



NOTICE NO: 134/2018

APPOINTMENT OF A PROFESSIONAL ARCHITECTURAL SERVICE PROVIDER FOR THE DESIGN OF MINI FRESH FOOD AND CRAFT MARKETS

CLOSING DATE:	Tuesday, 25 September 2018
Location for Submission of Bid	Tender Box, foyer at Entrance of Main Municipal Building at 33 Da Gama Road
Name of tendering firm:	
Contact Person (<i>Full Names</i>):	
Tel No.:	Cell No.:
Fax No.:	
E-mail:	
Supplier Database No.:	CSD No.:
Signature of Tenderer:	
Issued By:	
KOUGA LOCAL MUNICIPALITY	
PO Box 21	
JEFFREYS BAY, 6330	
CONTACT PERSON: Mr. A Perils, Tel: 042 200 2182 mail: aperils@kouga.gov.za	

NB: THIS TENDER WILL BE EVALUATED ON THE 80/20 POINT SCORING SYSTEM

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PLEASE TAKE NOTE OF ALL LISTED INSTRUCTIONS AND COMMENT

- NB: PLEASE ENSURE THAT YOU FAMILIARIZE YOURSELF WITH THE COMPLETE DOCUMENT AND SIGN ALL PAGES WHERE IT IS REQUIRED TO DO SO. ALL DOCUMENTATION MUST BE ORIGINALLY SIGNED IN BLACK INK (COPIES OF SIGNATORIES WILL NOT BE ACCEPTED)
- FAILURE TO FULLY COMPLETE THE COMPULSORY MUNICIPAL BIDDING DOCUMENTS WILL RESULT IN THE TENDER BEING CLASSIFIED AS NON-RESPONSIVE.
- THE NATIONAL TREASURY CENTRAL DATABASE AND TAX COMPLIANCE WILL BE VERIFIED ON DAY OF EVALUATING ANY TENDER. IN INSTANCES OF NON-COMPLIANCE BIDS WILL BE DECLARED NON-RESPONSIVE.
- TENDER DOCUMENTATION IS AVAILABLE ON E-TENDER AND AN ELECTRONIC COPY MAY BE REQUESTED FROM THE SUPPLY CHAIN OFFICE. A NON-REFUNDABLE FEE WILL BE CHARGED FOR ANY PRINTED DOCUMENT AND IS AVAILABLE FROM THE REGISTRY SECTION AT 33 DA GAMA ROAD, JEFFREYS BAY.
- PLEASE BE ADVISED THAT A COPY OF A CERTIFIED COPY DOES NOT CONSTITUTE A CERTIFIED COPY.
- DO NOT USE CORRECTION FLUID IN THE DOCUMENT. IF ANY MISTAKES ARE MADE, PLEASE DRAW A LINE THROUGH IT AND INITIAL NEXT TO IT.
- DOCUMENT TO BE COMPLETED IN INK. DOCUMENTATION COMPLETED IN PENCIL WILL NOT BE CONSIDERED.
- THE FOLLOWING DOCUMENTS MUST BE SUBMITTED WITHIN THE TIME SPECIFIED IN THE REQUEST. **FAILURE TO COMPLY WILL RESULT IN NON-ACCEPTANCE OF THE TENDER.THESE DOCUMENTS MAY BE REQUESTED AS SUPPORT TO THE CONTRACT FILE DOCUMENTATION FOR EVALUATION PURPOSES.**
 1. National Treasury Central Database Summary Report
 2. Business Registration Documents/ Formal Registration Documentation/ JV Agreements/Consortia/ Partnerships and Trust's – Applicable to all entities (ie. Companies, Public & Private Entities, Partnerships and Joint Ventures). CM9/ Name Change Document will not suffice as Proof of Business Registration.
 3. A copy of a valid SARS Tax Clearance Certificate and Tax Compliance Pin number for all entities and all partners of Joint Venture)
 4. Certified ID copies.
 5. For B-BBEE Status Level Contribution/ EME Certificate/ Sworn Affidavit for any Preference Points to be claimed (Certified copy of the valid certificate to be submitted)
 6. Latest Municipal Billing Clearance Certificate/ Copy of Municipal Account / Rental Documentation to be submitted
 7. Audited Financial Statements for the last 3 financial years
 8. Any Special Conditions of Contract Documentation- Must be submitted as set out in tender contract or upon request.

IT IS COMPULSORY IN THE CASE OF A FEMALE DIRECTOR / MEMBER OR PARTNER TO ALSO FURNISH HER MAIDEN NAME, AND IF APPLICABLE, ALL HER PREVIOUS MARRIED NAMES

- 1.4 The Tenderer's Representative for the purpose of this Tender is:

.....

2. STREET ADDRESS OF REGISTERED OFFICES

Street address, which address the Tenderer chooses as it's domicilium citandi et executandi for all purposes of this Tender.

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3. POSTAL ADDRESS

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2. CONTACT DETAILS

4.1 TELEPHONE NUMBERS

Business: Code

Cell:

Email: (An active email address must be provided. All correspondence and request for information with bidder will be sent to this email address. If not submitted within the specified timeframe of the request, the bid may be declared non-responsive).

4.2 FACSIMILE NUMBER Code

5. COMPANY RESOLUTION

- 5.1 A copy of the recorded Resolution taken by the Board of Directors, members, partners or trustees authorizing the representative to submit this Tender on the Tenderer's behalf must be attached to the Tender Document on submission of same.

- 5.2 A Tender shall be eligible for consideration only if it bears the signature of the Tenderer or of some person duly and lawfully authorized to sign it for and on behalf of the Tenderer.

6. BANK DETAILS (FOR FUTURE ELECTRONIC BANK TRANSFERS) – PLEASE SUBMIT A RECENTLY (PAST 3MONTHS) STAMPED LETTER FROM THE BANK CONFIRMING ACCOUNT DETAILS.

NAME OF BANK	ACCOUNT NAME	BRANCH CODE NO.	BANK A/C NO.

CERTIFICATION:

I declare that the information in this annexure is true and correct in all respects.

SIGNATURE: _____ **CAPACITY:** _____

NATIONAL TREASURY – GENERAL CONDITIONS OF CONTRACT**TABLE OF CLAUSES**

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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:

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

1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference herein.

1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.

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

1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.

1.6 "Country of Origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

1.7 "Days" means calendar day.

1.8 "Delivery" means delivery in compliance with the conditions of the contract or order.

1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.

1.10 "Delivery into consignee's store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

1.11 "Dumping" occurs when a private enterprise abroad markets its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

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

1.13 “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

1.14 “GCC” means the General Conditions of Contract.

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

1.16 “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.

1.17 “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.

1.18 “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

1.19 “Order” means an official written order issued for the supply of goods or works or the rendering of a service.

1.20 “Project site” where applicable, means the place indicated in bidding documents.

1.21 “Purchaser” means the organization purchasing the goods.

1.22 “Republic” means the Republic of South Africa.

1.23 “SCC” means the Special Conditions of Contract.

1.24 “Services” means those functional services ancillaries 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 supplier covered under the contract.

1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

2. Application

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of the contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of the contract are in conflict with these general conditions, the special conditions shall apply.

3. General

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

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

5. Use of contract documents and information; inspection.

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

5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser if so required by the purchaser.

6. Patent rights

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

7. Performance security

7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

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

7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

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

(b) a cashier's or certified cheque

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

8. Inspections, tests, and analyses

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

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

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

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

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

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

8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at the supplier's cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may,

without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

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

9. Packing 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size, and weights shall take into consideration, where appropriate, the remoteness of the goods final destination and the absence of heavy handling facilities at all points in transit.

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

10. Delivery and documents

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

10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

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

12. Transportation

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

13. Incidental services

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;

(c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

(d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and

(e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier 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 supplier for similar services.

14. Spare parts

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

(a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and

(b) in the event of termination of production of the spare parts:

(i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and

(ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier 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 Supplier 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 purchasers specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

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

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

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

16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

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

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

17. Prices

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

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

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

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

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

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

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

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the suppliers expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

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

23. Termination for default

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

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or

(c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

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

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and/or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction. These details will be loaded into the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

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

24. Anti-dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or antidumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not

liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him

25. Force Majeure

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

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

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

27. Settlement of Disputes

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

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

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

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

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

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

(b) the purchaser shall pay the Supplier any monies due the supplier.

28. Limitation of liability

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

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

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

29. Governing language

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

30. Applicable law

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

31. Notices

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

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

32. Taxes and duties

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

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

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid, the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

33. National Industrial Participation (NIP) Programme

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

34. Prohibition of Restrictive practices

34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is/are or a contractor(s) was/were involved in collusive bidding (or bid rigging).

34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has/have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

34.3 If a bidder(s) or contractor(s), has/have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the 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.

DIRECTORATE: INFRASTRUCTURE & ENGINEERING**NOTICE NO: 134/2018****APPOINTMENT OF A PROFESSIONAL ARCHITECTURAL SERVICE PROVIDER FOR THE DESIGN OF MINI FRESH FOOD AND CRAFT MARKETS**

Suitably Qualified, Capable and Experienced Service providers are hereby invited to submit tenders for the Appointment of a Professional Architectural Service Provider for the Design of Mini Fresh Food And Craft Markets.

Tenders

An electronic copy of the tender document will be available on E-Tender portal www.etender.gov.za or the municipal website www.kouga.gov.za. Printed copies of the Tender Document will be available at a non- refundable fee of R250 per document as from **Thursday, 23 August 2018** from the Registry Section, 33 Da Gama Road, Jeffreys Bay, 6330 Tel No: 042 200 2200.

