

## **HUMAN SCIENCES RESEARCH COUNCIL**

**BID DESCRIPTION: APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE KASPERSKY MANAGED DETECTION AND RESPONSE (MDR) FOR A PERIOD OF THREE (3) YEARS**

**BID NUMBER: HSRC/12/2023/24**

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### **1. BACKGROUND INFORMATION**

The Human Sciences Research Council (HSRC) is a research organisation that advances social sciences and humanities for public use. The HSRC subscribes to the values of good governance, accountable public administration and sound management of the resources as reflected in the Public Financial Management Act of 1999 (PFMA as amended by Act 29 of 1999) and other laws and regulations applicable to public administration.

Established in 1968 as South Africa's statutory research agency the HSRC has grown to become the largest dedicated research institute in the social sciences and humanities on the African continent, doing cutting-edge public research in areas that are crucial to development.

Our mandate is to inform the effective formulation and monitoring of government policy; to evaluate policy implementation; to stimulate public debate through the effective dissemination of research-based data and fact-based research results; to foster research collaboration; and to help build research capacity and infrastructure for the human sciences.

### **2. BACKGROUND**

- 2.1 The currently installed and operational Kaspersky EDR solution is licensed until June 2024. Therefore bidders should factor this and explore the possibility of utilising this to off-set the proposed MDR solution.

2.2 The MDR solution must commence upon the signing of an Service Level Agreement (SLA).

2.3 The managed Kaspersky service will be maintained for thirty-six (36) months initial duration of the SLA.

### **3. SCOPE OF WORK**

The HSRC IT is looking for a competent service provider to upgrade the existing Kaspersky EDR solution to Kaspersky MDR at all its regional offices located in Pretoria, Durban, Cape Town and Sweetwaters in Pietermaritzburg. The table below shows the required product and on-going services.

Part Number	Product	Quantity
KL47099ATR	Kaspersky Optimum security 3 year renewal ( KESB-Advance, EDRO, MDR included)	600
KL71239LTZ	Kaspersky Maintenance Service Agreement, Start- 3 year (Priority support)	1
KL42559ATR	Kaspersky Hybrid Cloud Security Server, 3 year renewal	65
Support	Installation, configuration, etc	
	Ad-hoc support 200 hours	200
Training	Training for three technicians	3
Documentation	System deployment documentation	

### **4. TECHNICAL DETAILS, I.E. ENTIRE PROPOSAL**

Proposals in their entirety must address, provide and meet the specifications and requirements stipulated in Section 4. Full technical details should be furnished in the proposal.

**\*\*Bidders will be evaluated against their compliance with Section 4.**

### System Specification

	Function/Feature
1.	<p>Simplicity</p> <ul style="list-style-type: none"> <li>a) Installs easily, smoothly and must be easy to administer</li> <li>b) Saves time – by automating OS &amp; software deployment tasks</li> </ul>
2.	<p>Comprehensive and advanced real-time protection system that:-</p> <ul style="list-style-type: none"> <li>a) Blocks attacks in real-time – using a Host-based Intrusion Prevention System.</li> <li>b) Identifies vulnerabilities and applies the latest patches – to close attack entry points – and grants the administrator control as to which applications are allowed to run in the environment.</li> <li>c) runs constantly in the background</li> <li>d) assesses the files accessed, detecting and removing threats before they can do any damage</li> <li>e) scans emails before drafts are sent and before received messages are opened removing all malicious links and either attached or embedded attachments</li> </ul>
3.	Proven protection that automatically identifies and cleans new (zero day) and even unknown malware threats, including APT's and Ransomware
4.	It must be possible to schedule scans to run when host is idle; or must allow for performance throttling so that scans do not slow down the host considerably
5.	It must keep resource impact low, to ensure security doesn't get in the way of productivity.
6.	It must monitor all collaboration software activity for viruses and virus-like activity and stop it
7.	It must have controls to monitor browser, network, application performance and behaviour analytics for drive-by malware and other malicious or suspicious behaviour
8.	<p>It must allow protection of malware related risks in the HSRC environment:</p> <ul style="list-style-type: none"> <li>a) computers, laptops (Windows, Linux, Mac)</li> <li>b) mobile devices e.g. tablets, smartphones, etc</li> <li>c) virtual servers/desktops, and servers (Windows, Linux)</li> <li>d) networks - local, remote and wireless communication</li> <li>e) web content filtration</li> <li>f) email traffic filtration</li> <li>g) application filtering</li> <li>h) behaviour based analytics</li> <li>i) geo-location based analytics</li> </ul>
9.	It must be easy to set-up policies and deploy them. It should also monitor for compliance with policy and refresh any host that may be in contradiction
10.	It must allow for granular selection of a level of protection to get precise/accurate levels of desired protection
11.	It should offer the specified functionality in one license or a simple scalable licensing model
12.	<p>Management</p> <p>All modules should be easily managed in one console i.e.,</p> <ul style="list-style-type: none"> <li>a) application deployment</li> <li>b) compliance monitoring</li> <li>c) patch and vulnerability assessment</li> <li>d) sandboxing and remediation</li> </ul>

