



NAME OF BIDDER:

CSD NUMBER:

NOTICE AMOUNT

EMAIL & CONTACT NUMBER.....

CLOSING DATE 18 JUNE 2021

REQUEST FOR FORMAL WRITTEN QUOTATIONS

NOTICE 10 OF 2021 - INVESTIGATION OF IRREGULAR EXPENDITURE

Buffalo City Metropolitan Development Agency hereby invites suitably qualifying service providers to submit formal written quotations for **INVESTIGATION OF IRREGULAR EXPENDITURE**.

Enquiries should be addressed to Miss. Z. Madabane at email address: zisanda@bcmda.org.za.

The detailed specifications are attached hereunder.

To ensure responsiveness to the NOTICE Bidders to take note of the following requirements (Compliance Evaluation):

1. Service providers must be registered on National Treasury's Central Supplier Database and submit a summary report as proof of registration or alternatively reflect the CSD supplier number on their proposal;
2. All prospective/interested suppliers should complete the MBD 4, MBD 8 and MBD 9 forms which may be obtained from the BCMDA website: www.bcmda.org.za;
3. All prices must be inclusive of VAT, where applicable;
4. Use of Tippex and erasable ink will render the bid non- responsive
5. Bidders are required to submit valid B-BBEE Status Level Verification Certificates together with their bids, to substantiate their B-BBEE rating claims, failing which will result in a status level score of zero be assigned to the tenderer; a joint venture, trust or consortium; must submit a consolidated B-BBEE status level verification certificate.
6. Bidders must submit confirmation that the bidder's municipal accounts are not in arrears for a period exceeding 3 months. Such confirmation must be for the company must be as follows:
 - o statements of municipal accounts showing the age of the municipal debt; OR
 - o a tenderers debt clearance certificate from their respective municipality that is stamped and signed by that municipality; OR

- lease agreements (signed by both lessor and lessee) must be submitted and must be supported by:
 - a written confirmation from the lessor stating that the bidder is not in arrears with regards to their payment obligations in terms of the lease agreement.
7. IN ADDITION TO 6 ABOVE : Bidders must submit confirmation that its directors' municipal accounts are not in arrears for a period exceeding 3 months. Such confirmation must be for the directors and must be as follows:
- statements of municipal accounts showing the age of the municipal debt; OR
 - a tenderers debt clearance certificate from their respective municipality that is stamped and signed by that municipality; OR
 - lease agreements (signed by both lessor and lessee) must be submitted and must be supported by:
 - a written confirmation from the lessor stating that the bidder is not in arrears with regards to their payment obligations in terms of the lease agreement.
8. BCMDA reserves the right to request further written information or clarification on any aspect pertaining to this tender;
9. Quotations received after the specified closing time and date will not be considered;
10. The BCMDA does not bind itself to accept the lowest priced tender or any tender and reserves the right to accept the whole or part of the tender.
11. All quotations are valid for 90 days after the bid closing date;
12. Quotations must be sealed and completed in full. Unsigned or quotations submitted by facsimile, will not be accepted;
13. BCMDA will not take responsibility for incorrectly delivered bids sent by courier. It is the bidder's responsibility to make sure that their quotation is correctly delivered in the tender box on or before the closing date of this notice;
14. The proposal or quotation must demonstrate the requirements detailed on the terms of reference below.
15. NO QUOTATIONS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE AS DEFINED IN THE LOCAL GOVERNMENT MUNICIPAL FINANCE MANAGEMENT ACT 56 OF 2003: MUNICIPAL SUPPLY CHAIN MANAGEMENT REGULATIONS.
16. EMAILED QUOTATIONS WILL NOT BE ACCEPTED

Failure to meet the above stated minimum requirements will result in a tender being considered non-responsive and therefore not considered for the award of the contract.

