

**BID NO: KZNTAFA-T06/2024/25 APPOINTMENT OF A PANEL OF SUITABLY QUALIFIED AND EXPERIENCED LEGAL SERVICE PROVIDERS TO PROVIDER LEGAL SERVICES TO THE ENTITY FOR A PERIOD OF THREE YEARS.**

Ithala Trade Centre  
29 Canal Quay (Signal) Road  
Durban  
4001

**Contact:** Thembekile Mdlophane and Olivia Manjate  
**Telephone:** 031 366 7500/031 003 9000  
**Email:** [tenders@zulu.org.za](mailto:tenders@zulu.org.za) and [tenders@kznfilm.co.za](mailto:tenders@kznfilm.co.za)

***PLEASE NOTE THAT THIS BID IS SUBJECT TO SUPPLY CHAIN MANAGEMENT LEGISLATION AND THE GENERAL CONDITIONS OF CONTRACT AS PRESCRIBED BY NATIONAL TREASURY.***

Specific Goals will be applicable for this Tender process ( upon quotation requests on a case by case bases)

	<b>Specific Goals</b>
<b>Price</b>	<b>80</b>
<b>Ownership Goals -</b>	
<ul style="list-style-type: none"> <li>At least 51% Blacks Africans,Indians or Coloreds Owned Companies</li> </ul>	10
<ul style="list-style-type: none"> <li>At least 51% Women owned companies</li> </ul>	05
<ul style="list-style-type: none"> <li>At least 51% Youth owned companies</li> </ul>	05
<b>Total</b>	<b>100</b>

***Failure on the part of a tenderer to submit proof or documentation required in terms of this Tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed***

**VALIDITY: 90 DAYS**

**TOTAL PRICE R.....**

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**SECTION A: BID NOTICE**

Bid description	<b>APPOINTMENT OF A PANEL OF SUITABLY QUALIFIED AND EXPERIENCED LEGAL SERVICE PROVIDERS TO PROVIDER LEGAL SERVICES TO THE ENTITY FOR A PERIOD OF THREE YEARS</b>										
Bid number	<b>KZNTAFA-T06/2024/25</b>										
Name of institution	KwaZulu-Natal Tourism and Film Authority										
The place where goods, works or services are required	Ithala Trade Centre, 29 Canal Quay (Signal) Road, Durban, 4001										
Closing date and time	<b>Date</b>	1	3	1	2	2	0	2	3	<b>Time</b>	11:00
Contact details	Postal address										
	Physical address		Ithala Trade Centre, 29 Canal Quay (Signal) Road, Durban, 4001								
	Tel		031 366 7500/031 003 9000								
	Fax		N/A								
	email		<a href="mailto:tenders@zulu.org.za">tenders@zulu.org.za</a> and <a href="mailto:tenders@kznfilm.co.za">tenders@kznfilm.co.za</a>								
	Contact person		Thembekile Mdlaphane and Olivia Manjate								
Where bids can be collected	Documents can be downloaded from the KwaZulu-Natal Film Commission and Tourism KwaZulu-Natal website on <a href="http://www.kznfilm.co.za">www.kznfilm.co.za</a> and <a href="http://www.zulu.org.za">www.zulu.org.za</a> at no cost.										
Where bids should be delivered	Tender Box: Ithala Trade Centre, 2 <sup>nd</sup> Floor, 29 Canal Quay (Signal) Road, Durban, 4001 (Reception Area)										
Category (refer to annexure A)	General										
Sector	Services: Professional										
Region	KwaZulu-Natal										

Site viewing N/A		
BRIEF SESSION  N/A	Date	
	Time	
	(Microsoft Teams) Link	

## SECTION B

### SPECIAL INSTRUCTIONS AND NOTICES TO BIDDERS REGARDING THE COMPLETION OF FORMS

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

1. Unless inconsistent with or expressly indicated otherwise by the context, the singular shall include the plural and visa versa and with words importing the masculine gender shall include the feminine and the neuter.
2. Under no circumstances whatsoever may the quotation/bid forms be retyped or redrafted. Photocopies of the original bid documentation may be used, but an original signature must appear on such photocopies.
3. The bidder is advised to check the number of pages and to satisfy himself that none are missing or duplicated
4. Bids submitted must be complete in all respects.
5. Bids shall be lodged at the address indicated not later than the closing time specified for their receipt, and in accordance with the directives in the bid documents.
6. Each bid shall be addressed in accordance with the directives in the bid documents and shall be lodged in a separate sealed envelope, with the name and address of the bidder, the quotation number and closing date indicated on the envelope. The envelope shall not contain documents relating to any bid/quotation other than that shown on the envelope. If this provision is not complied with, such bids may be rejected as being invalid.
7. All bids received in sealed envelopes with the relevant quotation numbers on the envelopes are kept unopened in safe custody until the closing time of the quotation/bids. Where, however, a quotation is received open, it shall be sealed. If it is received without a bid number on the

- envelope, it shall be opened, the bid number ascertained, the envelope sealed, and the quotation number written on the envelope.
8. A specific box is provided for the receipt of proposals, and no proposals found in any other box or elsewhere subsequent to the closing date and time of the bid proposal will be considered.
  9. No bid proposal sent through the post will be considered if it is received after the closing date and time stipulated in the bid proposal documentation, and proof of posting will not be accepted as proof of delivery.
  10. No bid proposal submitted by telefax, telegraphic or other electronic means will be considered.
  11. Bid proposal documents must not be included in packages containing samples. Such bids may be rejected as being invalid.
  12. Any alteration made by the bidder must be initialed.
  13. Use of correcting fluid is prohibited
  14. Bids will be opened in public as soon as practicable after the closing time of bid.
  15. Where practical, prices are made public at the time of opening bids.
  16. If it is desired to make more than one offer against any individual item, such offers should be given on a photocopy of the page in question. Clear indication thereof must be stated on the schedules attached.

## SECTION C

**Table 1: Compulsory Returnable**

ANNEXURE	ITEM
Section D	Registration on the National Treasury Central Suppliers Database
Section E	Invitation to Bid (SBD 1)
Section F	Bidders Disclosure (SBD 4)
Section G	Instruction to Bidders
Section H	Supply Chain Management Procedures
Section I	Authority to Sign the Bid (Resolution Letter (s))
Section J	Certification of Correctness of Information Supplied in this Document

**Table 2: Non- Compulsory Returnable**

ANNEXURE	ITEM
Section L	Tax Compliance Status Verification Pin
Section M	Company Registration Certificate/Agreement/ID Document
Section N	Central Supplier Database Summary report
Section K	SBD 6.1 Preference Points Claim Form in terms of the Preferential Procurement

## SECTION D

### REGISTRATION ON THE NATIONAL TREASURY CENTRAL SUPPLIERS DATABASE

1. In terms of the National Treasury SCM Instruction No 4A of 2016/2017, all suppliers of goods and services are required to register on the National Treasury Central Suppliers Database, before any procurement related activities can commence.
2. If you wish to apply for online registration, use the following website, <https://secure.csd.gov.za/>.
3. The supplier/service provider must register on the National Treasury Central Supplier's Database.



**SECTION E: PART A INVITATION TO BID**

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

BID NUMBER:		CLOSING DATE:		CLOSING TIME:	
DESCRIPTION					

**BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)**


**BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO**

**TECHNICAL ENQUIRIES MAY BE DIRECTED TO:**

CONTACT PERSON		CONTACT PERSON	
TELEPHONE NUMBER		TELEPHONE NUMBER	
FACSIMILE NUMBER		FACSIMILE NUMBER	
E-MAIL ADDRESS		E-MAIL ADDRESS	

**SUPPLIER INFORMATION**

NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		<b>OR</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
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**[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]**

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 <b>THE GOODS /SERVICES /WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES, ANSWER THE QUESTIONNAIRE BELOW ]
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**QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?