	Function/Feature
	<ul style="list-style-type: none"> <li>e) web filtering</li> <li>f) reports, etc</li> </ul>
13.	It should have one agent that scans for viruses and controls applications, devices, data, web access, etc
14.	It should have a feature to fine tune detection/protection rules
15.	The vendor must enter into 24/7 expert support SLA
16.	<p>Heterogeneous</p> <p>It must protect:-</p> <ul style="list-style-type: none"> <li>a) Windows</li> <li>b) Mac</li> <li>c) Linux</li> <li>d) Virtual machines</li> <li>e) Handheld/mobile devices</li> </ul>
17.	<p>Web security</p> <p>It must scan for malware and block malicious content</p>
18.	<p>Web filtering</p> <p>It should offer full visibility and control of web activity. It should be able to do this even when not connected to the HSRC network.</p>
19.	<p>Device control</p> <p>Manage the use of removable storage devices such as disabling auto-run, program execution from memory stick, etc</p>
20.	<p>Application control</p> <p>Block unauthorised applications like IM and P2P</p>
21.	<p>Data control</p> <p>Monitor data transfers so that user actions to/with sensitive data can be controlled</p>
22.	<p>Network Access Control (NAC)</p> <p>Assess and fix computers for out-of-date security settings before they join the network otherwise quarantine</p>
23.	<p>Client firewall</p> <ul style="list-style-type: none"> <li>a) Block malicious activity and prevent intrusions</li> <li>b) Malware must be <b>unable</b> to deactivate the firewall in memory, delete it from the hard drive, or steal the rights of legitimate programs (some malware, for example, will be dressed up to look like Internet Explorer and will try to grab all the rights granted IE).</li> <li>c) Block back-door applications from accessing the Internet</li> <li>d) Block all standard and stealth port scans</li> </ul>
24.	<p>Microsoft Exchange protection</p> <p>It must have antivirus and anti-spam protection for Outlook and other email clients</p>
25.	<p>Repair</p> <p>When a nasty malware infestation leaves an operating system non-bootable or prevents antivirus software installation, a USB-based bootable rescue system (or similarly mechanism) should be available as an easy-to-use solution with the aim to get a PC into a state where the desktop antivirus can complete the clean-up process.</p>
26.	<p>Alerting</p> <p>It must be able to setup alerts (preferably to IM) to raise an alarm when certain exception events occur e.g. an active virus outbreak in the environment.</p>
27.	Reporting

