



INVITATION TO BID: FMA 0001-2023/24

VALIDITY PERIOD OF BID OFFER: 90 DAYS FROM CLOSING DATE

THE DEPARTMENT OF THE PREMIER WISHES TO INVITE POTENTIAL BIDDERS TO SUBMIT A BID FOR THE PROCUREMENT OF HEADHUNTING SERVICE TO ESTABLISH A PANEL OF SERVICE PROVIDERS TO THE WESTERN CAPE GOVERNMENT (WCG) FOR A PERIOD OF 3 YEARS

BID NUMBER: FMA 0001-2023/24

Contact person: Derek Smith

Date of advertisement: 26 May 2023

Closing Date and Time: 19 June 2023

Late bid offers shall not be admitted for consideration.

Bidders to note that should the Bid document be too big to fit into the Bid Box, to please contact the following Supply Chain Management official/s who will ensure that bid documents get deposited into the bid box before the closing date and time:

Ashwin Nayar – 021 483 4679 and John Van Der Vent – 021 483 8213.

Completed and signed (in ink) bid documents must be submitted on the official bid forms and may not be re-typed.

Completed and signed (in ink) bid documents if posted must be addressed to:

The Director, Supply Chain Management and Administration, P.O. Box 659 Cape Town, 8000 and sufficient time must be allowed for the delivery of the bid to the offices of SCM, situated in 7 Wale Street, Cape Town.

Or

DEPOSITED IN THE DEPARTMENT OF THE PREMIER TENDER BOX SITUATED ON THE GROUND FLOOR (ENTRANCE) OF NO. 4 DORP STREET, CAPE TOWN (CNR KEEROM AND DORP STREET) before the closing time of the bid.

RFB/s will be regarded as late if received after the closing time of the bid.

The Department of the Premier (DotP) reserves the right to cancel the bid at any stage of the process.

ALL PRICES MUST BE QUOTED IN RSA CURRENCY AND MUST BE INCLUSIVE OF VAT.

The service provider/s must comply with the conditions for the processing of personal information as prescribed by the Protection of Personal Information Act, No 4 of 2013 (POPI). The service provider/s is required to provide the WCG with a certificate confirming that the personal information provided to the service provider/s by the WCG has been destroyed.

This bid is subject to the Preferential Procurement Policy Framework Act and the Preferential Procurement Regulations 2017, the General Conditions of Contract (GCC) and any other Conditions and or Special Conditions of Contract that might be stipulated in the requirement. Bidder's attention is drawn to the fact that amendments to any of the Bid Conditions or setting of counter conditions by bidders may result in the invalidation of such bids.

The successful bidder will be required to sign a written contract form within 7 days after the award of the bid.

PART A INVITATION TO BID

ZERO-TOLERANCE TO FRAUD, THEFT AND CORRUPTION (ANTI-FRAUD, THEFT AND CORRUPTION)

THE WCG IS COMMITTED TO GOVERN ETHICALLY AND TO COMPLY FULLY WITH ANTI-FRAUD, THEFT AND CORRUPTION LAWS AND TO CONTINUOUSLY CONDUCT ITSELF WITH INTEGRITY AND WITH PROPER REGARD FOR ETHICAL PRACTICES.

THE WCG HAS A ZERO TOLERANCE APPROACH TO ACTS OF FRAUD, THEFT AND CORRUPTION BY ITS OFFICIALS AND ANY SERVICE PROVIDER CONDUCTING BUSINESS WITH THE WCG.

THE WCG EXPECTS ALL ITS OFFICIALS AND ANYONE ACTING ON ITS BEHALF TO COMPLY WITH THESE PRINCIPLES TO ACT IN THE BEST INTEREST OF THE WCG AND THE PUBLIC AT ALL TIMES.

THE WCG IS COMMITTED TO PROTECTING PUBLIC REVENUE, EXPENDITURE, ASSETS AND REPUTATION FROM ANY ATTEMPT BY ANY PERSON TO GAIN FINANCIAL OR OTHER BENEFIT IN AN UNLAWFUL, DISHONEST OR UNETHICAL MANNER.

INCIDENTS AND SUSPICIOUS ACTIVITIES WILL BE THOROUGHLY INVESTIGATED AND WHERE CRIMINAL ACTIVITY IS CONFIRMED, RESPONSIBLE PARTIES WILL BE PROSECUTED TO THE FULL EXTENT OF THE LAW.

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)

BID NUMBER: **FMA 0001-2022/23** CLOSING DATE: **19 JUNE 2023** CLOSING TIME: **11H00**

DESCRIPTION: **PROCUREMENT OF HEADHUNTING SERVICE TO ESTABLISH A PANEL OF SERVICE PROVIDERS TO THE WESTERN CAPE GOVERNMENT (WCG) FOR A PERIOD OF 3 YEARS**

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT THE GROUND FLOOR (ENTRANCE) OF NO. 4 DORP STREET, CAPE TOWN (CNR KEEROM AND DORP STREET) before the closing time of the bid.

BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO TECHNICAL ENQUIRIES MAY BE DIRECTED TO:

CONTACT PERSON Ashwin Nayar / Kim-Leigh February CONTACT PERSON Derrick Smith

TELEPHONE NUMBER 021-483-4679 / 021-483-2943 TELEPHONE NUMBER 021-483-4869

FACSIMILE NUMBER N/A FACSIMILE NUMBER N/A

E-MAIL ADDRESS Ashwin.Nayar@westerncape.gov.za / Kim-Leigh.February@westerncape.gov.za E-MAIL ADDRESS Derrick.Smith@westerncape.gov.za

SUPPLIER INFORMATION

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: AND CENTRAL SUPPLIER DATABASE No: MAAA

B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX] ☐ Yes ☐ No B-BBEE STATUS LEVEL SWORN AFFIDAVIT [TICK APPLICABLE BOX] ☐ Yes ☐ No

IF YES, WAS THE CERTIFICATE ISSUED BY A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN NATIONAL ACREDITATION SYSTEM (SANAS) [TICK APPLICABLE BOX] ☐ Yes ☐ No

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 GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
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QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> 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.	

