



**STATE INFORMATION TECHNOLOGY AGENCY (SOC) LTD**

Registration number 1999/001899/30

## **REQUEST FOR BID**

<b>RFB No:</b>	<b>RFB 2579-2022</b>
<b>Description</b>	<b>APPOINTMENT OF A NEW MICROSOFT LICENSE SOLUTION PROVIDER (LSP) FOR SITA TO ADMINISTER THE MICROSOFT LICENCES ENROLMENT FOR THE SUB-150 LICENSES FOR A PERIOD OF TWO (02) YEARS.</b>
<b>Virtual Briefing Session</b>	<b>Non-Compulsory Briefing Session will be held as follows:</b> <b>Date:08 JUNE 2022</b> <b>Time: 10:00AM</b> <b>Place: Microsoft Teams (Copy the link below)</b> <a href="#">Click here to join the meeting</a>
<b>Closing Date for questions / queries</b>	<b>13 JUNE 2022 at 16:30PM</b>
<b>Proposal Submission Address</b>	<b>Tender Officer</b> <b>459 Tsitsa Street, Erasmuskloof, Pretoria, 0105</b>
<b>RFB Closing Details and Address</b>	<b>Date: 17 JUNE 2022</b> <b>Time: 11:00AM (South African Time)</b> <b>Address : Tender Officer, 459 Tsitsa Street, Erasmuskloof, Pretoria, 0105</b>
<b>RFB Validity Period</b>	<b>120 Days from the Closing Date</b>

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**SECTION 1: Invitation to Bid**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE SITA</b>					
BID NUMBER:		CLOSING DATE:		CLOSING TIME:	
DESCRIPTION					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON			CONTACT PERSON		
TELEPHONE NUMBER			TELEPHONE NUMBER		
E-MAIL ADDRESS			E-MAIL ADDRESS		
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		<b>OR</b>	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX]  <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX]  <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE <b>GOODS /SERVICES /WORKS OFFERED?</b>		<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES, ANSWER THE QUESTIONNAIRE BELOW ]
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?

☐ YES ☐ NO

DOES THE ENTITY HAVE A BRANCH IN THE RSA? ☐

YES ☐ NO

DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?

☐ YES ☐ NO

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?

☐ YES ☐ NO

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?

☐ YES ☐ NO

**IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.**

#### BIDDING STRUCTURE

Individual bidder

Joint Venture

Consortium

Subcontractors

Other

**If the bid is submitted as a Consortium or Joint Venture or Sub Contracting Arrangement list the members of such Consortium or Joint Venture and Sub Contractors below:**

a)

b)

c)

d)

e)

f)

#### PART A: BID SUBMISSION

a) BIDS MUST BE DELIVERED BY THE STIPULATED TIME AND TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED.

b) **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED– (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**

c) THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.

d) **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT DOCUMENT.**

#### PART B: TAX COMPLIANCE REQUIREMENTS

- a) BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- b) BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE SITA TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
- c) APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- d) BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- e) IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS PIN / CSD NUMBER.
- f) WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
- g) NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

**NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.**

Signature of Authorised Bidder Representative:.....

Capacity Under which this Bid is signed:.....

(Proof of authority must be submitted e.g. company resolution)

Date: .....

