right to accept all or a portion only of any tender.
11. Should there be any difference between the prices or particulars contained in the official Form of bid and those contained in the covering letter from the bidder the prices and particulars contained in the official form of bid, in all circumstances, prevail.
12. If any of the conditions on this bid form are in conflict with any special conditions, stipulations or provisions incorporated in the bid, such special conditions, stipulations or provisions shall apply.
13. Bids must be submitted in sealed envelopes.
14. The bid number and title of the bid must appear on the front of the sealed envelope in which the bid is submitted.
15. The Municipality shall not be obliged to accept the lowest or any bid. It is important that only Bidders with the necessary experience, qualifications and technical ability to carry out the requirements of this bid submit bids in regard hereto. The Municipality will consider all prices and submissions made by the bidders. Should the Municipality require that a specific price and/or submission be reconsidered, it reserves the right to do so, subject to the Municipality requesting all Bidders to submit such a request or revision of the Bid Proposal.
16. The bidder undertakes that it will make itself and its members, officials and employees and agents aware of the appropriate legislation, regulations and by-laws of the Municipality that might have implications on the Bidder's activities in terms hereof.
17. Neither the Municipality nor any official of the Municipality will be held responsible for loss of a potential opportunity to bid due to the failure of the Bidder complying with any of the requirements of this bid.
18. The covering letter or other matter submitted with the official bid document may explain, amplify or illustrate, but not replace any part of the official bid document or the information furnished therein.
19. All data/information supplied by the Municipality will be received by the Bidder at his/her risk. It will be the responsibility of the Bidder to check and verify the accuracy of the data/information supplied by the Municipality. The Municipality will not be held responsible for any inaccurate or incomplete data/information.
20. **Two envelope system will not be applicable on this project.**

21. PAYMENT OF MUNICIPAL SERVICES

Proof must be produced, together with the bidding documents that the entity is not indebted to the Municipality or Municipal area in which they are staying, for a period of more than 30 days for services rendered / rate payable. Bidders residing on farms with no municipal services should submit a letter from their Induna / owner stating the above.

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22. INVITATION TO BID

Bids shall be invited by the Municipal Manager in terms of the Supply Chain Management Policy of the Newcastle Municipality.

23. ACCEPTANCE OF BIDS

After the opening of bids, the official designated by the Municipal Manager shall forward such tender to the Head of Department for whom such tenders have been invited. The Head of Department concerned will then consider the tenders and submit them to the appropriate Committee with the written comments of the Chief Financial Officer and with details of any irregularity or defect in connection with the bid documents or matters relating to the calling of bids together with the recommendation for consideration by the Committee.

24. BID DOCUMENTS

- a. Where applicable all bid documents and drawings are to be returned at the time of bidding except that where an additional copy of the Schedule of Quantities is provided, a copy may be retained by the tender for his records.
The original Schedule of Quantities must be forwarded to the Newcastle Municipality
- b. After awarding the bid, no documents will be returned to any unsuccessful bidder, but will be retained by the Municipal Manager.
- c. All bid documents must be completed in black ink and should any alteration, omission, erasure or addition be made, it will not be recognised unless authenticated with the initials of the bidder and those of the witnesses of his signature. Bidders may, however, qualify their bid by a letter accompanying the bid documents.
 - i. Any irregularity, incompleteness or obscurity in a bid renders it liable for rejection.
 - ii. Failure to sign the bid document will invalidate the bid , provided that if it is the only acceptable bid received, the Head of Department may recommend that it be considered as an offer after signature by the bidder.
 - iii. Bidders shall check that they have been provided with all the documents and drawings. Bidders must advise the Department concerned immediately if there is any duplication or obscure typing or if there is any doubt as to the meaning of any words, clause, sentence, paragraph, drawing or any other particulars and have the matter rectified, otherwise it will be taken for granted that there are no doubts or errors, and no liabilities whatsoever will be admitted in respect of errors in the tender due to the foregoing.

25. DEPOSITS

- a. A sum as stated in the invitation to bid being a deposit for the supply of the bid documents. The bidder must obtain a receipt for the deposit amount from the office of the Chief Financial Officer prior to receiving the bid documents.
- b. A deposit in the sum stated in the bid documents is non-refundable.
- c. The Head of the Department concerned, in the event of receiving any deposits, shall forthwith hand to the Chief Financial Officer any deposits or security received.

26. LATE BIDS

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- a. Any bid received after the closing date and time advertised for the receipt of bids shall not be considered, provided that a late bid may be admitted by the Council when:
 - I. in the case of a bid submitted through the post, there is proof that the bid was posted in sufficient time to reach the Municipal Manager before the closing date and time advertised for the receipt of bid and the bidder has taken reasonable steps against ordinary delays and was in no way to blame for the late receipt of his bid;
 - II. in the case of a bid delivered by hand, there is proof that the bidder had taken reasonable steps against ordinary delays and was in no way to blame for the late delivery.
- b. The Council may accept a bid which is received late and has for that reason been disallowed in terms of the provisions of this rule, provided it was the only acceptable bid received.

27. COMMUNICATION PROHIBITED

- a. Except where clarification of a bid is necessary or whenever it is necessary to approach a bidder for an extension of the binding period of a bid, no communication, without written authority of the Council, shall take place between the bidder and any member or officer of Council on a question affecting any matter which is the subject of a bid between the closing date and time of a bid and the acceptance by Council of the bid. When clarification is required or an extension of time, this may be requested by a Council Officer on the authority of his Head of Department.
- b. In no case shall bids be returned or referred to bidders for amendment or completion in any respect without the written authority of the Council.

28. COUNCIL NOT OBLIGED TO ACCEPT ANY BID

Council does not bind itself to accept the lowest or any bid and where the bid documents allow for such cases, reserves the right to accept a portion only of any bid.

Council will not compensate the bidder in the preparation and submission of his bid. Council reserves the right to purchase goods outside this contract if and when the need arise

29. DEVIATION FROM CONTRACT

Council reserves the right to deviate or procure goods or services outside of this contract if and when the need arises.

30. ALTERNATIVES

The bidder may submit alternatives which, in his/her opinion, are to the Council's advantage economically and technically.

31. CONTRACT DURATION

The contract duration as per special conditions of sale.

32. POST AWARD PRODUCT COMPLIANCE PROCEDURES

The following post award product compliance procedure will apply:

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- i. In the case the equipment has been discontinued / replaced with a new model, the service provider(s) will be required to submit letters from the Manufacturer / Supplier stating the changes and the approval be obtained from the Accounting Officer prior to the executions of such changes.
- ii. Furthermore, service provider(s) are expected to disclose information on the following:
 - Financial Implications & Price Variances
 - Any potential risk
- iii. The new model should at least meet the minimum specification of the original model.
- iv. The delivery and installation of new equipment cannot be affected without the approval from the head of the department (Strategic Executive Director).

33. DEMONSTRATIONS AND INSPECTIONS

- i. All bidders must be prepared to demonstrate, where required, free of charge and obligation, at the Newcastle Municipality or any other area within the boundary of the Newcastle Municipality, any services offered in this bid.
- ii. Where officials are required to attend demonstrations or inspections outside the boundary of the Newcastle Area, all costs to attend such demonstration shall be borne by the bidder.

34. PRICE ADJUSTMENT

In the event of a total price increase exceeding the going inflation rate during the bid period, Council reserves the right to withdraw from the bid and call for fresh bids.
(Please see MBD 3.2 for price adjustment formula).

Prices for labour and materials submitted in the bid for the purpose of allowing for statutory increase must be ruling prices as at the date of bidding.

Should the Bidder wish to place the risk of rise or fall in certain items or factors of costs to the account of the Municipality, the Bidder shall state specifically under separate cover in respect of which items or factors he wishes to avoid the risk of rise or fall on what rate he has calculated the item or factor in his price offered.