	Function/Feature
	It must be possible to run and produce scheduled (on a predefined schedule) or ad-hoc reports. The system should allow reports to be saved to a central reports repository and also be e-mailed.
28.	Heuristics Heuristic technology to protect against basic unknown viruses.
29.	On-Demand Scanner It should be possible to launch an ad-hoc scan of any amount of files ranging from a single attachment that has just been received via an e-mail or a whole folder, CD or memory sticks before using its contents
30.	Script Blocking Block script based viruses, such as the mass-mailing script worms. The scanning engine should be able to recognise VBScripts, JScripts, etc. to detect and stop those malicious scripts.
31.	Scan e-mail attachment Many viruses spread via email. Some of them, (worms) can spread through an unprotected system without even requiring the user to access the attachment. That is why anti-virus software with email scanning ability is mandatory.
32.	Scan within compressed Files Even though a virus cannot be run when compressed, it is always important that the system be able to detect it before it enters the system. The number of levels deep, that the anti-virus software can go is important. A good number is up to 5 as more can compromise machine performance.
33.	Detect Ransomware, Trojan, malicious active-X controls and Java applets The anti-virus software should not only detect viruses and worms but also protect against malicious code in Trojan horses, ActiveX controls and Java applets.
34.	Product Upgrades All anti-virus products will have to be updated from time to time. A desirable system is one that does not require uninstallation of the old in order to install the new.
35.	On-Line support The vendor should have on-line support facilities for example where samples of files suspected to be infected.
36.	Alerts The vendor should offer virus alerts as this a very important feature. If a new virus is detected in the wild, it is important that the vendor has the ability to alert clients, so that that the necessary actions to protect the HSRC as fast as possible are taken. In many cases, it may be critical to be alerted and to receive information about a virus before signatures are available. An early alert and understanding of what the virus does will allow clients, for example, to institute preventive countermeasures to keep the virus away until updates are made available.
37.	Product vulnerabilities The introduction of a new security product in an environment should not open any security holes. It is consequently always interesting to take a look at the list of vulnerabilities listed for the products under consideration for acquisition.
38.	Privacy Stops webcam hijacks & hides browsing – on handheld, PC & Mac. Blocks phishing and other social engineering attacks
39.	Wi-Fi Security Assess the traffic through the Wi-Fi network and router, no matter where a connection is made from.

	Function/Feature
40.	<p>Artificial Intelligence and Machine Learning</p> <p>Antivirus must detect zero-day threats in pre-execution stage including file-based malware, trojans, password stealers, exploits, obfuscated malware, targeted attacks, script-based attacks, mutating and polymorphic malware, ransomware, etc</p>
41.	<p>Improved visibility and risk mitigation</p> <p>Should offer vulnerability &amp; patch management that provides comprehensive information about devices and applications running on the network. It must gather data about software versions and ascertain whether updates are required and vulnerabilities need to be patched. The detected vulnerabilities must be automatically prioritised so that the most critical patches are patched first and the most important updates deployed with priority.</p>
42.	<p>Vendor profile</p> <p>The vendor's profile shall be checked. If making a decision for an entire organisation as in this case, it is important to find out early enough, which business the HSRC will be partnered with. It is also prudent to consider how big the company is, how long they have been on the market and how long they have been in the anti-virus business. The partner status e.g. silver, gold, etc. will to be taken into account.</p>
43.	<p>Encryption protection for sensitive data</p> <p>Use Industry grade encryption standards to protect corporate data and confidential information</p>
44.	<p>Adaptive security</p> <p>Lowering exposure to applications-based attack, Adaptive Anomaly Control automatically raises security to the highest level appropriate to everyone in the organisation depending on regular behaviour analysed over time.</p>
45.	<p>Network Access Control (NAC)</p> <p>With Network Admission Control (NAC), guest/non-compliant devices (including mobile devices) are automatically recognised and sent to a corporate portal where the correct identification credentials enables them to use approved resources only.</p>
46.	<p>Remote anti-theft Tools</p> <p>SIM-Watch, Remote Lock, Wipe and Find to prevent unauthorised access</p>
47.	<p>Support for Employee Owned Devices</p> <p>Support for BYOD where Corporate data and applications are isolated in encrypted containers which are transparent to the user and can be wiped separately.</p>
48.	<p>When all else has failed, the service provider must act as a rapid response Computer Security Incident Response point of contact and be able to be in the HSRC systems within 15 Minutes to neutralise and remediate any attack on the HSRC.</p>

## 5. SUBMISSIONS

- a) Bid documents may either be posted to HSRC Building, 134 Pretorius Street Pretoria (preferably registered mail) OR placed in the tender box OR couriered **to HSRC Building, 134 Pretorius Street Pretoria before the closing date and time.**
- b) **NB:** The HSRC shares the building with the Department of Social Development (DSD). Bidders are requested to ensure that their bid documents are deposited in the correct tender box. Bid documents deposited in the wrong tender box and received from DSD after the closing date will not be considered.
- c) Bid documents will only be considered if received by the HSRC before the closing date and time, regardless of the method used to send or deliver such documents to the HSRC.
- d) The bidder(s) are required to submit **two (2)** copies of each file Original **one (1)** hard copy duplicate **(1) USB** with content of each file by the Closing date **28 February 2024**. Each file and **USB** must be marked correctly and sealed separately for ease of reference during the evaluation process.