## SECTION 2: Bid Terms and Conditions

### 2.1 Definitions

- 2.1.1 The State Information Technology Agency SOC Ltd [hereinafter referred to as SITA] is a company with limited liability duly incorporated in accordance with the Companies Act of the Republic of South Africa with company registration number 1999/001899/30, and in terms of the State Information Technology Agency Act No. 88 of 1998 [Hereinafter referred to as "SITA Act"] as amended by SITA Amendment Act (Act 38 of 2002).
- 2.1.2 SITA is mandated in accordance with section 7(g) of the Act to render Information and Communications Technology (ICT) services to Organs of State/government and to act as the Information Communications Technology ("ICT") procurement agency for the Government.
- 2.1.3 **"Acceptable Bid"** - any bid which in all respects materially complies with the specifications and conditions set out in this Request For Bids ("RFB") document.
- 2.1.4 **"B-BBEE"** – broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act.
- 2.1.5 **"B-BBEE contributor status level of contributor"** - the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice or Sector Code on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
- 2.1.6 **"Bid"** - a written offer in a prescribed or stipulated form in response to an invitation from SITA for the provision of services, works or goods through price quotations, advertised bidding processes or proposals.
- 2.1.7 **"Bidders"** - any juristic/natural person, enterprise, Consortium, partnership, Joint Venture ("JV") or firm that submits a Bid in response to this Bid invitation.
- 2.1.8 **"Broad-Based Black Economic Empowerment Act"** – the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).
- 2.1.9 **"Client"** – means Organs of State that enlists the services of SITA as a procurement agent, service provider and/or call-off from SITA transversal agreements as well as panels of accredited suppliers/service providers.
- 2.1.10 **"Comparative Price"** - the price which includes all applicable taxes calculated after the addition or deduction of variable costs and conditional/unconditional discounts, *etcetera*.
- 2.1.11 **"Consortium"** – two or more entities joining forces as an umbrella entity to gain a strategic collaborative advantage by combining their expertise, capital, efforts, skills and knowledge for the purpose of delivering the requisite goods, works or services.

- 2.1.12 **“Contractor Agent”** - any person mandated by a Prime Contractor or consortium/joint venture to do business for and on behalf of, or to represent in a business transaction, the Prime Contractor and thereby acquire rights for the Prime Contractor or consortium/joint venture against SITA or an organ of state and incur obligations binding the Prime Contractor or consortium/joint venture in favour of SITA or an organ of state.
- 2.1.13 **“Co-operative”** – an autonomous association of persons united voluntarily to meet their common economic and social needs and aspirations through jointly owned and democratically controlled enterprise organised and operated on co-operative principles.
- 2.1.14 **“Designated Group”** means:
- a) Black designated groups;
  - b) Black people;
  - c) Exempted Micro Enterprises (“EME”);
  - d) Women;
  - e) People with disabilities;
  - f) Small enterprises as defined in sections 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);
  - g) Qualifying Small Enterprises (“QSE”); and/or
  - h) Youth.
- 2.1.16 **“Exempted Micro Enterprise (EME)”** – An entity with an annual turnover of R 10 (ten) million or less.
- 2.1.17 **“Firm Price”** - the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition or abolition of customs or excise duty and any other duty, levy or tax which, in terms of a law or regulation is binding on the contractor and demonstrably has influence on the price of any supplies or the rendering cost of any service, for the execution of a contract.
- 2.1.18 **“Goods”** – any work, equipment, machinery, tools, materials or anything of whatever nature to be rendered to SITA or SITA’s delegate by the Successful Bidder in terms of this bid.
- 2.1.19 **“Imported Content”** – that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its 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 port of entry.
- 2.1.20 **“Joint Venture”** - two or more entities/persons joining together under a contractual agreement to conduct a specific business enterprise with both parties sharing profit and losses. The venture is for one specific project only, rather than for a continuing business relationship as in a strategic alliance. It is about sharing risk with others and providing one or more missing and needed assets and competencies.

- 2.1.22 **“Military Veterans”** – has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011).
- 2.1.23 **“Non-firm Price(s)”** - all price(s) other than “firm” price(s).
- 2.1.24 **“Organ of State”** – means Organ of the State as defined in terms of section 239 of the Constitution of the Republic of South Africa Act 108 Of 1996 (as amended).
- 2.1.25 **“People with disabilities”** – people who have a long term or recurring physical or mental impairment which substantially limits their prospects of entry into or advancement in employment or any other economic activity.
- 2.1.26 **“Person(s)”** - a natural and/or juristic person(s).
- 2.1.27 **“Personal Information”** means personal information as defined in section 1 of the Protection of Personal Information Act, 4 of 2013.
- 2.1.28 **“Price”** – includes all applicable taxes less all unconditional discounts.
- 2.1.29 **“Prime Contractor”** –any person (natural or juristic) who forwards an acceptable proposal in response to this RFB with the intention of being the main contractor should the proposal be awarded to him/her.
- 2.1.30 **“Proof of B-BBEE contributor status level”** means:
- a) the B-BBEE status level certificate issued by an authorised body or person in terms of the B-BBEE legislation;
  - b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
  - c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act.
- 2.1.31 **“Rand Value”** - the total estimated value of a contract in Rand, calculated at the time Bids are invited and includes all applicable taxes as well as excise duties.
- 2.1.32 **“Rural areas”** – means
- a) a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or
  - b) an area including a large settlement which depends on migratory labour and remittances and governmental social grants for survival, and may have a traditional land tenure system.
- 2.1.33 **“SMME”** – bears the same meaning assigned to this expression in the National Small Business Act, 1996 (Act No. 102 of 1996).
- 2.1.34 **“Sub-contract”** – the Prime Contractor’s and/or Bidder assigning, leasing, making out work to, or employing, another person to support such Prime contractor and/or Bidder in the execution of a part of the contractual obligations for the provision of goods, works or services.