Evaluation criteria:

Quotations meeting the tender conditions shall be evaluated on an 80/20 basis, in line with the PPPFA, as follows:

CRITERIA	POINTS
PRICE	80
B-BBEE	20
TOTAL	100

Quotations must be submitted in a sealed envelope, clearly marked: “*RE-ADVERT: NOTICE 10 OF 2021 - INVESTIGATION OF IRREGULAR EXPENDITURE*” and must be deposited in the QUOTATIONS BOX, At the offices of the Buffalo City Metropolitan Development Agency, 12 Esplanade Road, Quigney, East London, 5201 NOT LATER THAT THE CUT-OFF TIME OF 12H00 (MIDDAY) ON FRIDAY, 18 JUNE 2021.

Evaluation criteria:

- A. COMPLIANCE EVALUATION
- B. PPPFA PREFERENTIAL POINTS CALCULATION AND PRICE

TERMS OF REFERENCE: INVESTIGATION OF IRREGULAR EXPENDITURE

INTRODUCTION

The Buffalo City Metropolitan Development Agency (BCMDA) is a municipal entity wholly owned by the Buffalo City Metropolitan Municipality and established in terms of S76 of the Municipal Systems Act, 32 of 2000, as amended.

The primary mandate of BCMDA is to attract investors into Buffalo City and increase economic growth through tourism, economic and social development as well as property management and commercialisation.

PURPOSE

The aim of these terms of reference is to call for consulting engagement proposals from Chartered Accountants and Auditors for the investigation of the irregular expenditure incurred by the Agency. A detailed schedule of the irregular expenditure will be provided to the successful tenderer.

BACKGROUND

During the audit of 2018/19 financial year, the Auditor General identified and reported findings to the effect that the BAC of the BCMDA was not constituted in line with the MFMA SCM Regulations, regulation 29, which states the following:

- “29 (2): A bid adjudication committee must consist of at least four senior managers of the municipality or municipal entity which must include-
 - a. the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer;
 - b. at least one senior supply chain management practitioner who is an official of the municipality or municipal entity; and**
 - c. a technical expert in the relevant field who is an official of the municipality or municipal entity, if the municipality or municipal entity has such an expert.
- 29 (4): Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.”

The BAC of the Agency consisted of the CFO and four other Senior Managers. No senior supply chain management practitioner was a member of the BAC as required by regulation 29(2)(b).

This led to the failure to comply with the SCM Regulations and findings from the AG. Thus, all expenditure above R200 000 that was subject to BAC recommendations was deemed to be irregular expenditure.

In an attempt to resolve the findings, the Agency took the following steps:

- Submitted a correspondence to the National Treasury, Office of the Chief Procurement Officer to apply for exemption in terms of section 170 of the MFMA;
- Sought advice from the same office on whether an improperly constituted BAC results in irregular expenditure as opposed to mere non-compliance with legislation;
- Requested the parent municipality for the resources to assist in the procurement processes, to avoid a repeat of the finding. The resource commenced in March 2020; and
- The Board approved the appointment of an additional SCM official to address the issues relating to Bid Committee membership and the recruitment process was concluded and the official was appointed with effect from 01 April 2020.

As at the date of this correspondence no responses have been received from the Office of the Chief Procurement Officer.

The BCMDA's Policy governing unauthorized, irregular and fruitless and wasteful expenditure, in section 9.2 thereof states the following:

9.2.1 Once the Accounting Officer becomes aware of any allegation of Irregular or fruitless and wasteful expenditure, such allegation may be referred to the Agency's own Internal Audit Unit or any other appropriate investigative body for investigation, to determine whether or not grounds exist for a charge of financial misconduct to be laid against the official / political office bearer liable for the expenditure.

9.2.2 Once the investigation by Internal Audit is concluded, the Accounting Officer must table a report to the Board providing particulars of the Irregular or fruitless

and wasteful expenditure, steps taken to recover such expenditure and steps taken to prevent recurrence of Irregular or fruitless and wasteful expenditure.