It should be emphasized that price adjustments based on the Rate of Exchange (ROE) will be allowed only on the imported content of the commodity and it should only meet the provider's additional costs on the imported content. Price adjustments due to the fluctuation in the Rate of Exchange should indicate the dates and period of affect issued by the Reserve Bank of S.A. at 12:00 of the specified date.

Unless any item or factor is reserved in terms of this clause, the bid shall be considered to be a firm delivery price. (See MBD 3.2)

35. Where applicable, all redundant or unusable products, materials or equipment which are removed from site remains the property of the Municipality and shall be returned to the Municipality. The Service provider shall obtain a written acceptance of the goods unless the bid states otherwise.

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NB: THE FOLLOWING CLAUSES HAVE BEEN REPEATED AS THESE WILL LEAD TO THE REJECTION OF THE BID

- All bid documents must be completed in black ink and should any alteration, omission, erasure or addition be made, it will not be recognised, unless authenticated with the initials of the bidder and those of the witnesses of his signature.
- Failure to sign the bid document will invalidate (Invitation to Bid) the bid, provided that it is the only acceptable bid received, Council may recommend that it be considered as an offer after signature by the bidder.
- NO correction fluid/tape may be used.
- Bidders shall ensure that they have been provided with all the documents and drawings. Bidders must advise the Department concerned immediately if there is any duplication or obscure typing or if there is any doubt as to the meaning of any words, clause, sentence, paragraph, drawing or any other particulars and have the matter rectified, otherwise it will be assumed correct and no liabilities whatsoever will be admitted in respect of errors in the bid due to the foregoing.
- Bids received after the official closing date and time of this bid, will not be accepted.
- Proof must be produced, together with the bidding document that the entity is not indebted to the Municipality or municipal area in which they are staying, for a period of more than 30 days for services rendered / rates payable. Bidders residing on farms with no municipal services should submit a letter from their Induna/owner stating the above.
- **TAX COMPLIANCE STATUS**
A valid Tax Compliance Status Pin or CSD Master Registration Number should be supplied on MBD 1 for verification.

NAME OF BIDDER

ADDRESS

TELEPHONE NUMBER

NAME OF THE OFFICIAL **POSITION**.....

SIGNATURE **DATE**.....

WITNESSES

NAME **NAME**

SIGNATURE **SIGNATURE**

ID NUMBER **ID NUMBER**

6. AUTHORITY OF SIGNATORY

Indicate the status of the Bidder by ticking the appropriate box hereunder. The Bidder must complete the certificate set out below for the relevant category.

| A COMPANY | B PARTNERSHIP | C JOINT VENTURE | D SOLE PROPRIETOR | E CLOSE CORPORATION |
|--------------|------------------|--------------------|----------------------|------------------------|
| | | | | |

A. Certificate for Company

I,, chairperson of the board of, hereby confirm that by resolution of the board (copy attached) taken on 20..... , Mr/Ms.....acting in the capacity of, was authorised to sign all documents in connection with this bid for Bid no **Bid no A019-2020/21** and any contract resulting from it on behalf of the company.

As witnesses:

1. Chairman:

2. Date:

B. Certificate for Partnership

We, the undersigned, being the key partners in the business trading as, hereby authorise Mr/Ms, acting in the capacity of, to sign all documents in connection with this bid for **Bid no A019-2020/21** and any contract resulting from it on our behalf.

| Name | Address | Signature | Date |
|------|---------|-----------|------|
| | | | |
| | | | |
| | | | |

Note: This certificate is to be completed and signed by all key partners upon whom rests the direction of the affairs of the Partnership as a whole.

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C. Certificate for Joint Venture

We, the undersigned, are submitting this tender offer in Joint Venture and hereby authorise Mr/Ms , authorised signatory of the company , acting in the capacity of lead partner, to sign all documents in connection with this bid for **Bid no A019-2020/21** and any contract resulting from it on our behalf. This authorisation is evidenced by the attached power of attorney signed by legally authorised signatories of all the partners to the Joint Venture.

| Name of Firm | Address | Authorising Name and Capacity | Authorising Signature |
|---------------|---------|-------------------------------|-----------------------|
| Lead Partner: | | | |
| | | | |
| | | | |

NOTE: A copy of the Joint Venture Agreement indicating clearly the percentage contribution of each partner to the Joint Venture, is to be submitted with the bid. A board resolution, authorising each signatory who signed above to do so, is to be submitted with the bid.

D. Certificate for Sole Proprietor

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

As witnesses:

1. Sole Owner:
2. Date:

E. Certificate for Close Corporation

We, the undersigned, being the key members in the business trading as , hereby authorise Mr/Ms acting in the capacity of , to sign all to sign all documents in connection with this bid for **Bid no A019-2020/21** and any contract resulting from it on our behalf.

| Name | Address | Signature | Date |
|------|---------|-----------|------|
| | | | |
| | | | |
| | | | |

Note: This certificate is to be completed and signed by all key partners upon whom rests the direction of the affairs of the Partnership as a whole.

7. RECORD OF ADDENDA

We confirm that the following communications received from the employer before the submission of this tender offer, amending the tender documents, have been taken into account in this tender offer.

| | Date | Title or Details |
|----|-------------|-------------------------|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |

Attach additional pages if more space is required.

Failure to acknowledge any addendum released by Newcastle Municipality may result in your tender submission being declared non-responsive.

| | | | |
|-----------------------|--|---------------------|--|
| Name of Bidder | | | |
| Signature | | Name (print) | |
| Capacity | | Date | |

8. DECLARATION FOR MUNICIPAL ACCOUNTS

MUST BE COMPLETED FOR THIS BID

Declaration in terms of paragraph 38(1)(d)(i) of the Supply Chain Management Regulation, irrespective of the contract value of the bid:

NB: Please note that this declaration must be completed by ALL bidders

- i. I, the undersigned hereby declare that the signatory to this tender document; is duly authorised and further declare:
- ii. I acknowledges that according to SCM Regulation 38(1)(d)(i), the Municipality may reject the tender of the tenderer if any municipal rates and taxes or municipal service charges owed by the Tenderer or any of its directors/members/partners to Newcastle Municipality, or to any other municipality or municipal entity, are in arrears for more than 3 (three) months.
- iii. I acknowledge that should it be found that any municipal rates and taxes or municipal charges as set out in (ii) above are in arrears for more than three (3) months, the bid will be rejected and the Newcastle Municipality may take such remedial action as is required, including the rejection of the bid and/or termination of the contract; and
- iv. The following account/s of the bidding entity has reference:

| Physical Business Address(es) of the Tenderer | Municipality | Municipal Account Number |
|--|---------------------|---------------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

NB: If insufficient space above, please submit on a separate page

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PLEASE NOTE further that if no municipal rates and taxes or municipal charges are payable by the bidding entity, indicate the reason/s for that in the space below by means of a tick next in the relevant block,

| Reason | Tick | Portfolio of evidence |
|---|-------------|--|
| Bidding entities who rent premises from a landlord | | Signed copy of the lease agreement together with a letter from the landlord stating that no levies are in arrears. |
| Bidding entities who operate from a property owned by a director / member / partner | | Municipal account statement/s of a director / member / partner |
| Bidding entities who operate from farms / informal settlements | | A letter from their Induna/owner. |
| Bidding entities who operate from somebody else's property | | Sworn affidavit stating the details and relationship with the property owner. |

Attach latest municipal account statement behind this page. The portfolio of evidence must not be older than three months from the close of this tender.

SIGNED AT.....THIS.....DAY OF..... 20.....

Name of Duly Authorised Signatory: (Please print).....

Authorised Signature:

As witness: 1.

2.

| | | | |
|-----------------------|--|---------------------|--|
| Name of Bidder | | | |
| Signature | | Name (print) | |
| Capacity | | Date | |

9. CENTRAL SUPPLIER DATABASE REGISTRATION

No awards will be made to a tenderer who is not registered on the Central Supplier Database (CSD).