YES     NO

DOES THE ENTITY HAVE A BRANCH IN THE RSA?

YES     NO

DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?

YES     NO

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?

YES     NO

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?

YES     NO

**IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.**

## PART B TERMS AND CONDITIONS FOR BIDDING

### 1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED– (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

### 2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO 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:

.....

**SECTION F**  
**BIDDER’S DISCLOSURE (SBD 4)**

**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. BIDDERS’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:

.....  
 .....

<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 DECLARATIONS**

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.

3.4 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.

3.5 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.

3.6 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

**DEFINITIONS**

**1. DEFINITIONS**

1.1 “KZN Tourism & Film” means the KwaZulu-Natal Tourism and Film Authority

1.2 “Head” means the officer appointed to the post of Head of the KZN Tourism & Film, who has signed this contract and shall include any person acting in that capacity.

1.3 “Service Provider” means the person or persons, partnership, firm or company or close corporation, etc. whose quotation for this work has been accepted, and who has, or have, signed this Contract, and shall



include his or her heirs, executors, administrators, successors, and any representative, duly appointed, with the consent in writing of the Employer.

1.4 “Team” means person or persons representing or acting on behalf of the Service Provider in the execution of this Contract.

1.5 “Written instructions” means any printed, typed or written documents or letter signed by or on behalf of the Head and addressed to the Service provider for the purpose of his guidance, direction or instruction.

## **SECTION G - INSTRUCTION TO BIDDERS**

### **2. INSTRUCTION TO BIDDERS**

- 2.1 The service provider must be a legal entity, person or consortium with all other necessary expertise.
- 2.2 Be registered with the National Treasury Central Service Providers Database. Proof of registration together with the number must be provided as part of the proposal.
- 2.3 The service provider must fully complete all the relevant sections in the bid proposal document failure to complete the relevant sections will result in bid proposal disqualification.
- 2.4 Service providers to ensure that all Tax matters are in order.
- 2.5 Service providers are required to declare in writing, as part of their proposal's submissions, that they have no conflict of interest in acting for the KZN Tourism and Film in this assignment.
- 2.6 KZN Tourism and Film will enter into agreement with the selected service provider for the work set out in these Terms of Reference. In the event of any conflict arising between the Terms of Reference and the agreement, the agreement will prevail.
- 2.7 The persons proposed for the profession work on the assignment shall themselves carry out the work, unless permission is granted by KZN Tourism and Film to replace them. Such permission will only be granted in exceptional circumstances.
- 2.8 The cost of preparing proposals and of negotiating the contract is not reimbursable.
- 2.9 KZN Tourism and Film is not bound to accept any proposals submitted and reserve the right to negotiate price with the preferred service provider and to request improvements to the service provider's team if deemed necessary.
- 2.10 KZN Tourism and Film reserves the right to interview short-listed service providers if required and /or call for the best and final offers from one or more service providers.
- 2.11 Any effort by the service provider to influence proposal evaluation, proposal comparisons or proposal award decisions in any manner, will result in rejection of the proposal concerned.
- 2.12 Copyright, patent rights and other similar rights in any works or products created as a result of the performance of this project / assignment shall vest in and are hereby transferred to KZN Tourism and Film, unless specifically agreed to otherwise, in the form of individual written, Agreement signed by both parties.

- 2.13 For this purpose only, all works created in terms of this project / assignments thereof shall be deemed to have been created under control and direction of KZN Tourism and Film and be the property of KZN Tourism and Film.
- 2.14 All information documents, records and books provided by KZN Tourism and Film to any service provider in connection with the proposal or otherwise are strictly private and confidential.
- 2.15 Any proposer to any third party shall not disclose them, except with the express consent of KZN Tourism and Film, which shall be granted in writing prior to such disclosure. KZN Tourism and Film however, reserves the right to disclose any information provided by the service provider to any of its employees.
- 2.16 KZN Tourism and Film requires no bid surety, but services providers should note that KZN Tourism and Film reserves the right to review this position at contractual stages.
- 2.17 KZN Tourism and Film reserves the right to downscale the required services should the need arise; however, this will be done on a consensus basis.
- 2.18 KZN Tourism and Film reserves the right to visit the premises of the short-listed service providers prior to the assignment being awarded and after the contract has been signed.

## **2.2 EQUIPMENT**

Cell phones and any other equipment, where required, must be provided at own cost by the service provider. All official cell phone calls will only be reimbursed by the Commission if supported evidence is provided.

## **2.3. LANGUAGE MEDIUM**

The language medium for all documentation related to the Contract shall be in English.

## **2.4. PAYMENT**

Once a contract is awarded the supplier must complete a Bank Form available from the Commission. This form must be submitted together with a cancelled cheque or a certified bank statement and a certified copy of the ID of the person who signs the financial detail certificate.

## **SECTION H– SUPPLY CHAIN MANAGEMENT PROCEDURES**

### **3. SUPPLY CHAIN MANAGEMENT PROCEDURES**

#### **3.1 PROCEDURES FOR SUBMISSION**

- 3.1.1 It is the responsibility of the service providers to ensure that their proposals are in the Bid Box by deadline date and time.
- 3.1.2 Bids proposals are late if they are received at the address indicated in the bid documents after the closing date and time.
- 3.1.3 A late bid proposal shall not be considered and, where practicable, shall be returned unopened to the Bidder.
- 3.1.4 No late bids proposals are accepted.
- 3.1.5 Bidders must please ensure that in all instances, the bid proposal reference number as well as the name of the project is clearly written in bold on the envelope.

#### **3.2 VERIFICATION OF NATIONAL TREASURY CENTRAL SUPPLIERS DATABASE**

- 3.2.1 The KZN Tourism and Film will verify the following information of the National Treasury Central Suppliers Database.
- a) Business registration, including details of directorship and membership.
  - b) Bank account holder information.
  - c) In the service of the state status.
  - d) Tax compliance status.
  - e) Identity number.
  - g) Tender defaulting and restriction status; and
  - h) Any additional and supplementary verification information communicated by the National Treasury.

- 3.2.2 Suppliers / service providers to ensure that the above information are updated and correct on the National Treasury Central Suppliers Database.

### **3.3 JOINT VENTURES**

3.3.1 In terms of the Supply Chain Management Policy Framework, a consortium or joint venture may, based on the percentage of the contract value managed or executed by their HDI members, be entitled to equity ownership in respect of an HDI.

3.3.2 Should this bid proposal be submitted by a joint venture, a certified copy of the joint venture agreement must accompany the bid proposal document before the closing date and time? The joint venture agreement must clearly specify the percentage of the contract to be undertaken by each company participating therein.

### **3.4 EQUAL BID PROPOSALS**

In the event that two or more bids have equal total points in all respects, the Adjudication shall be decided by the drawing of lots.

### **3.5 ELECTRONIC PAYMENTS**

Once a contract is awarded the supplier must complete an Original Bas Entity Form available from the KZN Tourism and Film this form must be submitted together with a cancelled cheque or a certified bank statement and a certified copy of the ID of the person who signs the financial detail certificate.

### **3.6 APPEALS PROCESS**

All service providers are advised to refer to KZN Tourism and Film SCM policy framework for the appeal process and procedures. The SCM policy framework is available on KZN Treasury website. [www.kzntreasury.gov.za](http://www.kzntreasury.gov.za)

### **3.7 COMMUNICATION**

All correspondence regarding this bid must be addressed or hand delivered to the:

The Accounting Officer  
Supply Chain Unit  
KwaZulu-Natal Tourism and Film  
Ithala Trade Centre  
2<sup>ND</sup> Floor (Reception Area)

29 Canal Quay (Signal) Road  
Durban  
4001

**SECTION I-AUTHORITY TO SIGN A BID**

**A. COMPANIES**

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

**AUTHORITY BY BOARD OF DIRECTORS**

By resolution passed by the Board of Directors on.....20.....,  
 Mr/Mrs/Miss..... (whose signature appears below) has  
 been duly authorised to sign all documents in connection with this bid on behalf  
 of (Name of Company)  
 .....