**Table 1: Bid timelines**

Activity	Due Date
Advertisement of bid on Government e-tender portal / print media / HSRC website	07 February 2024
Virtual briefing- session.	15 February 2024
Closing date for bid-related enquiries	19 February 2024
Publication of questions and answers on HSRC website	21 February 2024
Bid validity	The bid must be valid for a period of 90 days from the closing date
Bid closing date	28 February 2024
Notice to bidder(s)	HSRC will endeavour to inform bidders of the progress until conclusion of the tender.

- a) All dates and times in this bid are South African standard time.
- b) Any time or date in this bid is subject to change at the HSRC's discretion.

- c) The establishment of a time or date in this bid does not create an obligation on the part of the HSRC to take any action, or create any right in any way for any bidder to demand that any action be taken on the date established. The bidder accepts that, if the HSRC extends the deadline for bid submission (the Closing Date) for any reason, the requirements of this bid otherwise apply equally to the extended deadline.



## 6. SUPPLIER DUE DILIGENCE

The HSRC reserves the right to conduct supplier due diligence prior to final award or at any time during the contract period. This may include site visits and requests for additional information.

## 7. EVALUATION CRITERIA

The tender will be evaluated in four (4) stages as follows:

Stage 0: Pre-qualification Criteria	Stage 1: Mandatory requirements	Stage 2: Functionality evaluation	Stage 3: Price and Preference points Evaluation
Bidders must submit all documents as on Pre-qualification criteria. Only bidders that comply with ALL these criteria will proceed to the next stage.	Bidders must comply with the mandatory requirements. Failure to comply with mandatory requirements will automatically renders the unresponsive	Bidder(s) are required to achieve a minimum of 70 points out of 100 points to proceed to price and preference points.	Price= 80 Specific goals= 20 Total= 100

## 7.1 STAGE 0- PRE-QUALIFICATION CRITERIA

Without limiting the generality of HSRC's other critical requirements for this Bid, bidder(s) must submit the documents listed in the **Table 2 below**. All documents must be completed and signed by the duly authorised representative of the prospective bidder(s). During this phase bidders' response will be evaluated based on compliance with the listed administration and mandatory bid requirements. The bidder(s) proposal may be disqualified for non-submission of any of the documents.

**Table 2: Documents that must be submitted for Pre-qualification**

Document that must be submitted	Non-submission may result in disqualification	
Invitation to Bid – SBD 1	Y	Complete and sign the supplied pro forma document
Declaration of Interest – SBD 4	Y	Complete and sign the supplied pro forma document
Preference Point Claim Form – SBD 6.1	N	Non-submission will lead to a zero (0) score on preference points
Registration on Central Supplier Database (CSD)	N	The Bidder must be registered as a service provider on the Central Supplier Database (CSD). If you are not registered proceed to complete the registration of your company prior to submitting your proposal. Visit <a href="https://secure.csd.gov.za/">https://secure.csd.gov.za/</a> to obtain your vendor number.  Submit proof of registration.
General Conditions of Contract	Y	Initial each page and sign

## 7.2 STAGE 1- Mandatory requirements

*Failure to comply with the mandatory requirements will immediately disqualify the bid.*

No.	Mandatory documents to be provided by the bidder	Provided YES or
<b>Bidder accreditation</b>		
7.1	The bidder must be a minimum of Kaspersky Gold accredited service provider for the proposed solution. The bidder must provide documentary proof of accreditation from the OEM	