The establishment of a Central Supplier Database (CSD) will result in one single database to serve as the source of all supplier information for all spheres of government. The purpose of centralising government's supplier database is to reduce duplication of effort and cost for both supplier and government while enabling electronic procurement processes.

Registration on the Central Supplier Database must be done online via the website:

<https://secure.csd.gov.za/>

| | | | |
|-----------------------|--|---------------------|--|
| Name of Bidder | | | |
| Signature | | Name (print) | |
| Capacity | | Date | |

10. MBD 4: DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudging 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/ Representative | |
| 3.2 | Identity Number | |
| 3.3 | Position occupied in the Company (director, trustee, shareholder²) | |
| 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. | | |
| | | | |
| 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. | | |
| | | | |

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.

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| | | | |
|--------|--|-----|----|
| | | | |
| 3.10 | Do you, have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? | Yes | No |
| 3.10.1 | If yes, furnish particulars. | | |
| | | | |
| 3.11 | Are you, aware of any relationship (family, friend, other) between a bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? | Yes | No |
| 3.11.1 | If yes, furnish particulars. | | |
| | | | |
| | | | |
| 3.12 | Are any of the company's directors, managers, principal shareholders or stakeholders in service of the state? | Yes | No |
| 3.12.1 | If yes, furnish particulars. | | |
| | | | |
| 3.13 | Are any spouse, child or parent of the company's directors, managers, principal shareholders or stakeholders in service of the state? | Yes | No |
| 3.13.1 | If yes, furnish particulars. | | |
| | | | |
| 3.14 | Do you or any of the directors, trustees, managers, principal shareholders or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. | Yes | No |
| 3.14.1 | If yes, furnish particulars. | | |
| | | | |

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

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| Full Names | Identity Number | State Employee Number |
|------------|-----------------|-----------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

| | | | |
|-----------------------|--|---------------------|--|
| Name of Bidder | | | |
| Signature | | Name (print) | |
| Capacity | | Date | |

11. MBD 8: 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 to combat the abuse of the supply chain management system.
3. **The bid of any bidder may be rejected if the bidder, or any of its directors have:**
 - a) Abused the Municipality'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) Wilfully neglected, reneged or failed to comply with any government, municipal or public sector contract during the past five years; or
 - d) Been listed in the Register for Bid Defaulters in terms of section 29 of the Prevention and Combating of Corruption 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 | <p>Is the bidder or any of its directors listed on the National Treasury's database as a company or person prohibited from doing business with the public sector?</p> <p>(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 audit alteram partem rule was applied).</p> <p>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.</p> | <p>Yes</p> <input type="checkbox"/> | <p>No</p> <input type="checkbox"/> |
| 4.1.1 | If so, furnish particulars: | | |
| 4.2 | <p>Is the bidder or any of its directors listed on the Register for Bid Defaulters in terms of section 29 of the Prevention and Combating of Corruption Activities Act (No 12 of 2004)?</p> <p>(The Register for Bid 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.</p> | <p>Yes</p> <input type="checkbox"/> | <p>No</p> <input type="checkbox"/> |
| 4.2.1 | If so, furnish particulars: | | |

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| ITEM | QUESTION | YES | NO |
|-------|--|---------------------------------|--------------------------------|
| 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: | | |
| 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 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"/> |
| 4.5.1 | If so, furnish particulars: | | |

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME) _____

CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM TO BE 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.

| | | | |
|-----------------------|--|---------------------|--|
| Name of Bidder | | | |
| Signature | | Name (print) | |
| Capacity | | Date | |

12. MBD 9: 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:
 - a. has been requested to submit a bid in response to this bid invitation;
 - b. could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - c. provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or 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;
 - b) geographical area where product or service will be rendered (market allocation)
 - c) methods, factors or formulas used to calculate prices;
 - d) the intention or decision to submit or not to submit, a bid;
 - e) the submission of a bid which does not meet the specifications and conditions of the bid;
 - or
 - f) bidding with the intention not to win the bid.

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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.
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.

| | | | |
|-----------------------|--|---------------------|--|
| Name of Bidder | | | |
| Signature | | Name (print) | |
| Capacity | | Date | |

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.

13. MBD 7.3: CONTRACT FORM - SALE OF GOODS/WORKS

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SUCCESSFUL BIDDER (PART 1) AND THE SELLER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SUCCESSFUL BIDDER AND THE SELLER 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 purchase all or any of the goods and/or works described in the attached bidding documents from (name of institution) **Newcastle Municipality** in accordance with the requirements stipulated in (bid number) **A019 – 2020/21** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the seller 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;
 - Tax clearance certificate;
 - Pricing schedule(s);
 - Declaration of interest;
 - Declaration of Bidder's past SCM practices;
 - 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) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) cover all my obligations and I accept that any mistakes regarding price(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 undertake to make payment for the goods/works as specified in the bidding documents.
6. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
7. I confirm that I am duly authorised to sign this contract.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

| | |
|------------------|-------|
| WITNESSES | |
| 1 | |
| 2. | |
| DATE: | |

MBD 7.3 CONTRACT FORM - SALE OF GOODS/WORKS

PART 2 (TO BE FILLED IN BY THE SELLER)

1. I..... in my capacity as..... accept your bid under reference number **A019 – 2020/21** dated.....for the purchase of goods/works indicated hereunder and/or further specified in the annexure(s).
2. I undertake to make the goods/works available in accordance with the terms and conditions of the contract.

| ITEM NO. | DESCRIPTION | PRICE (ALL APPLICABLE TAXES INCLUDED) | | |
|----------|-------------|---------------------------------------|--|--|
| | | | | |

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

SIGNED ATON.....

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1.

2.

DATE



PART B– SPECIFICATIONS/TERMS OF REFERENCE

SALE OF COMMERCIAL VACANT SITES ZONED TRANSITIONAL ZONE 2

14. SPECIFICATIONS/TERMS OF REFERENCE

(RE-ADVERTISEMENT): INVITATION FOR DEVELOPMENT PROPOSALS FOR SALE OF COMMERCIAL VACANT SITES ZONED TRANSITIONAL ZONE 2 IN NEWCASTLE

DEVELOPMENT BRIEF

1.0 INTRODUCTION

Development proposals are hereby invited for the comprehensive development of commercial and light industrial vacant sites that have been created along Hospital, Hastie and Hardwick Street. The installation of services for properties in Hospital and Hastie Street are currently being undertaken by Newcastle Municipality. The road to facilitate access into the subject properties will be developed by the municipality. These properties are zoned **Office**. The development proposals requested are not limited to one site only. However, each property will be alienated in terms of the applicable sections of the Municipal Finance Management Act No. 56 of 2003 to the disposal of land owned by the Municipality.

2.0 BACKGROUND

The subject properties are vacant sites and in the process of the installation of services by Newcastle Municipality currently zoned for Transitional Zone 2. The Newcastle Town Planning Scheme and permitted uses allow for the development of office buildings, professional offices and residential buildings. Surrounding land uses include residential properties, a Private Hospital as well as offices for various specialized activities. These site are also within the proximity of Provincial Public Hospitals and, will contribute to support these medical facilities that are already existing in the area. Furthermore, it will support and encourage the concept of creating a quality urban settlement in which people can live, work and play. The envisaged development is expected to contribute to the aesthetic improvement of the area, as well as the reduction of costs of travelling to acquire services and residential accommodation within the area.

3.0 MUNICIPAL DEVELOPMENT OBJECTIVES RELEVANT TO THE ENVISAGED DEVELOPMENTS

The envisaged neighborhood of these sites, should contribute to the achievement of the following objectives.

- Promote the integration of social, economic, institutional and physical aspects of land development;
- Promote the availability and employment opportunities in close proximity to or integrated with each other;
- Establishing mixed and diverse land uses within the surrounding area;

BID NO.: A019-2020/21 – INVITATION FOR DEVELOPMENT PROPOSALS FOR SALE OF COMMERCIAL VACANT SITES ZONED TRANSITIONAL ZONE 2 IN NEWCASTLE

- Promote accessibility of communities to goods and services within the nodal development point;
- Improve the aesthetics of the surrounding area;
- Ensure clustering of various activities at strategic locations which are in line with the principles of sustainable human settlements.