Please note:

- Telegraphic, telephonic, telex, facsimile, email or late tenders will not be accepted.
- This contract will be evaluated on the 80/20 point scoring system
- The Guidelines for locally produced goods or locally manufactured goods with a stipulated minimum threshold where applicable will be applied.
- A valid SARS Tax Clearance Certificate and the Tax Compliance Status pin to be submitted.
- Prospective Service Providers must register on Kouga Municipality's Supplier database as per the registration requirements.
- The National Treasury Central Supplier Database Summary report to be submitted.
- In order to claim Preference points a valid original or certified B-BBEE Status level Verification certificate or a Sworn Affidavit completed in the DTI format must be submitted to validate the claim.
- The Council reserves the right to accept any tender and, or part thereof, appoint more than one contractor, and does not bind itself to accept the lowest or any tender. The Council reserves the right to appoint any contractor.
- The validity period for submission must be 120 days from the closing date.
- Tenders that are deposited in the incorrect box or delivered to any other venue will not be considered.

Any information regarding this tender can be obtained from Mr. A. Perils at 042 200 2200 ext: 2182 or aperils@kouga.gov.za.

Completed documents in a sealed envelope endorsed "**NOTICE NO: 134/2018" APPOINTMENT OF A PROFESSIONAL ARCHITECTURAL SERVICE PROVIDER FOR THE DESIGN OF MINI FRESH FOOD AND CRAFT MARKETS.**", must be placed in the Tender Box in the foyer of the Municipal Offices at 33 Da Gama Road, Jeffreys Bay on or before **12:00 on Tuesday 24 September 2018**.

C. DU PLESSIS
MUNICIPAL MANAGER

P.O. Box 21
JEFFREYS BAY
6330

For Placement:

Herald –

Municipal Website/ Municipal Notice Boards in all offices/areas –

CONDITIONS OF TENDER

1. PRICES

- All prices tendered, and all deposits or payments made shall be in the currency of the Republic of South Africa.
- Prices should remain firm for the period of the Tender. Should the successful Tenderer wish to alter any Tender price during the currency of the Tender period bidder can only do so **twelve months after the award has been made**, the Municipality reserve the right to:
 - Accept the amended price provided that one (1) month written notice was given to the Municipality; or
 - Call for new Tenders in respect of the particular items concerned or negotiate new prices with alternative suppliers to the exclusion of the Tenderer.
 - Tenderers shall state the time of delivery in days from the date of the official order by the Municipality and all tendered prices are to include VAT as well as costs of delivery to the Municipal Stores In Jeffreys Bay or such other address as may be indicated by the Kouga Local Municipality.
- All prices tendered shall be VAT included.
- Copies of all relevant registrations/permits/grading reports **MUST** be attached to this tender document. If this documentation is not attached, your tender will not be considered.

2. LAYOUT

This tender document is divided into several sections. Please read through all the sections. The Conditions of Tender are most important, as they contain several new clauses in the light of the procurement policy and please take note of the conditions of tender and the list of required documents to be handed in, seeing that non-adherence to these requirements can lead to non-responsiveness of tender.

3. SCHEDULE OF PRICES

In this schedule, a rate and a total price must be inserted against every item. If the rate has been included in another item elsewhere in the schedule, the Tenderer is to write A included @ in the Amount column.

4. SUBMISSION

Please read through carefully the Conditions of Tender, which deals with submission of tender. Your completed tender document must be placed in a sealed envelope and the contract number and name of the contract written clearly on the outside. The envelope must be deposited, In accordance with the instructions in the Tender Advertisement. It is the Service Provider's responsibility to ensure that their bid is deposited in the correct tender box. No bid document delivered at any other venue or tender box than the mentioned one will be considered.

5. SCOPE OF CONTRACT

Appointment of A Professional Architectural Service Provider For The Design Of Mini Fresh Food And Craft Markets.

6. VALIDITY OF TENDER

Tenders shall remain valid for acceptance for a period of 120 days

7. ACQUAINTANCE WITH TENDER DOCUMENTS

By submission of a tender, the Tenderer will be deemed to have acquainted himself fully with the tender documents, local requirements, and the laws prior to pricing and submission of tender.

8. TENDER EXPENSES

The Council will not be responsible for any expense incurred by the tenderer in submitting a tender.

9. UNCONDITIONAL DISCOUNT

The quoted prices can be subject to an unconditional discount. Tenderers must state on the Schedule of Prices the percentage of unconditional discount they are offering.

10. OTHER SUPPLIERS

Should the tenderer after acceptance of his tender for any reason whatsoever not be able to provide or deliver the service to the Municipality within the reasonable specified time, the Municipality reserves the right to obtain goods from any other source or tenderer, in which case the tenderer will be liable for any additional costs incurred in case of a difference in price.

11. SURCHARGE IN RESPECT OF FALSE DISCLOSURE

Should the information submitted by the tenderer with his/her tender for the purpose of being allocated equity preference points, be found, during the currency of the contract, to be false, then the tenderer shall be liable to pay to the Employer the additional costs incurred by the Employer as the result of the Employer awarding the contract to the tenderer on the basis of the information submitted.

The additional cost shall be the difference between the sum tendered by the tenderer and the sum tendered by the tenderer who would have been awarded the tender, had the tenderer not submitted the false information.

12. B-BBEE

Refer to new legislation, circulars, and codes regarding B-BBEE. Sworn Affidavit be submitted in the DTI format.

13. CORRESPONDENCE

An active email address must be provided. All correspondence and request for information with bidder will be sent to this email address as provided on page five (5). If not submitted within the specified timeframe of the request, the bid may be declared non-responsive.

14. LOCAL CONTENT- (only if applicable)

The Guidelines for locally produced goods or locally manufactured goods with the stipulated minimum threshold for local production and content for the designated sector is reflected on the website www.thedti.gov.za and tender document for more information.

If bidder requires an authorisation letter from **The DTI** please do so timeously. The following people can be contacted at The DTI:

Patricia Khumalo: Tel: [012 394 1390](tel:0123941390), email: khumalop@thedti.gov.za
 Jaywant Irkhede: Tel; [012 394 5166](tel:0123945166), email: jirkhede@thedti.gov.za

15. CONTRACT PERIOD

Construction to be completed by end June 2019

Signed	Date	Name (block letters)	Capacity in Firm

TAX CLEARANCE CERTIFICATE REQUIREMENTS

1. The Tax Clearance Certificate Requirements are also applicable to foreign bidders/individuals who wish to submit bids.
2. SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval and a tax compliance status pin that can be used by municipality's to verify a client's tax compliance status at any given time.
3. **The Tax Clearance Certificate and tax compliance status pin must be submitted together with the bid. Failure to submit the valid Tax Clearance Certificate will result in the invalidation of the bid.**
4. In bids where Consortia / Joint Ventures / Sub-contractors are involved; each party **must submit** a separate Tax Clearance Certificate.

KOUGA MUNICIPALITY (EC108)**TENDER NOTICE 134/2018****APPOINTMENT OF A PROFESSIONAL ARCHITECTURAL SERVICE PROVIDER FOR
THE DESIGN OF MINI FRESH FOOD AND CRAFT MARKETS****SPECIAL CONDITIONS****1. DEFINITIONS**

In the Contract, the following words and expressions shall have the meanings indicated, except where the context otherwise requires. Defined terms and words are signified in the text of the Contract by the use of capital initial letters.

Contract

The Contract signed by the Parties and of which these General Conditions of Contract form a part.

Contract Data

Specific data, which together with these General Conditions of Contract, collectively describe the risks, liabilities, and obligations of the Contracting Parties and the procedures for the administration of the Contract.

Contract Price

The price to be paid for the performance of the Services in accordance with the Pricing Data.

Day

A calendar day.

Defect

A part of the Services, as performed, which does not comply with the requirements of the Contract.

Deliverable

Any measurable, tangible, verifiable outcome, result or item that must be produced or completed;

Employer

The contracting party named in the Contract who employs the Service Provider.

Force Majeure

An event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

Key Persons

Persons who are named as such in the Contract Data who will be engaged in the performance of the Services.

Others

Persons or organizations who are not the Employer, the Service Provider or any employee, Subcontractor, or supplier of the Service Provider.

Parties

The Employer and the Service Provider.

Period of Performance

The period within which the Services are to be performed and completed, commencing from the Start Date.

Personnel

Persons hired by the Service Provider as employees and assigned to the performance of the Services or any part thereof.

Personnel Schedule

A schedule naming all Personnel and Key Persons.

Pricing Data

Data that establishes the criteria and assumptions that were taken into account when developing the Contract Price and the record of the components that make up the Contract Price.

Project

The project named in the Contract Data for which the Services are to be provided.

Scope of Work

The document which defines the Employer's objectives and requirements and specifies the Services which must, or may, be provided under the Contract.

Service Provider

The contracting party named in the Contract Data who is employed by the Employer to perform the Services described in the Contract, and legal successors to the Service Provider and legally permitted assignees.

Services

The work to be performed by the Service Provider pursuant to the Contract as described in the Scope of Work.

Start date

The date on which the Services are to commence as stated in the Contract Data

Subcontractor

A person or body corporate who enters into a subcontract with the Service Provider to perform part of the Services.

2. INTERPRETATION

2.1 Unless inconsistent with the context, an expression which denotes:

- a) any gender includes the other genders;
- b) a natural person includes a juristic person and vice versa;
- c) the singular includes the plural and vice versa.

2.2 If there is any conflict between the provisions of these General Conditions of Contract and the Contract Data, the provisions of the Contract Data shall prevail.

2.3 The clause headings shall not limit, alter or affect the meaning of the Contract.

3. GENERAL

3.1 Governing law

Law governing the Contract shall be the law of the Republic of South Africa.

3.2 Change in legislation

If after the commencement of the Contract, the cost or duration of the Services is altered as a result of changes in, or additions to, any statute, regulation or bye-law, or the requirements of any authority having jurisdiction over any matter in respect of the Project, then the Contract Price and time for completion shall be adjusted in order to reflect the impact of those changes, provided that, within 14 Days of first having become aware of the change, the Service Provider furnished the Employer with detailed justification for the adjustment to the Contract Price or Period of Performance (or both).

