

## PROVINCIAL GOVERNMENT OF WESTERN CAPE

### DECLARATION OF INTERESTS, BIDDERS PAST SCM PRACTICES AND INDEPENDENT BID DETERMINATION

1. To give effect to the requirements of the Western Cape Provincial Treasury Instructions, 2012: Supply Chain Management (Goods and Services), Practice Note 4 of 2006 Declaration of Bidders Past SCM Practices-(SDB8), Instruction note Enhancing Compliance Monitoring and Improving Transparency and Accountability in Supply Chain Management SBD 4 Declaration of Interest, Practice Note 2010 Prohibition of Restrictive practices SBD9, Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998 as amended together with its associated regulations, the Prevention and Combating of Corrupt Activities Act No 12 of 2004 and regulations pertaining to the tender defaulters register, Paragraph 16A9 of the National Treasury Regulations and/or any other applicable legislation.
2. All prospective bidders intending to do business with the Institution must be registered on the central supplier database.
3. **Definitions**

“**Bid**” includes a price quotation, advertised competitive bid, limited bid or proposal

“**Bid rigging (or collusive bidding)**” occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors

“**business interest**” means —

- (a) a right or entitlement to share in profits, revenue or assets of an entity;
- (b) a real or personal right in property;
- (c) a right to remuneration or any other private gain or benefit, and includes any interest contemplated in paragraphs (a), (b) or (c) acquired through an intermediary and any potential interest in terms of any of those paragraphs;

“**Consortium or Joint Venture**” 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;

“**employee**” means a person employed by the Provincial Government or a provincial public entity, whether permanently or temporarily, including –

- (a) an employee as contemplated in section 8 of the Public Service Act, 1994 (Proclamation 103 of 1994);

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- (b) a person appointed in terms of section 12A of the Public Service Act;
- (c) a person transferred or seconded to the Provincial Government or a provincial public entity in terms of section 15 of the Public Service Act; and
- (d) an educator as defined in the *Employment of Educators Act, 1998* (Act 76 of 1998), and includes a member of the board or other controlling body of a provincial public entity;

**“entity”** means any —

- (a) association of persons, whether or not incorporated or registered in terms of any law, including a company, corporation, trust, partnership, close corporation, joint venture or consortium; or
- (b) sole proprietorship;

**“entity conducting business with the Institution”** means an entity that contracts or applies or tenders for the sale, lease or supply of goods or services to the Province

**“Family member”** means a person’s —

- (a) spouse; or
- (b) child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption;

**“intermediary”** means a person through whom an interest is acquired, and includes—

- (a) a person to whom is granted or from whom is received a general power of attorney; and
- (b) a representative or agent;

**“Institution”** means —

Provincial Government of the Western Cape

**“Provincial Government Western Cape (PGWC)”** means

- (a) the Institution of the Western Cape, and
- (b) a provincial public entity;

**“RWOPS”** means —

Remunerative Work Outside the Public Service

**“spouse”** means a person’s —

- (a) partner in marriage;
- (b) partner in a customary union according to indigenous law; or
- (c) partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;

4. Any legal person, including persons employed by the Institution, or their family members, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the

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PG, or to their family member, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where the bidder is employed by the Institution; and/or

5. The bid of any bidder may be disregarded if that bidder or any of its directors have abused the institution's supply chain management system; committed fraud or any other improper conduct in relation to such system; or failed to perform on any previous contract.
6. Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging). Collusive bidding is a *per se* prohibition meaning that it cannot be justified under any grounds.
7. Communication between partners in a joint venture or consortium will not be construed as collusive bidding
8. 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.

<b>SECTION A: DETAILS OF THE ENTITY</b>	
<b>A1.</b>	<i>Name of the Entity</i>
<b>A2.</b>	<i>Entity registration Number (where applicable)</i>
<b>A3.</b>	<i>Entity Type</i>
<b>A4.</b>	<i>Tax Reference Number</i>
<b>A5.</b> <i>Full details of directors, shareholder, member, partner, trustee, sole proprietor or any persons with a right or entitlement to share in profits, revenue or assets of an entity, of the entity should be disclosed in the Table A below.</i>	

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**C2. Table C**

Complete the below table to the maximum of the last 5 contracts.

NAME OF CONTRACTOR	PROVINCIAL DEPARTMENT OR PROVINCIAL ENTITY	TYPE OF SERVICES OR COMMODITY	CONTRACT / ORDER NUMBER	PERIOD OF CONTRACT	VALUE OF CONTRACT

**C3.** Is the entity or its principals listed on the National Database as companies or persons prohibited from doing business with the public sector?  NO  YES

**C4.** Is the entity or its principals listed on the National Treasury Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004)?  NO  YES  
*(To access this Register enter the National Treasury’s website, [www.treasury.gov.za](http://www.treasury.gov.za), click on the icon “Register for Tender Defaulters” or submit your written request for a hard copy of the Register to facsimile number (012) 3265445.)*

**C5.** If yes to C3 or C4, were you informed in writing about the listing on the database of restricted suppliers or Register for Tender Defaulters by National Treasury?  NO  YES

**C6.** Was the entity or persons listed in Table A convicted for fraud or corruption during the past five years in a court of law (including a court outside the Republic of South Africa)?  NO  YES

**SECTION D: DULY AUTHORISED REPRESENTATIVE TO DEPOSE TO AFFIDAVIT**

*The form should be signed by a duly authorised representative of the entity before a commissioner of oaths.*

I, ..... hereby swear/affirm;

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- i. that the information disclosed above is true and accurate;
- ii. that I understand the content of the document;
- iii. the entity undertakes to independently arrive at any offer at any time to the Institution without any consultation, communication, agreement or arrangement with any competitor. In addition, that there will be no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to the Institution.
- iv. that the entity or its representative are aware of and undertakes not to disclose the terms of any bid, formal or informal, directly or indirectly, to any competitor, prior to the awarding of the contract.

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DULY AUTHORISED REPRESENTATIVE'S  
SIGNATURE

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:

1.1 Do you know and understand the contents of the declaration?

ANSWER: .....

1.2 Do you have any objection to taking the prescribed oath?

ANSWER: .....

1.3 Do you consider the prescribed oath to be binding on your conscience?

ANSWER: .....

1.4 Do you want to make an affirmation?

ANSWER: .....

2. I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration, which was sworn to/affirmed before me and the deponent's signature/thumbprint/mark was place thereon in my presence.

.....  
SIGNATURE FULL NAMES

Commissioner of Oaths

Designation (rank) .....ex officio: Republic of South Africa

Date: .....Place .....

Business Address: .....

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