4.1 Locality

The subject properties are located to the Central East of Newcastle, situated at Hospital Street. A locality plan depicting the proposed properties is attached.

4.2 Accessibility

The properties are easily accessible from the Ellen Street which links the Newcastle CBD and N11 national trade route.

4.3 Land Ownership

In terms of ownership the subject properties are owned by Newcastle Municipality.

4.4 Development Controls

The listed properties are located within Newcastle's Medical Precinct; an area that is recognized for the many well established and future proposed medical land uses in the area.

Therefore developers are encouraged but not limited to base their proposals on developments within the medical fraternity together with its ancillary land uses.

4.4.1 The primary land uses afforded to developers are the following:

- Office Building
- Professional office
- Residential building

4.4.2 Secondary land uses that may be considered are:

- Commercial Workshop
- Place of education
- Hotel
- Motor trade Shop
- Parking Garage
- Place of physical instruction
- Place of assembly
- Place of Instruction
- Restaurant

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- Shop
- Veterinary Purposes

4.4.3 Building controls

| | |
|-----------------|--------|
| F. A. R. | : 2.00 |
| Height | : n/a |
| Coverage | : 70% |
| Building line | : 6m |
| Side/rear space | : 2m |

Parking requirements : 1 car space for every 45 square metres or part thereof of gross shop/office area, plus at least one loading space, where and if required by the Council.

4.4.4 Design typology

The area is identified for many different land uses such as residential, office and medical uses; within these uses several of the newer developments have been designed with the modern and/or contemporary building typology.

Therefore, bidder are encouraged to base their proposals on a design typology (modern and/or contemporary) that will complement the existing and surrounding land uses.

Bidders are also encouraged to reference materials that will be utilized as the modern and/or contemporary design standards have; these materials can range from but are not limited to cladding, tiles, stainless steel, glass and aluminum etc.

Developers are also encouraged to list and/or mention the color scheme and theme of the development/proposals.

A site development plan and an artist impression depicting the external appearance of the development will supplement the developer's written proposal and will represent what will actually be developed on the property. A detailed site development plan must be submitted to the Municipality prior the registration of the property.





4.4.5 Urban greening

Developers are **obligated** to illustrate urban greening features on their concept design and the written proposals, these elements must however may include indigenous plants, shrubs and grasses, ponds or water features with indigenous plans and fish.

Architectural features of green buildings can also be applied to designs or proposals. Elements such as:

- Water efficiency;
- Energy efficiency;
- Sustainability;
- Waste reduction or recycling;

5.0 AVAILABILITY OF SERVICES

5.1 Water, Sewer, Roads, and Storm Water.

Newcastle Municipality is currently in the process of installing infrastructural services within the area and for the subject properties.

5.2 Community Services.

The normal refuse removal and cemetery services will be provided by Council to the developer.

5.3 Electricity

The reticulation costs payable do not include the individual service connection costs or the consumer's deposit.

6.0 PROPOSED DEVELOPMENT REQUIREMENTS

6.1 Detail Design Concept Plan

The detailed design concept plan / development proposal to be submitted **should** include the following:

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- a) Architectural Design
- b) Aesthetic View
- c) Anticipated business
- d) Timeframe and action plan

- A detailed site development plan, excluding elevations (this should be part of the submission).
- Provision may be made for parking facilities;
- Provision may be made for security to reduce criminal activities especially in the evening;
- Provision may be made for public spacing and greening.

6.2 Conformity of Development Proposals

The envisaged development proposals have to conform to the conditions as set out by the Department of Development Planning and Human Settlements, Supply Chain Policy and Council Policy.

7.0 REQUIREMENTS TO BE COMPLIED WITH BY THE PROSPECTIVE DEVELOPERS

The interested parties or developers are requested to submit their development proposals indicating the time frames and the budget for the proposed development. The interested parties and / or developers must also provide the following information:

- Background and experience of the company / individual;
- Capacity to undertake the development within the stipulated time frame;
- Work schedule and estimated cost;
- Special experience / expertise relevant.

8.0 FORMAT FOR SUBMITTING DEVELOPMENT PROPOSALS

- Comprehensive report with detailed concept plan design clearly demonstrating all phases of development in a hard copy or in digital format together with tender documents.
- A prospective developer might be requested to make a presentation to the Municipal Adjudication Committees and other relevant stakeholders on the proposed development.

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9. CONDITIONS THAT WILL BE APPLICABLE TO THE SUCCESSFUL DEVELOPER

- Prior to the submission of the final conceptual plans approval, the developer shall submit, for consideration to Municipality a set of preliminary drawings showing the layout plan of the site, the designs and elevations of the proposed buildings and a detailed report on the uses to be provided and any further information that Council may require;

- Development shall take place strictly in accordance with the development plan as approved by the Committee and any addition to or amendments or changes of such plan shall not take place without the written permission of Council first being obtained. The omission of any use shown on the approved development plan during the actual development of the property shall not be permitted without the approval of Council first being obtained.

- The successful bidder will be expected to develop the property within two years. Registerable Clause which stipulate that, the purchaser shall develop the property within a 2 year period after registration will be included in the Deed of Sale Contract.

10. BRIEFING MEETING

All bidders must attend a Compulsory Briefing Meeting at the municipal offices of the Strategic Executive Director: Development Planning and Human Settlements, 37 Murchison Street.

11. CONTACT PERSONS

Mr. B. Mseleku : Manager: Real Estates at 034 328 7916

15. EVALUATION PROCESS

The evaluation of this bid will be conducted in the following four (4) stages:-

- Stage 1: Administrative compliance
- Stage 2: Functionality criteria
- Stage 3: Financial Offers
- Stage 4: Objective criteria

Stage 1: Administrative compliance

The Municipality has prescribed minimum administrative requirements that must be met by the bidders, in order for the former to accept the bid for evaluation. In this regard administrative compliance will be carried out to determine whether the bidder's bid comply in this regard.

Stage 2: Functionality criteria

- Bids will be evaluated in terms of the set criteria on the functionality criteria.
- All bidders that advance to stage 3 will be evaluated through determining the acceptable financial offer that is compliant with all specified bid requirements.
- Functionality criterions will count out of 100 and bidders must achieve a minimum of 60% out of 100 to proceed to the next stage. Bidders achieving less 60% will not be evaluated further.
- Prospective bidders to provide the information (required for functionality test), marked for easy reference.

Stage 3: Financial Offers

- Evaluation of financial proposals will be as follows:

$$P_s = \{1 + (P_t - P_m)/P_m\} \times 100$$

Where

P_s = Points scored for financial offer of bid under consideration

P_t = Financial offer of bid under consideration

P_m = Financial offer of highest acceptable bid

Stage 4: Objective criteria

In terms of Preferential Procurement Regulation 11 and section 2(1) (f) of the Preferential Procurement Policy Framework Act, the following are the objective criteria:

- The risk of fruitless and wasteful expenditure to Newcastle Local Municipality;
- The risk of Irregular expenditure to Newcastle Local Municipality;
- The risk of poor project and contract management on existing project with Newcastle Local Municipality;
- The risk of an abnormally low bid; and
- The risk of a material irregularity.

The Municipality reserves a right to apply objective evaluation criteria should the recommended bidder pose any of the above-mentioned risks after assessment, Newcastle Local Municipality after ascertaining sufficient information will not make an award to the bidder exposing the Municipality to one or more of the above mentioned risks.

