

BID NO IUCMA/010/LEGALSERVICES/2022-A PANEL OF ATTORNEYS TO PROVIDE PROFESSIONAL LEGAL SERVICES TO THE IUCMA FOR A PERIOD OF THREE (3) YEARS



<b>BID DOCUMENT</b>
<b>IUCMA/010/LEGALSERVICES/2022</b>

<b>BID DESCRIPTION</b>
<b>A PANEL OF ATTORNEYS TO PROVIDE PROFESSIONAL LEGAL SERVICES TO THE IUCMA FOR A PERIOD OF THREE (3) YEARS</b>

<b>CLOSING DATE</b>	
<b>DATE TIME</b>	<b>26 JANUARY 2023 11H00 AM</b>
<b>DELIVERY ADDRESS</b>	<b>IUCMA OFFICES, SUITE 801 THE MAXSA BUILDING 13 STREAK STREET MBOMBELA 1200</b>

<b>BIDDER TO COMPLETE</b>	
<b>NAME OF BIDDER</b>	
<b>TRADING AS</b> (if different from above)	
<b>CSD NO</b>	<b>MAAA</b>

**ISSUED AND PREPARED BY:  
INKOMATI-USUTHU CATCHMENT MANAGEMENT AGENCY  
PRIVATE BAG X11214  
MBOMBELA  
1200  
Tel: +27 13 753 9000**

**DETAILS OF THE BIDDER**

<b>Name of Bidder</b>	
<b>Postal Address</b>	
<b>Street Address</b>	
<b>Company Registration Number</b>	
<b>Telephone Number</b>	
<b>Cellphone Number</b>	
<b>Contact Person's Name</b>	
<b>E-mail Address</b>	

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**SECTION A – BID INVITATION, GENERAL  
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CONTRACT**

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**1. CHECKLIST**

The Checklist below is attached hereto to assist bidders with the completion of the bid document. Please ensure that the following forms have been completed and signed and that all documents, as requested, are attached to the tender document. Bidders are required to **TICK** the relevant boxes for verification purposes.

No	Description	Bidder to Tick (√)	For Official Use Only	
1.	<b>SBD 1 - Invitation to Bid</b> Is the form duly completed and signed?		D	
2.	Has the CSD Supplier Number been submitted with the bid document?			
3.	Is the full CSD report not more than 10 days before the bid closing date attached?			
4.	<b>Declaration of POPI Act</b> Is the form duly completed and signed?		D	
5.	Has the bid document been completed in a non-erasable <b>Black Ink Pen</b> and all corrections counter-signed? - No retype and correction fluid/tape used - Bid document completed and returned without missing page/s - No unauthorised alteration in the bid document		D	
6.	Has the compulsory "Tender Briefing Session" been attended?	N/A	N/A	N/A
7.	<b>Authority to Sign a Bid</b> Is the form duly completed and/or an original/copy of the resolution attached?			
8.	<b>SBD 4 - Bidder's Disclosure</b> Is the form duly completed and signed?		D	
9.	<b>SBD 6.1 - Preference Points Claim Form</b> Is the form duly completed in its entirety and signed?			
10.	<b>Is a valid B-BBEE certificate (accredited by SANAS) or a sworn affidavit attached?</b>			
11.	<b>SBD 7.2 Contract Form for Rendering of Services</b> Is the form duly completed and signed?			
12.	<b>Pricing Schedule</b> Is the pricing schedule fully completed or submitted as required?			
13.	<b>Declaration by Bidder</b> Is the form duly completed and signed?		D	

**\*\*\* D: Failure to comply with these sections will result in the disqualification of the tender.**

Name of Bidder: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**2. BID NOTICE & INVITATION TO BID**

**BID NO. IUCMA/010/LEGALSERVICES/2022**

**CLOSING DATE: 26 January 2023**

The Inkomati-Usuthu Catchment Management Agency (IUCMA) is a body corporate established in terms of section 78 (1) of the National Water Act 36 of 1998, as amended (the Act). The IUCMA is listed in Schedule 3A of the Public Finance Management Act 1 of 1999 (PFMA) as a National Public Entity and is as such required to manage its resources in compliance with the PFMA as amended.

Bids are hereby invited from qualified, competent, and capable bidders to render the following services:

**A PANEL OF ATTORNEYS TO PROVIDE PROFESSIONAL LEGAL SERVICES TO THE IUCMA FOR A PERIOD OF THREE (3) YEARS**

It is compulsory that service providers download a copy of the bid document that will ONLY be available from **Friday, 09 December 2022** on the National e-Tender Portal: [www.etenders.gov.za](http://www.etenders.gov.za) and the IUCMA website: [www.iucma.co.za](http://www.iucma.co.za) on the tenders free of charge.

**NB: There will be no Briefing Session.**

Bids will be adjudicated in terms of the Preferential Procurement Regulations as amended, pertaining to the Preferential Procurement Policy Framework Act, 5/2000 and other applicable legislation and will be based on 80/20 points system. Preference points will be awarded to service providers using their B-BBEE status level of contribution. BIDS shall remain valid for the period of days as indicated in the bid document from the date of closing. The IUCMA reserves the right to accept all, part, or none of the bids submitted, either wholly or in part and it is not obliged to accept the lowest bid. Tenders are subject to the General Conditions of Contract and the Supply Chain Management Policy of the IUCMA.

Completed bid documents complying with the conditions of a bid must be sealed and endorsed “**A PANEL OF ATTORNEYS TO PROVIDE PROFESSIONAL LEGAL SERVICES TO THE IUCMA FOR A PERIOD OF THREE (3) YEARS**” bearing the name and address of the bidder at the back of the envelope to be deposited in the official bid box provided at the IUCMA Offices, Suite 801, The Maxsa Building, 13 Streak Street, Mbombela before 11:00 am on the closing date. Late quotations or tenders received by way of facsimile or e-mail will under no circumstances be considered.