3.3 Language

3.3.1 The language of the Contract and of all communications between the Parties shall be English.

3.3.2 All reports, recommendations, and reports prepared by the Service Provider under the Contract shall be in English.

3.4 Notices

3.4.1 Any notice, request, consent, approvals or other communication made between the Parties pursuant to the Contract shall be in writing and forwarded to the address specified in the Contract Data. Such communication shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or one week after having been sent by registered post, or unless otherwise indicated in the Contract Data, when sent by e-mail or facsimile to such Party

3.4.2 A Party may change its address for receipt of communications by giving the other Party 30 Days advance notice of such change.

3.5 Location

The Services shall be performed at such locations as are specified in the Contract Data, and where the location of a particular task is not so specified, at such locations as the Employer may approve.

3.6 Publicity and publication

Unless otherwise stated in the Contract Data, the Service Provider shall not release public or media statements or publish material related to the Services or Project within two (2) years of completion of the Services without the written approval of the Employer, which approval by the Employer shall not be unreasonably withheld.

3.7 Confidentiality

Both parties shall keep all sensitive information obtained by them in the context of the Contract confidential and shall not divulge it without the written approval of the other Party.

3.8 Variations

3.8.1 The Employer may, without changing the objectives or fundamental scope of the Contract, order variations to the Services in writing or may request the Service Provider to submit proposals, including the time and cost implications, for variations to the Services.

3.8.2 The reasonable cost of preparation and submission of such proposals and the incorporation into the Contract of any variations to the Services ordered by the Employer, including any change in the Contract Price, shall be agreed between the Service Provider and the Employer.

3.8.3 Where a variation is necessitated by default or breach of Contract by the Service Provider, any additional cost attributable to such variation shall be borne by the Service Provider.

3.9 Changes to the Contract Price or Period of Performance

3.9.1 The Service Provider is entitled to apply to the Employer for a change in Contract Price or the Period of Performance in the event that:

- a) a change in legislation takes place in accordance with the provisions of Clause 3.2;
- b) a variation to the Services is made in accordance with the provisions of Clause 3.8;
- c) the Employer or Others do not perform an action, provide access to people, places or things or perform work in accordance with the programme (see Clause 3.15);
- d) the contract is suspended in accordance with the provisions of Clause 8.5;
- e) the contract is restarted following a suspension; or
- f) an event occurs which neither Party could prevent, and which prevents the Service Provider from completing the Services or a part thereof

3.9.2 The Service Provider shall submit proposals to change the Contract Price or the Period for Completion (or both) to the Employer within 6 weeks of becoming aware of an event described in 3.9.1 occurring, failing which, the Service Provider shall not be entitled to a change in the Contract Price or Period of Performance.

3.9.3 The Employer shall assess the changes to the Contract Price on the effect of the event on the Services based on time-based fees.

3.9.4 The Employer shall assess the changes to the Period of Performance on the basis of the time that planned completion as shown on the latest approved programme is delayed.

3.10 Sole agreement

The Contract constitutes the sole agreement between the Parties for the performance of the Services and any representation not contained therein shall not be of any force or effect. No amendments will be of any force or effect unless reduced to writing and signed by both Parties.

3.11 Indemnification

The Service Provider shall, at his own expense, indemnify, protect and defend the Employer, its agents and employees, from and against all actions, claims, losses and damage arising from any negligent act or omission by the Service Provider in the performance of the Services, including any violation of legal provisions, or rights of others, in respect of patents, trademarks and other forms of intellectual property such as copyrights.

3.12 Penalty

3.12.1 If due to his negligence, or for reasons within his control, the Service Provider does not perform the Services within the Period of Performance, the Employer shall without prejudice to his other remedies under the Contract or in law, be entitled to levy a penalty for every Day or part thereof, which shall elapse between the end of the period specified for

performance, or an extended Period of Performance, and the actual date of completion, at the rate and up to the maximum amount stated in the Contract Data.

3.12.2 If the Employer has become entitled to the maximum penalty amount referred to in 3.12.1, he may after giving notice to the Service Provider:

- a) terminate the Contract
- b) complete the Services at the Service Provider's cost.

3.13 Equipment and materials furnished by the Employer

3.13.1 Equipment and materials made available to the Service Provider by the Employer, or purchased by the Service Provider with funds provided by the Employer for the performance of the Services shall be the property of the Employer and shall be marked accordingly. Upon termination or expiration of the Contract, the Service Provider shall make available to the Employer an inventory of such equipment and materials and shall dispose of them in accordance with the Employer's instructions.

3.13.2 The Service Provider shall, at his own expense, insure the equipment and materials referred to in 3.13.1 for their full replacement value.

3.14 Illegal and impossible requirements

The Service Provider shall notify the Employer immediately, on becoming aware that the Contract requires him to undertake anything which is illegal or impossible.

3.15 Programme

3.15.1 The Service Provider shall, within the time period set out in the Contract Data and whenever a programme is amended or revised, submit for the Employer's approval a programme for the performance of the Services which shall, *inter alia*, include:

- a) the order and timing of operations by the Service Provider and any actions, access to people, places, and things and work required of the Employer and Others;
- b) the dates by which the Service Provider plans to complete work needed to allow the Employer and Others to undertake work required of them;
- c) provisions for float;
- d) the planned completion of the Services or part thereof in relation to a Period of Performance; and
- e) other information as required in terms of the Scope of Work or Contract Data.

3.15.2 The Employer may, during the course of the Contract, request the Service Provider to amend the programme. Where this is not practicable, the Service Provider shall advise the Employer accordingly and advise him of alternative measures, if any, which might be taken.

3.15.3 A programme shall be deemed to be approved if the Employer fails to approve such programme or give reasons for not approving a programme within three weeks of receipt of a request by the Service Provider to approve a programme.

3.15.3 The Service Provider shall update the programme:

- a) unless otherwise stated in the Contract Data, every three months to reflect actual progress to date;
- b) whenever a change in Period of Performance or Contract Price is applied for; and
- c) whenever a change in the Period of Performance is changed by the Employer and submit such revised programme to the Employer for approval.

3.16 Price adjustment to time-based fees for inflation

3.16.1 Time-based fees which are stated in the Pricing Data as a unique rate and are not calculated by multiplying the total annual cost of employment contained, shall unless

otherwise stated in the Contract Data, be adjusted in terms of 3.16.2 on each anniversary of the Starting Date.

3.16.2 The adjustment to the time-based fees shall be equal to $(CPI_n - CPI_s) / CPI_s$ where CPI_s = the indices specified in the Contract Data during the month in which the start date falls

CPI_n = the latest indices specified in Contract Data during the month in which the anniversary of the Start Date falls

4. EMPLOYER'S OBLIGATIONS

4.1 Information

4.1.1 The Employer shall timeously provide to the Service Provider, free of cost, all available information, and data in the Employer's possession which may be required for the performance of the Services.

4.1.2 The Employer shall provide the Service Provider with reasonable assistance required in obtaining other relevant information that the latter may require in order to perform the Services.

4.2 Decisions

The Employer shall, within a reasonable time, give his decision on any matter properly referred to him in writing by the Service Provider so as not to delay the performance of Services.

4.3 Assistance

4.3.1 The Employer shall co-operate with the Service Provider and shall not interfere with or obstruct the proper performance of the Services. The Employer shall as soon as practicable:

- a) authorize the Service Provider to act as his agent insofar as may be necessary for the performance of the Services;
- b) provide all relevant data, information, reports, correspondence and the like, which become available;
- c) procure the Service Provider's ready access to premises, or sites, necessary for the performance of the Services;
- d) assist in the obtaining of all approvals, licenses, and permits from state, regional and municipal authorities having jurisdiction over the Project, unless otherwise stated in the Contract Data;

4.3.2 Unless otherwise communicated, the authorized and designated person named in the Contract Data has complete authority in giving instructions and receiving communications on the Employer's behalf and interpreting and defining the Employer's policies and requirements regarding the Services.

4.4 Services of Others

The Employer shall, at his own cost, engage such others as may be required for the execution of work not included in the Services, but which is necessary for the completion of the project.

4.5 Notification of material change or defect

The Employer shall immediately advise the Service Provider on becoming aware of:

- a) any matter other than a change in legislation which will materially change, or has changed the Services; or
- b) a material defect or deficiency in the Services.

4.6 Issue of instructions

Where the Service Provider is required to administer the work or services of others, or any contract or agreement, on behalf of the Employer, then the Employer shall issue instructions related to such work, services, contract or agreement only through the Service Provider.

4.7 Payment of Service Provider

The Employer shall pay the Service Provider the Contract Price in accordance with the provisions of the Contract.

5. SERVICE PROVIDER'S OBLIGATIONS

5.1 General

5.1.1 The Service Provider shall perform the Services in accordance with the Scope of Work with all reasonable care, diligence, and skill in accordance with generally accepted professional techniques and standards.

5.1.2 If the Service Provider is a joint venture or consortium of two or more persons, the Service Provider shall designate one person to act as a leader with authority to bind the joint venture or consortium. Neither the composition nor the constitution of the joint venture or consortium shall be altered without the prior consent in writing of the Employer, which shall not be unreasonably withheld.

5.2 Exercise of authority

The Service Provider shall have no authority to relieve others appointed by the Employer to undertake work or services on the Project of any of their duties, obligations, or responsibilities under their respective agreements or contracts unless expressly authorised by the Employer in response to an application by the Service Provider in writing to do so.

5.3 Designated representative

Unless otherwise communicated, the authorised and designated person named in the Contract Data has complete authority to receive instructions from and give information to the Employer on behalf of the Service Provider.

5.4 Insurances to be taken out by the Service Provider

5.4.1 The Service Provider shall as a minimum and at his own cost take out and maintain in force all such insurances as are stipulated in the Contract Data.