PART B

TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED – (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (WCBD7).**

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE WITH TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE AND CSD NUMBER AS MENTIONED IN 2.3 ABOVE.
- 2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
- 2.7 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 BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:
(Proof of authority must be submitted e.g. company resolution)

DATE:

PROVINCIAL GOVERNMENT WESTERN CAPE**DECLARATION OF INTERESTS, BIDDERS PAST SCM PRACTICES AND INDEPENDENT BID
DETERMINATION**

1. To give effect to the requirements of the Western Cape Provincial Treasury Instructions, 2019: Supply Chain Management (Goods and Services), Public Finance Management Act (PFMA) Supply Chain Management (SCM) Instruction No. 3 of 2021/2022 - SBD 4 Declaration of Interest, Section 4 (1)(b)(iii) of the Competition Act No. 89 of 1998 as amended together with its associated regulations, the Prevention and Combating of Corrupt Activities Act No 12 of 2004 and regulations pertaining to the tender defaulters register, Paragraph 16A9 of the National Treasury Regulations and/or any other applicable legislation.
2. 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.
3. All prospective bidders intending to do business with the Institution must be registered on the Central Supplier Database (CSD) and the Western Cape Supplier Evidence Bank (WCSEB) if they wish to do business with the Western Cape Government (WCG) via the electronic Procurement Solution (ePS).
4. The status of enterprises and persons listed on the National Treasury's Register for Tender Defaulters will be housed on the ePS. Institutions may not under any circumstances procure from enterprises and persons listed on the Database of Tender Defaulters.
5. The status of suppliers listed on the National Treasury's Database of Restricted Suppliers will be housed on the ePS; however, it remains incumbent on institutions to check the National Treasury Database of Restricted Suppliers before the conclusion of any procurement process. For suppliers listed as restricted, institutions must apply due diligence and risk assessment before deciding to proceed with procurement from any such supplier.

6. Definitions

"bid" means a bidder's response to an institution's invitation to participate in a procurement process which may include a bid, price quotation or proposal;

"Bid rigging (or collusive bidding)" occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and/or services through a bidding process. Bid rigging is, therefore, an agreement between competitors;

If you know of any corrupt, fraudulent or collusive actions in the Institution, please report it by calling the National Hotline 0800 701 701

This form must be completed annually. Should the information herein declared change in the course of the year or before the next renewal or in relation to any bid, quotation or contract, it is the entity's responsibility to advise the Institution in writing of the change in such details.

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"business interest" means -

- (a) a right or entitlement to share in profits, revenue or assets of an entity;
- (b) a real or personal right in property;
- (c) a right to remuneration or any other private gain or benefit, or
- (d) includes any interest contemplated in paragraphs (a), (b) or (c) acquired through an intermediary and any potential interest in terms of any of those paragraphs;

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

"Controlling interest" means, 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;

"Corruption"- General offences of corruption are defined in the Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004) as:

Any person who directly or indirectly -

- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act personally or by influencing another person so to act, in a manner—
 - (i) that amounts to the-
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
 - (ii) that amounts to-
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules;
 - (iii) designed to achieve an unjustified result; or
 - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, of the, is guilty of the offence of corruption.

"CSD" means the Central Supplier Database maintained by National Treasury;

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"employee", in relation to –

- (a) a department, means a person contemplated in section 8 of the Public Service Act, 1994 but excludes a person appointed in terms of section 12A of that Act; and
- (b) a public entity, means a person employed by the public entity;

"entity" means any –

- (a) association of persons, whether or not incorporated or registered in terms of any law, including a company, corporation, trust, partnership, close corporation, joint venture or consortium; or
- (b) sole proprietorship;

"entity conducting business with the Institution" means an entity that contracts or applies or tenders for the sale, lease or supply of goods or services to the Province;

"Family member" means a person's –

- (a) spouse; or
- (b) child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption or some other legal arrangement (as the case may be);

"intermediary" means a person through whom an interest is acquired, and includes a representative or agent or any other person who has been granted authority to act on behalf of another person;

"Institution" means –

a provincial department or provincial public entity listed in Schedule 3C of the Act;

"Provincial Government Western Cape (PGWC)" means

- (a) the Institution of the Western Cape, and
- (b) a provincial public entity;

"RWOEE" means –

Remunerative Work Outside of the Employee's Employment

"spouse" means a person's –

- (a) partner in marriage or civil union according to legislation;
- (b) partner in a customary union according to indigenous law; or
- (c) partner with whom he or she cohabits and who is publicly acknowledged by the person as his or her life partner or permanent companion.

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7. Regulation 13(c) of the Public Service Regulations (PSR) 2016, effective 1 February 2017, prohibits any employee from conducting business with an organ of state, or holding a directorship in a public or private company doing business with an organ of state unless the employee is a director (in an official capacity) of a company listed in schedules 2 and 3 of the Public Finance Management Act.
 - a) Therefore, by 31 January 2017 all employees who are conducting business with an organ of state should either have:
 - (i) resigned as an employee of the government institution or;
 - (ii) cease conducting business with an organ of state or;
 - (iii) resign as a director/shareholder/owner/member of an entity that conducts business with an organ of state.
8. Any legal person, or their family members, may make an offer or offers in terms of this invitation to bid. In view of potential conflict of interest, in the event that the resulting bid, or part thereof, be awarded to family members of persons employed by an organ of state, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where the bidder is employed by the Institution.
9. The bid of any bidder may be disregarded if that bidder or any of its directors abused the institution's supply chain management system; committed fraud or any other improper conduct in relation to such system; disclosure is found not to be true and complete; or failed to perform on any previous contract.
10. Section 4(1)(b)(iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging). Collusive bidding is a per se prohibition meaning that it cannot be justified under any grounds.
11. Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorises accounting officers and accounting authorities to:
 - a) disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b) cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
12. Communication between partners in a joint venture or consortium will not be construed as collusive bidding.