For technical enquiries contact Mr S Mchunu at Tel: 013 753 9000 or email [mchunus@iucma.co.za](mailto:mchunus@iucma.co.za) and for SCM enquiries contact Mr N Hlatshwayo on Tel: 013 753 9039 or e-mail [hlatshwayon@iucma.co.za](mailto:hlatshwayon@iucma.co.za) during office hours (Monday to Friday) 07:30 to 16:00.

**Only prospective suppliers who are registered on the National Treasury Supplier database are legible to bid. To register on the CSD log onto [www.csd.gov.za](http://www.csd.gov.za)**

**Mr LC Mohalaba  
Chief Executive Officer**

BID NO IUCMA/010/LEGALSERVICES/2022-A PANEL OF ATTORNEYS TO PROVIDE PROFESSIONAL LEGAL SERVICES TO THE IUCMA FOR A PERIOD OF THREE (3) YEARS

PART A

INVITATION TO BID

SBD 1

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE IUCMA</b>					
BID NUMBER:	<b>IUCMA/010/LEGALSERVICES/2022</b>	CLOSING DATE:	<b>26 January 2023</b>	CLOSING TIME:	<b>11:00</b>
DESCRIPTION	<b>A PANEL OF ATTORNEYS TO PROVIDE PROFESSIONAL LEGAL SERVICES TO THE IUCMA FOR A PERIOD OF THREE (3) YEARS</b>				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT</b>					
<b>IUCMA, SUITE 801, THE MAXSA BUILDING, 13 STREAK STREET, MBOMBELA, 1200 (DURING OFFICE HOURS BETWEEN 07H30 TO 16H00)</b>					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	<b>Mr N Hlatshwayo</b>		CONTACT PERSON	<b>Mr S Mchunu</b>	
TELEPHONE NUMBER	<b>013 753 9039</b>		TELEPHONE NUMBER	<b>013 753 9000</b>	
FACSIMILE NUMBER	<b>N/A</b>		FACSIMILE NUMBER	<b>N/A</b>	
E-MAIL ADDRESS	<b>hlatshwayon@iucma.co.za</b>		E-MAIL ADDRESS	<b>mchunus@iucma.co.za</b>	
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		<b>O</b> CENTRAL SUPPLIER DATABASE No:	MAAA	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN-BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]	
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS (Not applicable to South African suppliers)</b>					

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IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>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 BELOW.</b>	

**PART B**

**SBD1**

**TERMS AND CONDITIONS FOR BIDDING**

- |   |
|---|
| <b>1. BID SUBMISSION:</b>   |
| 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.  |
| 1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED – (NOT TO BE RE-TYPED) OR ONLINE.</b>   |
| 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS AS AMENDED, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT. |
| 1.4. <b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</b>  |
| 1.5. THE BOX IS GENERALLY OPEN DURING OFFICE HOURS: 07:30 – 16:00 MONDAYS TO FRIDAYS.   |
| <b>2. TAX COMPLIANCE REQUIREMENTS</b>   |
| 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 VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.   |
| 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.  |
| 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.  |
| 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.  |
| 2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.   |
| 2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."                             |

**NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.**

**SIGNATURE OF BIDDER:** .....

**CAPACITY UNDER WHICH THIS BID IS SIGNED:** .....  
 (Proof of authority must be submitted e.g., company resolution)

**DATE:** .....

**3. DECLARATION OF POPI ACT**

**THE BIDDER WILL BE DISQUALIFIED IF THE FORM IS NOT FULLY COMPLETED AND SIGNED**

**PERMISSION BY BIDDER:**

On behalf of Company/Close Corporation/Trust/Joint Venture/Consortium/Juristic Person/Partnership

\_\_\_\_\_ (Name of bidder)

I, Mr/Ms \_\_\_\_\_ (duly authorised), hereby grant permission, in terms of the Protection of Personal Information Act, 2013 (Act 4 of 2013), POPI Act, to the Inkomati-Usuthu Catchment Management Agency, to utilise all information contained in the tender documents submitted to the Inkomati-Usuthu Catchment Management Agency, for purposes of procurement.

Capacity: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

#### **4. GENERAL CONDITIONS OF BID**

##### **1. Definitions**

- 1.1. The word “Bidder/Tenderer” in these conditions shall mean and include any firm of contractors, suppliers, service providers or any company or body incorporated or unincorporated.

##### **2. General conditions of the Contract**

- 2.1. 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.

##### **3. Pricing**

- 3.1. Rates and prices offered by the bidder must be written onto the pricing schedule or form of an offer of this document by hand, completed in full and signed by the duly authorised signatory.
- 3.2. All prices shall be quoted in South African currency and be **INCLUSIVE of VAT** where applicable.
- 3.3. 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.
- 3.4. All bid prices will be final and binding.

##### **4. Forward Exchange Rate Cover**

- 4.1. 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 entity against exchange rate variations.
- 4.2. The bidder must provide proof of forward exchange rate cover within 14 days after an order was placed.
- 4.3. If proof that forward exchange rate cover was taken out within 14 days after the order was placed but is not submitted to the IUCMA along with the invoice, the contract price adjustment will not be accepted, and the contract may be cancelled.

##### **5. Submission of Bids**

- 5.1. 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.
- 5.2. The bid box is at **IUCMA offices, Suite 801, MAXSA Building, 13 Streak Street, Mbombela.**
- 5.3. All literature must be securely attached to the bid. The entity shall not be held liable for any loss or damages sustained due to the service provider’s failure to comply with this condition.
- 5.4. If a courier service company is being used for the 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 IUCMA will not be held responsible for any bid

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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

Please note:

- Bids that are deposited in the incorrect box will not be considered.
- Mailed, telegraphic or faxed tenders will not be accepted.

**Failure to adhere to this condition will render your submission non-responsive.**

## **6. Bid Responses**

6.1. Changes to the bidder's submission will not be allowed after the closing date of the tender. All bid responses will be regarded as offers unless the bidder indicates otherwise. No bidder or any of its consortium/joint venture members may have an interest in any of the other bidder/joint venture/consortium participating in this bid. Tenders will be opened immediately after the closing time for tenders at IUCMA.