16. FUNCTIONALITY TEST

1. Functionality (Total 100 points)

Points for functionality will be determined in relation to the bidder's ability to meet the terms of reference as set out in this bid document and focusing on:

- a) Architectural Design
- b) Aesthetic View
- c) Anticipated business
- d) Timeframe and action plan
- e) Experience

| Description | Points for submission | Points Allocation | Points scored |
|---|---|--------------------------|----------------------|
| Situational and needs analysis | - Detailed relevant analysis including statistics (Market analysis) = 15 - Feasibility Study (Viability and compatibility of development) = 10 - Lack of understanding = 0 | 15 | |
| Experience of developers for similar development (contracted developer or main developer) | - 2 or more similar development = 20 - 1 development = 10 - None = 0 | 20 | |
| Employment opportunities | Job opportunities during development = 5 Full time job opportunities = 5 Temporal workers = 5 | 15 | |
| Development proposal and architectural design with facilities and equipment | -Business proposal with specialized facilities and equipment = 30 -Business proposal with facilities and equipment but not related to specialization = 15 -Only business proposal = 5 -None-submission = 0 | 30 | |
| Project Management Plan, Financially linked Gantt Chart (Timeframe & Action Plan) | - Provided and linked = 20 - provided but not linked = 10 - Not provided = 0 | 20 | |
| Total | | 100 | |

Only bidders qualifying in terms of functionality will be considered for evaluation on financial proposals.

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2. Bid Rating

For Bidders to be considered for the next phase of evaluation, a **minimum of 60%** under functionality must be achieved thereafter the Municipality will refer the bids for further evaluation as per its Supply Chain Management process.

3. Tendering Procedures

Completed bid documents must be forwarded to the Newcastle Municipality: Rates Hall and be deposited in the bid box provided at the Main Building: Municipal Civic Centre, 37 Murchison Street, Newcastle clearly endorsed: **"Bid no. A019-2020/21 – (RE- ADVERTISEMENT) INVITATION FOR DEVELOPMENT PROPOSALS FOR SALE OF COMMERCIAL VACANT SITES ZONED TRANSITIONAL ZONE 2 IN NEWCASTLE"** bearing the name and address of the bidder at the back of the envelope by not later than 12h00 on **Friday, 00 March 2023** where bids will be opened in public.

4. Formal Presentations

Please note that the presentations may be requested by the Newcastle Municipality at their discretion.

17. ELIGIBILITY CRITERIA

Bid offers will only be accepted if:

1. The proposal must be properly received in a sealed envelope clearly indicating the description of the service/goods/works to be supplied and the Bid number for which the Bid is submitted;
2. A valid Tax Compliance Status Pin or CSD Master Registration Number for verification;
3. The **MBD 1 Form** is completed and signed;
4. Costing or price proposal.
5. The bidder or any of its directors/shareholders is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 person prohibited from doing business with the public sector;
6. The bidder has not:
 - a. abused the Employer's Supply Chain Management System; or
 - b. failed to perform on any previous contract and has been given a written notice to this effect;
7. The bidder has completed the Declaration of Interest and there are no conflicts of interest which may impact on the tenderer's ability to perform the contract in the best interests of the employer or potentially compromise the tender process and persons in the employ of the state are permitted to submit tenders or participate in the contract;
8. The bidder is registered on the **Central Supplier Database**;
9. The bidder is not in arrears for more than 3 months with municipal rates and taxes and municipal service charges. The latest municipal account is to be attached. The statement must not be older than three months from the closing date of this tender.
10. A Joint-Venture Agreement or Consortium, where applicable, is submitted with bid;
11. The bidder scores a minimum of **60%** in respect of evaluation Functionality criteria;
12. All returnable schedules are to be completed and all relevant certificates attached where indicated.

18. SPECIAL CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

The words and expressions set out below shall for the purpose of this agreement have the meanings assigned opposite them unless the context clearly indicates a contrary intention.

- 1.1 SELLER THE NEWCASTLE MUNICIPALITY Herein represented by Z.W Mcineka in his capacity as **Municipal Manger** to the said Council on behalf of Newcastle Municipality, having been duly authorised.
- 1.2 SELLER'S PHYSICAL ADDRESS The Municipal Manager
Municipal Tower Block
37 Murchison Street
Newcastle
- 1.3 SELLER'S POSTAL ADDRESS Private Bag X6621
Newcastle
2940
- 1.4 PURCHASER THE SUCCESSFUL BIDDER
- 1.5 PURCHASER'S PHYSICAL ADDRESS THE BIDDER'S ADDRESS
- 1.6 PURCHASER'S POSTAL ADDRESS THE BIDDER'S ADDRESS
- 1.7 PARTY/PARTIES the SELLER and/or the PURCHASER individually or collectively
- 1.8 PROPERTY THE PROPERTY
- 1.9 TRANSFER/TRANSFERRED in so far as it relates to the PROPERTY means registered in the name of the PURCHASER in the Deeds Registry
- 1.10 DATE OF TRANSFER the date upon which the TRANSFER of the PROPERTY is registered in the name of the PURCHASER pursuant to the provisions of this agreement.
- 1.11 DATE OF OCCUPATION Date of transfer
- 1.12 CONVEYANCERS The conveyancers appointed by the

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SELLER in its sole discretion.

- 1.13 DATE OF SALE the last date upon which this agreement shall have been signed by or on behalf of the PARTIES.
- 1.14 THE PRESCRIBED RATE OF INTEREST The rate of interest prescribed from time to time by the Minister in terms of the Prescribed Rate of Interest Act and calculated in accordance therewith.
- 1.15 The headnotes to this agreement and to the individual paragraphs are for reference purposes only, and shall not govern the interpretation of any of the clauses of this agreement, or any of the provisions contained herein;
- 1.16 The preamble, if any, shall form part of this agreement;
- 1.17 In this agreement, unless the contrary intention appears from the context:-
- 1.17.1 words signifying the one gender shall include the other genders;
- 1.17.2 words signifying the singular shall mean and include the plural and vice versa;
- 1.17.3 reference to natural persons shall mean and include reference to artificial persons and vice versa;
- 1.18 If any provision in a definition is a substantive provision, conferring rights or imposing obligations on any PARTY, notwithstanding that such provision is only contained in the relevant definition, effect shall be given thereto as if such provision were a substantive provision in the body of the agreement.
- 1.19 When any number of days is prescribed in this agreement, the number shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday (in the Republic of South Africa) in which event the last day shall be the next succeeding day which is not such a Saturday, Sunday or public holiday.
- 1.20 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.21 Unless the context clearly indicates otherwise, words and expressions defined in this agreement shall bear the same meaning in any schedules or annexures to this agreement which do not contain their own definitions.

2. SALE AND PURCHASE

The SELLER hereby sells to the PURCHASER and the PURCHASER hereby purchases the PROPERTY, subject to the terms and conditions set out in this agreement

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3. PURCHASE PRICE

The purchase price payable by the PURCHASER to the SELLER is the price bid by the successful bidder.

4. VALUE ADDED TAX

4.1 The SELLER records that the SELLER is registered as a Vendor as defined under the Value Added Tax No. 89/1991 (the VAT Act).

4.2 The purchase price and any other amount payable by or to any PARTY to this agreement and/or any other payment due by or due to any other PARTY in terms of this agreement shall be inclusive of VAT unless any relevant provision of this agreement specifically provides to the contrary.

5. PAYMENT OF THE PURCHASE PRICE

5.1 The purchase price shall be paid by the PURCHASER to the SELLER in cash free of any deductions, at Newcastle, on TRANSFER. Should the purchaser fail to make payment as stipulated in this clause, the property shall be awarded to the next qualifying bidder.

5.2 The PURCHASER shall, at the PURCHASER'S cost and expense:-

5.2.1 within 90 days of the date of sale deposit the price bid by the successful bidder with the conveyancers who shall hold and invest same in trust in terms of Section 78(2A) of Act 53 of 1979 in an interest bearing account with a financial institution of their choice on behalf of and for the benefit of the PURCHASER for payment to the SELLER on the date of transfer or cancellation by reason of breach by the PURCHASER as hereinafter provided; and

5.2.2 deliver to the conveyancers within a period of 30 (thirty) days of the date on which the PURCHASER accepts the loan granted in terms of the provisions of clause 20 (or if clause 20 is not applicable then of the date of sale) the purchase price in cash or a bank guarantee/s in respect of so much of the purchase price as is not paid in cash to the conveyancers.

