



C a c a d u
DISTRICT MUNICIPALITY

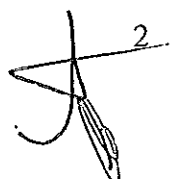
progress through development

APPX Financial System Support Tender Agreement

BID 21/2013



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DEFINITIONS: In this Contractual Agreement, unless the context indicates otherwise, the following words and expressions shall have the meaning assigned to them below:

“Agreement” means this Contractual Agreement entitled APPX Financial System Support;

“The Client” means the Cacadu District Municipality

“Consultant”, means Impumelelo Computers (PTY) Ltd

“The Project” means the (Provision of APPX Financial System Support Services)

“Deliverable” means the specific aim, objective or result of an act or action by the Service Provider as listed in this Agreement and in the original Bid Document marked “Bid 21/2013”;

“Period of Contract Agreement” means the period commencing on 01 July 2013 and terminating on 31 December 2014.



1. INTRODUCTION

The Client has its head office in Port Elizabeth, and administers the district known as the Cacadu District in the Eastern Cape Province. In terms of the Client's business model, it regards its core function as support and capacity building targeted at local municipalities in its area.

This contract governs the activities of the Service Provider in assisting the client to successfully implement the project:

2. APPOINTMENT OF THE CONSULTANT

The client appoints the Consultant for the purpose of providing Support to the Financial System (AAPX) and the Consultant shall act as an independent contractor, and has no authority to enter into agreements binding the client.

The Consultant accepts the appointment on the terms and conditions as stated herein.

3. STATEMENT OF SERVICE

The Consultant agrees that it will make available to Cacadu, in the capacity of independent consultants, the following services:-

- APPX application development as required and documented by Cacadu
- Management of the Cacadu Financial IT system
- User training on an on-going basis
- All necessary data file updates
- All necessary APPX software upgrades
- All system and user documentation as required by Cacadu
- All audit requirements as specified in audit findings document
- Relocation facilitation and management
- Backup function: System and data on a daily, monthly and annual basis
- Data Capture: All data as required for transaction processing and month end functions
- Reporting duties: print all required accounts and necessary reports
- Batch runs: Process and run daily, weekly and monthly batches
- Audit Trails
- Risk Management Controls.

4. COMPENSATION

In consideration for the Services performed by the Consultant hereunder, Cacadu agrees to pay the Consultant as follows:-

- From 1st July 2013 to 30 June 2014 a monthly billing of R137 964,62 – including VAT @ 14%
- From 1st July 2014 to 31 December 2014 a monthly billing of R151 761,07 including VAT @ 14%
- This amount will be billable monthly in advance

Such sums as may be due hereunder less any amounts already paid will be billed to Cacadu by the Consultant at the start of each calendar month. The Consultant shall submit invoices for the Services, and related expenses furnished under Section 3 directly to Cacadu District Municipality. Upon presentation of such invoices in form and detail satisfactory to Cacadu, Cacadu shall make payment within 30 days;

Notwithstanding any other provisions of this Agreement, Cacadu shall be under no obligation to make any payment to the Consultant in excess of the amounts in Section 4 above for any and all Services performed together with any and all mutually agreed expenses.

5. CONFIDENTIALITY CLAUSE

Consultant acknowledges that in the course of performing Services for Cacadu, it will have access to Confidential Information (defined below) of Cacadu, and Consultant agrees that neither it nor any of its employees or agents will at any time, during or after the performance of such Services, disclose any such Confidential Information, unless Consultant first obtains the written consent of Cacadu or unless required by law or the lawful order of a court or governmental agency.

“Confidential Information” means any and all tangible and intangible information, other than information which may be known to the Consultant or any of its employees or agents prior to disclosure to the Consultant by Cacadu and other than information which may at any time become available from any third party, relating to the management, operations, finances, and products or Services of Cacadu and its affiliates, including but not limited to financial data, computer programs and systems, plans, projections, existing and proposed and contemplated projects or investments, formulae, processes, methods, products, manuals, supplier lists, customer lists, purchase and sales records, territories, marketing information, contracts, correspondence and similar or dissimilar information relating to the business of Cacadu, whether developed by Cacadu or provided to it by others.

With respect to the Confidential Information, the Consultant will:-

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line and a small flourish. To the right of the signature are the initials 'S' and a scribble.

1. Advise its employees, agents and subcontractors with access to the Confidential Information of its confidentiality;
2. Restrict disclosure of Confidential Information to its employees, agents and subcontractors who need to know it in order to perform the Services;
3. Require its employees, agents and subcontractors to use a degree of care appropriate for the protection of the Confidential Information, but in any event not less than reasonable care;
4. Use the Confidential Information only for the purposes for which it was provided;
5. Upon request of Cacadu and in any event upon termination of Consultant's Services, promptly deliver to Cacadu any and all physical records containing Confidential Information, irrespective of whether they were supplied to or prepared by Consultant, which are in Consultant's possession or control.