5.4.2 The Service Provider shall, at the Employer's request, provide evidence to the Employer showing that the insurance required in terms of Clause 5.4.1 has been taken out and maintained in force.

5.5 Service Provider's actions requiring Employer's prior approval

The Service Provider shall obtain the Employer's prior approval in writing before taking, inter alia, any of the following actions:

- a) appointing Subcontractors for the performance of any part of the Services,
- b) appointing Key Persons not listed by name in the Contract Data.
- c) any other action that may be specified in the Contract Data.

5.6 Co-operation with Others

If the Service Provider is required to perform the Services in co-operation with others he may make recommendations to the Employer in respect of the appointment of such others.

The Service Provider shall, however, only be responsible for his own performance and the performance of Subcontractors unless otherwise provided for.

5.7 Notice of change by Service Provider

On becoming aware of any matter which will materially change or has changed the Services, the Service Provider shall within 14 Days thereof give notice to the Employer.

6. CONFLICTS OF INTEREST

6.1 Service Provider not to benefit from commissions, discounts, etc.

The remuneration of the Service Provider under the Contract shall constitute the Service Provider's sole remuneration in connection with the Contract, or the Services, and the Service Provider shall not accept for his own benefit any trade commission, discount, or similar payment in connection with activities pursuant to the Contract, or in the discharge of his obligations under the Contract, and shall use his best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them shall, similarly, not receive any additional remuneration.

6.2 Royalties and the like

The Service Provider shall not have the benefit, whether directly or indirectly, of any royalty or of any gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the Contract, or Project, unless so agreed by the Employer in writing.

6.3 Independence

The Service Provider shall refrain from entering any relationship which could be perceived as compromising his independence of judgment, or that of Subcontractors or Personnel.

7. SERVICE PROVIDER'S PERSONNEL

7.1 General

7.1.1 The Service Provider shall employ and provide all qualified and experienced Personnel required to perform the Services.

7.1.2 Where required in terms of the Contract, the Service Provider shall provide Key Persons as listed in the Contract Data to perform specific duties. If at any time, a particular Key Person cannot be made available, the Service Provider may engage a replacement who is equally or better qualified to perform the stated duty, subject to the Employer's approval, which approval shall not be unreasonably withheld.

7.1.3 Where the fees for the Services are time-based, the fee payable for a person provided as a replacement to a named Key Person shall not exceed that which would have been payable to the person replaced.

7.1.4 The Service Provider shall bear all additional costs arising out of or incidental to replacement of Personnel, except where such replacement is otherwise provided for in the Contract.

7.1.5 The Service Provider shall take all measures necessary and shall provide all materials and equipment necessary to enable Personnel to perform their duties in an efficient manner.

7.2 Provision of Personnel in terms of a Personnel Schedule

7.2.1 The Service Provider shall, where required in terms of the Contract Data, provide appropriate Personnel for such time periods as required in terms of the Contract and enter

all data pertaining to Personnel including titles, job descriptions, qualifications and estimated periods of engagement on the performance of the Services in the Personnel Schedule.

7.2.2 Where the Service Provider proposes to utilize a person not named in the Personnel Schedule, he shall submit the name, relevant qualifications and experience of the proposed replacement person to the Employer for approval. Should the Employer not object in writing within 10 Days of receipt of such notification, the replacement shall be deemed to have been approved by the Employer.

7.2.3 The Services shall be performed by the Personnel listed in the Personnel Schedule for the periods of time indicated therein. The Service Provider may, subject to the approval of the Employer, make such adjustments to the data provided in terms of Clause 7.2.1 above as may be appropriate to ensure the efficient performance of the Services, provided that the adjustments will not cause payments to exceed any limit placed on the Contract Price.

7.2.4 The Service Provider shall if required in terms of Clause 7.2.1:

a) forward to the Employer for approval, within 15 Days of the award of the Contract, the Personnel Schedule and a timetable for the placement of Personnel.
b) inform the Employer of the date of commencement and departure of each member of Personnel during the course of the Project.

c) submit to the Employer for his approval a timely request for any proposed change to Personnel, or timetables.

8. COMMENCEMENT, COMPLETION, MODIFICATION, SUSPENSION AND TERMINATION

8.1 Commencement of Services

The Service Provider shall commence the performance of the Services within the period stated in the Contract Data.

8.2 Completion

8.2.1 Unless terminated in terms of the Contract, or otherwise specified in the Contract Data, the Contract shall be concluded when the Service Provider has completed all Deliverables in accordance with the Scope of Work.

8.2.2 The Service Provider may request an extension to the Period of Performance if he is or will be delayed in completing the Contract by any of the following causes:

a) additional Services ordered by the Employer;
b) failure of the Employer to fulfill his obligations under the Contract;
c) any delay in the performance of the Services which is not due to the Service Provider's default;
d) *Force Majeure*; or
e) suspension.

8.2.3 The Service Provider shall within 14 Days of becoming aware that a delay may occur or has occurred, notify the Employer of his intention to make a request for the extension of the Period of Performance to which he considers himself entitled and shall within 30 days after the delay ceases to deliver to the Employer full and detailed particulars of the request.

8.2.4 The Employer shall, within 30 Days of receipt of a detailed request, grant such extension to the Period of Performance as may be justified, either prospectively or retrospectively, or inform the Service Provider that he is not entitled to an extension. Should the Service Provider find the decision of the Employer to be unacceptable he shall, nevertheless, abide by such decision in the performance of the Services and the matter shall be dealt with as a dispute in terms of Clause 12.

8.3 Force Majeure

8.3.1 The failure of a Party to fulfil any of its obligations under the Contract shall not be considered to be a breach of or default under, this Contract insofar as such inability arises from an event of *Force Majeure*, provided that the Party affected by such an event has taken all reasonable precautions, due care, and reasonable alternative measures in order to meet the terms and conditions of this Contract, and has informed the other Party as soon as possible about the occurrence of such an event.

8.3.2 In the event that the performance of the Services has to be suspended on the grounds of *Force Majeure*, the Period of Performance shall be extended by the extent of the delay plus a reasonable period for the resumption of work.

8.3.3 During the period of his inability to perform the Services as a result of an event of *Force Majeure*, the Service Provider shall be entitled to any payment due in terms of the Contract and shall be reimbursed for additional costs reasonably and necessarily incurred by him in suspending, delaying and re-activating the performance of the Services.

8.4 Termination

8.4.1 The Employer may terminate the Contract:

- (a) where the Services are no longer required;
- (b) where the funding for the Services is no longer available;
- (c) if the Service Provider does not remedy a failure in the performance of his obligations under the Contract within thirty (30) Days after having been notified thereof, or within any further period as the Employer may have subsequently approved in writing;
- (d) if the Service Provider becomes insolvent or liquidated; or
- (e) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days;

8.4.2 The Employer shall give the Service Provider not less than thirty (30) Days written notice of any termination made in terms of 8.4.1 (a) or (b).

8.4.3 The Service Provider may terminate the Contract, by giving not less than thirty (30) Days written notice to the Employer after the occurrence of any of the following events:

- (a) if the Employer fails to pay any monies due to the Service Provider in terms of the Contract and not subject to dispute pursuant to Clause 12 within forty-five (45) Days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days; or
- (c) when the Services have been suspended under Clause 8.5 and the period of suspension exceeds the period stated in the Contract Data, or it is clear to the Service Provider that it will be impossible or impractical to resume the suspended Services before the period of suspension has exceeded the period stated in the Contract Data; or
- (d) if the Employer is in material breach of a term of the Contract and fails to rectify such breach within 30 Days of the receipt of written notice requiring him to do so.

8.4.4 Upon termination of this Contract pursuant to Clauses 8.4.1 or 8.4.3, the Employer shall remunerate the Service Provider in terms of the Contract for Services satisfactorily performed prior to the effective date of termination and reimburse the Service Provider any reasonable cost incident to the prompt and orderly termination of the Contract, except in the case of termination pursuant to events (c) and (d) of Clause 8.4.1.

8.4.5 Should the Service Provider, being an individual or the last surviving principal of a partnership or body corporate, die or be prevented by illness or any other circumstances beyond his control from performing the obligations implied by the Contract, the Contract shall be terminated without prejudice to the accrued rights of either Party against the other.

8.5 Suspension

8.5.1 The Employer may temporarily suspend all or part of the Services by notice to the Service Provider who shall immediately make arrangements to stop the performance of the Services and minimise further expenditure.

8.5.2 When Services are suspended, the Service Provider shall be entitled to pro-rata payment for the Services carried out and reimbursement of all reasonable cost incident to the prompt and orderly suspension of the Contract.

8.6 Rights and liabilities of the Parties

Completion, suspension or termination of the Contract shall not prejudice or affect the accrued rights or liabilities of the Parties.

9. OWNERSHIP OF DOCUMENTS AND COPYRIGHT

9.1 Copyright of all documents prepared by the Service Provider in accordance with the relevant provisions of the Copyright Act (Act 98 of 1978) relating to Project shall be vested in the party named in the Contract Data. Where copyright is vested in the Service Provider, the Employer shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the Project and need not obtain the Service Provider's permission to copy for such use. Where copyright is vested in the Employer, the Service Provider shall not be liable in any way for the use of any of the information other than as originally intended for the Project and the Employer hereby indemnifies the Service Provider against any claim which may be made against him by any party arising from the use of such documentation for other purposes.

9.2 The ownership of data and factual information collected by the Service Provider and paid for by the Employer shall, after payment by the Employer, lie with the Employer.

9.3 The Employer shall have no right to use any documents prepared by the Service Provider whilst the payment of any fees and expenses due to the Service Provider in terms of the Contract is overdue.

10. SUCCESSION AND ASSIGNMENT

10.1 Except as defined in Clause 8.4.4 above, each Party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other Party and to the other partners, successors, executors, administrators, assigns and legal representatives of the other Party in respect of all obligations and liabilities of the Contract.