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

**SIGNED ON BEHALF OF COMPANY:** .....

(PRINT NAME)

**SIGNATURE OF SIGNATORY:** ..... **DATE:** .....

**WITNESS:** 1..... **WITNESS:** 2.....

**B. SOLE PROPRIETOR (ONE - PERSON BUSINESS)**

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

Tradingas.....  
 .....  
 .....

**SIGNATURE**

**DATE**

(PRINT NAME)

**C. PARTNERSHIP**

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

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

We, the undersigned partners in the business trading as.....  
 hereby authorized .....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 on behalf of

.....

**SIGNATURE**

**SIGNATURE**

(PRINT NAME)

(PRINT NAME)

(PRINT NAME)



.....  
**DATE** **DATE** **DATE**

**D. CLOSE CORPORATION**

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

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

.....Mr/Mrs/Miss....., whose signature

appears below, has been authorised to sign all documents in connection with this bid on behalf of (Name of Close Corporation) .....

**SIGNED ON BEHALF OF CLOSE CORPORATION:**

.....  
**(PRINT NAME) IN HIS/HER CAPACITY AS ..... DATE:**  
.....

**SIGNATURE OF SIGNATORY:** .....

**WITNESSES: 1** .....

**2** .....

**E. CO-OPERATIVE**

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

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

.....Mr/Mrs/Miss....., whose signature  
 appears below,

has been authorised to sign all documents in connection with this bid on behalf of (Name of  
 cooperative) .....

**SIGNATURE OF AUTHORISED REPRESENTATIVE/SIGNATORY:**

(PRINT NAME)

.....

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

**DATE:** .....

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

**NAME IN BLOCK LETTERS:**

.....

**WITNESSES: 1** .....

2 .....

**F. JOINT VENTURE**

If a bidder is a joint venture, a certified copy of the resolution/agreement passed/reached signed by the duly authorised representatives of the enterprises, authorising the representatives who sign 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 joint venture must be submitted with this bid, before the closing time and date of the bid.

**\*A trust, consortium or joint venture must obtain and submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid.**

**AUTHORITY TO SIGN ON BEHALF OF THE JOINT VENTURE**

By resolution/agreement passed/reached by the joint venture partners

on.....20.....Mr/Mrs/Miss.....,  
 Mr/Mrs/Miss.....

..... Mr/Mrs/Miss.....and

Mr/Mrs/Miss..... (Whose signatures appear below) have been duly authorised to sign all documents in connection with this bid on behalf of:

(Name of Joint Venture) .....

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

**SIGNED ON BEHALF OF (COMPANY NAME):** .....

(PRINT NAME)

**SIGNATURE:** .....

**DATE:** .....

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

**SIGNED ON BEHALF OF (COMPANY NAME):** .....

(PRINT NAME)

**SIGNATURE:** .....

**DATE:** .....

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

**SIGNED ON BEHALF OF (COMPANY NAME):** .....  
 (PRINT NAME)

**SIGNATURE:** ..... **DATE:** .....

**IN HIS/HER CAPACITY AS:** .....  
**SIGNED ON BEHALF OF (COMPANY NAME):** .....  
 (PRINT NAME)

**SIGNATURE:** ..... **DATE:** .....

**G. CONSORTIUM**

If a bidder is a consortium, a certified copy of the resolution/agreement passed/reached signed by the duly authorised representatives of concerned enterprises, authorising the representatives who sign 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 consortium must be submitted with this bid, before the closing time and date of the bid.

**\*A trust, consortium or joint venture must obtain and submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid.**

**AUTHORITY TO SIGN ON BEHALF OF THE CONSORTIUM**

By resolution/agreement passed/reached by the consortium on.....20.....

Mr/Mrs/Miss.....  
 (Whose

signature appears below) have been duly authorised to sign all documents in connection with this bid on behalf of:(Name of Consortium) .....

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

**SIGNATURE:**.....

**DATE:**.....

(PRINT NAME)

**SECTION J- CERTIFICATION OF CORRECTNESS OF INFORMATION SUPPLIED  
 IN THIS DOCUMENT**

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

- 1.The bidder will furnish documentary proof regarding any bidding issue to the satisfaction of the province, if requested to do so.
- 2.If the information supplied is found to be incorrect and/or false then the province, in addition to any remedies it may have, may: -
  - a)Recover from the contractor all costs, losses or damages incurred or sustained by the province as a result of the award of the contract, and/or
  - b)Cancel the contract and claim any damages which the province may suffer by having to make less favourable arrangements after such cancellation.

**SIGNED ON THIS..... DAY OF..... 20.....  
 AT.....**

.....  
**SIGNATURE OF BIDDER OR DULY AUTHORIZED REPRESENTATIVE** **NAME IN BLOCK LETTERS**

**ON BEHALF OF (BIDDER’S NAME)**

.....

**NATORY**

**NAME OF CONTACT PERSON (IN BLOCK LETTERS, PLEASE) .....**

.....

**POSTAL ADDRESS** .....

**TELEPHONE NUMBER:** .....

**FAX NUMBER:** .....

**CELLULAR PHONE NUMBER:** .....

**E-MAIL ADDRESS:** .....

## SECTION K SBD 6.1

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

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

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

#### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

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

#### 1.2 To be completed by the organ of state

The applicable preference point system for this tender is the 80/20 preference point system.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

#### 1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
Price	80
Specific Goals	20
Total points for Price and Specific Goals	100

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.



- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

## 2. DEFINITIONS

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

## 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

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

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

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

Where

P<sub>s</sub> = Points scored for price of tender under consideration

P<sub>t</sub> = Price of tender under consideration

Pmin = Price of lowest acceptable tender

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

#### 3.2.1. POINTS AWARDED FOR PRICE

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

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

Where

Ps = Points scored for price of tender under consideration  
 Pt = Price of tender under consideration  
 Pmax = Price of highest acceptable tender

### 4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system: or
  - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,
- then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

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

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

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

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
At least 51% Blacks Africans, Indians or Coloureds Owned Companies		10		
At least 51% Women owned companies		05		
At least 51% Youth owned companies		05		

**DECLARATION WITH REGARD TO COMPANY/FIRM**

4.3. Name of company/firm.....

4.4. Company registration number: .....

4.5. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One-person business/sole propriety
- Close corporation
- Public Company
- Personal Liability Company
- (Pty) Limited
- Non-Profit Company
- State Owned Company

[TICK APPLICABLE BOX]

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

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

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

**SURNAME AND NAME:** .....

**DATE:** .....

**ADDRESS:** .....

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

## **ANNEXTURE B: GENERAL CONDITIONS OF CONTRACT**

**DEFINITIONS:** The following terms shall be interpreted as indicated:

- a) “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
- b) “Contract” means the written agreement entered into between the Province and the Contractor, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- c) “Contract price” means the price payable to the Contractor under the contract for the full and proper performance of his contractual obligations.
- d) “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- e) “Countervailing duties” are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- f) “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- g) “Day” means calendar day.
- h) “Delivery” means delivery in compliance with the conditions of the contract or order.
- i) “Delivery ex stock” means immediate delivery directly from stock actually on hand.
- j) “Delivery into consignees store or to his site” means delivery and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the Contractor bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- k) “Dumping” occurs when a private enterprise abroad markets its goods and services on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- l) “Force majeure” means an event beyond the control of the Contractor and not involving the Contractor’s fault or negligence and not foreseeable. Such event may include, but is not

restricted to, acts of the province in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

- m) “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- n) “GCC” means the General Conditions of Contract.
- o) “Goods” means all the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- p) “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the Contractor or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic, where supplies covered by the bid will be manufactured.
- q) “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- r) “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- s) “Order” means an official written order issued for the supply of goods or works or the rendering of a service.
- t) “Project site” where applicable, means the place indicated in bidding documents.
- u) “Province” means the procuring KZN Tourism and Film, incorporating the KwaZulu-Natal Provincial Legislature.
- v) “Republic” means the Republic of South Africa.
- w) “SCC” means the Special Conditions of Contract.
- x) “Services” means 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 Contractor covered under the contract.