- 2.1.35 **“Subcontractor”** - any person (natural or juristic) who is subcontracted a portion of an existing contract by a Prime Contractor. The Subcontractor is not a Bidder.
- 2.1.36 **“Successful Bidder”** - the organisation or person with whom the order is placed and who is contracted to execute the work as detailed in the Bid.
- 2.1.37 **“Technical/functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- 2.1.38 **“Township”** – an urban living area that any time from late 19<sup>th</sup> century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994.
- 2.1.39 **“Youth”** – persons between the ages of 14 and 35 as defined in the National Youth Commission Act 19 of 1996.

## 2.2 Acronyms and abbreviations

2.2.1 The following acronyms and abbreviations are used in this RFB document and must be similarly used in the proposal submitted in response and shall have the meaning ascribed thereto below:

Abbreviations/acronyms	Description
B-BBEE	Broad-Based Black Economic Empowerment
BEE	Black Economic Empowerment
CPI	Consumer Price Index
ICT	Information Communication Technology
IS	Information Systems
ISO	International Standard Organisation
IT	Information Technology
ITC	Information Technology Committee
NIPP	National Industrial Participation Programme
OEM/OSM	Original Equipment Manufacturer/ Original Software Manufacturer
PAIA	Promotion of Access to Information Act, 2 of 2000
POPIA	Protection of Personal Information Act, 4 of 2013
RFB	Request for Bid
RSA	Republic of South Africa
SITA	State Information Technology Agency SOC Ltd
SLA	Service Level Agreement
SSA	State Security Agency

Abbreviations/acronyms	Description
URS	User Requirements Specification

## 2.3 General rules and instructions

### 2.3.1 News and press releases

- a) Bidders or their agents shall not make any news releases concerning this RFB or the awarding of the same or any resulting agreement(s) without the consent of and then only in collaboration with SITA and its Client.

### 2.3.2 Precedence of documents

- a) This RFB also incorporates Annexures/Schedules. Where there is a contradiction in terms between the clauses, phrases, words, stipulations or terms and herein referred to generally as stipulations in this RFB and the stipulations in any other document attached hereto or the proposal submitted in response thereto, the relevant stipulations in this RFB shall take precedence.
- b) Where this RFB is silent on any matter, the relevant stipulations addressing such matter shall take precedence to the extent that they do not contradict any applicable law, policy or standard. Bidders shall refrain from incorporating any additional stipulations or making amendments to the RFB document in their proposals submitted in response to this RFB document. Where any additions or amendments are proposed they should be clearly marked on a separate letter and SITA will exercise its discretion whether to accept the proposal or not.

### 2.3.3 Preferential procurement reform

- a) SITA supports B-BBEE as an essential ingredient of its business. In accordance with government policy, SITA insists that Bidders demonstrate their commitment and performance against B-BBEE in the areas of ownership (shareholding), skills transfer, employment equity and procurement practices (SMME Development), *etcetera*.

### 2.3.4 National Industrial Participation Programme

- a) The Industrial Participation policy, which was endorsed by Cabinet on 30 April 1997, is applicable to contracts that have an imported content. The NIP is obligatory and therefore must be complied with. Bidders are required to sign and submit the Standard Bidding Document ("SBD").