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13. 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.

SECTION A DETAILS OF THE ENTITY	
CSD Registration Number	MAAA
Name of the Entity	
Entity registration Number (where applicable)	
Entity Type	
Tax Reference Number	

Full details of directors, shareholder, member, partner, trustee, sole proprietor or any persons having a controlling interest with a right or entitlement to share in profits, revenue or assets of the entity should be disclosed in the Table A below.

TABLE A

FULL NAME	DESIGNATION (Where a director is a shareholder, both should be confirmed)	IDENTITY NUMBER	PERSONAL TAX REFERENCE NO.	PERCENTAGE INTEREST IN THE ENTITY

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SECTION B: DECLARATION OF THE BIDDER'S INTEREST

The supply chain management system of an institution must, irrespective of the procurement process followed, prohibit any award to an employee of the state, who either individually or as a director of a public or private company or a member of a close corporation, seek to conduct business with the WCG, unless such employee is in an official capacity a director of a company listed in Schedule 2 or 3 of the PFMA as prescribed by the Public Service Regulation 13(c).

Furthermore, an employee employed by an organ of state conducting remunerative work outside of the employee's employment should first obtain the necessary approval by the delegated authority (RWOEE), failure to submit proof of such authority, where applicable, may result in disciplinary action.

B1.	Are any persons listed in Table A identified on the CSD as employees of an organ of state? (If yes, refer to Public Service Circular EIM 1/2016 to exercise the listed actions)	NO	YES
B2.	Are any employees of the entity also employees of an organ of state? (If yes complete Table B and attach their approved "RWOEE")	NO	YES
B3.	Are any family members of the persons listed in Table A employees of an organ of state? (If yes complete Table B)	NO	YES

TABLE B

Details of persons (family members) connected to or employees of an organ of state should be disclosed in Table B below.

FULL NAME OF EMPLOYEE	IDENTITY NUMBER	DEPARTMENT/ ENTITY OF EMPLOYMENT	DESIGNATION/ RELATIONSHIP TO BIDDER**	INSTITUTION EMPLOYEE NO./ PERSAL NO. (Indicate if not known)

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SECTION C: PERFORMANCE MANAGEMENT AND BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

To enable the prospective bidder to provide evidence of past and current performance.

C1.	Did the entity conduct business with an organ of state in the last twelve months? (If yes complete Table C)	NO	YES
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C2. TABLE C

Complete the below table to the maximum of the last 5 contracts.

NAME OF CONTRACTOR	PROVINCIAL DEPARTMENT OR PROVINCIAL ENTITY	TYPE OF SERVICES OR COMMODITY	CONTRACT/ ORDER NUMBER	PERIOD OF CONTRACT	VALUE OF CONTRACT	
C3.	Is the entity or its principals listed on the National Database as companies or persons prohibited from doing business with the public sector?				NO	YES
C4.	Is the entity or its principals listed on the National Treasury Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004)?				NO	YES
(To access this Register enter the National Treasury's website, www.treasury.gov.za , click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 326 5445.)						
C5.	If yes to C3 or C4, were you informed in writing about the listing on the database of restricted suppliers or Register for Tender Defaulters by National Treasury?			NO	YES	N/A
C6.	Was the entity or persons listed in Table A convicted for fraud or corruption during the past five years in a court of law (including a court outside the Republic of South Africa)?				NO	YES
C7.	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?				NO	YES

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SECTION D: DULY AUTHORISED REPRESENTATIVE TO DEPOSE TO AFFIDAVIT

This form must be signed by a duly authorised representative of the entity in the presence of a commissioner of oaths.

- I, hereby swear/affirm;
- i. that the information disclosed above is true and accurate;
 - ii. that I have read and understand the content of the document;
 - iii. that I have arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor.
 - iv. that the entity undertakes to independently arrive at any offer at any time to the Institution without any consultation, communication, agreement or arrangement with any competitor. In addition, that there will be no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specification, 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;
 - v. that the entity or its representative are aware of and undertakes not to disclose the terms of any bid, formal or informal, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract; and
 - vi. that there have been no consultations, communications, agreements or arrangements made 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 that my entity was not involved in the drafting of the specifications or terms of reference for this bid.

DULY AUTHORISED REPRESENTATIVE'S SIGNATURE

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:

- 1.1 Do you know and understand the contents of the declaration? ANSWER:
- 1.2 Do you have any objection to taking the prescribed oath? ANSWER:
- 1.3 Do you consider the prescribed oath to be binding on your conscience? ANSWER:
- 1.4 Do you want to make an affirmation? ANSWER:
2. I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration, which was sworn to/affirmed and the deponent's signature/thumbprint/mark was placed thereon in my presence.

.....
SIGNATURE FULL NAMES Commissioner of Oaths

Designation (rank) ex officio: Republic of South Africa

Date: Place

Business Address:

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31 May 2022

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PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022 AND IN TERMS OF THE WESTERN CAPE GOVERNMENTS INTERIM STRATEGY AS IT RELATES TO PREFERENCE POINTS

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 (TENDERERS) MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER, PREFERENTIAL PROCUREMENT REGULATIONS, 2022 AND THE BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT AND THE CODES OF GOOD PRACTICE

1. DEFINITIONS

- 1.1 **"acceptable tender"** means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document.
- 1.2 **"affidavit"** is a type of verified statement or showing, or in other words, it contains a verification, meaning it is under oath or penalty of perjury, and this serves as evidence to its veracity and is required for court proceedings.
- 1.3 **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 1.4 **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 1.5 **"B-BBEE status level of contributor"** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 1.6 **"bid"** means a written offer on the official bid documents or invitation of price quotations and "tender" is the act of bidding /tendering;
- 1.7 **"Code of Good Practice"** means the generic codes or the sector codes as the case may be;
- 1.8 **"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- 1.9 **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;