## **7. Completion of Tender Documents**

7.1. The original tender document must be completed fully in handwriting and in a non-erasable **black ink pen**. The documents must be signed and completed by a person who has been given the authority to act on behalf of the bidder.

7.2. Paragraph 2.1.1,2.2.1,2.3.1 of the SBD 4 and SBD 6.1 paragraph 7.1.1 is excluded from the condition of 7.1 if the chosen answer is no.

7.3. If a tender has not been properly signed by a party having the authority to do so, according to the example of "Authority for Signatory" will be rejected.

7.4. The use of correction fluid/tape on the bid documents including returnable 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. Failure to do so will result in the disqualification of the tender.

7.5. Tender documents may not be retyped. Retyped documents will result in the disqualification of the tender.

7.6. The complete original tender document must be returned. Missing pages will result in the disqualification of the tender.

7.7. No unauthorised alteration of this set of tender documents will be allowed. Any unauthorised alteration will disqualify the tender automatically. Any ambiguity has to be cleared with the contact person for the tender before the tender closure.

## **8. Opening, Recording and Publications of Bids Received**

8.1. 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.

8.2. Details of bids received in time will be recorded in a register that is open to public inspection.

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8.3. 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.

**9. Alternative Bids**

9.1. No alternative bid offers will be accepted, and bids must be completed on the bid document provided by the IUCMA.

**10. Validity Period**

10.1. Bids shall remain valid for **one hundred and twenty (150) days** after the tender closure date.

10.2. During the validity period the prices which have been quoted by the bidder must remain firm and valid.

10.3. If the bid validity expires on a weekend or public holiday, the bid validity period shall remain open until the closure of business on the next working day.

**11. Incorrect Information**

11.1. 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 entity may, in addition to any other legal remedy it has or may have, recover from the service provider all costs, losses or damages incurred or sustained by the entity as a result of the award of the contract.

**12. Withdrawal of Bid during and After the SCM Process**

12.1. 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 IUCMA holds the right to accept or reject with or without a claim for any damages.

12.2. When a bidder withdraws or cancels the contract after the 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.

**13. Legal requirements for invoices**

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

**13.1.1. 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 IUCMA
- e) The entity's name and postal or physical address
- f) Accurate description of goods and/or services supplied/provided.

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- g) Unit of measurement of goods or services supplied
- h) Price

**13.1.2. 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 an invoice
- e) The official order number of IUCMA
- f) The entity's name and postal or physical address
- g) Accurate description of goods and/or services supplied/provided.
- h) Unit of measurement of goods or services supplied
- i) Price and VAT amount

**14. Payment Terms**

- 14.1. It is the policy of the IUCMA to pay all creditors by means of electronic bank transfers.
- 14.2. 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 IUCMA. In exceptional circumstances, the IUCMA may, at its discretion, deviate from the above.

**15. Poor Performance**

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

**16. Central Supplier Database**

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

**17. Tax Compliance Status**

- 17.1. It is necessary to ensure that a supplier conducting business with the IUCMA is tax compliant at the date of submission and award of a bid, as well as for the full duration of their respective contracts. The bidder's tax compliance status of bidders shall be verified on the CSD for all price quotations and competitive bidding.
- 17.2. No bid may be awarded to a bidder whose tax matters have not been declared by the SARS to be in order. IUCMA reserves the right to withdraw an award made, or cancel a contract concluded with a successful bidder in the event that it is established that such bidder was in fact not tax compliant at the time of the award.

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17.3. Where the recommended bidder is not tax compliant, the bidder shall be notified in writing of their non-compliant status and granted seven (7) working days to rectify their tax compliance status with SARS. Thereafter the bidder is responsible to provide IUCMA with proof of its tax compliance status which shall be verified through CSD and/or Tax Compliance System.

17.4. Recommended bidder with a non-compliant tax status may be disqualified with failure to update the Tax Status within seven (7) working days.

**18. Confidentiality of Information**

18.1. IUCMA will not disclose any information disclosed to IUCMA through this tender process to a third party or any other bidder without any written approval from the bidder whose information is sought.

18.2. Bidders may not disclose any information given to the bidders as part of this tender process to any third party without written approval from IUCMA. In the event that the bidder requires to consult with third parties on the tender, such third parties must complete confidentiality agreements, which should also be returned to IUCMA with the bid.

**19. Disbursements, Travel and Subsistence**

19.1. No bidder will be refunded any cost or disbursements incurred in respect of the project, save where the prior written approval of IUCMA has been obtained in respect of such expenditure.

19.2. Any authorized disbursements will be refunded at the reasonable and actual cost determined by IUCMA. Any expenditure incurred by the successful bidder in respect of authorized travel for the project will be refunded in accordance with the IUCMA travel policy 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 or South Africa Revenue Services.

19.3. 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.

19.4. All expenses incurred by the bidder for the proposal and presentations are the responsibility of the bidder and will not be reimbursed by IUCMA.

**20. Joint Venture Agreement or Consortium**

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

20.1.1. All parties of the Joint Venture or Consortium shall submit tax compliance status at the date of submission and award of a bid.

20.1.2. All parties of the Joint Venture or Consortium shall submit signed copies of the Bidder's Disclosure.

20.1.3. 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

20.1.4. 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 shall appear on the relevant pages of the document.

**21. Samples for Quality Control**

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

**22. Cession of Assignment**

- 22.1. The service provider may not assign this contract, not sub-let any part of this contract or any of its obligations hereunder without the prior written consent of the client. The service provider's obligations to the client hereunder shall remain unchanged and the service provider shall be solely responsible to the client for the performance of this obligation.