- y) “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

## **1. CESSION OF CONTRACTS**

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

## **2. DISCREPANCIES**

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

## **3. QUALITY AND GUARANTEE**

- 3.1 All Goods supplied shall be equal in all respects to samples, patterns or specifications where such are provided. Any changes to quality or brands will have to be approved by the province, as this is a change to the conditions of the contract.
- 3.2 Should the Province, after the award of the Contract and/or during the manufacture of the goods specified, decide on a variation or alteration to the specification, either at the suggestion of the Contractor or otherwise, which will be to the province’s advantage, such variation or alteration shall be performed to the Province’s satisfaction. Any variation in the Contract Price arising there from shall be subject to agreement between the Province and the Contractor.
- 3.3 The Contractor shall not be relieved of his obligations with respect to the sufficiency of the materials and workmanship and the quality of the Goods supplied by the reason of no

objection having been taken thereto by the Province's Representative at the time the Goods were delivered.

- 3.4 The Contractor warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The Contractor further warrants that all goods supplied under this contract shall have no defect, arising from design, materials or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the Contractor, that may develop under normal use of the supplied goods in the conditions prevailing in the country of the final destination.
- 3.5 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in the Special Conditions of Contract.
- 3.6 The Province shall promptly notify the Contractor in writing of any claims arising under this warranty. The Contractor shall immediately remedy the said defect free of cost to the province. Should the Contractor delays remedial work in excess of time stipulated by the province's representative, the province may have such remedial work executed at the Contractor's expense. Should the Province decide that the defect is such that it cannot be remedied, the Goods may be rejected. Such rejected goods shall be held at the risk and expense of the Contractor and shall, on request of the province, be removed by him immediately on receipt of notification of rejection. The Contractor shall be responsible for any loss the province may sustain by reason of such action as the province may take, in terms of this clause.
- 3.7 The risk in respect of the Goods purchased by the province under the contract shall remain with the Contractor until such goods have been delivered to the province.
- 3.8 The principal feature of the Goods and Work are described in the Goods or Services Information, but the Goods or Services Information does not purport to indicate every detail of construction, fabrication or arrangements of Goods and Works necessary to meet the requirements. Omission from the Goods or Services information of reference to any part or



parts shall not relieve the Contractor of his responsibility for carrying out the Work as required under the Contract.

- 3.9 If any dispute arises between the Province and the Contractor in connection with the quality and guarantee of the Goods, either party may give the other notice in writing of the existence of such dispute, and the same shall thereupon be referred to arbitration in South Africa by a person mutually agreed upon by both parties. The submission shall be deemed to be a submission to arbitration within the meaning of the terms of the arbitration laws in force in the Republic of South Africa.

#### **4. FAILURE TO COMPLY WITH CONDITIONS AND DELAYED EXECUTION**

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

cancel the contract, and without prejudice to its other rights, be entitled to claim damages from the contractor.

4.5 In the event of the province availing itself of the remedies provided for in paragraph 4.2 -

4.5.1 the contractor shall bear any adverse difference in price of the said supplies services and these amounts plus any other damages which may be suffered by the Province, shall be paid by the contractor to the Province immediately on demand, or the Province may deduct such amounts from moneys (if any) otherwise payable to the contractor in respect of supplies or services rendered or to be rendered under the contract or under any other contract or any other amounts due to the contractor; or

4.5.2 if the Contractor fails to supply the goods or render the service within the period stipulated in the contract, the province shall have the right, in its sole discretion, to claim any damages or loss suffered.

4.6 No damages shall be claimed in respect of any period of delay which the contractor can prove to be directly due to a state of war, sanctions, strikes, lockouts, damage to machinery as a result of accidents, fire, flood or tempest or act of God, which could not be foreseen or overcome by the contractor, or to any act or omission on the part of persons acting in any capacity on behalf of the province.

4.7 If the delivery of the supplies or the rendering of the service is likely to be delayed or is in fact being delayed on account of any of the reasons mentioned in paragraph 4.6, full particulars of the circumstances shall be reported forthwith in writing to the province and at the same time the contractor shall indicate the extension of the delivery period

## 5. PATENTS

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

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

## 6. PACKAGING, MARKING AND DELIVERY

- 6.1 All goods shall be crated, packed or battened securely in such a manner as to prevent damage during loading, transport and off-loading. Unless otherwise specified, packing cases and packing materials are included in the Contract Price, and shall be and remain the property of the province.
- 6.2 All goods shall be clearly marked in the manner stated in the Goods or Services Information.
- 6.3 Goods shall be delivered to the address within the province's area of jurisdiction as set out in the Special Conditions of Contract or Goods and Services Information.
- 6.4 Goods shall be delivered on Weekdays between 08:00 and 16:00, free of all charges, only when ordered upon an official letter or form of order issued by the province. No goods will be received on Saturdays, Sundays and public holidays. This paragraph (6.4) is applicable only when not excluded in the Special Conditions of Contract.
- 6.5 Goods delivered shall in all cases be accompanied by delivery notes in duplicate, one which will be retained by the province. The Contractor shall be responsible for the safe delivery as to the quality, quantity and condition of the goods.
- 6.6 Delivery, unless otherwise provided for in the Special Conditions of Contract, shall be affected within seven (7) days from receipt of the order. The Contractor shall advise the province upon receipt of an order in writing of any anticipated delays, citing reasons therefore and put forward a new anticipated delivery date. The province may then extend the delivery date, if and as it deems fit.
- 6.7 Should the Contractor fail to supply the material within the time stated in his bid, or within the extended time allowed to him in terms of clause 6.6 hereof, the province reserves the right (after giving the Contractor seven days' notice in writing) to cancel the contract and purchase the materials elsewhere and the bidder shall refund to the province any extra cost incurred over and above the contract price.
- No liability shall, however, be attached to the Contractor if delivery of materials is rendered impossible or delayed by reason of circumstances beyond the Contractor's control.
- 6.8 If the Contractor cannot produce proof satisfactory to the province that the delay was due to circumstances beyond his control, no price increase after the due date will be recognized.

6.9 If at any time the province ascertains that, due to negligence of the Contractor or for reasons beyond his control:

6.9.1 No work on the order has been commenced and in the opinion of the province, there is little or no prospect of work being commenced in reasonable time;

6.9.2 Delivery of any materials is being or is likely to be delayed beyond the delivery date promised, and/or

6.9.3 There is little or no prospect of the order being completed within a reasonable time after the promised date; the Province may, by notice to the Contractor in writing, cancel as from the future date specified in such notice, the whole or any part of the order in respect of which material has not been delivered by that date without incurring any liability by reasons of such cancellation. The cases where circumstances beyond the control of the Contractor have delayed commencement or completion of the order, cancellation of the order will be affected by mutual arrangement or where this is not possible by the decision of the province. The Contractor shall then as soon as possible after such date deliver to the province that part of the order which has been completed, and payment is to be effected is for the part performance on a proportional basis, subject to the uncompleted part not being an integral or essential part of the contract.

