

**BUFFALO CITY COUNCIL**

**HDI's PREFERENCE CLAIM CERTIFICATE**

**(as amended December 2001)**

**NB : BEFORE COMPLETING THE DECLARATION FORM AND THE DISCLOSURE FORM, TENDERERS MUST CAREFULLY STUDY THE GENERAL DEFINITIONS SET OUT HEREUNDER AS WELL AS THE DIRECTIVES CONTAINED IN THE FORMS**

**1. GENERAL DEFINITIONS**

The words and expressions set out hereunder shall have the meaning hereby assigned to them unless such meanings are clearly inconsistent with the context of a particular tender, contract or paragraph.

**1.1 CONTROL**

The possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial authority and power in determining the policies of the business and directing the operations of the business.

**1.2 COMMERCIALLY USEFUL FUNCTION**

The performance of real and actual work, or the provision of actual services, in the discharge of any contractual obligation which shall include but not be limited to the performance of a distinct element of work which the business has the skill and expertise to undertake and the responsibility for management and supervision.

**1.3 EQUITY OWNERSHIP**

Equity ownership shall be equated to the percentage of an enterprise which is owned by individuals, or in the case of a company, the percentage shares that are owned by individuals who are actively involved in the management and daily business operations of the enterprise and exercise control over the enterprise, commensurate with their degree of ownership.

1.4 **OWNED**

Having all the customary incidents of ownership, including the right of disposition and the sharing of all the risks and profits commensurate with the degree of ownership interests as demonstrated by an examination of the substance rather than the form of ownership arrangements.

1.5 **LOCAL SUPPLIER : A Local Enterprise that :**

- (a) owns, operates or maintains a store, warehouse or other establishment within the boundaries of Buffalo City in which materials or supplies required for the performance of the contract are brought, kept in stock and regularly sold to the public in the usual course of business; and
- (b) engages as its principle business, and in its own name, in the purchase and sale of the products in question or the provision of a professional service.

1.6 **LOCAL LABOURERS/LABOUR ONLY SUB-CONTRACTORS**

Individuals employed by the Contractor in the performance of the Contract, who permanently reside in the area of Buffalo City Council.

1.7 **HISTORICALLY DISADVANTAGED INDIVIDUALS (HDIs)**

“Historically Disadvantaged Individual (HDI)” means a South African citizen -

- (1) who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No. 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) (“the Interim Constitution”); and/or
- (2) who is a female; and/or
- (3) who has a disability:

Provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not be an HDI;

1.8 **Agent**

“Agent” means a person mandated by another person (“the principal”) to do business for and on behalf of, or to represent in a business transaction, the principal, and thereby acquire rights for the principal against an organ of state and incur obligations binding the principal in favour of an organ of state;

1.9 **BUSINESS ENTERPRISE**

A business which adheres to statutory labour practices, is a legal entity, registered with the South African Revenue Service and a continuing and independent enterprise for profit providing a Commercially useful function.

1.10 **JOINT VENTURE**

Means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;

1.11 **MANAGEMENT**

In relation to an enterprise or business, means an activity inclusive of control and performed on a daily basis, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether or not that person is a director.

1.12 **SUB-CONTRACTING**

Means the primary contractor’s assigning or leasing or making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;

## 2. **RESPONSIVE TENDERS**

Responsive tenders are tenders which

- comply with the conditions of tender
- have been properly completed
- have been signed
- meet the minimum resource goal (if laid down)
- contain no material deviations from, or unacceptable qualification to the terms, conditions and requirements of the contract which could:-
  - a) detrimentally affect the scope, quality, or performance of the works, or
  - b) change the employers, or the contractors risks and responsibilities under the contract, and which would detrimentally affect the competitive positions of other responsive tenders were it to be rectified.