10.2 An assignment shall be valid only if it is a written agreement by which the Service Provider transfers his rights and obligations under the Contract, or part thereof, to others.

10.3 The Service Provider shall not, without the prior written consent of the Employer, assign the Contract or any part thereof, or any benefit or interest thereunder, except in the following cases:

(a) by a charge in favour of the Service Provider's bankers of any monies due or to become due under the Contract; or

(b) by assignment to the Service Provider's insurers of the Service Provider's right to obtain relief against any other person liable in cases where the insurers have discharged the Service Provider's loss or liability.

10.4 The approval of an assignment by the Employer shall not relieve the Service Provider of his obligations for the part of the Contract already performed or the part not assigned.

10.5 If the Service Provider has assigned his Contract or part thereof without authorization, the Employer may forthwith terminate the Contract and the third party will have no claim against the Employer resulting from such termination.

11. SUBCONTRACTING

11.1 A Service Provider may not subcontract any work which he has the skill and competency to perform unless otherwise permitted in the Contract Data.

11.2 A subcontract, where permitted in terms of the Contract Data, shall be valid only if it is a written agreement by which the Service Provider entrusts performance of a part of the Services to Others.

11.3 The Service Provider shall not subcontract to nor engage a Subcontractor to perform any part of the Services without the prior written authorization of the Employer. The services to be sub-contracted and the identity of the Subcontractor shall be notified to the Employer. The Employer shall, within 14 Days of receipt of the notification and a full motivation why such services are to be subcontracted, notify the Service Provider of his decision, stating reasons, should he withhold such authorization. If the Service Provider enters into a subcontract with a Subcontractor without prior approval, the Employer may forthwith terminate the Contract.

11.4 The Employer shall have no contractual relationships with Subcontractors. However, if a Subcontractor is found by the Employer to be incompetent, the Employer may request the Service Provider either to provide a Subcontractor with qualifications and experience acceptable to the Employer as a replacement or to resume the performance of the relevant part of the Services himself.

11.5 The Service Provider shall advise the Employer without delay of the variation or termination of any subcontract for the performance of all or part of the Services.

11.6 The Service Provider shall be responsible for the acts, defaults, and negligence of Subcontractors and their agents or employees in the performance of the Services, as if they were the acts, defaults or negligence of the Service Provider, his agents or employees. Approval by the Employer of the subcontracting of any part of the Contract or of the engagement by the Service Provider of Subcontractors to perform any part of the Services shall not relieve the Service Provider of any of his obligations under the Contract.

12. RESOLUTION OF DISPUTES

12.1 Settlement

12.1.1 The Parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to the Contract and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.

12.1.2 Any dispute or claim arising out of or relating to the Contract which cannot be settled between the Parties shall in the first instance be referred by the Parties to either mediation or adjudication as provided for in the Contract Data.

12.2 Mediation

12.2.1 If the Contract Data does not provide for dispute resolution by adjudication, not earlier than 14 Days after having advised the other Party, in terms of Clause 12.1, that negotiations in regard to a dispute have failed, an aggrieved Party may require that the dispute be referred, without legal representation, to mediation by a single mediator. The mediator shall be selected by agreement between the Parties, or, failing such agreement, by the person named for this purpose in the Contract Data. The costs of the mediation shall be borne equally by the Parties.

12.2.2 The mediator shall convene a hearing of the Parties and may hold separate discussions with any Party and shall assist the Parties in reaching a mutually acceptable settlement of their differences through means of reconciliation, interpretation, clarification,

suggestion, and advice. The Parties shall record such agreement in writing and thereafter they shall be bound by such agreement.

12.2.3 The mediator is authorised to end the mediation process whenever in his opinion further efforts at mediation would not contribute to a resolution of the dispute between the Parties.

12.2.4 If either Party is dissatisfied with the opinion expressed by the mediator or should the mediation fail, then such Party may require that the dispute be referred to arbitration or litigation in a competent civil court, as provided for in the Contract Data.

12.3 Adjudication

12.3.1 If the Contract Data does not provide for dispute resolution by mediation, an aggrieved Party may refer the dispute to adjudication. Adjudication shall be in accordance with the latest edition of the separately published CIDB Adjudication Procedures.

12.3.2 The adjudicator shall be appointed in terms of the Adjudicator's Agreement bound in the Construction Industry Development Board's Adjudication Procedure.

12.3.3 The Adjudicator shall be any person agreed to by the parties or, failing such agreement, shall be nominated by the person named in the Contract Data. The Adjudicator shall be appointed in accordance with the Adjudicator's Agreement contained in the CIDB Adjudication Procedure.

12.3.4 If a Party is dissatisfied with the decision of the Adjudicator, the Party may give the other Party notice of dissatisfaction within 28 Days of the receipt of that decision and refer the dispute to arbitration or litigation in a competent civil court as provided for in the Contract Data. If no notice of dissatisfaction is given within the specified time, the decision shall be final and binding on the Parties.

12.4 Arbitration

12.4.1 Arbitration, where provided for in the Contract Data, shall be by a single arbitrator in accordance with the provisions of the Arbitration Act of 1965 as amended and shall be conducted in accordance with such procedure as may be agreed between the Parties or, failing such agreement, in accordance with the Rules for the Conduct of Arbitrations published by the Association of Arbitrators current at the date the arbitrator is appointed.

12.4.2 The arbitrator shall be mutually agreed upon or, failing agreement, to be nominated by the person named in the Contract Data.

13. LIABILITY

13.1 Liability of the Service Provider

13.1.1 The Service Provider shall be liable to the Employer arising out of or in connection with the Contract if a breach of Clause 5.1 is established against him.

13.1.2 The Service Provider shall correct a Defect on becoming aware of it. If the Service Provider does not correct a Defect within a reasonable time stated in a notification and the Defect arose from a failure of the Service Provider to comply with his obligation to provide the Services, the Service Provider shall pay to the Employer the amount which the latter assesses as being the cost of having such Defect corrected by Others.

13.1.3 All persons in a joint venture or consortium shall be jointly and severally liable to the Employer in terms of this Contract and shall carry individually the minimum levels of insurance stated in the Contract Data if any.

13.2 Liability of the Employer

The Employer shall be liable to the Service Provider arising out of or in connection with the Contract if a breach of an obligation of his in terms of the Contract is established. The Service Provider shall have no separate delictual right of action against the Employer.

13.3 Compensation

If it is established that either Party is liable to the other, compensation shall be payable only on the following terms:

(a) Compensation shall be limited to the amount of reasonably foreseeable loss and damage suffered as a result of the breach.

(b) In any event, the amount of compensation will be limited to the amount specified in Clause 13.5.

13.4 Duration of Liability

Notwithstanding the terms of the Prescription Act No. 68 of 1969 (as amended) or any other applicable statute of limitation neither the Employer nor the Service Provider shall be held liable for any loss or damage resulting from any occurrence unless a claim is formally made within the period stated in the Contract Data or, where no such period is stated, within a period of three years from the date of termination or completion of the Contract.

13.5 Limit of Compensation

13.5.1 Unless otherwise indicated in the Contract Data, the maximum amount of compensation payable by either Party to the other in respect of liability under the Contract is limited to:

a) the sum insured in terms of 5.4 in respect of insurable events; and

b) the sum stated in the Contract Data or, where no such amount is stated, to an amount equal to twice the amount of fees payable to the Service Provider under the Contract, excluding reimbursement and expenses for items other than salaries of Personnel, in respect of non-insurable events.

13.5.2 Each Party agrees to waive all claims against the other insofar as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amount payable.

13.5.3 If either Party makes a claim for compensation against the other Party and this is not established, the claimant shall reimburse the other for his reasonable costs incurred as a result of the claim or if proceedings are initiated in terms of Clause 12 for such costs as may be awarded.

13.6 Indemnity by the Employer

Unless otherwise indicated in the Contract Data, the Employer shall indemnify the Service Provider against all claims by third parties which arise out of or in connection with the performance of the Services save to the extent that such claims do not in the aggregate exceed the limit of compensation in Clause 13.5, if applicable, or are covered by the insurances arranged under the terms of Clause 5.4.

13.7 Exceptions

13.7.1 Clauses 13.5 and 13.6 shall not apply to claims arising from deliberate misconduct.

13.7.2 The Service Provider shall have no liability whatsoever for actions, claims, losses or damages occasioned by:

a) the Employer omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Service Provider, or requiring the Service Provider to implement a

decision or recommendation with which the Service Provider disagrees or on which he expresses a serious reservation; or

b) the improper execution of the Service Provider's instructions by agents, employees or independent contractors of the Employer.

14. REMUNERATION AND REIMBURSEMENT OF SERVICE PROVIDER

The Employer shall remunerate and reimburse the Service Provider for the performance of the Services as set out in the Pricing Data. If not otherwise stated in the Pricing Data, the following shall apply:

14.1 The Service Provider shall be entitled to render interim monthly accounts for fees and reimbursements throughout the duration of the Contract. Interim amounts of lump sum fees due shall be based on progress.

14.2 Amounts due to the Service Provider shall be paid by the Employer within thirty (30) Days of receipt by him of the relevant invoices. If the Service Provider does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Employer, at the prime interest rate charged by his bank and certified by such bank, plus 2% per annum, and calculated from the due date of payment.

14.3 If any item or part of an item in an invoice submitted by the Service Provider is disputed by the Employer, the latter shall, before the due date of payment, give notice thereof with reasons to the Service Provider, but shall not delay payment of the balance of the invoice. Clause 14.2 shall apply to disputed amounts which are finally determined to be payable to the Service Provider.

14.4 In respect of Services charged for on a time-basis and all other reimbursable expenses the Service Provider shall maintain records in support of such charges and expenses for a period of twenty-four months after the completion or termination of the Contract. Within this period the Employer may, on not less than 14 Days' notice, require that a reputable and independent firm of accountants, nominated by him at his expense, audit any claims made by the Service Provider for time charges and expenses by attending during normal working hours at the office where the records are maintained.