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

## **7. CONSIGNMENT OF GOODS**

7.1 Goods, if delivered by Spoornet may be consigned carriage paid in the Contractor's name, care of the Province to the place of delivery stipulated, but not in the name of the State. Goods consigned to stores located in areas which Spoornet may refuse to deliver, must be done so care of a local agent or to a local depot from which they may be re-delivered by road to such stores.

7.2 Contractors shall arrange with Spoornet to deliver goods to the Province's stores during the hours and on the days that the stores are open.

7.3 The Province will not be responsible for any damage, re-delivery charges or any other charges raised by Spoornet.

7.4 Claims on the South African Transport Services or on any other carrier in respect of weight, quantity, damage or loss, shall be made by the Contractor

## 8. PAYMENT

- 8.1 The Contractor shall furnish the Province with an invoice accompanied by a copy of the delivery note upon fulfilment of other obligations stipulated in the contract.
- 8.2 Payments shall be made promptly by the Province, but in no case later than thirty days (30) days after submission of an invoice or claim by the Contractor.
- 8.3 Payments will be made in Rand unless otherwise stipulated.
- 8.4 Payments for goods are made by the Province only. Any disputes regarding late or delayed payments must be taken up with the KZN Tourism and Film and if a problem persists, the Supply Chain Management Office can be requested to investigate the delays.

## 9. INVOICES

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

## 10. CONTRACT PRICE ADJUSTMENT

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

another formula acceptable to the Province, which shall be indicated in the Special Conditions of Contract. Only those cost increases due to wage increases prescribed by regulating measures having the force of law or increases in the cost of materials and railage as may be proven by documentary evidence, or published data, will be considered in determining Contract Price variation.

10.1.3 Any difference between Rates and Charges ruling at the time of bid and those actually paid by the Contractor will be for the account of the Province. The Contract Price adjustment arising from any variation in Rates and Charges shall, in every instance, be applied to the appropriate value, or tonnage, of the Goods shipped. Where a variation in the Cost to bidder has been allowed, the contract price shall be adjusted by the product of such variation and every component of Rates and Charges which is based on the value of the Goods, whether or not the costs of such components have varied.

10.1.4 No claim for increased costs will be entertained if the Contractor is unable to produce documentation to substantiate Cost to Bidder and Rates and Charges on which the contract price was based and documentation to support his claim. Such documentation must, in the opinion of the Province, adequately support the Contractor's claim. No claim for increased costs to the Contractor arising from negligence on his part, or that of the manufacturer, will be considered.

10.1.5 The Contractor shall, in respect of every consignment or shipment of Goods delivered, supply to the Province's Representative documentary evidence of variation, if any, in Cost to Bidder and Rates and Charges.

10.1.6 Claims for increased cost shall be submitted with the invoice for the Goods in respect of which the claim is made, or as soon thereafter as possible. Claims shall not be considered if received more than 90 days after the expiry of the Contract unless notice of intention to claim has been given to the Province before such date.

10.1.7 In the event of there being no claim by the Contractor for increased costs, the Contractor shall not be entitled to full payment under the Contract before he has submitted to the Province, in his own name or in the name of the manufacturer, a certificate declaring that there have been no adjustments in the cost of manufacture which entitle the Employer to a reduction in the Contract Price as provided for in this clause.

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

11.1 In the event of the death of a contractor or the provisional or final sequestration of his/her/their estate or of his/her/their cession or transfer of a contract without the approval of the Province or of the surrender of his/her/their estate or of his/her/their reaching a compromise with his/her/their creditors or of the provisional or final liquidation of a contractor's company/closed corporation or the placing of its affairs under judicial management, the Province may, without prejudice to any other rights it may have, exercise any of the following options :

11.1.1 Cancel the contract and accept any of the bids which were submitted originally with that of the contractor or any offer subsequently received to complete the contract. In such a case the estate of the contractor shall not be relieved of liability for any claim which has arisen or may arise against the contractor in respect of supplies not delivered or work not carried out by the contractor, under the contract.

11.1.2 Allow the executor, trustee, liquidator or judicial manager, as the case may be, for and on behalf of and at the cost and expense of the estate of the contractor to carry on with and complete the contract.

11.1.3 For and on behalf of and at the cost and expense of the estate of the contractor, itself carry on with and complete the contract and in that event the Province may take over and utilize, without payment, the contractor's tools, plant and materials in whole or in part until the completion of the contract.

11.1.4 Should the Province elect to act in terms of paragraph 11.1.3 it shall give notice of its requirements to

the executor, trustee, liquidator or judicial manager of the contractor's estate and should the said executor, trustee, liquidator or judicial manager fail within 14 days of the dispatch of such notice to make provision to the satisfaction of the Province for the fulfilment of such requirements, or should no trustee, liquidator or judicial manager be appointed within 14 days of the occurrence mentioned in paragraph 11.1, the Province may apply any remedy open to it in terms of the contract as if a breach thereof had taken place.

11.1.5 Should the Province act in terms of paragraph 11.1.3 the contractor must leave the premises immediately and may not occupy such premises on account of retention or any other right.

## **12. LAW TO APPLY**

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

## **13. OFFERING OF COMMISSION OR GRATUITY**

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

## **14. PREFERENCES**

14.1 Should the Contractor apply for preferences in the submission of his bid, and it is found at a later stage that these applications were incorrect or made under false pretences, the Province may, at its own right: -

14.1.1 Recover from the Contractor all costs, losses or damages incurred or sustained by the Province as a result of the award of the Contract; and / or

14.1.2 Cancel the contract and claim any damages which the Province may suffer by having to make less favourable arrangements after such cancellation.

14.2 The Province may impose penalties, however, only if provision therefore is made in the Special Conditions of Bid.

## **15. WEIGHTS AND MEASURES**

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



## 16. SECURITY

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

## 17. ORDERS

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

## 18. EXPORT LICENCES

- 18.1 When orders are placed for goods in respect of which an export license from the country of origin of supplies is required, the Contractor shall:
- 18.1.1 Not incur any direct or indirect costs in connection with the supply or dispatch of such supplies before he has obtained such license.
  - 18.1.2 If the government of the country from which the supplies are to be exported refuses, or fails to grant such license within three months of the placing of the order, the order shall be considered to be cancelled and no liability will be accepted for any loss or expenses irrespective of the nature thereof, including loss or expenditure suffered or incurred by the Contractor or any other person in respect of the production, supply, transportation or delivery of such supplies.

## 19. INSURANCE

- 19.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
- 19.2 Any insurance policies taken out by a Contractor to cover goods delivered for a contract must be taken out with a company registered in South Africa in terms of relevant insurance and companies acts.

## 20. INSPECTION, TESTS AND ANALYSES

- 20.1 In terms of Provincial policy, inspections of a Bidder's goods and services are permitted. Bidders and Contractors must allow reasonable access to premises to officials from the KZN Tourism and Film inviting the bid, or person specially appointed by the Province to carry out inspection or tests. There are two main categories: Firstly, where the bid conditions call for goods to be inspected during the contract period.
- Secondly, where the inspection results are to be submitted with the bid document.
- 20.2 If it is a bid condition that goods to be produced should at any stage during production or on completion be subject to inspection, the premises of the Contractor shall be open, at all reasonable hours, for inspection by a representative of the Province or of organisation acting on its behalf.
- 20.3 Inspections tests and analyses may be carried out prior to dispatch in regard to such contract goods as may be deemed necessary by the Province, and the Contractor shall provide, if required, all the required facilities for the inspection, tests and analyses of the goods free of charge and shall, if required, provide all the materials, samples and labour and available apparatus which may be required for the purposes of such inspection, tests and analyses free of charge, unless otherwise specified.
- 20.4 If there are no inspection requirements in the bid documents and no mention thereof is made in the letter of acceptance, but during the contract it is decided that inspections shall be carried out, the Province shall itself make the necessary arrangements, including payment arrangements, with the testing authority concerned. The premises of the Bidder Contractor must be open and accessible at all reasonable times for the purposes of these tests.