**23. Ownership and Intellectual Property**

- 23.1. All work produced, including records and documents pertaining to this bid shall remain the property of the IUCMA. The contents of the material may not be altered without the prior permission of the IUCMA.
- 23.2. All the data and information generated under this project shall become the property of the IUCMA and shall not be given to third parties without written approval from the IUCMA.
- 23.3. The service provider may also not use IUCMA material for any advertisements and personal use without the prior permission of the IUCMA.

**24. Notice to Bidders**

- 24.1. Should any additions or alterations to the document as issued to bidders be deemed necessary prior to the date for submission of tenders, these will be issued to bidders in the form of Notices to Bidders and will form part of the tender document.
- 24.2. The Notices to Bidders shall be completed where applicable by bidders, signed, dated and returned with the tender documents.

**25. Fronting**

- 25.1. Government supports the spirit of broad-based black economic empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent and legally compliant manner. Against this background, the Government condemn any form of fronting.
- 25.2. The Government, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry, be established during enquiry/investigation, the onus will be on bidder/contractor to prove that fronting does not exist. Failure to do so within a period of 14 days from the date of notification may invalidate the bid/contract and may also result in the restriction of the

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bidder /contractor from conducting business with the public sector for a period not exceeding ten years, in addition to any other remedies IUCMA may have against the Bidder/contractor concerned.

**26. Data Protection**

26.1. The bidder undertakes to always comply with the Protection of Personal Information Act, no 4 of 2013 in performing its obligations during the bidding process and/or in terms of the agreement should it be successful in its bid and be awarded the tender.

**27. Service Level Agreement**

27.1. Successful service provider/s will enter into a service level agreement with IUCMA.

**28. Tender Defaulters and Restricted Suppliers**

28.1. No tender shall be awarded to a bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. The IUCMA reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been blacklisted with National Treasury by another government institution.

**29. Rights reserved by IUCMA regarding bids**

It shall be noted that IUCMA reserves its right to:

- 29.1. Award the bid in part or in whole.
- 29.2. Not to award the bid at all.
- 29.3. Withdraw/cancel the bid for any reason whatsoever.
- 29.4. Negotiate rates submitted by bidders.
- 29.5. Not to award the bid to the lowest bidder.
- 29.6. Appoint more than one service provider.
- 29.7. Contact references during the evaluation and adjudication process to obtain information.
- 29.8. Should bidder(s) be selected for further negotiations, they will be chosen based on cost-effectiveness and the principle of value for money not necessarily based on the lowest costs. The IUCMA, therefore, reserves the right not to appoint the lowest bidder.

## **5. 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

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among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

- 1.14. **“GCC”** means the General Conditions of Contract.
- 1.15. **“Goods”** means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16. **“Imported content”** means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the 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 that 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 result from them vendor's failure to complete his obligations under the contract.

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- 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:
- 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.

**9. Packaging**

- 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 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.

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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.

**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.

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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.

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. Contract Amendments**

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

**19. Assignment**

19.1. The 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.

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- 23.5. Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6. If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- i. the name and address of the 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.

**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**

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

**30. Applicable law**

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

**31. Notices**

31.1 Every written acceptance of a bid shall be posted to the 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. National Industrial Participation Programme**

33.1. The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

**34. Prohibition of restrictive practices**

34.1. 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).

34.2. 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.

34.3. 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

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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.



## **SECTION B – RETURNABLE DOCUMENTS**

**6. AUTHORITY TO SIGN A BID**

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.

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Company / Close Corporation</b>	<b>Sole Proprietor</b>	<b>Partnership</b>	<b>Joint Venture</b>

**A. COMPANIES AND CLOSE CORPORATIONS**

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

b. In the case of a **CLOSE CORPORATION (CC)** submitting a bid, a resolution by its members, authorizing a member or other official of the corporation to sign the documents on their behalf, **shall be included with the bid**.

**PARTICULARS OF RESOLUTION BY BOARD OF DIRECTOR/S OF THE COMPANY / MEMBERS OF THE CC**

<b>Date Resolution was taken</b>	
<b>Resolution signed by (name and surname)</b>	
<b>Capacity</b>	
<b>Name and surname of delegated Authorized Signatory</b>	
<b>Capacity</b>	
<b>Specimen Signature</b>	
<b>Full name and surname of ALL Director(s) / Member(s)</b>	

<b>Signed on behalf of Company / CC</b>		<b>Date</b>	
<b>Print Name</b>			
<b>Witness 1</b>		<b>Witness 2</b>	

**B. SOLE PROPRIETOR (SINGLE OWNER BUSINESS)**

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

.....

Signature .....

Date.....

**C. PARTNERSHIP**

We, the undersigned partners in the business trading as

.....

hereby authorize Mr/Ms .....to sign this bid as well as any contract resulting from the bid and any other documents and correspondence in connection with this bid and /or contract for and on behalf of the abovementioned partnership.

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

Full name of partner	Signature

Signed on behalf of Partnership		Date	
Print Name			
Witness 1		Witness 2	

**D. JOINT VENTURES**

**This returnable schedule is to be completed by JOINT VENTURES**

We, the undersigned, are submitting this tender offer in joint venture and hereby authorize Mr/Ms..... authorized signatory of the Company/Close Corporation/Partnership (name), acting in the capacity of lead partner, to sign all documents in connection with the tender offer and any contract resulting from it on our behalf.

1. Name of firm (Lead partner)			
Address			
		Tel no	
Signature		Designation	

2. Name of firm			
Address			
		Tel no	
Signature		Designation	

3. Name of firm			
Address			
		Tel no	
Signature		Designation	

4. Name of firm			
Address			
		Tel no	
Signature		Designation	

**NOTE: A copy of the Joint Venture Agreement clearly showing the percentage contribution of each partner to the Joint Venture, shall be appended to this Schedule**

**7. ADDENDA / NOTICE(S) ISSUED TO BIDDERS**

I/We confirm that the following communication / Information / Notice(s), issued to Bidders, was received from the Employer before the submission of this tender offer and has been taken into consideration in this tender:

(NB: Addendum/Addenda shall only be made available to Bidders who attended the Clarification Meeting.)