- 1.10 **"EME"** is an Exempted Micro Enterprise with an annual total revenue of R10 million or less.
- 1.11 **"Firm price"** means 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 the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 1.12 **"Large Enterprise"** is any enterprise with an annual total revenue above R50 million;
- 1.13 **"non-firm prices"** means all prices other than "firm" prices;
- 1.14 **"person"** includes a juristic person;
- 1.15 **"price" means an amount of money tendered for goods or services, and** includes all applicable taxes less all unconditional discounts;
- 1.16 **"proof of B-BBEE status level contributor"** means-
- (a) The B-BBEE status level certificate issued by an authorized body or person;
 - (b) A sworn affidavit as prescribed in terms of the B-BBEE Codes of Good Practice; or
 - (c) Any other requirement prescribed in terms of the Broad- Based Black Economic Empowerment Act.
- 1.17 **QSE** is a Qualifying Small Enterprise with an annual total revenue between R10 million and R50 million;
- 1.18 **"rand value"** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- 1.19 **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract.
- 1.20 **"tender"** means a written offer in the form determined by an organ of state in response to an invitation to provide or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- 1.21 **"tender for income-generating contracts"** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions;
- 1.22 **"the Act"** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- 1.23 **"the Regulations"** means the Preferential Procurement Regulations, 2022;

- 1.24 **"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 11 October 2013;
- 1.25 **"trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 1.26 **"trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

2. GENERAL CONDITIONS

2.1 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).

2.2 Preference point system for this bid:

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

2.3 Preference points for this bid (even in the case of a tender for income-generating contracts) shall be awarded for:

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

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

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

2.5 Failure on the part of a bidder to fill in, sign this form and submit in the circumstances prescribed in the Codes of Good Practice either a B-BBEE Verification Certificate issued by a Verification Agency accredited by the South African Accreditation System (SANAS) or an affidavit confirming annual total revenue and level of black ownership together with the bid or an affidavit issued by Companies Intellectual Property Commission, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 Subject to Section 2 (1) (f) of the Preferential Procurement Policy Framework Act, 2000, the **bidder obtaining the highest number of total points** will be awarded the contract.
- 3.2 A tenderer must submit proof of its B-BBEE status level of contributor in order to claim points for B-BBEE.
- 3.3 A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE will not be disqualified but will only score:
- (a) points out of 80 for price; and
 - (b) 0 points out of 20 for B-BBEE
- 3.4 Points scored must be rounded off to the nearest 2 decimal places.
- 3.5 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.6 As per section 2 (1) (f) of the Preferential Procurement Policy Framework Act, 2000, the contract may be awarded to a bidder other than the one scoring the highest number of total points based on objective criteria in addition to those contemplated in paragraph (d) and (e) of the Act that justifies the award to another tenderer provided that it has been stipulated upfront in the tendering conditions.
- 3.7 Should two or more bids be equal in all respects; the award shall be decided by the drawing of lots.

4. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

4.1 POINTS AWARDED FOR PRICE

4.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEM

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

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

Where

- P_s = Points scored for price of bid under consideration
- P_t = Price of tender under consideration
- P_{\min} = Price of lowest acceptable tender

5. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

5.1 POINTS AWARDED FOR PRICE

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

80/20

or

90/10

$$P_s = 80 \left(1 + \frac{P_t - P_{max}}{P_{max}} \right)$$

$$P_s = 90 \left(1 + \frac{P_t - P_{max}}{P_{max}} \right)$$

or

Where

P_s = Points scored for price of tender under consideration

P_t = Price of tender under consideration

P_{max} = Price of highest acceptable tender

6. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

- 6.1 In terms of WCG interim strategy, 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

- 6.2 An **EME** must submit a valid, originally certified affidavit confirming annual turnover and level of black ownership or an affidavit issued by Companies Intellectual Property Commission
- 6.3 A **QSE that is less than 51 per cent (50% or less) black owned** must be verified in terms of the QSE scorecard issued via Government Gazette and submit a valid, original or a legible certified copy of a B-BBEE Verification Certificate issued by SANAS.
- 6.4 A **QSE that is at least 51 per cent black owned (51% or higher)** must submit a valid, originally certified affidavit confirming turnover and level of black ownership as well as declare its empowering status or an affidavit issued by Companies Intellectual Property Commission.

- 6.5 A **large enterprise** must submit a valid, original or originally certified copy of a B-BBEE Verification Certificate issued by a verification agency accredited by SANAS.
- 6.6 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 6.7 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE status level verification certificate for every separate tender.
- 6.8 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

7. BID DECLARATION

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

8. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPH 6

- 8.1 B-BBEE Status Level of Contribution..... = *(maximum of 20 points)*

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 6.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or an affidavit confirming annual total revenue and level of black ownership in terms of the relevant sector code applicable to the tender.

9. SUB-CONTRACTING

- 9.1 Will any portion of the contract be sub-contracted? **YES/NO** *(delete which is not applicable)*

- 9.1.1 If yes, indicate:

(i) what percentage of the contract will be subcontracted?%

(ii) the name of the sub-contractor?

(iii) the B-BBEE status level of the sub-contractor?

(iv) whether the sub-contractor is an EME or QSE? **YES/NO** *(delete which is not applicable)*

- 9.1.2 Sub-contracting relates to a **particular** contract and if sub-contracting is applicable, the bidder to state in their response to a particular RFQ that a portion of that contract will be sub-contracted.