### 2.3.5 Language

- a) Bids shall be prepared in English.

### 2.3.6 Gender

- a) Any word implying any gender shall be interpreted to imply all other genders.

### 2.3.7 Headings

- a) Headings are incorporated into this RFB document for ease of reference only and shall not be used for the purposes of interpreting any aspect of this RFB document.

**2.3.8 Occupational Injuries and Diseases Act 13 of 1993**

- a) The Bidder warrants that all its employees (including the employees of any sub-contractor that may be appointed) are covered in terms of the Compensation for Occupational Injuries and Diseases Act 13 of 1993 and that the cover shall remain in force for the duration of the adjudication of this RFB and/ or subsequent agreement. SITA reserves the right to request the Bidder to submit documentary proof of the Bidder's registration and "good standing" with the Compensation Fund, or similar proof acceptable to SITA.

**2.3.9 Processing of the Bidder's Personal Information**

2.3.9.1 All Personal Information of the Bidder, its employees, representatives, associates and sub-contractors ("**Bidder Personal Information**") required under this RFB is collected and processed for the purpose of assessing the strength and competitiveness of the proposal. The evaluation and award of the contract shall be conducted in accordance with applicable legislation, policies and standards. The Bidder is advised that Bidder Personal Information may be passed on to third-parties to whom SITA is compelled by law to provide such information. For example, where appropriate, SITA is compelled to submit information to National Treasury's Database of Restricted Suppliers.

2.3.9.2 All Personal Information collected will be processed in accordance with POPIA and the SITA Data Privacy Policy.

2.3.9.3 The following persons will have access to the Personal Information that has been collected:

- a) SITA personnel participating in procurement/award procedures; and
- b) Members of the public: within seven working days from the time the bid is awarded, the following information will have to be made available on National Treasury's e-Tender portal:
  - i) contract description and bid number;
  - ii) names of the successful bidder(s) and preference points claimed;
- iii) the contract price(s) (if possible);
  - iv) contract period;
- v) names of directors; and
- vi) date of completion/award.

2.3.9.4 SITA will ensure that the rights of the Bidder and of its employees or representatives (i.e. the right of access and the right to rectify) are effectively guaranteed in accordance with the procedures as specified in the SITA PAIA manual.

2.3.9.5 In signing this document, the Bidder consents to the use of its Personal Information for the purposes as specified in section 2.3.9.1 above.

**2.3.10 Formal contract**

- a) This RFB, all the appended documentation and the proposal in response thereto read together, form the basis for a formal contract to be negotiated and finalised between SITA and/or its clients and the enterprise(s) to whom SITA awards the RFB in whole or in part.
- b) Any offer and/or acceptance entered verbally between SITA and any Bidder will neither constitute a contract nor be binding on the parties.
- c) This RFB is subject to Government Procurement: General Contract Conditions, Special Contract Conditions and any other conditions to be finalised during the contracting stage.

- d) The laws of the RSA shall govern this RFB and the bidders hereby accept that the courts of the Republic of South Africa shall have jurisdiction over any dispute arising from this RFB document or the award of a contract in relation to it.

#### 2.3.12 Oral presentations

- a) Bidders who submit Bids in response to this RFB may be required to give an oral presentation, which may include, but is not limited to, an equipment/service demonstration of their proposal to SITA. This provides an opportunity for the Bidder to clarify or elaborate on the proposal. This is a fact finding and explanation session only which will not include negotiations. SITA shall schedule the time and location of these presentations. Oral presentations will be held at SITA's discretion.

#### 2.3.13 Objection to brand specific requirements

- a) Any bidder who has reasons to believe that the RFB specification is based on a specific brand must inform SITA within five (5) days from the date of the publication of this RFB document. The failure to notify SITA within the stipulated timeframes may result in SITA not considering favourably the concern. .