## 3. **ESTABLISHMENT OF HDI EQUITY OWNERSHIP IN AN ENTERPRISE**

- 3.1 Equity ownership shall be equated to the percentage of an enterprise which is owned by individuals, or in the case of a company, the percentage shares that are owned by individuals who are actively involved in the management and daily business operations of the enterprise and exercise control over the enterprise, commensurate with their degree of ownership.
- 3.2 Notwithstanding 3.1, where individuals are not actively involved in the management and daily business operations and do not exercise control over the enterprise commensurate with their degree of ownership, the preference points may be adjusted by the Council.

4. **ADJUDICATION OF POINTS USING A POINTS SYSTEM**

4.1 **GENERAL**

- 4.1.1 Responsive tenders will be adjudicated by the Council using a points system. An example is set out in 4.2
- 4.1.2 The tender obtaining the highest points will not necessarily be awarded the contract.
- 4.1.3 Points scored will be rounded off to two (2) decimal places.
- 4.1.4 In the event of equal points being scored, the tender will be awarded to the tendered with the highest HDI points.

4.2 **POINTS AWARDED FOR COST OF WORK/PRODUCT**

80 or 90 points are allocated to cost of work on the following basis:

$$\text{Cost of Work} = 80 \text{ or } 90 \left[ 1 - \frac{(T - T1)}{T1} \right]$$

Where T1 = The lowest responsive tender which is realistically priced  
T = Respective tender under consideration

4.3 **EQUITY OWNED BY HISTORICALLY DISADVANTAGED INDIVIDUALS = 20 OR 10 POINTS**

Where Maximum 100% equity = 20/10 Points  
Minimum 0% equity = 0 Points  
and Pro-Rata within the limits

NOTE: The equity % shall be based on ownership as set out in relevant registration papers (e.g. articles of association/partnership agreement etc.), subject to 3.2 above. The actual points to be allocated will be clearly indicated in the Tender Document.

#### 4.4 **NON AWARD OF H.D.I POINTS**

4.4.1 Note that no H.D.I equity points will be awarded for equity ownership as defined in 1.3 read with 1.4 if the tenderer does not fully comply with the provisions of Sections 1.1. (Control), 1.2 (Commercially useful function), 1.4 (owned) 1.5 (Local Supplier) and 1.9 (Business Enterprise).

4.4.2 No H.D.I. equity points will be awarded for equity ownership as defined in 1.3 read with 1.4 if the tenderer is a public company.

#### 4.5 **AWARD TO AGENT**

4.5.1 An agent will, if awarded a tender, be regarded as a contractor and will be liable for all benefits/losses.

4.5.2 H.D.I. equity points as defined in 1.3 read with 1.4 will only be awarded to an agent if documents substantiating such an appointment accompany the tender submission.

#### 4.6 **TAX CLEARANCE CERTIFICATE**

No contracts will be awarded to tenderers who have failed to submit an original Tax Clearance Certificate from the South African Revenue Service certifying that their taxes are in order or that suitable arrangements have been made with the South African Revenue Service to satisfy them. The said certificate should be dated or issued after the date of advertisement calling for tenders but before the closing date for receipt of tenders.

#### 4.7 **CLEARANCE CERTIFICATE FOR MUNICIPAL LEVIES, SERVICES ETC.**

No contracts will be awarded to tenderers who have failed to submit an original Municipal Services/Levies Clearance certificate issued by the Directorate of Finance of Buffalo City, or the Municipality where they are situated certifying that their service charges/levies, etc are in order or that suitable arrangements have been made for their payment. The said certificate should be dated or issued after the date of advertisement calling for tenders but before the closing date for receipt of tenders.

#### 4.8 **PENALTIES**

Should any information furnished be found to be false, the Council may act against the contractor and in addition to any other remedy it may have:

- (a) recover all costs, losses or damages incurred or sustained by the Council as a result of the contract; and / or
- (b) cancel the contract and claim any damages which the Council may suffer by having to make less favourable arrangements after such cancellation; and / or
- (c) impose a penalty not exceeding 5% of the value of the contract.
- (d) blacklisting

The actual formula for calculation of such penalties, which shall be in addition to any penalties provided for in the applicable Conditions of Contract shall be specified in the Tender Document.