5.3 Any guarantee/s furnished in terms of this clause shall:-

5.3.1 be in the usual and customary form;

5.3.2 be subject to the approval of the SELLER and the CONVEYANCERS; and

5.3.3 be expressed to be payable to the SELLER or the SELLER'S nominee on behalf of the SELLER, in the amount of the purchase price, free of any deductions at NEWCASTLE, upon the date upon which the CONVEYANCERS notify the financial institution issuing the guarantee in writing that the PROPERTY has been transferred.

6. OCCUPATION AND DELIVERY

6.1 Subject to the rights of all existing tenants (with which rights the PURCHASER acknowledges to be fully acquainted) occupation of the PROPERTY shall be given to and taken by the PURCHASER on THE DATE OF OCCUPATION by which date the SELLER shall be obliged to

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vacate the PROPERTY. If the date of occupation does not coincide with the date of transfer, the PARTY enjoying occupation of the PROPERTY while it is registered in the name of the other PARTY, shall, in consideration thereof, and for the period of occupation, pay to the other PARTY, interest on the purchase price equivalent to R_____ (_____ RAND) per month or a pro-rata share thereof for any portion of a month, payable monthly in advance. Value Added Tax (if any) payable on such interest shall be paid by the PARTY in occupation and such PARTY shall be entitled to the tax invoice in respect thereof.

- 6.2 Pending registration of transfer the SELLER shall keep the buildings on the PROPERTY insured and the PARTY who has the right to occupy the PROPERTY (whether he actually occupies it or not) while it is registered in the name of the other PARTY, shall not without the prior written consent of the other PARTY, effect any material alteration or addition to any building, fitting or fixture or to the land and shall diligently and properly care for and maintain the PROPERTY.
- 6.3 No tenancy or lien or right of retention of whatsoever nature shall arise by virtue of occupation of the PROPERTY by the PURCHASER and if this Agreement is cancelled for whatever reason the PURCHASER shall forthwith and without notice vacate the PROPERTY.

7. BENEFIT AND RISK

From the DATE OF TRANSFER all benefit and risks of ownership of the PROPERTY shall pass to the PURCHASER and the PURCHASER shall be liable for all rates and taxes, insurance premiums and other imposts (if any) levied on the PROPERTY.

The PURCHASER shall refund to the SELLER the proportionate share of any rates and taxes, insurance premiums or other imposts paid by the SELLER before the DATE OF TRANSFER in respect of any period on or beyond the DATE OF TRANSFER.

8. TRANSFER AND TRANSFER COSTS

All documents required in connection with TRANSFER shall be prepared and registered by the CONVEYANCERS. The PARTIES shall upon request by the CONVEYANCERS, sign all documents required to be signed in connection with the TRANSFER within 7 (SEVEN) days of being requested to do so.

The PURCHASER undertakes to produce to the CONVEYANCERS all documents required for the purposes of TRANSFER within a reasonable time when being requested to do so.

The PURCHASER shall pay the costs of and incidental to the TRANSFER (the transfer costs) including conveyancing fees, transfer duty, VAT and any other duties which may be levied in connection with the transfer of the PROPERTY within 7 (SEVEN) days of receiving from the CONVEYANCERS a request to make such payment.

The SELLER shall release the PROPERTY from the operation of any existing bond or bonds and/or the costs of cancelling any existing bond or bonds over the PROPERTY.

In the event of the transaction being a vat able one, the SELLER shall procure and furnish to the PURCHASER a VAT invoice where relevant.

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The SELLER shall be entitled to withhold TRANSFER to the PURCHASER, or lodgement of the transfer documents, until the purchase price and all other costs due by the PURCHASER are paid or secured to the satisfaction of the SELLER in accordance with this agreement.

9. FIXTURES, FITTINGS OR BUILDINGS

The PROPERTY is vacant land, and the SELLER warrants that there are no fixtures, fittings or buildings on the PROPERTY that may require maintenance or insurance.

10. BEACONS

The SELLER shall not be required to point out to the PURCHASER any pegs, beacons or boundaries upon the PROPERTY and shall not be liable for the costs of location thereof.

11. VOETSTOOTS AND WARRANTIES

11.1 Voetstoots:

The PROPERTY is sold by the SELLER to the PURCHASER as it stands "VOETSTOOTS" and the SELLER shall not be liable to the PURCHASER or any other person for any defects, latent or patent, in the PROPERTY or buildings or improvements thereon, nor for any damage and/or loss occasioned to or suffered by the PURCHASER or any other person by reason of such defects.

11.2 Extent:

The SELLER shall not:

11.2.1 profit by any excess in the extent of the PROPERTY;

11.2.2 be answerable or liable to the PURCHASER or any other person for any deficiency in the extent of the PROPERTY.

11.3 Conditions:

11.3.1 The PROPERTY is hereby sold and shall be transferred to the PURCHASER subject to all conditions of title, servitude and other restrictions as held or imposed in terms hereof by the SELLER; and further subject to such conditions of town planning and/or zoning as may now exist or be imposed by any competent authority.

11.3.2 In the event of the PROPERTY not having been separately registered then the PROPERTY is hereby sold subject to all conditions of establishment and title imposed by any competent authority and the PURCHASER acknowledges to be fully acquainted with all such conditions.

11.4 Matrimonial Property Act

The SELLER and the PURCHASER warrant to each other that all consents required in terms of the Matrimonial Property Act No 88 of 1984 have been duly furnished.

11.5 Warranties:

11.5.1 no warranties other than those contained in this agreement shall be of any force and effect, and that no other warranties have been given or representations

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made to the PURCHASER by the SELLER whereby the PURCHASER has been induced to enter into this agreement.

- 11.5.2 without limiting or derogating from the generality of these premises, the PURCHASER has not been induced to enter into this agreement by:
- (a) the content of any advertisement by the SELLER inviting the purchase of the PROPERTY; and/or
 - (b) any document or information furnished by the SELLER to the PURCHASER.

11.6 Infestation and Electrical Installation Compliance Certificates:

The SELLER shall not be responsible or liable for the obtaining of an Infestation free or a Certificate of Compliance of the Occupational Health and Safety Act No. 85 of 1993 as amended or any regulations promulgated in terms thereof in respect of the electrical installation of the building (if any) erected on the PROPERTY and if such certificates are required for any reason then the PURCHASER shall obtain same at his expense.

12. BREACH OF CONTRACT

12.1 In the event of the PURCHASER defaulting in the timeous performance of any of his obligations in terms of this Agreement or the payment of any amount on due date, and so remaining in default after a written notice (addressed to the PURCHASER at his chosen *domicilium citandi et executandi*) wherein the PURCHASER is called upon to comply with the said obligation within 10 (TEN) days of receipt of such written notice, the SELLER (without detracting from any other rights which he may have) shall be entitled:-

12.1.1 To claim specific performance of the obligation in question or demand payment of the amount owing and in either eventuality interest thereon at the PRESCRIBED RATE OF INTEREST;

OR

12.1.2 To claim payment of:

12.1.2.1 the full balance of the purchase price and interest at the PRESCRIBED RATE OF INTEREST thereon and a Certificate issued by the duly appointed Conveyancer of the amount due in terms of this subparagraph shall be *prima face* proof for the purposes of provisional sentence, summary judgment or any other legal remedy, and

12.1.2.2 such damages as have been suffered by the SELLER,

OR

12.1.3 To cancel this Agreement, in which event the SELLER shall be entitled:

12.1.3.1 to take possession of the PROPERTY and to eject the PURCHASER and/or any occupier therefrom;

12.1.3.2 to retain as forfeited in his favour all amounts paid to him or held by the conveyancers in respect of the purchase price and/or interest (if any) in terms of this Agreement as a genuine pre-estimate of damages suffered by the SELLER, and the said amounts shall be forfeited by the PURCHASER;

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12.1.3.3 to claim payment of all arrear instalments and all other amounts in terms of this Agreement with interest thereon at the PRESCRIBED RATE OF INTEREST, and a Certificate issued by the duly appointed Conveyancer of the amount due shall be *prima facie* proof for the purposes of provisional sentence, summary judgment or any other legal remedy;

12.1.4 As an alternative to the remedies referred to in subparagraphs 1.2 and 1.3 above, the SELLER shall be entitled to claim damages from the PURCHASER and to this end the SELLER shall be entitled to retain all amounts paid to him or held by the conveyancers in respect of the purchase price and interest thereon until such time as the SELLER'S damages have been established and duly paid. Such damages shall as and from the date of determination thereof bear interest at the PRESCRIBED RATE OF INTEREST.