15 AMOUNTS DUE TO THE EMPLOYER

Amounts due to the Employer shall be paid by the Service Provider within thirty (30) Days of receipt by him of the relevant invoices. If the Employer does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Service Provider, at the rate stated in the Contract Data, calculated from the due date for payment.

PERSONNEL SCHEDULE

[illegible]

CONTRACT DATA

The Conditions of Contract are the *Standard Professional Services Contract (July 2009)* published by the Construction Industry Development Board.

Each item of data given below is cross-referenced to the clause in the Conditions of Contract to which it mainly applies.

Part 1: Data provided by the Employer

Clause	
	The Employer is the
3.4 and 4.3.2	The authorised and designated representative of the Employer is: Name: The address for receipt of communications is: Telephone: Facsimile: E-mail: Address:
1	The Project is
1	The Period of Performance is
1	The Start Date is the date on which Services are to commence.
3.4.1	Communications by facsimile are not permitted.
3.6	The Service Provider may not release public or media statements or publish material related to the Services or Project under any circumstances.
3.9.2	The time-based fees used to determine changes to the Contract Price are as stated in the Pricing Data
3.12	The penalty payable is R 500 per Day subject to a maximum amount of 5% of the value of the contract
3.15.1	The programme shall be submitted within 14 Days of the award of the Contract.
3.15.2	The Service Provider shall update the programme at intervals not exceeding 4 weeks.
3.16	The time-based fees shall not be adjusted for inflation.
13.16.1	The indices are those contained in Table A of P0141 Consumer Price Index for the CPI for all services published by Statistics South Africa Omit if no adjustment is to be made for inflation. Amend if necessary

4.3.1 (d)	The Service Provider is required to assist in the obtaining of approvals, licenses and permits from the state, regional and municipal authorities having jurisdiction over the Project
5.4.1	The Service Provider is required to provide professional indemnity cover as set out in the Professional Indemnity Schedule. The Service Provider is required to provide the following insurances: 1. Insurance against Professional Indemnity Cover is: Period of cover: Duration of project 2. Insurance against Cover is: Period of cover: State requirements for professional indemnity insurance, if any. State requirements for other insurances if required.
5.5	The Service Provider is required to obtain the Employer's prior approval in writing before taking any of the following actions: 1 Approval of V.O exceeding R20 000 2 Any action that may lead to increase of project budget
7.2	The Service Provider is required to provide personnel in accordance with the provisions of clause 7.2 and to complete the Personnel Schedule.
8.1	The Service Provider is to commence the performance of the Services within 10 Days of the date that the Contract becomes effective.
8.2.1	The Contract is concluded when a project closeout report has been submitted or when the necessary authorization/permit has been obtained.
8.4.3.(c)	The period of suspension under clause 8.5 is not to exceed 24 months/ weeks
9.1	Copyright of documents prepared for the Project shall be vested with the Kouga Municipality
11.1	A Service Provider may only subcontract the portion of work where he does not have the skill and competency to perform. He may however not subcontract the primary portion of the project.
12.1	Interim settlement of disputes is to be by mediation
12.2/ 12.3	Final settlement is by litigation
12.2.1	In the event that the parties fail to agree on a mediator, the mediator is nominated by Kouga Municipality

13.1.3	All persons in a joint venture or consortium shall carry a minimum professional indemnity insurance of
13.5.1	The maximum amount of compensation payable by either Party to the other in respect of liability under the Contract is limited to R
13.6	The provisions of 13.6 do not apply to the Contract Insert if provisions are not to apply
15	The interest rate will be a prime interest rate of the Employers bank at the time that the amount is due.

Part 2: Data provided by the Service Provider

Clause																			
1	The Service Provider is Address: Telephone: Faxsimile:																		
5.3	The authorised and designated representative of the Service Provider is: Name: Ashley Perils The address for receipt of communications is: Telephone: 042 200 2200 ext. 2182 Faxsimile: 086 5297827 Email: aperils@kouga.gov.za Address: 16 Woltemade Street, Jeffreys Bay, 6330																		
1	The Period of Performance is for the duration of the project.																		
5.5 / 7.1.2	The Key Persons and their jobs/functions in relation to the services are: <table border="1"> <thead> <tr> <th>Name</th><th>Specific Duties</th></tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Name	Specific Duties																
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KOUGA MUNICIPALITY (EC108)

TENDER NOTICE 134/2018

APPOINTMENT OF A PROFESSIONAL ARCHITECTURAL SERVICE PROVIDER FOR THE DESIGN OF MINI FRESH FOOD AND CRAFT MARKETS

FUNCTIONALITY CRITERIA	POINTS
Proven recent experience of similar projects (5 points per project, to a maximum of 4 projects)	20
Staff and Personnel Organization and support personnel resources in Eastern Cape Province	10
Project Team Leader experience with similar projects 1 – 5 years - 5 points 5 – 10 years- 15 points > 10 years - 20 points	20
Professional Bodies Registration with SACAP Registration with SAIA	3 2
Quality Assurance Quality assurance systems which ensure compliance with stated employer's requirements 5 points for ISO 9001: 2000 Certification/application	5
TOTAL POINTS ON FUNCTIONALITY	60

Minimum requirement/score for Functionality **45**

Proven recent experience of similar projects

A detailed list of projects completed by the company including contactable references need to be submitted. (Proof of authorisation granted could be requested)

Staff and Personnel (CV)

A detailed summary list must be provided with the Tender Submission, which must have sufficient detail to indicate how many qualified Architectural staff which are in the full-time employment of the Bidder, working from offices within the Eastern Cape Region, as the primary place of work, A clear indication must be given of their academic qualification as well as years of relevant experience. Bidders will be awarded 4 points each for any full-time senior Architectural professional with more than 5 years relevant experience and 1 point each for any full-time junior Architectural professional working in this field.

Project Team Leader Experience with similar projects

A detailed list of projects completed by the team leader including contactable references needs to be submitted. (Proof of authorisation granted could be requested)

Quality Assurance

Quality assurance systems employed by the Bidder in his office in order to ensure compliance with stated employer's requirements ISO 9001: 2000 Certification: Bidders who are certified as being compliant to the International Organization for Standardization's ISO 9001: 2000 quality management standard, will be awarded 5 points/ Proof of certification or application with evidence of previously started process must be attached in order to qualify for these points.

Note: Where the entity Tendering is a joint venture, provided one of these parties is ISO 9001: 2000 certified, and it has been indicated on the work plan submitted that the party will take responsibility for quality management and then the joint venture will be awarded 5 points in this respect.

KOUGA MUNICIPALITY (EC108)

TENDER NOTICE 134/2018

**APPOINTMENT OF A PROFESSIONAL ARCHITECTURAL SERVICE PROVIDER FOR
THE DESIGN OF MINI FRESH FOOD AND CRAFT MARKETS**

SPECIFICATIONS

Scope of work

Brief Project Overview

The Kouga Local Municipality intends constructing mini fresh food and craft markets and requires Architectural services for:

- Inception
- Concept Design
- Design Development
- Documentation and Procurement for Construction, including a Bill of Quantities, in the Prescribed Tender format of the Municipality.
- Project Management
- Close Out

GENERAL REQUIREMENTS

1. These terms of reference have been compiled to facilitate and accomplish the following:

- 1.1 Ensure the facilities are constructed before the end of June 2019.
- 1.2 Ensure a high quality of workmanship.

KOUGA MUNICIPALITY (EC108)**TENDER NOTICE 134/2018****APPOINTMENT OF A PROFESSIONAL ARCHITECTURAL SERVICE PROVIDER FOR
THE DESIGN OF MINI FRESH FOOD AND CRAFT MARKETS**

Work Stages	Disbursements	Fees	Total Excluding Vat
Inception			
Concept and Viability			
Design Development			
Documentation & Procurement			
Construction			
Close-Out			
Other (OHS, etc.)			
Sub Total			
VAT (15%)			
Total Project Cost			

Note: Disbursements to include all planned costs. Bidders to give detailed breakdown on hours spent, distance travelled, etc. for each work stage.

If not otherwise agreed elsewhere, the amount of travel expenses will be charged as published by the Department of Public Works from time to time or at the actual expenses incurred. Subsistence and accommodation fees will be reimbursed at the actual costs incurred.

Offer

The Employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of:

.....

The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of the tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the Service Provider under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the Contract Data.

The offered total of the Prices inclusive of Value Added Tax is

..... Rand (in words);

R (in figures)
(or other suitable wording)

This offer may be accepted by the Employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the Service Provider in the conditions of contract identified in the Contract Data.

Signature(s):

Name(s):

Capacity
for the
tenderer

.....
(Name and address of organization)

Name and
signature of
witness Date

Acceptance

By signing this part of this form of offer and acceptance, the Employer identified below accepts the tenderer's offer. In consideration thereof, the Employer shall pay the Service Provider the amount due in accordance with the conditions of contract identified in the Contract Data. Acceptance of the tenderer's offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1 Agreements and contract data, (which includes this agreement)

Part C2 Pricing data

Part C3 Scope of work.

and drawings and documents or parts thereof, which may be incorporated by reference into Parts C1 to C3 above.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the tender schedules as well as any changes to the terms of the offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this agreement.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the Employer's agent (whose details are given in the contract data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the Contract Data. Failure to fulfill any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now Service Provider) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.¹

Signature(s):

Name(s):

Capacity
for the
Tenderer

.....
(Name and address of organization)

Name and
signature of
witness Date

Schedule of Deviations

Notes:

1. The extent of deviations from the tender documents issued by the employer before the tender closing date is limited to those permitted in terms of the conditions of tender.
2. A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.
4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.

1 Subject _____

Details _____

2 Subject _____

Details _____

3 Subject _____

Details _____

4 Subject _____

Details _____

By the duly authorized representatives signing this agreement, the Employer and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the tender schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the Employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.