Consultant shall not acquire any proprietary rights to any Confidential Information.

6. DEVELOPED INFORMATION

Cacadu shall own all materials and software products prepared specifically for delivery to Cacadu by consultant in connection with the performance of Services under this Agreement.

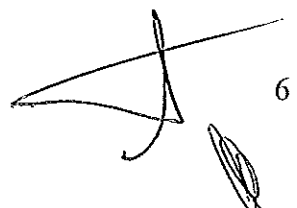
7. EXCLUSIVITY

During the term of Agreement, and for one (1) year thereafter, none of Consultants personnel Assigned to the Services described in the Agreement shall, without the prior consent of Cacadu, engage in consulting or similar activities for any company or entity whose business competes directly or indirectly with Cacadu.

8. INDEMNIFICATION

Consultant shall indemnify and hold harmless Cacadu from and against any loss, cost damage, injury, claim, expense (including reasonable attorney's fees) or liability ("liabilities") resulting from:

1. Physical injury to or death of any person;
2. Physical damage to or physical loss or destruction of any property;
3. Failure to comply with laws;
4. Infringement of a patent, copyright, trademark, service mark, or other proprietary rights of a third party; and



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5. Violation of the Confidentiality provisions of article 5 if such Liabilities result from the negligence of wilful misconduct of Consultant or its employees in connection with the performance of Services under this Agreement and not from the negligence or wilful misconduct of Cacadu or Cacadu's employees.

9. OWNERSHIP OF SOFTWARE APPLICATION

All software applications developed in terms of the agreement remain the property of Cacadu.

10. TERMINATION OF AGREEMENT

A six month written notice period is required.

11. CONSULTANT REPRESENTATION AND WARRANTIES

Consultant represents and warrants to Cacadu that it will not pay, directly or indirectly:

1. Any official or employee of any government or any agency or other instrumentality of any government;
2. Any officer, director, employee or agent of a customer;
3. Cacadu District Municipality, any of their divisions, subsidiaries or affiliates, or any employee, officer or director of Cacadu, or any of their divisions, subsidiaries or affiliates; or
4. Any person, firm or corporation at the direction of or by arrangement with Cacadu, or any of their divisions, subsidiaries or affiliates, or any employee, official or director of Cacadu, or any of their divisions, subsidiaries or affiliates.

12. NON-ASSIGNMENT

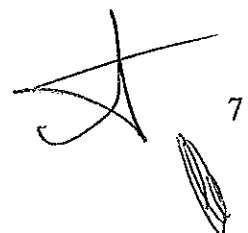
Neither party shall assign its rights or delegate its duties under this Agreement, without the prior written consent of the other party.

13. WAIVER OR MODIFICATION

No provision of this Agreement shall be modified or waived except by written agreement. This agreement contains the entire agreement of the parties as to Consultant's Services to Cacadu with respect to the Services, and supersedes all prior agreements, arrangements and understandings between the parties regarding the Services.

Consultant shall promptly notify Cacadu in writing of any action, change or development, which would make any representation furnished under this Agreement untrue, inaccurate or incomplete.

14. PERIOD OF CONTRACT AGREEMENT

A handwritten signature in black ink, followed by the number '7' and a small scribble below it.

The services shall be provided from 1 July 2013 and shall continue until 31 December 2014. Six month's written notice by either party is required to terminate one or more of the agreed services.

Consultant agrees to furnish Cacadu with written reports with respect to such Services if and when requested by Cacadu.

Consultant and Cacadu Management will meet regularly during the course of this contract to monitor and evaluate progress.

15. CONDUCT AND PERFORMANCE STANDARDS

By accepting appointment in terms of this agreement and tender documentation, the Consultant warrants that it has the necessary expertise, experience and administrative infrastructure to provide the services:

- a) Undertakes to perform its duties in terms of this agreement with utmost care and diligence and in accordance with the dictates of the profession of the Service Provider; and
- b) Undertakes to strictly comply with and adhere to the Code of Conduct applicable to the Professional Institute to which its Project Team is affiliated;

The Consultant shall exercise all reasonable skill, care and diligence in the performance of the work under the Agreement and shall carry out all of its responsibilities in accordance with professional standards acceptable to the Client.

16. OWNERSHIP OF MATERIAL

The Consultant hereby acknowledges that all reports in paper, electronic or any other recorded format produced by him/her in the furtherance of this Agreement shall become the property of the Client, which shall be entitled to use same for any purpose whatsoever and without payment to the Service Provider.