- 20.5 If the inspection, tests and analyses show the goods or service to be in accordance with contract requirements, the cost of the inspection, tests and analyses shall be defrayed by the Province calling for such tests or analyses. Where the supplies or services do not comply with the contract, the costs shall be defrayed by the Contractor and the Province shall have the right, without prejudice to any other legal remedy it may have, to deduct such costs from payments due to the Contractor under the contract or under any other contract.
- 20.6 Goods and services which do not comply with the contract requirements may be rejected.
- 20.7 Any goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract, and such rejected goods shall be held at the cost and risk of the Contractor who shall, when called upon, remove them immediately at his own cost and forthwith substitute them for goods which do comply with the requirements of the contract, failing which such rejected goods shall be returned at the Contractor's cost and risk. Should the Contractor fail to provide the substitute goods forthwith, the Province may, without giving the Contractor a further opportunity to substitute the rejected goods, purchase such supplies as may be necessary at the expense of the Contractor, for example, the transport costs and other expenses regarding the rejected goods must be refunded by the Contractor.
- 20.8 Where imported goods are to be inspected before delivery, the Contractor shall notify his suppliers abroad of the conditions applicable to inspections.
- 20.9 Provisions contained in sub-clauses 20.1 and 20.8 shall not prejudice the right of the Province to cancel the contract on account of a breach of the conditions thereof.

## **21. RESTRICTION OF BIDDING**

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

## **22. CONTRACTOR'S LIABILITY**

- 22.1 In the event of the contract being cancelled by the Province in the exercise of its rights in terms of these conditions, the Contractor shall be liable to pay to the Province any losses sustained and/ or additional costs or expenditure incurred as a result of such cancellation, and the Province shall have the right to recover such losses, damages or additional costs by means of set-off from monies due or which may become due in terms of the contract or any other contract or from guarantee provided for the due fulfilment of the contract and, until such time as the amount of such losses, damages or additional costs have been determined, to retain such monies or guarantee or any deposit as security for any loss which the Province may suffer or may have suffered.
- 22.2 The Contractor may be held responsible for any consequential damages and loss sustained which may be caused by any defect, latent or otherwise, in supply or service rendered or if the goods or service as a result of such defect, latent or otherwise, does not conform to any condition or requirement of the contract.

## **23. PRICE LISTS**

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

## **24. SUBMISSION OF CLAIMS**

- 24.1 Claims must be submitted within 90 days of the delivery date of items, but the delivery date will be calculated according to the delivery period stipulated in terms of the contract, unless an extension for late delivery has been granted by the Province.
- 24.2 For period contracts, no price increase will be granted within the first 180 days of the contract period. No price increase applications which are submitted later than 90 days after the contract period expired will be considered. The claims shall be accompanied by documentary proof and, if required, an auditor's report sustaining the claim shall be provided.
- 24.3 Claims referring to formulae and indices must be clearly set out in terms of indices or formulae values used to calculate the bid price, and the adjusted indices or values.

## **25. PROVINCIAL PROPERTY IN POSSESSION OF A CONTRACTOR**

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

## **26. RIGHTS TO PROCURE OUTSIDE THE CONTRACT**

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

## **27. AMENDMENT OF CONTRACT**

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

## **28. NOTICES**

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

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

## **29. INCIDENTAL SERVICES**

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

- a) performance or supervision of on-site assembly and/or commissioning of the supplied goods:
- b) furnishing of tools required for assembly and/or maintenance of the supplied goods.
- c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods.
- d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the Contractor of any warranty obligations under this contract; and
- e) training of the Province's personnel, at the Contractor's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

29.2 Prices charged by the Contractor for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Contractor for similar services.

## **30. USE OF CONTRACT DOCUMENTS AND INFORMATION INSPECTION**

30.1 The Contractor shall not, without the Province's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Province in connection therewith, to any person other than a person employed by the Contractor in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

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

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

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

### **31. SPARE PARTS**

31.1 If specified in SCC, the Contractor may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Contractor:

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

### **32. PENALTIES**

32.1 Subject to GCC Clause 4, if the Contractor fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the Province shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of delayed goods or unperformed services, using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The Province may also consider termination of the contract in terms of the GCC.

### **33. ANTI-DUMPING AND COUNTERVAILING DUTIES AND RIGHTS**

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

### **34. GOVERNING LANGUAGE**

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

### **35. TAXES AND DUTIES**

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

### **36. PROHIBITION OF RESTRICTIVE PRACTICES**

36.1 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 collective bidding (or bid rigging).

36.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice 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.

36.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

**SECTION L: TAX COMPLIANCE STATUS VERIFICATION PIN**

**SECTION M: COMPANY REGISTRATION CERTIFICATE/AGREEMENT/ID DOCUMENT**

**SECTION N: PROOF OF CENTRAL SUPPLIER DATABASE REGISTRATION**

## TERMS OF REFERENCE

**APPOINTMENT OF A PANEL OF SUITABLY QUALIFIED AND EXPERIENCED LEGAL SERVICE PROVIDERS TO PROVIDER LEGAL SERVICES TO THE ENTITY FOR A PERIOD OF THREE YEARS**

**Technical Enquiries: Mphiwa Xulu**

**Email: [MphiwaX@kznfilm.co.za](mailto:MphiwaX@kznfilm.co.za)**

**SCM Enquiries: Thembekile Mdlophane and Olivia Manjate**

**Email: [tenders@zulu.org.za](mailto:tenders@zulu.org.za) and [tenders@kznfilm.co.za](mailto:tenders@kznfilm.co.za)**

## 1. BACKGROUND INFORMATION

### 1.1 ACRONYMS

EDTEA	Department of Economic Development, Tourism and Environmental Affairs
KZN TOURISM & FILM	KwaZulu-Natal Tourism and Film Authority
KZN	KwaZulu-Natal
TOR	Terms of Reference
SLA	Service Level Agreement
SP	Service Provider
KZN	Province of KwaZulu-Natal
SCM	Supply Chain Management
CEO	Chief Executive Officer
CFO	Chief Financial Officer
PFMA	Public Finance Management Act, 1999 (Act No 29 of 1999) as Amended
B-BBEE	Broad-Based Black Economic Empowerment
PPPFA	Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000) as amended

### 1.2 Introduction

The KwaZulu-Natal Tourism and Film Authority as established under the KwaZulu-Natal and has as part of its objectives:

- To promote and market the province as a global tourism and film production destination;

### 1.3 Purpose of the Terms of Reference

KZN Tourism and Film wishes to establish a panel of legal service providers to provide legal services to the Authority.

## 2. SCOPE OF WORK AND DELIVERABLES

### 2.1 Scope of work

- KZN Tourism and Film wishes to establish a panel of suitably qualified and experienced legal service providers to provide legal services to the entity.
- The firms of attorneys will be required to render services to KZN Tourism and Film on a wide range of legal matters relating to, amongst others, the following fields of law:
  - Commercial and Corporate law.
  - Administrative, civil litigation, debt collection and insurance law.
  - Labour and employment law.
  - Constitutional and Public Sector law.
  - Film sector matters including issues such as Copyrights, international co-productions etc.
- When a need arises for the entity to procure any of the legal services in respect of the above-mentioned categories, all the service providers falling on the specific field will be invited to submit quotations.
- The quotations will be awarded through relevant procurement structures currently in place within the entity.
- There will be no guarantee that attorneys will receive instructions if they are appointed onto the legal panel.
- All copyright and intellectual property rights that may result as consequences of the work done for the entity will become the property of KZN Tourism and Film.
- Firms of attorneys would be obliged to hand over all documents and information in any format, including copies thereof, that they would have received from KZN Tourism and Film or that they had access to during the assignment immediately after the completion of the assignment(s) to KZN Tourism and Film.
- Firms of attorneys shall deliver to KZN Tourism and Film on completion of an assignment(s), any security devices, passwords or protective mechanisms to the soft versions of documents that were written and KZN Tourism and Film will have the right to amend and change these without obligation whatsoever to the firms of attorneys upon completion of the assignment.