## 7.3 STAGE 2: FUNCTIONALITY EVALUATION CRITERIA = 100

FUNCTIONALITY	Allocated Points
<b>1. Experience and Track Record</b>	
<p>Provide relevant contactable references where the MDR/EDR solution has been successfully implemented in the past five (5) years.</p> <p>Reference letters will only be valid if they meet the following criteria:</p> <ul style="list-style-type: none"> <li>- if on an official client letterhead.</li> <li>- if it makes reference to provision of EDR/MDR services.</li> <li>- if not older than 5 years.</li> <li>- if signed and dated by relevant personnel</li> </ul> <p><b>3x letters = 25    2x letters = 15    1x letter = 10</b></p>	<b>25</b>
<b>2. Methodology/ Implementation Plan</b>	
<p>Provide detailed methodology on how the proposed solution will be implemented. The methodology should include processes to follow, project timelines and deliverables, including associated risks as well as how these risk factors will be mitigated and managed.</p> <ul style="list-style-type: none"> <li>• Processes to deploy MDR while maintaining full functionality of the existing EDR until the smooth transition to MDR = <b>25</b> <ul style="list-style-type: none"> <li>○ Good approach = 25</li> <li>○ Fair approach = 15</li> <li>○ Poor approach = 0</li> </ul> </li> <li>• Risk management plan to ensure there is zero down-time for the Kaspersky EDR currently installed = <b>15</b> <ul style="list-style-type: none"> <li>○ Good approach = 15</li> <li>○ Fair approach = 10</li> <li>○ Poor approach = 0</li> </ul> </li> </ul>	<b>50</b>

<ul style="list-style-type: none"> <li>Projected timelines towards the project completion = 5</li> <li>Other associated risks and mitigating actions = 5</li> </ul>	
<b>3. CAPACITY AND TEAM EXPERIENCE</b> Submit a structure of the proposed team, clearly outlining the main disciplines/ specialities and key personnel responsible for each speciality.  Points allocation: <b>Lead Consultant:</b> The proposed lead consultant must meet the following criteria: <ul style="list-style-type: none"> <li>have a minimum of three (3) years individual experience in the deployment of Kaspersky EDR/MDR services <b>(15)</b></li> </ul> CV's of the personnel must highlight qualifications, areas of experience/ competencies relevant to task and objectives of the bid. <b>(10)</b>  <i>Zero points will be scored for experience that does not meet the minimum requirements</i>	<b>25</b>
<b>Total</b>	<b>100</b>
<b>NB: The minimum threshold score is 75%. Bidders who fail to obtain the minimum required threshold score will be disqualified.</b>	

#### 7.4 STAGE 4- Price and Specific Goals will be evaluated as follows:

##### Pricing schedule

In terms of regulation 6 of the Preferential Procurement Regulations pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), responsive bids will be adjudicated on the 80/20-preference point system in terms of which points are awarded to bidders on the basis of:

##### **Stage 1 – Price Evaluation (80 Points)**

Criteria	Points
<b>Price Evaluation</b>  $P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$	80

The following formula will be used to calculate the points for price:

Where

**Ps** = Points scored for comparative price of bid under consideration

**Pt** = Comparative price of bid under consideration

**Pmin** = Comparative price of lowest acceptable bid

***Stage 3 –Preference points Evaluation (20 Points) – Preference Points allocation***

A maximum of 20 points may be allocated to a bidder for attaining their preference points in accordance with the table below:

<b>Specific Goals [PPPFA par 2(1) (d)]</b>	<b>Number of points 80/20 system)</b>	<b>Required proof/ documents to be submitted for evaluation purposes</b>
SMME (EME & QSE)	4	B-BBEE certificate/ or Sworn affidavit showing EME/QSE claim
Owned by black people (50% or more)	4	Company Registration Certification (CIPC) • Certified identification documentation of company director/s • CSD report/ CSD registration number (MAAA number)
Owned by black people who are youth (30% or more)	4	Company Registration Certification (CIPC) • Certified identification documentation of company director/s • CSD report/ CSD registration number (MAAA number)
Owned by black people who are women (30% or more)	4	Company Registration Certification (CIPC) • Certified identification documentation of company director/s • CSD report/ CSD registration number (MAAA number)
Owned by black people with disabilities (30% or more)	4	Company Registration Certification (CIPC) • Certified identification documentation of company director/s • CSD report/ CSD registration number

		(MAAA number) • Certified medical certificate from a registered medical practitioner
Total points to be claimed	20	