Communication regarding the revision of this bid document can also be viewed on the following websites: [www.etenders.treasury.gov.za](http://www.etenders.treasury.gov.za) or [www.iucma.co.za](http://www.iucma.co.za)

Addendum / Notice Reference Number	Date of Issue	Subject Matter of Addendum / Notice

**NB:** Evidence of such addenda must be attached to this Schedule.

Specify number of sheets appended to this schedule \_\_\_\_\_ (if none, enter NONE)

**SIGNATURE:** \_\_\_\_\_  
(On behalf of the Bidder)

**DATE:** \_\_\_\_\_

**8. SBD 4: BIDDER'S DISCLOSURE**

**1. PURPOSE OF THE FORM**

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and/or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

**2. BIDDER'S DECLARATION**

2.1. Is the bidder, or any of its directors/trustees/shareholders/members/partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state? **YES/NO**

2.1.1. If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/directors/trustees/shareholders/members/partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

2.2. Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....

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.....  
*<sup>1</sup> the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.*

2.3. Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

2.3.1 If so, furnish particulars:

.....  
.....

**3. DECLARATION**

I, the undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1. I have read and I understand the contents of this disclosure.
- 3.2. I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect.
- 3.3. 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 consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.5. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.6. There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

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<sup>2</sup> *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.*

3.7. 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.

**I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.  
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.**

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

**9. SBD 6.1: PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS**

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS AS AMENDED.**

**1. GENERAL CONDITIONS**

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

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2

- a) The value of this bid is estimated not to exceed R50 000 000 (all applicable taxes included) and therefore the **80/20** preference point system shall be applicable; or
- b) Either the 80/20 preference point system will be applicable to this tender.

1.3 Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

1.4 The maximum points for this bid are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	80
<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>	20
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

**2. DEFINITIONS**

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- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
  - 1) B-BBEE Status level certificate issued by an authorized body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

**3. POINTS AWARDED FOR PRICE**

**3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS**

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

**80/20 or 90/10**

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

- P<sub>s</sub> = Points scored for price of bid under consideration
- P<sub>t</sub> = Price of bid under consideration
- P<sub>min</sub> = Price of lowest acceptable bid

**4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR**

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4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

**5. BID DECLARATION**

5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

**6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1**

6.1 B-BBEE Status Level of Contributor: . = .....(maximum of 10 or 20 points)  
 (Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.)

**7. SUB-CONTRACTING**

7.1 Will any portion of the contract be sub-contracted?

*(Tick applicable box)*

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE

*(Tick applicable box)*

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of

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Preferential Procurement Regulations as amended:

<b>Designated Group: An EME or QSE which is at last 51% owned by:</b>	<b>EME</b> √	<b>QSE</b> √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

**8. DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

8.7 Total number of years the company/firm has been in business:.....

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4

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and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

WITNESSES
1. ....
2. ....

..... SIGNATURE(S) OF BIDDERS(S)
DATE: .....
ADDRESS .....
.....

**10. SBD 7.2 CONTRACT FORM - RENDERING OF SERVICES**

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

**PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)**

1. I hereby undertake to render services described in the attached bidding documents to **INKOMATI-USUTHU CATCHMENT MANAGEMENT AGENCY** in accordance with the requirements and task directives/proposals specifications stipulated in Bid Number **BID NO. IUCMA/010/LEGALSERVICES/2022** at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the 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);
    - Filled in task directive/proposal;
    - Preference claims for Broad-Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations as amended;
    - Bidder`s Disclosure;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract; and
  - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfilment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.

6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

WITNESSES	
1	.....
2	.....
DATE:	.....

**CONTRACT FORM - RENDERING OF SERVICES**

**PART 2 (TO BE FILLED IN BY THE PURCHASER)**

1. I ..... in my capacity as Chief Executive Officer accept your bid under reference number **BID NO. IUCMA010/LEGALSERVICES/2022** dated ..... for the rendering of services indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating service delivery instructions is forthcoming.
3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

DESCRIPTION OF SERVICE	NAME OF THE COMPANY	PRICE (ALL APPLICABLE TAXES INCLUDED)	CONTRACT DURATION	B-BBEE STATUS LEVEL OF CONTRIBUTION
A PANEL OF ATTORNEYS TO PROVIDE PROFESSIONAL LEGAL SERVICES TO THE IUCMA FOR A PERIOD OF THREE (3) YEARS				

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

SIGNED AT... **MBOMBELA**.....ON.....

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

WITNESSES

1 .....

2 .....

DATE: .....



## **SECTION C – TERMS OF REFERENCE, PRICING SCHEDULE, AND OTHER RETURNABLE DOCUMENTS**

## **11. TERMS OF REFERENCE**

### **A PANEL OF ATTORNEYS TO PROVIDE PROFESSIONAL LEGAL SERVICES TO THE IUCMA FOR A PERIOD OF THREE (3) YEARS**

#### **1. Background**

1.1 The Inkomati-Usuthu Catchment Management Agency (IUCMA) is a water resource management institution established in accordance with the provisions of the National Water Act (36 of 1998). As part of its mandate, the IUCMA is responsible for the management of all water resources for all water users within its Water Management Area. The IUCMA also, amongst others, recommends to the responsible authority for the issue of Water Use Licences, initiates litigation proceedings to protect its rights, declares existing lawful water uses and facilitates the transfers of water use authorisations, enforces compliance with rules and regulations, takes administrative decisions in the exercise of public power, initiates internal disciplinary processes and manages the sustainable, efficient and equitable use of water resources.

1.2 As a regulator and an employer, the IUCMA is constantly involved in litigation either instituted by itself, the water users, or its employees. It is thus necessary to have a panel of attorneys to provide professional legal services to the institution with various degrees of specialty and experience in the legal field.