## 2.4. Instructions for submitting bids

#### 2.4.1 Bid responses must be submitted as follows:

- a) The Bidders must submit an original copy of the proposal in hard copy and an electronic version of the original using a flash drive. The proposal must be **signed** by an authorised employee, agent or representative of the Bidder. The proposal must on each and every page bear the initials of the signatory as an indication that the Bidder has familiarised itself with the terms and conditions of this RFB document.
- b) The original copy of the Bid will be the legal and binding document that will also be used for the purposes of evaluation. SITA will not assume any liability by disqualifying a Bidder due to the information not being contained in the original copy of the proposal, even when such information appears in a duplicate copy submitted by the Bidder.
- c) The proposals must be submitted as follows:

Date : **17 JUNE 2022**

Time : **11:00AM (South African Time)**

Address : **Tender Officer, 459 Tsitsa Street, Erasmuskloof, Pretoria, 0105**

- d) Bidders shall submit proposal responses in accordance with the prescribed manner of submission as specified above. **Failure to comply with the requirements in paragraph 2.4.3 (b) will lead to disqualification.**
- e) Late bids shall not be considered.
- f) **SITA reserves the right to disqualify any Bid/proposal that is not submitted in accordance with any of the instructions prescribed above.**

## 2.5 RFB Returnables

2.5.1 Bidders shall submit the returnable documents/information together with their Bids/proposals on or before the closing time and date of the Bids/proposals.

### 2.5.2 Schedule Index: Administrative Returnable Documents

- a) Bidders must return the administrative returnable documents on or before the closing date and time of the Bids.
- b) SITA reserves the right to request the administrative returnable documents after the closing date and time, in instances where the Bidder has not returned the documents. However, SITA is under no obligation to request such documents or information and may elect to disqualify the Bidder that has not returned the requisite document.
- c) Bidders must submit the following administrative returnable documents together with their Bids:

No:	Administrative Returnable Documents
i.	SBD 1 – Invitation to Bid ( <b>Section 1</b> )
ii.	SBD 4 – Bidder's Disclosure ( <b>Section 3</b> )
ii.	SBD 6.1- Preferential Procurement Claim form and copy of the B-BBEE Verification Certificate(s) issued by an authorised body or person, or a sworn affidavit prescribed by the B-BBEE Codes of Good Practice <b>or a Sector Code</b> .
iii.	Government Procurement General Conditions of Contract – July 2011.
iv.	Special Conditions of Contract.
v.	Central Supplier Database Report.

### 2.5.3 Schedule Index: Mandatory Returnable Documents

- a) Bidders must return the mandatory documents together with their submissions. A failure to submit the mandatory returnable documents will lead to the Bidder being disqualified from the bidding process.

No:	Mandatory Returnable Documents
i.	Cover letter (Provide an overview of the operating structure and geographical locations of the firm at the national, regional, and local levels, brief profile of the bidder, summary of the bidder's proposal and contact person and details for this RFB).
ii.	Technical / Functionality response/OEM or OSM accreditation letter.
iii.	Pricing / Costing.
iv.	SBD 5 – National Industrial Participation form (for requests that have an imported content of more than US\$10 million).
v.	SBD 6.2 Declaration of Local Content and Production.

### 2.5.4 Schedule Index: Evaluation Returnable Documents

- a) Bidders must return the evaluation returnable documents together with their submissions. A failure to submit the evaluation returnable documents will lead to the Bidder being scored low as provided for in the evaluation criteria and may not necessarily lead to the Bidder being disqualified from the bidding process.

<b>No:</b>	<b>Mandatory Returnable Documents</b>
i.	Technical / Functionality response/OEM or OSM accreditation letter.