10. DECLARATION WITH REGARD TO COMPANY/FIRM

10.1 Name of company/ entity:

10.2 VAT registration number:

10.3 Company Registration number:

10.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/ Joint Venture/ Consortium
- ☐ One-person business/ sole propriety
- ☐ Close corporation
- ☐ Public Company
- ☐ Personal Liability Company
- ☐ (Pty) Limited
- ☐ Non-Profit Company
- ☐ State Owned Company

[SELECT APPLICABLE ONE]

10.5 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-BBEE status level of contribution indicated in paragraph 7 above, qualifies the company/ firm for the preference(s) shown and I/we acknowledge that:

- (a) The Western Cape Government reserves the right to audit the B-BBEE status claim submitted by the bidder.
- (b) As set out in Section 13O of the B-BBEE Act as amended, any misrepresentation constitutes a criminal offence. A person commits an offence if that person knowingly:
 - (i) misrepresents or attempts to misrepresent the B-BBEE status of an enterprise;
 - (ii) provides false information or misrepresents information to a B-BBEE Verification Professional in order to secure a particular B-BBEE status or any benefit associated with compliance to the B-BBEE Act;
 - (iii) provides false information or misrepresents information relevant to assessing the B-BBEE status of an enterprise to any organ of state or public entity; or
 - (iv) engages in a fronting practice.
- (c) If a B-BBEE verification professional or any procurement officer or other official of an organ of state or public entity becomes aware of the commission of, or any attempt to commit any offence referred to in paragraph 10.5 (a) above will be reported to an appropriate law enforcement agency for investigation.

- (d) Any person convicted of an offence by a court is liable in the case of contravention of 10.5 (b) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person to a fine not exceeding 10 per cent of its annual turnover.
- (e) The purchaser may, if it becomes aware that a bidder may have obtained its B-BBEE status level of contribution on a fraudulent basis, investigate the matter. Should the investigation warrant a restriction be imposed, this will be referred to the National Treasury for investigation, processing and imposing the restriction on the National Treasury's List of Restricted Suppliers. The bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, may be restricted 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.
- (f) The purchaser may, in addition to any other remedy it may have –
 - (i) disqualify the person from the bidding process;
 - (ii) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (iii) 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; and
 - (iv) forward the matter for criminal prosecution.
- (g) The information furnished is true and correct.
- (h) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 2 of this form.

SIGNATURE(S) OF THE BIDDER(S):

DATE:

ADDRESS:

.....

WITNESSES:

1.

2.

TERMS OF REFERENCE

BID FOR THE PROCUREMENT OF HEADHUNTING SERVICE TO ESTABLISH A PANEL OF SERVICE PROVIDERS TO THE WESTERN CAPE GOVERNMENT (WCG) FOR A PERIOD OF 3 YEARS

1. PURPOSE AND GENERAL REQUIREMENTS

- 1.1. The Department of the Premier (the Department) invites potential bidders to submit bids in order to be listed on a panel of service providers for a **headhunting service for the following vacancy types: Head of Department (HOD), Senior Management Services (SMS), scarce skills and key occupations posts, critical occupations and posts proven difficult to recruit** in the Western Cape Government (WCG), for a period of 36 (thirty-six) months.
- 1.2. The Department's intention is to create a panel of service providers from which it may request quotations as and when the need arises.
- 1.3. Potential bidders are invited to submit bids on the provision of a headhunting service to the Department in order to be listed on the panel.
- 1.4. This panel will be in existence for 36 (thirty-six) months.
- 1.5. All bidders shall be bound by the General Conditions of Contract issued by the National Treasury (the GCC), read with the terms and conditions set out herein. The Department does not accept and will not be bound by potential bidders' own terms and conditions.
- 1.6. Please note that the Department may accept or reject any bid (in accordance with the conditions set out in the Terms of Reference). The Department may also cancel the bid process and reject all bids at any time prior to the award of the bid contemplated herein for any of the following reasons:
 - Due to changed circumstances, there no longer being a need for the headhunting services;
 - Funds no longer being available to cover the total envisaged expenditure;
 - No acceptable bids being received; and/or
 - There being a material irregularity in the bid process.

2. BACKGROUND

- 2.1. The Department, through its Chief Directorate: People Management Practices (PMP), which is a business unit under the Corporate Services Centre (CSC), manages all recruitment processes of 11 (eleven) of the 13 (thirteen) WCG departments, as well as the recruitment processes for HODs for the Department of Health and the Department of Education (the Department of Health and the Department of Education manage the balance of their recruitment processes independently).
- 2.2. The headhunting service required will entail the collection and submission of curricula vitae (CVs) of suitable candidates for HOD, SMS, scarce skills and key occupations posts, critical occupations and posts proven difficult to recruit for which PMP manages the recruitment processes. The headhunting service will exclude all other recruitment, selection and appointment services.

- 2.3. Standard recruitment processes do not always attract suitably competent, qualified and experienced applicants to HOD, SMS, scarce skills and key occupations posts, critical occupations and posts proven difficult to recruit. Assistance may from time to time be required from a service provider with links to and a network of suitable potential applicants, to submit CVs for such highly sought-after candidates for potential employment.
- 2.4. The aim of this bid is to establish a panel of suitably qualified and experienced headhunting service providers, who may be approached as and when the need arises, for the headhunting of potential candidates for HOD, SMS, scarce skills and key occupations posts, critical occupations and posts proven difficult to recruit (for which PMP manages the recruitment processes) for a period of 36 (thirty-six) months.

3. SCOPE

- 3.1. This bid is for the creation of a panel of service providers from which PMP may, as and when the need arises, request quotes to provide headhunting services to PMP. PMP manages the recruitment processes of 11 (eleven) WCG departments, as well as the recruitment processes for HODs within the Department of Health and the Department of Education.
- 3.2. Around 100 HOD, SMS, scarce skills and key occupations posts, critical occupations and posts proven difficult to recruit are advertised annually. In most instances it is possible to make an appointment from the pool of applicants who apply for a post through PMP's standard recruitment processes. Only where a suitable person cannot be appointed from those who applied for a post through PMP's standard recruitment processes, may a headhunting process be followed.
- 3.3. The headhunting services to be provided by the panel of service providers will be to, over a period of 36 (thirty-six) months, as and when the need arises, conduct a talent search and provide PMP with CVs of suitable candidates for HOD, SMS, scarce skills and key occupations posts, critical occupations and posts proven difficult to recruit (for which PMP manages the recruitment processes). The headhunting service excludes all other recruitment, selection and appointment services

Service requirements

- Identify suitable candidates as per the job description provided by PMP.
- Demonstrate that it generated interest in the post and that it approached suitably qualified and experienced candidates as per the relevant Department's Employment Equity (EE) priorities.
- Submit CVs of suitable candidates who meet the minimum requirements of the job description within the timeframe prescribed by PMP. Only CVs of people who have expressed an interest in the post should be submitted.