**Please tick next to the service you would like to be considered for:**

Administrative, civil litigation, and debt collection and insurance law.	
Commercial and Corporate law	
Labour and employment law	
Constitutional and Public Sector law	
Film sector matters including issues such as Copyrights, international co-productions etc	

## 2.2 Time frames

- The panel will be in place for a period of three (3) years.
- All appointed service providers will be required to sign a service level agreement. The said service level agreement is subject for review annually if it is deemed so.

## 2.3 Required fields of law:

### 2.3.1 Administrative, Civil litigation, and Debt Collection and Insurance Law

- Attorneys will attend to Administrative, civil litigations, Debt Collection and Insurance Law on behalf of KZN Tourism and Film, either in as court of law or through arbitrations. Attorneys are required to have in-depth knowledge of civil litigation procedures through arbitration or in the magistrates and courts, and expertise in debt collection and insurance is required, dealing but not limited to;
  - Collection of debts from non-paying debtors;
  - Insurance disputes; and
  - Insurance contracts.



### **Team Composition:**

#### **a) Team leader**

- Must have an officially recognised LLB qualification;
- Must be admitted as an attorney of the high court/Advocate;
- Must have a minimum of 7 years post admission litigation experience;
- Must have a minimum of 3 years' experience in the leadership of a legal team; and
- Must possess excellent report writing and presentation skills.
- A minimum of 5 years post admission contract drafting experience;
- 

#### **b) Team**

The team member must meet the following requirements:

- Must have an officially recognised LLB qualification;
- Must be Admitted attorneys of the High Court; and
- Must possess a minimum of 5 years post admission litigation experience.
- Minimum of 3 years post admission experience in contract drafting.

### **2.3.2 Commercial and Corporate law**

- Practical knowledge is required of all spheres of commercial and corporate law including but not limited to knowledge and application of the standard forms of contract, company registrations and shareholder rights. Attorneys may be required to attend to drafting, negotiating and interpretation of commercial agreements, **investigations** and more specifically, but not limited to:
  - Lease agreements;

- Service level agreements;
- Memorandum of agreements;
- Memorandum of understanding;
- Programme implementation agreements; and
- International co-production film agreements.
- Forensic Investigations (fruitless/wasteful expenditure etc)
- Information Technology
- Cyber Security

## Team Composition

### a) Team Leader

- Must have an officially recognised LLB qualification;
- Must be admitted as an attorney of the High Court/ advocate;
- Must possess a minimum of 7 years post admission contract drafting, forensic investigation and information technology experience;
- Must possess a minimum of 3 years' experience in the leadership of a legal team; and
- Must possess excellent report writing and presentation skills.

### b) Team

The team member must meet the following requirements:

- Must have an officially recognised LLB qualification;
- Admitted attorney of the high court; and
- Minimum of 5 years post admission experience in contract drafting.

### 2.3.3 Labour and Employment law

- Expertise in labour and employment law matters is required, more specifically but not limited to;
  - Ability to prosecute all levels employees in disciplinary hearings;
  - Advise on procedural and substantive issues relating to disciplinary hearings conducted;
  - Advise on disciplinary codes, policies governing legislation;
  - Representation at the CCMA, Labour court and Labour appeal court;
  - To advise and assist in process and compliance in section 189 of Labour Relations Act 66 of 1995 procedures;
  - Negotiation and settlement of labour disputes whether with individual employees or the bargaining unit represented by either union or lawyer;
  - Provision of legal opinion; and
  - Investigation of alleged misconduct.

#### Team composition

##### a) Team leader

- Must have an officially recognised LLB qualification;
- Must be admitted as an attorney of the high court/ advocate;
- Must possess a minimum of 7 years post admission labour law experience;
- Must possess a minimum of 3 years' experience in the leadership of a legal team; and
- Must possess excellent report writing and presentation skills.

## b) Team

The team member must meet the following requirements:

- Must have an officially recognised LLB qualification;
- Admitted attorney of the high court; and
- Minimum of 5 years post admission experience in labour law.

### 2.3.4 Constitutional and Public Sector law

- Expertise in constitutional and public sector law is required, dealing but not limited to;
  - Tender appeals.
  - Completion and dispute resolution.
  - Freedom of information and data protection.
  - Intellectual property.
  - PPPFA and procurement regulations.

## Team Composition

### a) Team Leader

- Must have an officially recognised LLB qualification;
- Must be admitted as an attorney of the High Court/ advocate;
- Must possess a minimum of 7 years' post admission contract drafting experience;
- Must possess a minimum of 3 years' experience in the leadership of a legal team; and
- Must possess excellent report writing and presentation skills.

## **b) Team**

The team members must meet the following requirements:

- Must have an officially recognised LLB qualification;
- Must be an Admitted attorney of the High Court; and
- Must possess a minimum of 5 years post admission experience in contract drafting.

### **2.3.5 Film sector matters including issues such as Copyrights, international co-productions etc**

Expertise in copyright, and laws applicable to international co-productions.

#### **Team Composition**

##### **a) Team Leader**

- Must have an officially recognised LLB qualification;
- Must be admitted as an attorney of the High Court/ advocate;
- Must possess a minimum of 7 years' in copyrights and laws on international co-production;
- Must possess a minimum of 3 years' experience in the leadership of a legal team; and
- Must possess excellent report writing and presentation skills.

##### **b) Team**

- The team members must meet the following requirements:
  - Must have an officially recognised LLB qualification;
  - Must be an Admitted attorney of the High Court; and

- Must possess a minimum of 5 years in copyrights and laws on international co-production; .

## 2.4 Methodology

- The Service Providers' proposal must outline the methodology they intend adopting to meet the deliverables specified above. Furthermore, bidders will need to provide the list of human resources - with role and skills set -s which will be dedicated to service KZN Tourism and Film.

## 3 PERSONAL PROFILES

3.1 Concise CVs with qualifications, experience and competency in relation to achieving the respective projects and associated activities of the work plan, together with traceable references of the nominated individuals must be provided.

3.2 All the members of the team will be required to sign statements of availability with each request for a quotation.

## 4 PANEL SELECTION CRITERIA

4.1 The selection of the service providers to be placed on the panel will be subject to the criteria set out herewith the document.

4.2 KZN Tourism and Film reserves the right to determine the number of service providers appointed into the panel. A company also has a right to apply for all specialisation if they meet the specified requirements of the bid proposal.

4.3 Service providers must indicate whether they would like to serve in **more than one** field of the panel. Should the service provider desire to be in **more than one** field they must provide their proposals for **each** field. Failure to indicate a field will lead to an automatic disqualification.

4.5 The selection of suitable service providers will be undertaken on the following basis:

4.5.1 Price is NOT a determining factor for the purpose of the establishment of the panel. No prices are required to be submitted in the proposals.

4.5.2 Price will only be taken into account in the evaluation of bids/quotations for specific

engagements as contemplated in paragraph 2.1.

## 5 TENDER REQUIREMENTS:

- 5.1 Bidders will be required to submit a technical proposal.
- 5.2 The technical proposal should comprise of the proposed approach to address the needs for each different area.

## 6 EVALUATION CRITERIA

The bid for the appointment of each service provider will be evaluated on compliance, functionality, preference point system and specific goals in accordance with the Preferential Procurement Regulation 2022.