## **2. Scope of work**

- 2.1 The successful bidders will be required to provide legal services to the IUCMA, which will include, representing the institution in litigation matters, advising the IUCMA on regulatory matters (incl. the applicable regulatory instruments), representing the IUCMA in public hearings or tribunals and providing general legal support for a period of three (3) years in any of the following legal categories (“Focus Areas”):
- (a) Water Law (Water Law and Governance, Environmental Compliance Monitoring, and Authorisation);
  - (b) Labour and Employment Law;
  - (c) Commercial law (contracts, commercial litigation, debt-collection, etc.);
  - (d) Legislative Drafting;
  - (e) Administrative law;
  - (f) Procurement Law
  - (g) Environmental Law;
  - (h) Corporate Governance;
  - (i) Data Privacy Law;
  - (j) Constitutional Law; and
  - (k) any other matter having an impact on the IUCMA’s ability to execute its mandate in terms of the National Water Act, 1998 (Act 36 of 1998) (“NWA”), Water Services Act, 1997 (108 of 1997), Public Finance Management Act, 1999 (Act 1 of 1999) (“PFMA”), Labour Relations Act, 1995 (Act 66 of 1995) (“LRA”), Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) (“PAJA”), National Environmental Management Act, 1998 (Act 107 of 1998), Electronic Communications Act, 2005 (Act 36 of 2005) (“EC Act”) and other related legislations.
- 2.2 The bidder(s) will be expected to provide services relating to the above Focus Areas and submit the following to the institution:

### **2.2.1 Litigation strategy or methodology**

- 2.2.1.1 The bidder(s) must provide and demonstrate how it prepares a litigation strategy or what methodology it may use in order to assist the IUCMA in dealing with or handling its litigation matters in a cost-effective, pragmatic, and efficient manner. The IUCMA must ensure compliance with legislation when executing its functions and act in the best interest of the water users. Above all, the IUCMA should act without fear, favour or prejudice. As an example, a plethora of Water Tribunal appeal proceedings are instituted by disgruntled applicants who are unsuccessful in vigorous water use authorisations and declaration of Existing Lawful Water Use (ELWU) processes that are undertaken by the IUCMA, on behalf of the Minister of Water & Sanitation. The IUCMA has an obligation to oppose such appeals proceedings and stand its ground particularly in instances where the IUCMA followed the appropriate legislative processes and acted in the public interest.

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**2.2.2** Pro-active Measures/ Analysis of short-comings and inadequacies:

2.2.2.1 The bidder(s) are expected to provide proactive measures and detailed analysis of the IUCMA's short- comings and inadequacies in:

- (a) dealing with and handling litigation;
- (b) support in the implementation of various provisions of the National Water Act;
- (c) assessing and updating IUCMA policies (labour, procurement, privacy, administrative action, corporate strategy, etc) to be congruent with prevailing legal norms and standards; and
- (d) conducting inquiries, studies, and investigations to assist the IUCMA Governing Board to effectively discharge its functions.

2.2.2.2 The IUCMA would like to see a profound improvement in terms of success rate in its litigation matters and implementation of its legislated mandate. The bidders should not only identify the problem areas but also make propositions as to how the IUCMA may improve from now onwards in minimising litigation against it and dealing with litigation proceedings once instituted.

2.2.2.3 Significantly, bidder(s) must indicate what pro-active measures the bidder will put in place to assist the IUCMA in achieving its mandate as a water resource management institution and identify litigation and or regulatory legal risks and mitigation controls.

**2.2.3** Communication plan and reporting strategy:

2.2.3.1 Bidders must provide a communication plan and reporting strategy that clearly spells- out how often and how the successful bidders will communicate and report on the progress made on matters handled on behalf of the IUCMA. Additionally, how pro- active measures will be communicated and implemented, to assist the IUCMA in achieving its objectives and/or mandate.

2.2.3.2 Bidders must indicate how new developments in law, that may have an impact on the mandate of the IUCMA, will be communicated to the IUCMA.

2.2.3.3 Lastly, bidders must indicate (provide at a minimum a sample contract clause and Chinese wall policy) how the bidder will handle any potential conflict of interest, when assisting the IUCMA

**3. Briefing Session**

3.1. There will be no briefing session conducted.

**4. EVALUATION PROCESS**

The bid will be evaluated and adjudicated in phases as follows:

- Phase 1 – Compliance/Mandatory requirements
- Phase 2 – Functional requirements

**Phase 1: Compliance/ mandatory Requirements**

Without limiting the generality of the IUCMA’s other critical requirements for this bid, the bidder(s) must submit the documents listed in the table below. All documents must be completed and signed by the duly authorized representative of the prospective bidder(s). During this phase Bidders’ responses will be evaluated based on compliance with the listed administration and mandatory bid requirements. The bidder(s) proposal will be disqualified for non-submission of any of the documents.

**Documents that must be submitted for Compliance/ Mandatory Requirements**

<b>A document that must be submitted</b>	<b>Yes/No</b>	<b>Non-submission will result in disqualification?</b>
Permission in terms of POPI Act to utilise the information contained in documents for procurement purposes	Yes	Complete and sign the supplied pro forma document.
Invitation to Bid – SBD 1	Yes	Complete and sign the supplied pro forma document.
Bidder`s Disclosure – SBD 4	Yes	Complete and sign the supplied pro forma document.
Preference Point Claim Form – SBD 6.1	No	Complete and sign the supplied pro forma document. Incomplete form will lead to a zero (0) score on BBEE.
Valid BEE certificate (accredited by SANAS) or Sworn affidavit (DTI or CIPC Template)	No	Non-submission will lead to a zero (0) score on BBEE
Registration on Central Supplier Database (CSD)	Yes	The bidder must be registered as a service provider on the CSD.

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A document that must be submitted	Yes/No	Non-submission will result in disqualification?
	No	Submit CSD full registration report (CSD full registration report must NOT be older than <b>10 days</b> from the closing date and a summary report will NOT be considered).
Law firms registered with the Legal Practice Council (“LPC”) and submit a certificate of good standing from the Council.	Yes	Bidders must submit a certificate of good standing from the Legal Practice Council.
<b>Bidder should submit attach Fidelity Fund Certificate.</b>	Yes	Bidders must provide the certificate of admission to practice as a legal practitioner and a Fidelity Fund Certificate in the firm’s name.