The Department retains the right not to fill the post, or to fill it by any other means, and/or not to appoint a candidate introduced to the Department by the successful bidder.

4. BID EVALUATION PROCESS

- 4.1. All bids will be evaluated as follows:
Phase One: (a) Strict compliance with all compulsory bid conditions and (b) Agreement to all conditions of contract (Refer to paragraphs 5 and 6)

Bidders who do not comply with all compulsory bid conditions (see paragraph 5) and/or do not agree to all the conditions of contract (see paragraph 6) will not be placed on the panel. The Department also reserves the right to conduct reference checks.

5. PHASE 1 (A) COMPULSORY BID CONDITIONS

- 5.1. The compulsory bid conditions contained in Table 1 below, must be adhered to by the bidders. Each bidder must indicate with an "X" in **Table 1** below whether it complies with the compulsory bid conditions. Each bidder must include in its bid a completed copy of Table 1 below. Compliance with compulsory bid conditions must be evidenced through the supporting documents indicated in **Table 1** below. In the event that a bidder does not or fails to indicate with an "X" whether it complies with the compulsory bid conditions set out in the **Table 1** below, it will be assumed, unless the bid documents indicate otherwise, that the bidder does not comply with the compulsory bid conditions set out in the **Table 1** below. Any bidder that does not comply with the compulsory bid conditions, and/or any bidder that does not provide the evidence requested below, will not proceed to phase 1 (b) and will not be placed on the panel.

Table 1: Compulsory Bid Conditions

COMPULSORY CONDITIONS		Compliance	
		Yes	No
5.1.1.	<p>Demonstrate previous experience (during the last five years) in successfully providing headhunting services with successful placements in positions at an executive / senior management level and/or in scarce skill or specialised posts and/or in posts proven difficult to recruit. At least three (3) reference letters must be provided in respect of services rendered during the last five (5) years. Such reference letters must include as a minimum:</p> <ul style="list-style-type: none"> a) Client Name b) Contact Person c) Contact number d) Title of position(s) placed at an executive / senior management level and/or in scarce skill or specialised posts and/or posts proven difficult to recruit e) When the placement was made (must be in the last five years) f) Success rate with placements 		
5.1.2.	<p>Each bid must contain a comprehensive technical proposal (portfolio) consisting of the bidder's and work processes and wherein it must be confirmed that the bidder can conduct a headhunting service for the placement of employees on executive/senior management level and/or in scarce skills or specialised posts and/or in posts proven difficult to recruit.</p> <p>The bidder's profile must contain the following:</p>		

	<ul style="list-style-type: none"> • Explicitly indicate the number of years, with a minimum of five (5) years, the bidder has been providing headhunting services for executive/senior management level and/or scarce skills or specialised posts and/or posts proven difficult to recruit. • Detailed methodology, approach and timeline. • CV / CVs of the headhunter / headhunting team detailing previous work with regard to similar assignments, including contactable references. <p>Please note that each bidder, by submitting its bid, hereby confirms that it has the necessary consent of each headhunting team member (if any) to provide any of his/her personal information as included as part of such bid. Reference to 'personal information' in this section shall mean 'personal information' as defined in the Protection of Personal Information Act, 4 of 2013 (POPIA). Where the personal information of a team member may not be disclosed at the bidding stage of this tender, a bidder may appropriately de-identify any information and documentation provided in its bid that constitute personal information of that team member.</p>		
5.1.3.	Each bid must contain a duly completed and signed WCBD form 1 (Invitation to Bid form). All information and documentation requested in such form must be provided. No WCBD 1 forms (including all information and documentation required in terms thereof) will be accepted after the closing date and time of the bid.		
5.1.4.	Each bidder must be duly registered on the Central Supplier Database (CSD). The Department will verify such registration prior to evaluation of each bid.		
5.1.5.	<p>Unless a duly completed WCBD 4 form is available on the Western Cape Supplier Evidence Bank (WCSEB), each bid must contain a duly completed, signed, commissioned and dated WCBD 4 form (Declaration of Interest, Declaration of Bidder's Past Supply Chain Management Practices and Certificate of Independent Bid Determination). All information and documentation requested in such form must be provided. No WCBD 4 form (including all information and documentation required in terms thereof) will be accepted after the closing date and time of the bid.</p> <p><u>Note:</u> The completed WCBD form 4, as submitted to the WCSEB, is valid for 12 months from the signature date of the commissioner of oaths. This document must be maintained on an annual basis</p>		

5.1.6.	<p>Where applicable, any bid submitted by a consortium or joint venture of two or more firms must be accompanied by a copy of the consortium formation document or joint venture agreement, as applicable, which sets forth the precise responsibilities of each of the parties thereto. Consortia and joint venture members are advised that each member will be held jointly and severally liable for the performance of the consortium or joint venture in terms of the contract. No copies of a consortium formation document or joint venture agreement will be accepted after the closing date and time of the bid. Where a bid is submitted by a consortium or joint venture of two or more firms, please ensure that:</p> <ul style="list-style-type: none"> • The joint venture agreement or consortium formation document submitted as part of the bid makes it clear that the arrangement between the member firms is either a joint venture or a consortium (as the case may be) and is not a sub-contracting arrangement; • All standard bidding forms (i.e. WCBD 1, WCBD 4 and WCBD 6.1) are completed in respect of each member firm; and • A consolidated B-BBEE status level verification certificate is provided if a joint venture / consortium intends claiming B-BBEE points. <p>Failure by a group of member firms to adhere to these requirements (excluding the requirement for a consolidated B-BBEE status level verification certificate) shall disqualify the bid submitted by such member firms. The Department reserves the right to request a preferred bidder that is a consortium or joint venture to provide the following prior to the making of the award: (a) a certified copy of the formation document or agreement duly certified by a Commissioner of Oaths (where the consortium or joint venture is based in South Africa); or (b) an authenticated copy of such document or agreement duly authenticated by a Notary Public (where the consortium or joint venture is based outside of South Africa). Failure by a preferred bidder to provide same within a period stipulated by the Department shall disqualify the bid submitted by that preferred bidder. The Department reserves the right to request clarity on the joint venture agreement or consortium formation document, as well as the accompanying WCBD forms, provided by a consortium or joint venture.</p>		
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NOTE: Evidence of all the above must accompany bid documentation.