12.2 In the event of cancellation of this Agreement in consequence of a breach of contract on the part of the PURCHASER, it is agreed that the PURCHASER shall have no right of recourse against the SELLER in respect of any improvements effected on the PROPERTY, and the PURCHASER shall, moreover, have no lien in respect thereof or on the PROPERTY.

12.3 Notwithstanding anything to the contrary herein contained and in addition to any other amount which the PURCHASER may be liable to pay to the SELLER or which may be forfeited to the SELLER, the SELLER reserves the right to charge the PURCHASER who shall be liable to pay to the SELLER an amount equal to 10% (TEN PERCENT) of the purchase price being an administrative charge.

12.4 In the event of the SELLER defaulting in the timeous performance of any of his obligations in terms of this Agreement or the payment of any amount on due date, and so remaining in default after a written notice (addressed to the SELLER at his chosen *domicilium citandi et executandi*) wherein the SELLER is called upon to comply with the said obligation within 10 (TEN) days of receipt of such written notice, the PURCHASER (without detracting from any other rights which he may have) shall be entitled either :-

12.4.1 to cancel the sale by registered letter addressed to the SELLER and to recover from the SELLER such damages as he may have suffered; or

12.4.2 to claim the immediate fulfilment of all the terms and conditions hereof, including transfer of the PROPERTY against compliance by him of his obligations in terms hereof.

13. ADDRESSES AND NOTICES

13.1 For the purposes of this agreement, including the giving of notices and the serving of legal process, each PARTY chooses as such PARTY'S *domicilium citandi et executandi* ("domicilium") the respective address which is defined for each PARTY under the heading of DEFINITIONS AND INTERPRETATION.

13.2 A PARTY may at any time change that PARTY'S *domicilium* by notice in writing, provided that the new *domicilium* is in the Republic of South Africa and consists of, or includes, a postal address and a physical address at which any process can be served.

13.3 Any notice given to any PARTY in connection with this agreement shall –

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13.3.1 be sent by prepaid registered post to the POSTAL ADDRESS defined for such PARTY;
or

13.3.2 be delivered by hand to the PHYSICAL ADDRESS defined for such PARTY;

13.4 A notice given as set out above shall be deemed to have been duly given:

13.4.1 if posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicile for the time being, shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the fourth day after the date of posting.

13.4.2 if delivered, on the date of delivery.

14. COURT PROCEEDINGS AND JURISDICTION

14.1 For the purpose of all and any legal proceedings arising out of or relating to this agreement the PARTIES hereby consent to the jurisdiction of the Magistrate's Court notwithstanding that such proceedings are otherwise beyond the jurisdiction of such Court, and this clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said Court pursuant to Section 45 of the Magistrate's Court Act of 1944, as amended.

14.2 Notwithstanding the foregoing, the PARTIES shall have the right at their sole option and discretion to institute proceedings in any other competent Court which might otherwise have jurisdiction.

14.3 Costs shall be paid as between Attorney and Client including collection commission in respect of overdue monies, by the PARTY which the Court determines to be the defaulting PARTY.

15. VARIATION AND CANCELLATION

This Deed of Sale constitutes the entire Agreement between the parties and no modification, variation or alteration thereto shall be valid unless in writing and signed by both parties hereto;

16. REVOCAATION

In the event of the property being land as defined in the Alienation of Land Act 68 of 1981, the purchase price being not more than R250 000,00 and the PURCHASER being a natural person then Section 29A of the said Act will, unless other exclusions contained in the said Section 29A are applicable, apply to this Offer or Agreement. Should such Section apply, then notwithstanding any other clause to the contrary herein contained, the PURCHASER has the right to revoke the offer which is made by him by signature hereof or terminate this Deed of Sale by written notice to be delivered to the SELLER or his or her agent within five (5) days of the date of the signature by the PURCHASER of the offer or of the conclusion of the Deed of Sale as the case may be. The PURCHASER hereby acknowledges that he/she is fully acquainted with the provisions of Section 29A of the aforesaid Act

17. INDULGENCES

No latitude, indulgence or extension of time may be allowed or granted by either PARTY to the other in respect of any obligation which any PARTY is bound to perform or observe in terms of this agreement shall be deemed to constitute a waiver or novation of any of the rights of the

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PARTY granting the indulgence which PARTY shall not thereby be precluded from exercising against the other PARTY any rights which may have arisen in the past or which might arise in the future under this agreement or from requiring strict and punctual compliance by the other PARTY with each and every provision of this agreement.

18. NO ASSIGNMENT

No PARTY may cede any of its rights or delegate any of its obligations under this Agreement.

19. SEVERABILITY

Should any one or more of the terms and conditions of this Agreement be invalid or unenforceable for any reason such term or condition shall be severable from the other terms and conditions and the validity of this Agreement shall not be affected thereby.

20. SUSPENSIVE / RESOLUTIVE CONDITION/S:-

20.1 Legal provisions

This agreement of sale is subject to compliance by the PARTIES of the provisions of the Local Government Municipal Finance Management Act No. 56 of 2003 and the SELLER'S Supply Chain Management Policy prepared in terms thereof insofar as such Act and Policy relates to the disposal of capital assets of the SELLER. In the event of this agreement of sale being void due to non-fulfilment of the relevant provisions of the said Act or Policy then the PARTIES shall as far as reasonably possible be restored to the status quo ante this agreement provided that the PARTY responsible for failure to comply with the provisions of the said Act or supply resulting in this agreement being void shall be liable to the other PARTY for all costs and expenses incurred in fulfilment by that other PARTY of its obligations in terms of this agreement.

21. SPECIAL CONDITIONS

21.1 Conditions - registerable

The sale of the PROPERTY is subject to the following conditions which shall be registered against the Title Deeds of the PROPERTY:-

Development Clause

The property shall not be sold to a third party until it has been developed with a permanent structure approved by the municipality.

- (i) The purchaser shall develop the property within a two (2) year period after registration, in the event that the property is not developed within that period, the following shall apply:-
- (ii) the full dominion/ownership shall revert back to the Council
- (iii) Council shall refund the purchaser with purchase price paid for the property

21.1.1 Use

Except with the prior consent in writing of the SELLER, the property shall not be used for other than special/general residential/religious *(delete whichever is not applicable or insert applicable use) purposes.

21.1.2 Mineral rights (if not already reserved)

The SELLER reserves to itself the right to all coal, iron and other minerals in and under the PROPERTY, with the right to the SELLER or its assigns to work, win and carry away all such coal, iron and other minerals provided that in doing so they shall not break or damage the surface of the PROPERTY or in any way interfere with the occupation thereof by the PURCHASER.

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21.1.3 Subdivision

The PROPERTY shall not be subdivided without the consent in writing of the SELLER first being had and obtained.