### Phase 1: COMPLIANCE

- *The bidder must be registered as a vendor on the National Treasury Central Supply Database (CSD). If not registered bidder must make means to register in order to bid for the process: Link below for registration on the database:*

[Register user - Central Supplier Database Application \(csd.gov.za\)](https://csd.gov.za)

- *The bidder must be in good standing with SARS, the information will be verified through Central Supply Database (CSD) and SARS e-filing pin in compliance with Instruction Note 9 of 2017/2018 prior to the award of the Tender.*
- *Completed Standard Bidding Documents (SBDs), Defaulters etc.*

### Phase 2: MANDATORY REQUIREMENTS (If applicable) (disqualifying requirement)

- N/A

**Phase 3: EVALUATION ON FUNCTIONALITY**

The service provider must score a minimum of 70 % in order to be shortlisted for price and specific goals and the highest scoring service provider will be in the panel. Service Providers who has been appointed on the panel will be requested to quote as and when required.

**Phase 4: APPLICATION OF PREFERENCE POINT SYSTEM AND SPECIFIC GOALS:**

The 80/20 preference points system will be applicable for the evaluation of this process in accordance with the Preferential Procurement Regulations 2022 (specific goals will be applicable upon quotation requests on a case by case bases)

	Specific Goals
Price	80
<b>Ownership Goal</b>	
<ul style="list-style-type: none"> <li>At least 51% Black Africans, Indians or Coloureds owned companies</li> </ul>	10
<ul style="list-style-type: none"> <li>At least 51% Women owned companies</li> </ul>	05
<ul style="list-style-type: none"> <li>At least 51% Youth owned companies</li> </ul>	05
<b>Total</b>	<b>100</b>

*Kindly Refer to Table 1 of SBD 6.1 of the Preference Claim Form to claim for Points.*

**Verification of Specific Goals:**

- **Black Africans, Indians and Coloureds verification** will be conducted through submission of the Sworn Affidavit or BBBEE Certificate with a summary report.
- **Women verification** will be conducted through submission of the Sworn Affidavit or BBBEE Certificate with a summary report or CSD Report.
- **Youth verification** will be conducted through submission of the Sworn Affidavit or BBBEE Certificate with a summary report or CSD Report.



**Failure on the part of a tenderer to submit proof or documentation required in terms of this Tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.**

**The organ of state reserves the right to require of a tenderer, either before a Tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.**

## **ANNEXURE A BELOW - EVALUATION GRID FOR FUNCTIONALITY**

Name of project: Appointment of panel of attorneys in Administrative and Civil Litigation, Debt Collection, and Insurance Law	Maximum Score	Initial assessment	Final assessment
<b>Firm profile</b>			
<b>Company profile</b>  Company experience reference letters for past 12 months relevant to Administrative and Civil litigation, and Debt Collection, C and Insurance Law 3 letters =25 2 letters= 10  Demonstration of experience in public sector 3 Public sector reference letters= 25 2 Public sector reference letters=10	<b>50</b>		
<b>Team profile</b>			
<b>CV of team leader</b>  <ul style="list-style-type: none"> <li>Admitted attorney of the High Court/Advocate with 7 years post admission experience in administrative and litigation law =8 points</li> <li>A minimum of 5 years post admission contract drafting experience = 7 points</li> </ul>	<b>15</b>		
<b>CV of support team</b>  <ul style="list-style-type: none"> <li>Admitted attorney of the High Court with 5 years post admission experience in administrative and litigation law= 8 points</li> <li>Minimum of 3 years post admission experience in contract drafting=7 points</li> </ul>	<b>15</b>		
<b>Total</b>	<b>80</b>		

Name of project: Appointment of panel of attorneys in Commercial and Corporate law	Maximum Score	Initial assessment	Final assessment
<p><b>Firm profile</b></p> <p><b>Company profile</b></p> <p>Company experience reference letters for past 12 months relevant to Commercial and corporate law 3 letters =25 2 letters= 10</p> <p>Demonstration of experience in public sector 3 Public sector reference letters= 25 2 Public sector reference letters=10</p>	50		
<p><b>Team profile</b></p>			
<p><b>CV of team leader</b></p> <ul style="list-style-type: none"> <li>Admitted attorney of the High Court/Advocate with 7 years post admission experience in Commercial and corporate law=15 points</li> </ul>	15		
<p><b>CV of support team</b></p> <ul style="list-style-type: none"> <li>Admitted attorney of the High Court with 5 years post admission experience in Commercial and corporate law=15 points</li> </ul>	15		
<p><b>Total</b></p>	80		

Name of project: Appointment of panel of attorneys in Labour and employment law	Maximum Score	Initial assessment	Final assessment
<b>Firm profile</b>			
<b>Company profile</b>  Company experience reference letters for past 12 months relevant to Labour and employment law 3 letters =25 2 letters= 10  Demonstration of experience in public sector 3 Public sector reference letters= 25 2 Public sector reference letters=10	<b>50</b>		
<b>Team profile</b>			
<b>CV of team leader</b>  <ul style="list-style-type: none"> <li>Admitted attorney of the High Court/Advocate with 7 years post admission experience in Labour and employment law=15 points</li> </ul>	<b>15</b>		
<b>CV of support team</b>  <ul style="list-style-type: none"> <li>Admitted attorney of the High Court with 5 years post admission experience in Labour and employment law =15 points</li> </ul>	<b>15</b>		
<b>Total</b>	<b>80</b>		

Name of project: Appointment of panel of attorneys in Constitutional and Public Sector law	Maximum Score	Initial assessment	Final assessment
<b>Firm profile</b>			
<b>Company profile</b>  Company experience reference letters for past 12 months relevant to Constitutional and public sector law 3 letters =25 2 letters= 10  Demonstration of experience in public sector 3 Public sector reference letters= 25 2 Public sector reference letters=10	<b>50</b>		
<b>Team profile</b>			
<b>CV of team leader</b> <ul style="list-style-type: none"> <li>Admitted attorney of the High Court/Advocate with 7 years post admission experience in Labour and employment law=15 points</li> </ul>	<b>15</b>		
<b>CV of support team</b> <ul style="list-style-type: none"> <li>Admitted attorney of the High Court with 5 years post admission experience in Labour and employment law= 15points</li> </ul>	<b>15</b>		
<b>Total</b>	<b>80</b>		

Name of project: Appointment of panel of attorneys in Film sector matters including issues such as Copyrights, international co-productions etc	Maximum Score	Initial assessment	Final assessment
<p>Firm profile</p> <p>Company profile</p> <p>Company experience reference letters for past 12 months relevant to copyrights and laws on international co-productions 3 letters =20 2 letters= 10</p> <p>Demonstration of experience in public sector</p> <p>3 Public sector reference letters= 20 2 Public sector reference letters=10</p> <p>Demonstration of experience in film sector 2 Reference letters =10 1 reference letter= 5</p>	50		
Team profile			
<p>CV of team leader Admitted attorney of the High Court/Advocate with 7 years post admission experience in copyrights and laws on international co-production=15 points</p>	15		
<p>CV of support team Admitted attorney of the High Court with 5 years post admission experience in copyrights and laws on international co-production= 15 points</p>	15		
Total	80		

**Minimum Required Score = 70%**

**For Technical Enquiries Contact: Mr Mphiwa Xulu**

**Email: [MphiwaX@zulu.org.za](mailto:MphiwaX@zulu.org.za)**

**For SCM Enquiries Contact: Ms Thembekile Mdlophane and Ms. Olivia Manjate**

**Email: [tenders@zulu.org.za](mailto:tenders@zulu.org.za) and [tenders@kznfilm.co.za](mailto:tenders@kznfilm.co.za)**

**APPROVED/NOT APPROVED:**

----- **DATE: -----**  
**Sbusiso Gumbi**  
**Chief Executive Officer**