***NB: No Bid will be awarded to any person whose tax matters have not been declared in order by South African Revenue Service.***

***NB: No award will be made to an entity which is not registered on the CSD (Central Supplier Database) with National Treasury.***

**Phase 2: Functionality Requirements**

The evaluation of bidders of functionality will be done in terms of the evaluation criteria as indicated in Table 1 below. Only bids that meet the minimum threshold of **80 out of 100 points** for functionality. The evaluation of functionality will be evaluated in accordance with the functionality criteria below and applicable values.

**Table 1: Functionality Evaluation Criteria**

Qualification criteria	Description	Points
<b>1. Litigation Methodology</b>	<p><b>How does the bidder prepare a litigation strategy and how will such approach assist the IUCMA in achieving its mandate and ensure cost efficiency?</b></p> <ul style="list-style-type: none"> <li>• Litigation strategy with analysis for prospect of success, evaluation for possibility of settlement and cost saving plan=20</li> <li>• Litigation strategy with analysis for prospect of success and evaluation for the possibility of settlement but without cost savings plan = 15</li> <li>• Litigation strategy with analysis for prospect of success but</li> </ul>	<b>20</b>

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	<p>without evaluation for possibility of settlement = 10</p> <ul style="list-style-type: none"> <li>• Litigation strategy without analysis for prospect of success = 5</li> <li>• No litigation strategy = 0</li> </ul> <ul style="list-style-type: none"> <li>• <b>Proof: Litigation strategy</b></li> </ul>	
<p><b>2. Focus areas and credentials</b></p>	<p>Prior verifiable experience in at least four (4) of the focus areas listed below and include other pertinent credentials that will be deployed to execute the services. <b>The focus areas are as follows:</b></p> <ul style="list-style-type: none"> <li>▪ Water Law (Water Law and Governance, Environmental Compliance Monitoring, and Authorisation);</li> <li>▪ Labour and Employment Law;</li> <li>▪ Commercial law (contracts, commercial litigation, debt-collection, etc.);</li> <li>▪ Legislative Drafting;</li> <li>▪ Administrative law;</li> <li>▪ Procurement Law</li> <li>▪ Environmental Law;</li> <li>▪ Corporate Governance;</li> <li>▪ Data Privacy Law;</li> <li>▪ Constitutional Law;</li> </ul> <p>Reference letters evidencing experience in four focus areas above – <b>20</b>  Reference letters evidencing experience in three focus areas above – <b>15</b>  Reference letters evidencing experience in two focus areas above – <b>10</b>  Reference letters evidencing experience in one focus areas above – <b>5</b></p> <p><b>Proof:</b> Reference letters, on client letterheads. <b>No attachment will score zero.</b></p>	<p><b>20</b></p>
<p><b>3. Company measures.</b></p>	<p><b>Provide pro-active measures that the bidder will put in place to assist the IUCMA in achieving its mandate as a Water Management Institution for the Inkomati Usuthu Water Management Area and provide a legal risk analysis on litigation, regulation, drafting process and NWA Section 33 Existing Lawful Use declarations and Section 25 Transfer of Authorisations with mitigation controls.</b></p> <ul style="list-style-type: none"> <li>• Pro-active measures provided with a detailed plan and provided a thorough analysis of potential legal risks (litigation, development of regulations and ss 33 and 25 inquiries) with mitigation controls = <b>30</b></li> <li>• Pro-active measures provided with a detailed plan and identified</li> </ul>	<p><b>30</b></p>

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	<p>potential legal risks (litigation, development of regulations or ss 33 and 25 enquiry) but without an analysis to mitigate the risks = <b>20</b></p> <ul style="list-style-type: none"> <li>• Pro-active measures provided with a detailed plan but without identifying the potential legal risks = <b>15</b></li> <li>• Pro-active measures provided without a detailed plan = <b>10</b></li> <li>• No pro-active measures provided= <b>0</b></li> </ul> <p><b>Proof: provide a detailed plan with pro-active measures</b></p>	
<p><b>4. Personnel experience.</b></p>	<p>Provide legal practitioners' profiles (Curriculum Vitae) with experience in at least three of the focus areas listed in 2 above. Indicate if external services or Counsel will be utilised as experts in certain instances and add the credentials and profiles of such experts and/or Counsel.</p> <ul style="list-style-type: none"> <li>• CV provided with relevant focus areas, example(s) of water law matter and public interest matter and two or more contactable references = <b>10</b></li> <li>• CV provided with relevant focus areas, example(s) of water law matter(s) and two or more contactable references = <b>8</b></li> <li>• CV provided with relevant focus areas and contactable references but no example(s) of water law matter(s) = <b>6</b></li> <li>• CV provided with relevant focus areas and example(s) of water law matter(s) with one (1) contactable reference = <b>4</b></li> <li>• CV provided with relevant focus areas, no example of water law matter and no contactable reference = <b>1</b></li> </ul> <p><b>Proof: Curriculum Vitae (CV) of senior personnel evidencing the requirements above, with certified qualifications to be attached. No attachment will score zero.</b></p>	<p><b>10</b></p>
<p><b>5. Communication and reporting strategy</b></p>	<p><b>Provide a communication plan or reporting strategy.</b></p> <ul style="list-style-type: none"> <li>• Comprehensive Communication Plan or Reporting Strategy with reporting timeframes and indication of how new developments impacting the IUCMA will be communicated and how to handle potential conflict of interest, sample contract clause and Chinese wall policy provided = <b>20</b></li> <li>• Communication Plan or Reporting Strategy is provided with indication of how new developments impacting IUCMA will be communicated and how potential conflict of interest will be handled= <b>15</b></li> <li>• Communication Plan or Reporting Strategy is provided with indication of either how new developments impacting IUCMA will be communicated or how to handle potential conflict of interest = <b>10</b></li> </ul>	<p><b>20</b></p>