21.1.4 Omnibus conditions

- (a) Unless otherwise provided for in the conditions of title or conditions of establishment issued in terms of the Town Planning Ordinance No. 27 of 1947 the SELLER shall, without compensation, have the right to erect, lay, construct and maintain electric wires, sewers, drains and water supply piping over or under the PROPERTY along any boundary thereof other than a road frontage and within a distance of 1,83 metres from such boundary and shall have reasonable access thereto for the purpose of maintenance, removal or extension and the PURCHASER shall, without compensation, be obliged to allow the sewerage and drainage of any other land or street to be conveyed along any such sewers and drains; provided that if the PURCHASER be aggrieved by the unreasonable exercise of these rights, he shall have the right of appeal to the relevant provincial authority, whose decision shall be final.
- (b) The PURCHASER shall, without compensation, be obliged to permit such deposit of material or excavation on the land as may, in connection with the formation of any street and owing to differences in level between the land and the street, be deemed necessary by the Municipality in order to provide a safe and proper slope to the cut and full commencing from the boundary of the land, unless he shall elect, at his own cost, to build a retaining wall to the satisfaction of the Municipality.

21.2 Conditions - non registerable

The sale of the PROPERTY is subject to the following conditions which shall be not be registered against the Title Deeds of the PROPERTY:-

21.2.1 Fencing

The PURCHASER shall, within three (3) months of the date of occupation or such later date as the SELLER may in writing agree erect at his expense along all boundaries of the PROPERTY a fence which complies with the provisions of the local authority bylaws relating thereto. Should the PURCHASER fail to do so the SELLER shall be entitled but not obliged to erect such fence and debit the cost thereof plus 10% against the rates and services account of the PURCHASER

21.2.2 Water/sewage

The PURCHASER shall purchase all his requirements of water and electricity from the SELLER at the tariff rate fixed by the SELLER from time to time and as soon as sewage disposal services are available to the PROPERTY the PURCHASER shall at his expense connect his sewage disposal to such sewage system in accordance with the municipal bylaws.

21.2.3 Storm water

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All storm water shall be led off the land to the satisfaction of the SELLER.

21.2.4 Electricity building

The PURCHASER shall at his own expense, if required to do so by the SELLER, construct and maintain a building to house such electrical equipment and installations as may be necessary for the purpose of supplying electricity to the land or to any buildings on the land, such building to be of such dimensions, material and structure as shall be required by the SELLER. Should the PURCHASER fail to do so the SELLER shall be entitled but not obliged to construct such building and debit the cost thereof plus 10% against the rates and services account of the PURCHASER

21.4 Building Plans

Building Plans must be approved by the Strategic Executive Director: Development Planning and Human Settlements.

22. AGENT'S COMMISSION

The PURCHASER warrants that no person or agent introduced him to the SELLER or the PROPERTY entitling such person to any commission and hereby indemnifies the SELLER against any claim arising out of breach of such warranty, including Value Added Tax payable thereon.

23. NO UNDISCLOSED PRINCIPAL

The PURCHASER warrants that it is acting as a principal and not as an agent for an undisclosed principal.

24. IDENTITY OF PURCHASER – LIABILITY OF SIGNATORY

24.1 If this Agreement:-

24.1.1 is being concluded by anyone as a trustee for a company or close corporation still to be registered and the company or close corporation is not registered within 14 (fourteen) days from the date upon which the last of the suspensive or resolute conditions of this Agreement (if any) is fulfilled, or if there are no such conditions, then from the date of this Agreement and within the same period of time the company or close corporation fails to comply with all legal requirements in order to make the Agreement binding upon it; or

24.1.2 is being concluded as a stipulation alterii in favour of a trust still to be established and the trust is not established and/or does not accept the stipulation within the period of time referred to in (a) above;

then and in all these events, the PARTY signing this document on behalf of the entity contemplated above will in his personal capacity be bound to the provisions of this Agreement as PURCHASER. In the case of subclause 1.2 such PARTY will not be the PURCHASER but the signatory.

24.2 If this Agreement is being concluded on behalf of an existing company, close corporation, trust or other PARTY not being a natural person and also if the entity or trust contemplated in subclause 1 is in fact registered or established, then in all such events

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the person signing this document on behalf of the PURCHASER, hereby in his personal capacity binds himself as surety for and co-principal debtor with the PURCHASER for the due and proper performance by the PURCHASER of its obligations in terms of this Agreement and the said surety hereby waives the benefits of the legal exception of excussion and division.

- 25. Should the purchaser fail to make payment as stipulated on Special Conditions of Sale, the property shall be awarded to the next qualifying bidder after communication with the awarded successful bidder.
- 26. The bidder will be allowed to tender for specific properties as listed in the tender document (basically the submission be one tender document even if the interest is on multi – properties).
- 27. Objection can only be done per site/property.

Name of Bidder :.....

Signature of Bidder :..... **Date** :.....

WITNESS:

1. **NAME** :..... **SIGNATURE** :

2. **NAME** :..... **SIGNATURE** :

19.PRICING SCHEDULE

| NO. | Erf No. | TOWNSHIP | Extent | Zoning | MARKET VALUE | BIDDING PRICE |
|------------|----------------|-----------------|--------------------|---------------|---------------------|----------------------|
| 1. | 17484 | Newcastle | 3521m ² | Office | R 2 113 000.00 | |
| 2. | 16969 | Newcastle | 2366m ² | Office | R 1 200 000.00 | |
| 3. | 16970 | Newcastle | 2147m ² | Office | R 1 100 000.00 | |
| 4. | 16971 | Newcastle | 1831m ² | Office | R 1 000 000.00 | |
| 5. | 16972 | Newcastle | 1500m ² | Office | R 900 000.00 | |

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20. SCHEDULE OF SIMILAR WORK EXPERIENCE OF THE BIDDER

| Employer (Name, Tel, Fax, Email) | | Contact person (Name, Tel, Fax, Email) | | Nature of Work | Value of Work (Incl. Vat) | Date Completed |
|-------------------------------------|--|---|--|----------------|------------------------------|----------------|
| Name | | Name | | | | |
| Tel | | Tel | | | | |
| Fax | | Fax | | | | |
| Email | | Email | | | | |
| Name | | Name | | | | |
| Tel | | Tel | | | | |
| Fax | | Fax | | | | |
| Email | | Email | | | | |
| Name | | Name | | | | |
| Tel | | Tel | | | | |
| Fax | | Fax | | | | |
| Email | | Email | | | | |
| Name | | Name | | | | |
| Tel | | Tel | | | | |
| Fax | | Fax | | | | |
| Email | | Email | | | | |
| Name | | Name | | | | |
| Tel | | Tel | | | | |
| Fax | | Fax | | | | |
| Email | | Email | | | | |

Attach additional pages if more space is required.

| | |
|--|--|
| Number of sheets appended by the tenderer to this schedule (If nil, enter NIL) | |
|--|--|

| | | | |
|-----------------------|--|---------------------|--|
| Name of Bidder | | | |
| Signature | | Name (print) | |
| Capacity | | Date | |

20. DECLARATION BY BIDDER

I / We acknowledge that I / we am / are fully acquainted with the contents of the conditions of tender of this tender document and that I / we accept the conditions in all respects.

I / We agree that the laws of the Republic of South Africa shall be applicable to the contract resulting from the acceptance of *my / our tender and that I / we elect domicillium citandi et executandi (physical address at which legal proceedings may be instituted) in the Republic at:

I / We accept full responsibility for the proper execution and fulfillment of all obligations and conditions devolving in me / us under this agreement as the principal liable for the due fulfillment of this contract.

I / We furthermore confirm I / we satisfied myself / ourselves as to the corrections and validity of my / our tender; that the price quoted cover all the work / items specified in the tender documents and that the price(s) cover all my / our obligations under a resulting contract and that I / we accept that any mistake(s) regarding price and calculations will be at my / our risk.

I / We furthermore confirm that my / our offer remains binding upon me / us and open for acceptance by the Purchases / Employer during the validity period indicated and calculated from the closing date of the bid.

| | | | |
|-----------------------|--|---------------------|--|
| Name of Bidder | | | |
| Signature | | Name (print) | |
| Capacity | | Date | |
| Witness 1 | | Witness 2 | |