6. PHASE 1 (B): CONDITIONS OF CONTRACT

- 6.1. Each bidder must indicate with an "X" in **Table 2** below if it agrees to the following conditions of contract of the bid. Each bidder must include in its bid a signed and completed copy of **Table 2** below (i.e. a completed copy of **Table 2** with a signature of an authorised representative of the bidder on each page comprising **Table 2**). In the event that a bidder does not indicate with an "X" whether it agrees to a particular condition of contract set out in **Table 2** below, it will be assumed that the bidder does not agree to the condition of contract concerned. Failure on the part of a bidder to agree to all conditions of contract set out in **Table 2** below and to submit as part of its bid a signed and completed copy of **Table 2**, will lead to disqualification of that bidder's bid. In the event that a bidder submits a completed but unsigned copy of **Table 2** the Department reserves the right to verify with that bidder whether the completed **Table 2** was in fact completed by the said bidder (which verification shall be deemed sufficient in lieu of a signed copy of **Table 2**).

Table 2: Conditions of Contract

Conditions of Contract		Agreement to conditions	
		Accept	Do not Accept
6.1.1.	Headhunting requests may be cancelled or amended by the Department within the turn-around time applicable to a Headhunting request.		
6.1.2.	All information generated during the term of contract will remain the intellectual property (IP) of the Department.		
6.1.3.	The Department will enter into a Service Level Agreement (SLA) with a successful bidder who is allocated work in terms paragraph 7 below.		
6.1.4.	The placement fee payable to a successful bidder in respect of a successful placement, will be paid within 30 days of receipt of invoice provided that the Department has verified and certified the invoice as correct.		
6.1.5.	No material or information derived from the bid submission or the provision of the services under the contract may be used for any purposes other than those of the Department except where authorised by the Department in writing to do so.		
<p>The following bidder hereby accepts the conditions of the contract as indicated as being accepted on this page:</p> <p>Bidder name: _____</p> <p>Signature of Authorised Representative of the Bidder: _____</p>			

Conditions of Contract	Agreement to conditions	
	Accept	Do not Accept
6.1.6. A successful bidder must at all times during the term of the contract comply with and work within all legislation, regulations, policies and frameworks applicable to WCG (including, but not limited to, the Public Service Act, the Protection of Personal Information Act 4 of 2013 (POPIA) and all other prescripts relating to Human Resource Development in the public Service). The cost of compliance with such legislation, regulations, policies and frameworks is for the successful bidder's own account and cannot be recovered from the Department.		
6.1.7. All successful bidders shall be bound by the General Conditions of Contract issued by the National Treasury (the GCC), read with the terms and conditions set out herein and to the exclusion of any standard terms and conditions that a successful bidder would ordinarily impose on its clients. Any terms and conditions that are not included herein or in the GCC but that a successful bidder may require to be included in the contract between it and the Department may, at the sole discretion of and with the agreement of the Department, be included in the Service Level Agreement referred to above.		
6.1.8. In the event that a successful bidder is a consortium or joint venture, each member of such consortium or joint venture (as the case may be) shall be held jointly and severally liable for the performance of the consortium or joint venture in terms of the contract contemplated herein. The bidder will identify a lead member, who will be primarily responsible for all communications with and reporting to the Department.		
6.1.9. The Department will not be liable for any relocation of staff, offices or assets required by a successful bidder in giving effect to the requirements of the contract, nor shall the Department be liable for any parking costs, computer consumables, telephone calls, or travel and accommodation cost that a successful bidder and its employees, agents, representatives and/or resources may incur in giving effect to the requirements of the contract.		
<p>The following bidder hereby accepts the conditions of the contract as indicated as being accepted on this page:</p> <p>Bidder name: _____</p> <p>Signature of Authorised Representative of the Bidder: _____</p>		

Conditions of Contract	Agreement to conditions	
<p>The below is the maximum placement fee (inclusive of VAT) payable to a successful bidder for the successful placement of a candidate</p> <p>MAXIMUM % PLACEMENT FEE</p> <p>(Expressed as a percentage of the annual salary of the successful candidate, which percentage is linked to the salary level of the headhunted post)</p>	Accept	Do not Accept Disagree
Salary band: R 261 372.00 – R 378 765.00 Percentage placement fee: 7%		
Salary band: R 382 245.00 – R 561 981.00 Percentage placement fee: 6.5%		
Salary band: R 744 255.00 – R 1 038 999.00 Percentage placement fee: 6%		
Salary band: R 1 073 187.00 – R 1 264 176.00 Percentage placement fee: 5.5%		
Salary band: R 1 269 951 – R 1 518 396.00 Percentage placement fee: 5%		
Salary band: R 1 544 415.00 – R 1 739 784.00 Percentage placement fee: 4.5%		
Salary band: R 2 008 212.00 – R 2 262 252.00 Percentage placement fee: 4%		
NOTE: Should the salary not fall within the salary bands above, the nearest salary band will apply.		
<p>The following bidder hereby accepts the conditions of the contract as indicated as being accepted on this page:</p> <p>Bidder name: _____</p> <p>Signature of Authorised Representative of the Bidder: _____</p>		

7. ALLOCATION OF WORK AND PAYMENT

Allocation of work

- 7.1. The successful bidders will be added to the panel of service providers, who may be approached as and when the need arises, to provide the headhunting services.
- 7.2. No panel member shall be guaranteed the allocation of work in terms of the provisions set out herein. In the absence of being allocated any work, a panel member shall not be entitled to any remuneration pursuant to these terms of reference.