## **2.6. Terms and Conditions**

- 2.6.1 This RFB is subject to the General Conditions of Contract referred to in this RFB document which are only negotiable at SITA's discretion.
- 2.6.2 SITA SCM may request written clarification regarding any aspect of this RFB and Bids in response to the RFB. The Bidders must supply the requested information in writing within the specified time frames after the request has been made, otherwise the proposal shall be disqualified. The supplied information shall not change the material aspects of the submission, i.e. bid price, the firmness of the price and technical/functionality, *etcetera*.
- 2.6.3 In the case of Consortia, Joint Ventures or Subcontractors, Bidders are required to provide copies of signed agreements stipulating the split of the work and revenue.
- 2.6.4 Where applicable, bidders who are distributors, resellers and installers of network equipment are required to submit back-to-back agreements or certification from their OEM/OSM.
- 2.6.5 Where applicable, SITA reserves the right to conduct benchmarks on prices and/or product/services offered during and after the evaluation.
- 2.6.6 SITA reserves the right to conduct a due-diligence exercise to evaluate the Bidder's capabilities to meet the requirements specified in the RFB and supporting documents.
- 2.6.7 Where the RFB calls for already available solutions, bidders who offer to provide future based solutions will/may be disqualified.
- 2.6.8 Should the parties at any time before and/or after the communication of the award but prior to the conclusion of the contract fail to agree on any significant product price or service price adjustments, change in technical specification and/or change in services, *etcetera*, SITA shall be entitled within 14 (fourteen) days of such failure to agree, to recall the letter of award after giving the Bidder not less than 14 (fourteen) days written notice of such cancellation, in which event all fees on which the parties failed to agree increases or decreases shall, for the duration of such notice period, remain fixed on those fee/price applicable prior to the cancelation.
- 2.6.9 Such cancellation shall mean that SITA reserves the right to award the same proposal to next best bidders as it deems fit.
- 2.6.10 Any amendment or change of any nature made to this document shall only be of force and effect if it is in writing, signed by the delegated SITA signatory and added to this document as an addendum.
- 2.6.11 Failure or neglect by SITA to (at any time) enforce any of the provisions of this RFB shall not in any manner, be construed to be a waiver of any of SITA's right in that regard and in terms of this RFB. Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this RFB or prejudice the right of SITA to institute action or to exercise any other right available to SITA in law.

- 2.6.12 The proposal will be awarded to the Prime Contractor and/or Bidder who shall be responsible for the management of the awarded contract. No separate contract shall be entered into between SITA and any subcontractors.
- 2.6.13 SITA reserves the right to cancel this RFB, reject any proposal and to not award the contract to the lowest Bidder, or to award parts of the proposal to different bidders.
- 2.6.14 By submitting a proposal in response to this RFB, the Bidder hereby accepts all the terms and conditions contained in this RFB document.
- 2.6.15 Should a Bidder withdraw its proposal after accepting the award, SITA reserves the right to recover any additional expenses incurred by SITA for having to accept any less favourable proposal or the additional expenditure incurred by SITA in the preparation of a new RFB.
- 2.6.17 All services supplied in accordance with this proposal must be in accordance to applicable legal requirements in terms of the South African law, policies and permissions.
- 2.6.18 The Bidders' response to this RFB or parts of the response, shall be included as a whole or by reference in the final contract to the extent that it is acceptable to SITA.
- 2.6.19 SITA has a discretion to extend the validity period should the evaluation of this RFB not be completed within the stipulated validity period. Any Bidder that refuses to extend its validity period without any justifiable reasons will be disqualified.
- 1.6.20 Upon receipt of the request to extend the validity period of the RFB, the bidder must respond within the required time frames and in writing on whether or not it agrees to hold his original RFB response valid under the same terms and conditions for a further period.
- 2.6.21 Should the bidder change any wording or phrase in this document, the RFB shall be evaluated as though no change has been made and the original wording or phrases shall be used.
- 2.6.22 The onus is on the bidder to continuously check the SITA website for any communication and changes on the RFB document. SITA will not be held responsible for any failure by the Bidder to check updates on the RFB document.

## **SECTION - 3: Bidder's Disclosure**

### **3.1 PURPOSE OF THE FORM**

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

### **3.2 Bidder's declaration**

3.2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state? **YES/NO**.

3.2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

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<sup>1</sup> the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.



3.2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

3.2.2.1 If so, furnish particulars:

.....  
.....

3.2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?**YES/NO**

3.2.3.1 If so, furnish particulars:

.....  
.....

### 3.3 DECLARATION

I, the undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

3.3.1 I have read and I understand the contents of this disclosure;

3.3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;

3.3.3 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 consortium<sup>2</sup> will not be construed as collusive bidding.

3.3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.

3.3.4 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.