DECLARATION OF INTEREST

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

3.1 Full Name:

3.2 Identity Number:

3.3 Position occupied in the Company (Director, trustee, shareholder)

3.4 Company Registration Number:

3.5 Tax Reference Number:

3.6 VAT Registration Number:

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

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

3.8.1 If yes, furnish particulars.....

.....

* MSCM Regulations: "in the service of the state" means to be –

(a) a member of –

- (i) any municipal council;
- (ii) any provincial legislature; or
- (iii) the national Assembly or the national Council of provinces;

(b) a member of the board of directors of any municipal entity;

(c) an official of any municipality or municipal entity;

(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);

(e) a member of the accounting authority of any national or provincial public entity; or

(f) an employee of Parliament or a provincial legislature.

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

.....

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

3.9.1 If yes, furnish particulars.

.....

.....

3.10. Do you, have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid?

3.10.1If yes, furnish particulars.

.....

.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid?

3.11.1If yes, furnish particulars

.....

.....

3.12 Are any of the company's directors, trustees, managers, principal shareholders or stakeholders in the service of the state?

YES / NO

3.12.1 If yes, furnish particulars.

.....

.....

3.13 Are any spouse, child or parent of the company's directors, trustees, managers, principal shareholders or stakeholders in service of the state?

YES / NO

3.13.1 If yes, furnish particulars.

.....

.....

3.14 Do you or any directors, trustees, managers, principal shareholders Or stakeholders of this company have any interest in other related companies or business whether or not they are bidding for this contract?

YES / NO

3.14.1 If yes, furnish particulars.

.....

.....

.....

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

Full Name	Identity Number	State Employee Number (applicable of employed by government (state))

.....

Signature

.....

Date

.....

Capacity

.....

Name of Bidder

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

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

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

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

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

1.2

- a) The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

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

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

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

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

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

2. DEFINITIONS

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

3. POINTS AWARDED FOR PRICE

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

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

80/20	or	90/10
$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$	or	$P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$

Where

P_s = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmin = Price of lowest acceptable bid

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

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

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

5. BID DECLARATION

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

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

- 6.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

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

(Tick applicable box)

YES		NO	
-----	--	----	--

- 7.1.1 If yes, indicate:

i) What percentage of the contract will be subcontracted.....%

- ii) The name of the sub-contractor.....
 iii) The B-BBEE status level of the sub-contractor.....
 iv) Whether the sub-contractor is an EME or QSE
(Tick applicable box)

YES		NO	
-----	--	----	--

- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

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

8. DECLARATION WITH REGARD TO COMPANY/FIRM

- 8.1 Name of company/firm:.....
 8.2 VAT registration number:.....
 8.3 Company registration number:.....
 8.4 TYPE OF COMPANY/ FIRM
- ☐ Partnership/Joint Venture / Consortium
 - ☐ One person business/sole propriety
 - ☐ Close corporation
 - ☐ Company
 - ☐ (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

.....

.....

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

8.7 MUNICIPAL INFORMATION

Municipality where business is situated:

Registered Account Number:

Stand Number:.....

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

8.9 I/we, the undersigned, who is/are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

- (a) disqualify the person from the bidding process;

- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

WITNESSES

1.
2.

.....

SIGNATURE(S) OF BIDDERS(S)

DATE:

DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS – COMPULSORY IF APPLICABLE

This Municipal Bidding Document (MBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2017, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

1. General Conditions

- 1.1. Preferential Procurement Regulations, 2017 (Regulation 8) make provision for the promotion of local production and content.
- 1.2. Regulation 8.(2) prescribes that in the case of designated sectors, organs of state must advertise such tenders with the specific bidding condition that only locally produced or manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3. Where necessary, for tenders referred to in paragraph 1.2 above, a two-stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

- x is the imported content in Rand
- y is the bid price in Rand excluding value-added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on http://www.thedti.gov.za/industrial_development/ip.jsp at no cost.

- 1.6. A bid may be disqualified if this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation;

- 2. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:**

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
_____	_____ %
_____	_____ %
_____	_____ %

- 3.** Does any portion of the goods or services offered have any imported content?

(Tick applicable box)

YES		NO	
-----	--	----	--

- 3.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on www.reservebank.co.za

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

Currency	Rates of exchange
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

4. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the Dti must be informed accordingly in order for the Dti to verify and in consultation with the AO/AA provide directives in this regard.

LOCAL CONTENT DECLARATION – COMPULSORY IF APPLICABLE

(REFER TO ANNEX B OF SATS 1286:2011)

LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)

IN RESPECT OF BID NO.

ISSUED BY: (Procurement Authority / Name of Institution):
.....

NB

- 1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.
- 2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D, and E) is accessible on http://www.thdti.gov.za/industrial_development/ip.jsp. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D, and E with the actual values for the duration of the contract.

I, the undersigned, (full names),

do hereby declare, in my capacity as

of(name of bidder entity), the following:

(a) The facts contained herein are within my own personal knowledge.

(b) I have satisfied myself that:

- (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and

- (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above.

The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.

- (d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.
- (e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 14 of the Preferential Procurement Regulations, 2017 promulgated under the Preferential Policy Framework Act (PPFA), 2000 (Act No. 5 of 2000).

SIGNATURE: _____

DATE: _____

WITNESS No. 1 _____

DATE: _____

WITNESS No. 2 _____

DATE: _____

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES - COMPULSORY

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

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

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

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

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME)

CERTIFY THAT THE INFORMATION FURNISHED ON THIS
DECLARATION FORM TRUE AND CORRECT.

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

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

MBD 9**CERTIFICATE OF INDEPENDENT BID DETERMINATION - COMPULSORY**

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

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

3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:

- a. take all reasonable steps to prevent such abuse;
- b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
- c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.

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

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

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION - COMPULSORY

I, the undersigned, in submitting the accompanying bid:

NOTICE NO: 134/2018:
APPOINTMENT OF A PROFESSIONAL ARCHITECTURAL SERVICE PROVIDER FOR THE
DESIGN OF MINI FRESH FOOD AND CRAFT MARKETS
 (Bid Number and Description)

in response to the invitation for the bid made by:

KOUGA MUNICIPALITY

(Name of Municipality / Municipal Entity)

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

I certify, on behalf of: _____ that:
 (Name of Bidder)

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

- (a) prices;
- (b) the geographical area where product or service will be rendered (market allocation)
- (c) methods, factors or formulas used to calculate prices;
- (d) the intention or decision to submit or not to submit, a bid;
- (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
- (f) bidding with the intention not to win the bid.

8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, and conditions or delivery particulars of the products or services to which this bid invitation relates.

9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

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

JOINT VENTURE DECLARATION

Only to be completed if applicable

Submit your Joint Venture Agreement together with this annexure.**Section 1: Name of each enterprise:** _____**Address of each enterprise:** _____**Section 2: VAT registration number(s), if any:****Section 3: CIDB registration number(s), if any:****Section 4: Has a original valid Tax Clearance Certificate been submitted by each enterprise?**

YES

☐

NO

☐**Section: 5**

Percentage equity ownership by black persons (no franchise prior to elections).

%

Section: 6

Percentage equity ownership by women.

%

Section: 7

Percentage equity ownership by a person who has a disability.

%

Section: 8

Percentage of the contract value managed or executed by the HDI member.

%

SIGNED ON BEHALF OF TENDERER

KOUGA MUNICIPALITY

Attach resolution re authority of signatory as per instruction of Page 3 of tender document.

AUTHORITY FOR SIGNATORY

Companies submitting tenders must provide evidence that the person who signed the tender document has authority to do so, by attaching a copy of the relevant resolution of the Board of Directors, duly signed and dated, to this form. Alternatively, this form may be completed by the competent authority.

By resolution of the Board of Directors at a meeting held on

Mr/Ms

Has been duly authorised to sign all documents in connection with this Tender on behalf of:

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

SIGNED ON BEHALF OF COMPANY:.....

IN HIS CAPACITY AS:

SIGNATURE OF SIGNATORY:.....

COMPANY STAMP:

INDEMNITY AGREEMENTS

SUPPLIER

"I the undersigned, having been given permission by the Municipal Manager to enter the property of the Municipality for purposes of deliveries and having recognised the inherent hazards that exist in premises of this nature, hereby acknowledge that I enter the said property entirely at my own risk and that I shall have no claim against the Municipality or any of its employees, agents or mandataries for any loss, damage or injury whether fatal or otherwise, whether or not same is a result of any negligent act or omission on the part of the Municipality or any of its employees or other independent contractors or is as a result of the use of defective materials or equipment supplied by the Municipality or by way of any human or mechanical error, default or failure occurring on the said property or by way of any other cause, nothing at all excepted. Further, I hereby hold the Municipality blameless for any damage, injury or loss suffered by any person or such person's dependents as a result of the said contractual work and I undertake to compensate fully the Municipality for any loss sustained by it through and by way of such contractual work".

SIGNED:

DATE:.....

WITNESS:

DATE:

WITNESS:

DATE:

KOUGA MUNICIPALITY**CERTIFICATE FOR PAYMENT OF MUNICIPAL SERVICES**

DECLARATION IN TERMS OF CLAUSE 112(1) OF THE MUNICIPAL FINANCE MANAGEMENT ACT (NO.56 OF 2003) - (To be signed in the presence of a Commissioner of Oaths)

I, _____, _____ (full name and ID no.), hereby acknowledge that according to SCM Regulation 38(1)(d)(i), the Municipality may reject the tender of the tenderer if any municipal rates and taxes or municipal service charges owed by the Tenderer or any of its directors/members/partners to the Kouga Municipality, or to any other municipality or municipal entity, are in arrears for more than 3 (three) months.

I declare that I am duly authorised to act on behalf of _____ (name of the firm) and hereby declare, that to the best of my personal knowledge, neither the firm nor any director/member/partner of said firm is in arrears on any of its municipal accounts with any municipality in the Republic of South Africa, for a period longer than 3 (three) months.