- 7.3. When headhunting services are required, the Department shall issue all panel members with a request for a quotation, which request will include full details of the position for which the headhunting services are required, the time period within which the services must be provided, the functionality requirements against which the panel members will be evaluated, as well as all other pertinent information. Upon receipt of such a request, each panel member must indicate in writing the following:
- 7.3.1. whether it can provide the required services in line with the requirements specified by the Department in its request for a quotation;
 - 7.3.2. the headhunting team member(s) who will provide the services;
 - 7.3.3. the extent to which it meets the functionality requirements;
 - 7.3.4. the placement fee (i.e. the total all-inclusive fixed price, inclusive of VAT) for providing the services (which fee must be expressed as a percentage of the annual salary of the candidate for the position that is to be filled).
- 7.4. Any quotation that does not contain the information and documentation required in terms of the request for a quotation issued by the Department shall be considered non-responsive and will not be eligible for further consideration.
- 7.5. Each quotation received from a panel member that meets the requirements set out in the request for a quotation issued by the Department will be evaluated by the Department against the functionality requirements. All panel members who meet the minimum functionality threshold will then be evaluated with reference to price (i.e. the placement fee for providing the service) and B-BBEE on the 80/20 preference point system according to the Preferential Procurement Policy Framework Act and the regulations thereto. The work will be allocated to the panel member that scores the highest points for price and B-BBEE. In the event that two or more panel members score the same points, the deadlock will be dealt with as provided for in the Preferential Procurement Policy Framework Act and the regulations thereto.
- 7.6. Allocation of work will be effective upon the issuing of a written letter to the successful panel member (i.e. the service provider) confirming such allocation. The Department shall notify, in writing, unsuccessful panel members of the outcome of the process. The service provider will be required to sign an SLA with the Department for the headhunting services to be rendered. It will be a term of such SLA that if the service provider breaches any of the terms or conditions of the SLA and fails to remedy such breach as required, the Department may remove the service provider from the panel.
- 7.7. The Department reserves the right to negotiate with panel members and/or service providers on the specifics of services required where necessary and appropriate, provided that no unfair advantage is given to any one or more of the panel members and/or service providers concerned.
- 7.8. All information disclosed to panel members in a request for a quotation will be provided on the basis that it will remain confidential and will not under any circumstances be disclosed to any third party.

Payment of service providers

- 7.9. A service provider shall not be entitled to claim payment from the Department under any circumstances of any amount outside or beyond the placement fee referred to above.
- 7.10. A service provider will only receive the placement fee if and when a candidate, introduced to the Department by the service provider, is successfully placed in the relevant position.
- 7.11. Other than the placement fee, a service provider will not be entitled to any other fee or remuneration and will not be entitled to claim any disbursement or expenses incurred by it from the Department.
- 7.12. If the candidate, after successful placement in the position, does not remain in the position for any reason whatsoever, the following rebates will apply:
- 7.12.1. If the candidate leaves the position within 30 (thirty) days of the date on which the candidate commenced employment in the position, the Department will receive a rebate of 80% (eighty percent) of the placement fee paid by the Department;
- 7.12.2. If the candidate leaves the position within 60 (sixty) days of the date on which the candidate commenced employment in the position, the Department will receive a rebate of 65% (sixty-five percent) of the placement fee paid by the Department; and
- 7.12.3. If the candidate leaves the position within 90 (ninety) days of the date on which the candidate commenced employment in the position, the Department will receive a rebate of 40% (forty percent) of the placement fee paid by the Department.

Right to procure outside of these Terms of References

- 7.13. The Department reserves the right to procure headhunting services elsewhere (i.e. outside of these terms of reference) if such services are required by the Department and the Department is of the opinion that such services are not available or should not be sourced from the panel members for any reason whatsoever.

8. BID SUBMISSION REQUIREMENTS

- 8.1. Bidders are required to submit a sealed envelope titled "Technical Proposal: Bid Number [Insert bid number]". This envelope must contain at least the following:
- Cover letter signed by the bidder
 - Completed standard bid documents
 - A completed copy of Table 1 above
 - Mandatory documents specified in paragraphs 5 above (the bidder is advised to flag all documents according to evaluation criteria)
 - A completed copy of Table 2 above signed by an authorised representative of the bidder on each page
 - Any other applicable information/annexures and supporting material

For Bidding enquiries:

Name: Ashwin Nayar and Kim-Leigh February

E-mail: Ashwin.Nayar@westerncape.gov.za

Kim-Leigh.February@westerncape.gov.za

Tel: 021-483-4679 and 021-483-2943

For Technical enquiries:

Name: Derrick Smith

E-mail: Derrick.Smith@westerncape.gov.za

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THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

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 General Conditions of Contract 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 General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference 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 any thing 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 organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services 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, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

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

5. Use of contract documents and information; inspection.

- 5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of 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:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the 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:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

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

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the 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 fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the 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 contracts 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 canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the 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:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

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

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

23.4 If a purchaser intends imposing a restriction on a supplier or any

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

- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
 - (ii) the date of commencement of the restriction
 - (iii) the period of restriction; and
 - (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

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

24. Anti-dumping and countervailing duties and rights

- 24.1 When, after the date of bid, provisional payments are required, or 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,

- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of
liability**

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

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

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

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| 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 | <p>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</p> <p>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.</p> |
| 32. Taxes and duties | <p>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.</p> <p>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.</p> <p>32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.</p> |
| 33. National Industrial Participation Programme (NIP) | 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation. |
| 34 Prohibition of Restrictive practices | <p>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).</p> <p>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.</p> |

- 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.

Js General Conditions of Contract (revised July 2010)