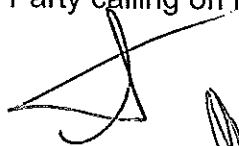

17. WHOLE AGREEMENT

This contract agreement including the tender documentation constitutes the whole Agreement between the parties and no representations, either verbal or written, made by either party during the tenure of this Agreement shall be of any force or effect unless agreed to by both parties, reduced to writing and annexed hereto as an addendum.

18. BREACH/TERMINATION

Any party may terminate this Agreement by reason of the material breach of the Agreement by another party. Such termination shall be without prejudice to any other claim that any Party may have, whether under this Agreement or in law, including any claim for damages.

For the purpose of this clause a breach shall be deemed to be material if it goes to the root of the Agreement, and the Party committing the breach fails to rectify the breach within 30 (thirty) days of receipt of written notice from the Party calling on it


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to do so, or within such longer period of notice that may reasonably be required to rectify the breach; or

If any Party commits any non-material breach of this Agreement then the other Party may claim specific performance or damages or both, as the case may be, but shall have no right of termination.

19. ARBITRATION

Any dispute between the Parties in regard to:

- the interpretation of;
- the effect of;
- the Parties' respective rights and obligations in terms of;
- a breach of;
- any matter arising out of;

This Agreement or consequent upon the termination thereof shall be referred to and finally resolved by arbitration, by an arbitrator to be appointed by the Arbitration Foundation of South Africa ("AFSA") in accordance with the AFSA rules and regulations, which arbitrator's findings shall be subject to an appeal in terms of the AFSA rules, and may be made an order of court.

20. PREVAILING LEGISLATION

The terms and conditions of this Agreement shall be interpreted and governed in accordance with the laws of the Republic of South Africa.

21. DOMICILIUM CITANDI ET EXECUTANDI

The Cacadu District Municipality chooses as its domicilium citandi et executandi for all purposes arising from this Agreement:

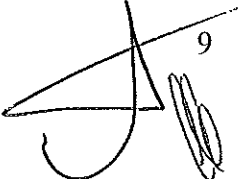
**Standard Bank Building
32 Govan Mbeki Avenue
Port Elizabeth
6001**

The Impumelelo Computers (Pty) Ltd chooses as its domicilium citandi et executandi for all purposes arising from this Agreement:

**Impumelelo Computers (PTY) Ltd
14 Seeliger Road
Kommetjie
7975**

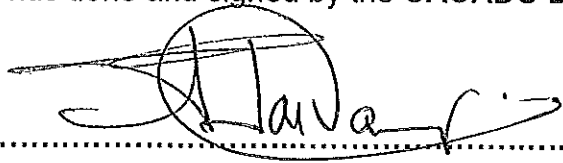
Either party may change its domicilium citandi et executandi by means of a written notice to the other party, provided that such domicilium shall be a physical address within the Province of the Eastern Cape, Republic of South Africa.

All notices contemplated under this Agreement shall be delivered by hand or sent by registered post, in which event such notice shall be deemed to have been

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received by the addressee 14 (fourteen) business days after the proven date of posting.

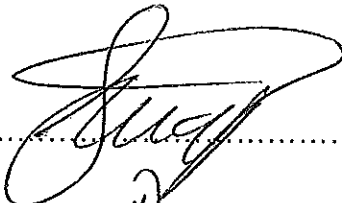

Thus done and signed by the **CACADU DISTRICT MUNICIPALITY** by


.....

at PORT ELIZABETH this day of JULY 2013

As witnessed:

For the **CACADU DISTRICT MUNICIPALITY**

1. 
.....
2. 
.....


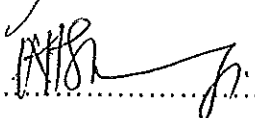
Thus done and signed by **Impumelelo Computers (PTY) Ltd** by


.....

at Port Elizabeth this 22 day of July 2013

As witnessed:

For **Impumelelo Computers (PTY) Ltd**

1. 
.....
2. 
.....

IMPUMELELO COMPUTERS

Technology with Confidence

Martin Street
Nieu Bethesda 6286

Cel 082 442 3174
Fax 086 610 4160

terry@impumelelocomputers.co.za

Cacadu District Municipality
P o Box 318
Port Elizabeth
6000

2 July 2013

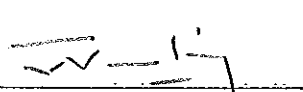
To Whom It May Concern,

Mrs Chiquita Cooper was appointed Technical and Personnel Manager for Impumelelo Computers as from 1 June 2012.

In this position she has full authority to sign all tenders, supplier agreements, SARS documents and general agreements with clients.

Mrs Cooper has full authority to represent the company and is fully authorized in this position to sign for the company.

For any further info please contact me on 082 442 3174.



Ms Terry Winship
Director and Majority Shareholder
6210180016080

Directors: Ms V Hammond, Ms T Winship
Impumelelo Computers (Pty) Ltd: 2004/023037/07