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<sup>2</sup> 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.

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3.3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

3.3.6 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.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.  
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

\_\_\_\_\_  
Position

\_\_\_\_\_  
Name of bidder

## **SECTION - 4: National Industrial Participation Programme**

**This document must be signed and submitted together with your Bid**

### **4.1 Introduction**

- 4.1.1 The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all State and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

### **4.2 Pillars of the programme**

- 4.2.1 The NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million shall have an NIP obligation. This threshold of US\$ 10 million can be reached as follows:
- 4.2.1.1 Any single contract with imported content exceeding US\$10 million; or
  - 4.2.1.2 Multiple contracts for the same goods, works or services each with imported content exceeding US\$3 million awarded to one seller over a 2 year period which in total exceeds US\$10 million; or
  - 4.2.1.3 A contract with a renewable option clause, where should the option be exercised the total value of the imported content shall exceed US\$10 million; or
  - 4.2.1.4 Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$10 million.
- 4.2.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 4.2.1.1 to 4.2.1.4 above shall amount to 30 % of the imported content whilst suppliers in respect of paragraph 4.2.1.4 shall incur 30% of the total NIP obligation on a *pro-rata* basis.
- 4.2.3 To satisfy the NIP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.
- 4.2.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

#### **4.3 Requirements of The Department of Trade And Industry**

- 4.3.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract that is in excess of **R10 million** (ten million rand), submit details of such a contract to the DTI for reporting purposes.
- 4.3.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million rand) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 4.2.1.1 to 4.2.1.4 above.

#### **5.4 BID submission and contract reporting requirements of bidders and successful bidders (contractors)**

- 4.4.1 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with the Bid on the closing date and time.
- 4.4.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 4.2.1.2 to 4.2.1.4.
- 4.4.2.1 above and to enable the DTI in determining the NIP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million rand), to contact and furnish the DTI with the following information:
- a) bid or contract number.
  - b) description of the goods, works or services.
  - c) date on which the contract was accepted.
  - d) name, address and contact details of the government institution.
  - e) value of the contract.
  - f) imported content of the contract, if possible.

4.4.2 The information required in paragraph 4.4.2.1 above must be sent to the DTI, Private Bag X 84, Pretoria, 0001 within five (5) working days after award of the contract, at e-mail/s [Ynematswerani@thedtic.gov.za](mailto:Ynematswerani@thedtic.gov.za) and [Amohlahlo@thedtic.gov.za](mailto:Amohlahlo@thedtic.gov.za).

#### **4.5 Process to satisfy the NIP obligation**

- 4.5.1 Once the successful bidder (contractor) has contacted and furnished the DTI with the information required, the following steps shall be followed:
- 4.5.2 the contractor and the DTI shall determine the NIP obligation;
- 4.5.3 the contractor and the DTI shall sign the NIP obligation agreement;
- 4.5.4 the contractor shall submit a performance guarantee to the DTI;
- 4.5.5 the contractor shall submit a business concept for consideration and approval by the DTI;
- 4.5.6 upon approval of the business concept by the DTI, the contractor shall submit detailed business plans outlining the business concepts;
- 4.5.7 the contractor shall implement the business plans; and

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4.5.8 the contractor shall submit bi-annual progress reports on approved plans to the DTI.

4.5.9 The NIP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid number_____ Closing date_____	
Name of bidder_____	
Postal address_____	
_____	
Signature_____	Name (in print)_____
Date_____	

## **SECTION – 5: Preferential Procurement Claim Form**

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.**

### **5.1 GENERAL CONDITIONS**

5.1.1 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).
- If the lowest acceptable bid price is up to and including R50 000 000 (all applicable taxes included) then the 80/20 preferential point system will apply to all acceptable bids; or
- if it is unclear which preference point system will be applicable, that either the 80/20 or 90/10 preference point system will apply, The price of the lowest technically acceptable tender will be used to determine the applicable preference point system;

5.1.2 Points for this bid shall be awarded for:

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

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

	POINTS
PRICE	80/90
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20/10
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

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

5.1.5 SITA reserves the right to require of a Bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim with regards to preferences, in any manner required by SITA.