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	<ul style="list-style-type: none"> <li>• Communication Plan or Reporting Strategy is provided but without indication of how new developments impacting IUCMA will be communicated and how to handle potential conflict of interest = <b>5</b></li> <li>• No communication Plan or Reporting Strategy provided = <b>0</b></li> </ul> <p><b>Proof: Provide a communication plan or reporting strategy</b></p>	
<b>Total</b>		<b>100</b>
<b>Minimum required score</b>		<b>80</b>

## Conditions of Contract

5.1 Successful bidders must take cognisance of the specific conditions of contract detailed below:

5.1.1 Due to the relatively small size of the institution and the low volume of litigious work, appointment to the panel will be limited to the top (10) law firms scoring the highest points in functionality.

5.1.2 To ensure fairness and equitability, members of the panel will be utilised for assignments on a rotational basis, as and when they are needed.

5.1.3 Appointment to the panel does not in any way guarantee that a firm of attorneys will receive instructions and/or that it is entitled to a portion of instructions/assignments.

5.1.4 At the discretion of the IUCMA, firms of attorneys who have pending instructions/assignments during the last three (3) months of the contract period shall be allowed to continue after the expiry of this contract period, until such time that those instructions/assignments are finalised.

5.1.5 Notwithstanding clause 5.1.3 above, those members of the panel who have overlapping assignments will be expected to conclude them without unreasonable delays and the IUCMA has a discretion to terminate mandates whenever it is of the opinion that such mandates no longer serve the interests of the institution.

5.1.6 The condition contained in clause 5.1.3 above does not absolve panel members from participating in the competitive bidding process to form part of a new panel at the end of the envisaged period. If a firm of attorneys with an overlapping assignment has not been included in the 'new' panel, their relationship with the IUCMA shall terminate at the completion of the assignment or at the termination of the mandate at the instance of the IUCMA.

## 7. PROJECT PERIOD

The project will be executed for a period of three (03) years.

## 8. VALIDITY OF PROPOSALS

The Bidder is required to confirm that it will hold its proposal valid for **150 days** from the closing date of the submission of proposals, during which time it will maintain without change, the personnel proposed for the services together with their proposed rates.

## 9. SERVICE LEVEL AGREEMENT

The acceptance of any proposal is only valid upon the conclusion of a written SLA between the IUCMA and the successful Service Provider, in terms of which the rights and duties of the parties are recorded, which agreement shall regulate the relationship between the IUCMA and the successful Service provider.

Until such time that an appropriate SLA has been concluded between the IUCMA and the successful Service Provider, no rights shall be conferred, nor shall any legitimate expectations be

conferred to the successful service provider to carry out the works or services provided for in this document. This document is not to be edited or altered as it forms part of the contract. Any contract amendments are to be raised with the IUCMA for legal consideration.

**13. AMENDMENTS, QUALIFICATIONS AND ALTERNATIVES**

*(This is not an invitation for amendments, deviations or alternatives, but should the Bidder desire to make any departures from the Provisions of this Contract he shall set out his proposals clearly hereunder. The Employer will not consider any amendment, unless form (a), has been completed to the satisfaction of the Employer).*

I / We herewith propose the amendments, as set out in the table below:

**(a) AMENDMENTS**

PAGE, CLAUSE OR ITEM NO	PROPOSED AMENDMENT

**Notes:** (1) Amendments to the General and Special Conditions of Contract are not acceptable.

(2) The Bidder must give full details of all the financial implications of the amendments and qualifications in a covering letter attached to his Tender.

**14. SCHEDULE OF THE BIDDER'S EXPERIENCE**

The following is a statement of work of similar nature recently successfully executed by myself/ourselves:

Employer: Name and Address	Project Manager: Contact Person and Telephone Number	Nature of Work	Value of Work (inclusive of VAT)	Date Completed or Expected to be Completed

Attach additional pages if more space is required.

**Note: When completing the above schedule, Tenderers must take cognisance of the evaluation criteria**

SIGNATURE: .....  
 (of person authorised to sign on behalf of the Bidder)

DATE: .....

### **15. REFERENCE LETTERS**

Bidders must have specific experience (e.g. providing banking services that are competitive and meet the operational activities of the IUCMA and submit positive reference/s (in a form of written proof/(s) on organization's letterhead including relevant contact person, nature of service and contact details) of similar work undertaken.

**Bidders are to note that appointment letters/purchase orders will not be accepted in lieu of reference letters.**

Attach Letters of Reference to this page.



**17. SCHEDULE OF PROPOSED SUB-CONSULTANTS (WHERE APPLICABLE)**

We notify you that it is our intention to employ the following Sub-consultants for Work in this Contract. If we are awarded a contract, we agree that this notification does not change the requirement for us to submit the names of proposed Sub-consultants in accordance with requirements in the Contract for such appointments. If there are no such requirements in the Contract, then your written acceptance of this list shall be binding between us.

	<b>Name and address of proposed sub-consultant</b>	<b>Nature and Extent of Work</b>	<b>Previous experience with Sub-consultant.</b>
1.			
2.			
3.			
4.			
5.			

Signed

Date

Name

Position

Bidder

**18. COMPANY PROFILE, INCLUDING TRACK RECORD**

***[Abbreviated company profile, giving history, status, activities, staff and track record of the bidding entity, to be inserted here. In the case of a Joint Venture, a separate profile for each partner must be submitted]***

***Attach here***



**20. DECLARATION BY BIDDER**

**THE BIDDER WILL BE DISQUALIFIED IF DECLARATION IS NOT FULLY COMPLETED AND SIGNED**

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:

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

<b>Name of Bidder</b>			
<b>Signature</b>		<b>Name (print)</b>	
<b>Capacity</b>		<b>Date</b>	