I further hereby certify that the information set out in this schedule and/or attachment(s) hereto is true and correct. The Tenderer acknowledges that failure to properly and truthfully complete this schedule may result in the tender being disqualified, and/or in the event that the tenderer is successful, the cancellation of the contract.

PHYSICAL BUSINESS ADDRESS(ES) OF THE TENDERER	MUNICIPAL ACCOUNT NUMBER

FURTHER DETAILS OF THE BIDDER'S Director / Shareholder / Partners, etc.:

Director / Shareholder / partner	Physical address of the Business	Municipal Account number(s)	Physical residential address of the Director/shareholder / partner	Municipal Account number(s)

NB: A municipal billing certificate must be submitted. If the entity or rents/leases premises, a copy of the rental/lease agreement must be submitted with this tender. Please refer to Instruction Page 3 of this document.

Signature	Position	Date

COMMISSIONER OF OATHS Signed and sworn to before me at _____, on this _____ day of _____ 20____ by the Deponent, who has acknowledged that he/she knows and understands the contents of this Affidavit, it is true and correct to the best of his/her knowledge and that he/she has no objection to taking the prescribed oath, and that the prescribed oath will be binding on his/her conscience. COMMISSIONER OF OATHS:- Position: _____ Address: _____ Tel: _____	Apply official stamp of authority on this page:
--	---

KOUGA MUNICIPALITY
NOTICE NO: 134/2018

**APPOINTMENT OF A PROFESSIONAL ARCHITECTURAL SERVICE PROVIDER FOR THE
DESIGN OF MINI FRESH FOOD AND CRAFT MARKETS**

SCHEDULE OF WORK CARRIED OUT BY THE TENDERER

The tenderer must insert in the space provided below, a list of work (goods supplied) similar in nature to this Contract, completed by him/her during the past five years, or work presently being performed by his/her firm:-

Employer (Name, Tel No.)	Contact Person	Contact Telephone & E-mail	Value of Work	Year Completed

SIGNED OF BEHALF OF THE TENDERER:

KOUGA MUNICIPALITY SUPPLIER DATABASE INFORMATION – PLEASE COMPLETE IF NOT UPDATED OR LISTED ON MUNICIPAL SUPPLIER DATABASE

1. BUSINESS PARTICULARS:

1.1 Name of Business as registered with the Registrar of Companies / Close Corporations (Legal Name)

.....

1.2 Name of business used for TRADING purposes, if different from 1.1 or name of business if business is not registered with the registrar (Trading Name)

.....

1.3 Registration Number as registered with the Registrar of companies / close corporations (if applicable) **OR** identity number if sole proprietor

.....

1.4 Postal Address

.....

.....

.....

Postal Code:

Physical Address

.....

.....

.....

Postal Code:.....

Telephone Number: (.....) Fax No: (.....)

E-mail Address

.....

1.5 Contact Person for database and tenders

Contact name:

Cell Number:

Email address:

Telephone: (.....)

2. BANKING DETAILS - An original (signed and stamped) bank letter from the bank not older than three months, or an original cancelled cheque must be supplied. Also the account holder must match the trading name of the organization.

2.1 Name of banking institution:

2.2 Branch Name:

2.3 Branch Code:

2.4 Town / City:

2.5 Banking account number:

2.6 Account type:

2.7 Account Holder (Name under which account is operated)

.....

3. COMMODITIES AND SERVICE PROVIDED

In order to identify your organization as a potential service provider, types of commodities or services rendered have to be classified.

<u>SECTOR CODE</u>	<u>SECTOR</u>	PLEASE TICK (✓)
SCM1	Agriculture	
SCM2	Mining and Quarrying	
SCM3	Manufacturing	
SCM4	Construction	
SCM5	Retail and Motor Trade	
SCM6	Catering, Accommodation	
SCM7	Transport and Storage	
SCM8	Finance and Business Services	
SCM9	Repair /allied Services	
SCM10	Communications	
SCM11	Other trade	
SCM12	Community and Social Services	
SCM13	Personnel Services	

Please specify the appropriate commodity or service that your organization provides as well as the area of supply.

SERVICE	AREA WHERE SERVICE CAN BE RENDERED

--	--

*IF MORE SPACE IS NEEDED TO SPECIFY SERVICES PLEASE ADD A PAGE

PRODUCTS	AREA WHERE PRODUCTS CAN BE SOLD

*IF MORE SPACE IS NEEDED TO SPECIFY SERVICES PLEASE ADD A PAGE

4. CERTIFICATION OF CORRECTNESS OF INFORMATION SUPPLIED IN THIS DOCUMENT

I / WE, THE UNDERSIGNED, WHO WARRANTS THAT HE/SHE IS DULY AUTHORISED TO DO SO ON BEHALF OF THE SUPPLIER, CERTIFIES THAT THE INFORMATION SUPPLIED IN TERMS OF THIS DOCUMENT INCLUDING THE ANNEXURE/S WITH ADDITIONAL INFORMATION, IS CORRECT AND ACCURATE AND ACKNOWLEDGES THAT:

1. The supplier will be required to furnish documentary proof of the claims if requested to do so.
2. If the information supplied is found to be incorrect then the KLM may, in addition to any remedies it may have:
 - (i) Disqualify the supplier/ contractor for a particular tender/contract/project it may be considered for, or which had been awarded to the supplier/contractor;

- (ii) Recover from the supplier/ contractor all costs, losses or damages incurred or sustained by the KLM as a result of breach of the contract;
- (iii) Cancel the contract and claim any damages which the KLM may suffer by having to make less favourable arrangements after such cancellation; and /or
- (iv) De-register the supplier registered on the Supplier Database.

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

.....

SIGNATURE OF AUTHORISED REPRESENTATIVE

.....

NAME IN BLOCK LETTERS

.....

IN HIS/HER CAPACITY AS

ON BEHALF OF THE (SUPPLIER'S NAME)

5. DECLARATION OF INTEREST

1. No application will be accepted from persons in the service of the state*.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may submit a database application. In view of possible allegations of favouritism, should the resulting registration, award to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.

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

3.1 Full Name:

3.2 Identity Number:

3.3 Position occupied by the Company (Director, trustee, shareholder).....

3.4 Company Registration Number:

3.5 Tax Reference Number:

3.6 VAT Registration Number:

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

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

* MSCM Regulations: "in the service of the state" means to be –

(a) a member of –

- (i) any municipal council;
- (ii) any provincial legislature; or
- (iii) the national Assembly or the national Council of provinces;

(b) a member of the board of directors of any municipal entity;

(c) an official of any municipality or municipal entity;

(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);

(e) a member of the accounting authority of any national or provincial public entity; or

(f) an employee of Parliament or a provincial legislature.

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

3.8.1 If yes, furnish particulars

.....

.....

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

3.9.1 If yes, furnish particulars.

.....

.....

3.10. Do you, have any relationship (family, friend, other) with persons in the service of the state and who may be involved in the evaluation and or adjudication of this bid?

YES / NO

3.10.1If yes, furnish particulars.

.....

.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid?

YES / NO

3.11.1If yes, furnish particulars

.....

.....

3.12 Are any of the company's directors, trustees, managers, principal shareholders or stakeholders in the service of the state?

YES / NO

3.12.1If yes, furnish particulars.

.....

.....

3.13 Are any spouse, child or parent of the company's directors, trustees, managers, principal shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars.

.....

.....

3.14 Do you or any directors, trustees, managers, principal shareholders Or stakeholders of this company have any interest in other related companies or business whether or not they are bidding for this contract? **YES / NO**

3.14.1 If yes, furnish particulars.

.....

.....

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

Full Name	Identity Number	State Employee Number

.....

Authorising Signature

.....

Date

.....

Full name

.....

Capacity

.....

Witness

.....

Witness

Commisioner of Oaths

6. Undertaking

by

.....

(the "Supplier")

vis a vis the

Kouga Local Municipality**("KLM")**

WITH THIS FORM PLEASE ATTACH A LATEST MUNICIPAL BILLING CERTIFICATE FOR THE BUSINESS PREMISES AND ALSO FOR ALL THE DIRECTORS, MEMBERS OR OWNERS OF THE BUSINESS. IF OFFICE PREMISES ARE BEING RENTED PLEASE ATTACH COPY OF LEASE AGREEMENT.

Whereas:

- (a) the Supplier delivers or renders services to KLM;
- (b) KLM is liable to pay the Supplier for goods delivered or services rendered; and
- (c) the Supplier is liable **to pay KLM or relevant Local Authority** any due municipal rates and taxes or municipal service charges and any other indebtedness **owed by the Supplier to the KLM or relevant Local Authority.**

Now therefore the Supplier undertakes the following:

1. In the event of the Supplier being in arrears in respect of any municipal rates and taxes, municipal services charges, or any other indebtedness owed by the Supplier to the relevant Local Authority; which is/are due:
 - 1.1 the Supplier shall make satisfactory and reasonable written settlement arrangements with the KLM or relevant Local Authority for the payment thereof; and
 - 1.2 failing which, the KLM may set-off any such due indebtedness owed by the Supplier to the KLM from any amount owed by the KLM to the Supplier;
2. To co-operate with the KLM and to do all things and sign all such documents (and/or procure same to be done) as may be necessary or requisite in order to give proper and due effect to the terms of this undertaking or any matter arising therefrom in accordance with its intent and purpose;
3. No extension of time or indulgence granted by the KLM shall be deemed in any way to affect, prejudice or derogate from its rights in any respect in terms of this undertaking, nor shall it in any way be regarded as a waiver of the KLM's rights hereunder; and
4. The Supplier shall not be entitled to cede any of its right's nor delegate any of its obligations in terms of this undertaking to any other person without the prior written consent of the KLM.

Thus done and signed by the Supplier at on 20

.....

.....

(The Supplier) duly authorized

.....

Witness