## 5.2. POINTS AWARDED FOR PRICE

### 5.2.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

#### 80/20 or 90/10

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

$P_s$  = Points scored for price of bid under consideration

$P_t$  = Price of bid under consideration

$P_{\min}$  = Price of lowest acceptable bid

## 5.3 POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

5.3.1 In terms of 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

## 5.4 BID DECLARATION

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

## 5.5 B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

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5.5.1 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.

**5.6 SUB-CONTRACTING**

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

**(Tick applicable box)**

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

i. 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	
-----	--	----	--

Designated Group: An EME or QSE which is at last 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		



**5.7 DECLARATION WITH REGARD TO COMPANY/FIRM**

5.7.1 Name of company/firm:.....

5.7.2 VAT registration number:.....

5.7.3 Company registration number:.....

**5.7.4 TYPE OF COMPANY/ FIRM**

- ☐ Partnership/Joint Venture / Consortium
- ☐ One person business/sole propriety
- ☐ Close corporation
- ☐ Company
- ☐ (Pty) Limited

[TICK APPLICABLE BOX]

**5.7.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

.....

.....

.....

.....

**5.7.6 COMPANY CLASSIFICATION**

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

[TICK APPLICABLE BOX]

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

5.7.8 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 5.1.4 and 5.5.1 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 5.1.4 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.

<p>WITNESSES</p> <p>1. ....</p> <p>2. ....</p>	<p>..... SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE:.....</p> <p>ADDRESS.....</p> <p>.....</p> <p>.....</p>
--	---

## **SECTION – 6: Government Procurement: General Conditions of Contract**

### **NOTES**

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government Bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- ☐ The GCC will form part of all bid documents and may not be amended.
- ☐ Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the GCC. Whenever there is a conflict, the provisions in the SCC shall prevail.

### **TABLE OF CLAUSES**

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency

- 27. Settlement of disputes
- 28. Limitation of liability
- 29. Governing language
- 30. Applicable law
- 31. Notices
- 32. Taxes and duties
- 33. National Industrial Participation Programme (NIPP)
- 34. Prohibition of restrictive practices

**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 therein.
- 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 "Day" means calendar day.
- 1.8 "Delivery" means delivery in compliance of 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 consignees 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 market 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 organisation purchasing the goods.
- 1.22 "Republic" means the RSA.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary 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, SCC are also laid down to cover specific supplies, services or works.
- 2.3 Where such SCC 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](http://www.treasury.gov.za)

## **4 Standards**

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

**1 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 patent, trademark, or industrial design rights arising from 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:
- 7.3.1 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
- 7.3.2 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 organisation 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 suppliers 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 final 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:
- 13.1.1 performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - 13.1.2 furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - 13.1.3 furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - 13.1.4 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
  - 13.1.5 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:
- 14.1.1 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
  - 14.1.2 in the event of termination of production of the spare parts:
    - 14.1.2.1 Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
    - 14.1.2.2 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 purchaser's 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 fulfilment 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 authorised in SCC or in the purchaser's 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 supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of 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 cancelling 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 supplier's 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:
- 23.1.1 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;
- 23.1.2 if the Supplier fails to perform any other obligation(s) under the contract; or
- 23.1.3 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:
- 23.6.1 the name and address of the supplier and / or person restricted by the purchaser;
  - 23.6.2 the date of commencement of the restriction
  - 23.6.3 the period of restriction; and
  - 23.6.4 the reasons for the restriction.
- 23.7 These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.
- 23.8 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 anti-dumping 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,
- 27.5.1 the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- 27.5.2 the purchaser shall pay the supplier any monies due the supplier.

## **28 Limitation of liability**

- 28.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6;
- 28.1.1 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
- 28.1.2 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 SARSs.

**33 National Industrial Participation (NIP) Programme**

- 33.1 The NIP Programme administered by the DTI 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.

**CONFIDENTIAL**

The above General Conditions of Contract (GCC) are accepted by:

<b>Name:</b>	
<b>Designation:</b>	
<b>Bidder:</b>	
<b>Signature:</b>	
<b>Date:</b>	