The Agency is currently outsourcing the Internal Audit function and during the 2019/20 financial year the Internal Auditors performed an investigation of the irregular expenditure that had been incurred on the affected contracts as at 30 April 2020. This led to a resolution by the Board to write off the entire amount of the irregular expenditure incurred and investigated at that time. Since all of the irregular expenditure identified was solely emanating from the BAC constitution, the engagement scope that was agreed upon between Management and the Internal Audit, in consultation with the Audit and Risk Committee (ARC), was mainly the review of the achievement of value for money by the Agency in relation to the affected contracts.

The successful tenderer will therefore be expected to conduct an investigation in line with applicable legislation in a similar manner as that previously performed by Internal Auditors.

SCOPE OF WORK

The scope of work envisaged covers the following areas:

1. Reviewing and reporting on the root cause of all irregular expenditure identified.
2. Reviewing the circumstances surrounding non-compliance that resulted in irregular expenditure and conclude if it is justifiable.
3. Reviewing and confirming if the breach was in good faith or intentional financial misconduct.
4. Confirming whether the Agency received value or suffered any loss.
5. In the instances that the Agency has suffered the financial loss, determine that the amount of loss can be recoverable from the liable person
6. Reporting to the management with recommendations on the outcome of the investigation.
7. Irregular expenditure to be investigated is in relation of 13 contracts that were awarded by the improperly constituted BAC and is summarised as follows:

DETAIL	2021	2020
Opening Balance	2,155,529.00	13,353,047.97
Incurred in current year	66,033,608.73	17,880,634.30
Written off during the year	-	- 29,078,153.27
Closing balance	68,189,137.73	2,155,529.00

SPECIAL CONDITIONS

The contract will be for a period of one month from the date of acceptance of offer.

The firm of Chartered Accountants and Auditors appointed will be bound to and by the BCMDA Code of Conduct and Confidentiality of Information.

The Buffalo City Metropolitan Development Agency reserves the right to reject any proposal found to be inadequate or non-compliant to the Terms of Reference.

The successful tenderer will sign a Service Level Agreement (SLA). Reporting on the progress and completion of the contract will be made to BCMDA Management and Audit & Risk Committee.

The appointed service provider must be registered and in good standing with SAICA or IIA.

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/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 of bidder or his or her representative:.....

3.2 Identity Number:

3.3 Position occupied in the Company (director, trustee, hareholder²):.....

3.4 Company Registration Number:

3.5 Tax Reference Number:.....

3.6 VAT Registration Number:

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

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

3.8.1 If yes, furnish particulars.

.....

¹MSCM Regulations: “in the service of the state” means to be –

- (a) a member of –
 - (i) any municipal council;
 - (ii) any provincial legislature; or
 - (iii) the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) an executive member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

² Shareholder” means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

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? **YES / NO**

3.10.1 If 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**

3.11.1 If yes, furnish particulars

.....
.....

3.12 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.12.1 If yes, furnish particulars.

.....
.....

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

3.13.1 If yes, furnish particulars.

.....
.....

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

3.14.1 If yes, furnish particulars:

.....
.....

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

Full Name	Identity Number	State Number	Employee Number

.....
Signature

.....
Date

.....
Capacity

.....
Name of Bidder

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are 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 for 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	<p>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?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p>The Register 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 home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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 <input type="checkbox"/>	No <input type="checkbox"/>

4.3.1	If so, furnish particulars:		
Item	Question	Yes	No
4.4	Does the Does Is 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 <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	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

Js367bW

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Municipal Bidding Document (MBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - a. take all reasonable steps to prevent such abuse;
 - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Municipality / Municipal Entity)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

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

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

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.

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.

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
Js9141w 4

.....
Name of Bidder

DECLARATION OF BIDDER

The undersigned, who warrants that he / she is duly authorised to do so on behalf of the enterprise:

i) authorizes the Employer to obtain a tax clearance certificate from the South African Revenue Services that my / our tax matters are in order;

ii) confirms that neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004;

iii) confirms that no partner, member, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears, has within the last five years been convicted of fraud or corruption;

iv) confirms that I / we are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest; and

iv) confirms that the contents of this questionnaire are within my personal knowledge and are to the best of my belief both true and correct.

Signed

Name

Enterprise Name