- a) Failure to submit a fully completed SBD 6.1 will lead to no award of points for preference.
- b) The points scored by a bidder in respect of points indicated above will be added to the points scored for price.
- c) Bidders are requested to complete the various preference claim forms in order to claim preference points.
- d) Only a bidder who completed and signed the declaration part of the preference claim form will be considered for preference points.
- e) Points scored will be rounded off to the nearest 2 decimals.
- f) In the event that two or more bids have scored equal total points, the contract will be awarded to the bidder scoring the highest number of points for preference points. Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.
- g) A contract may, on reasonable and justifiable grounds, be awarded to a bid that did not score the highest number of points.
- h) Joint ventures, consortiums and trusts.
  - i. A trust, consortium or joint venture, will qualify for points for their preference points as a legal entity, provided that the entity submits their preference points claims.
  - ii. A trust, consortium or joint venture will qualify for points for their preference points as an unincorporated entity, provided that the entity submits their consolidated preference points scorecard as if they were group structure and that such a consolidated preference points scorecard is prepared for every separate bid.
  - iii. Bidders must submit concrete proof of the existence of joint venture and/ or consortium arrangements. HSRC will accept signed agreements as acceptable proof of the existence of a joint venture and/or consortium arrangement.
  - i) The joint venture and/ or consortium arrangements must clearly set out the roles and responsibilities of the Lead Partner and the joint venture and/or consortium party.

The agreement must also clearly identify the Lead Partner, with the power of attorney to bind the other party/ parties in respect of matters pertaining to the joint venture and/ or consortium arrangement.

j) Subcontracting after award of tender

- i. A person awarded a contract may only enter into a subcontracting arrangement with the approval of HSRC
- ii. A person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below stipulated minimum threshold.

## 8. PRICING SCHEDULE

8.1 Bidders must submit pricing proposals for a period of three (3) years according to the pricing schedule below

8.2 Pricing proposals must include all applicable taxes

Part Number	Product	Quantity
<b>KL47099ATR</b>	Kaspersky Optimum security 3 year renewal ( KESB-Advance, EDRO, MDR included)	600
<b>KL71239LTZ</b>	Kaspersky Maintenance Service Agreement, Start- 3 year (Priority support)	1
<b>KL42559ATR</b>	Kaspersky Hybrid Cloud Security Server, 3 year renewal	65
<b>Support</b>	Installation, configuration, etc	
	Ad-hoc support 200 hours	200
<b>Training</b>	Training for three technicians	3
<b>Documentation</b>	System deployment documentation	
<b>Other</b>		

## 9. GENERAL CONDITION OF CONTRACT

Any award made to a bidder(s) under this bid is conditional, amongst others, upon –

- a) The bidder(s) accepting the terms and conditions contained in the General Conditions of Contract as the minimum terms and conditions upon which the HSRC is prepared to enter into a contract with the successful Bidder(s).
- b) The bidder submitting the General Conditions of Contract to the HSRC together with its bid, duly signed by an authorised representative of the bidder.
- c) The bidder should provide two different quotations per citation database.
- d) HSRC reserves the right to appoint one or two service providers for this service.

## **10. CONTRACT PRICE ADJUSTMENT**

Contract price adjustments will be done annually on the anniversary of the contract start date.

## **11. SERVICE LEVEL AGREEMENT**

- a) Upon award the HSRC and the successful bidder/s will conclude a Service Level Agreement regulating the specific terms and conditions applicable to the services being procured by the HSRC more or less in the format of the draft Service Level Indicators included in this tender pack.
- b) The HSRC reserves the right to vary the proposed draft Service Level Indicators during the course of negotiations with a bidder/s by amending or adding thereto.
- c) Bidder(s) are requested to:
  - I. Comment on draft Service Level Indicators and where necessary, make proposals to the indicators;
  - II. Explain each comment and/or amendment; and
  - III. Use an easily identifiable colour font or “track changes” for all changes and/or amendments to the Service Level Indicators for ease of reference.
  - IV. The HSRC reserves the right to accept or reject any or all amendments or additions proposed by a bidder if such amendments or additions are unacceptable to the HSRC or pose a risk to the organisation.
- d) The successful bidder will not change or replace resources without prior express approval of the HSRC, irrespective of whether the new resources meet the set-out criteria set out above or not. The replacement resource must hold the same qualification and experience or higher as compared to the previous resource. The HSRC reserves the right to accept such replacement.



## **12. SPECIAL CONDITIONS OF THIS BID**

The HSRC reserves the right:

- a) To award this tender to a bidder that did not score the highest total number of points, only in accordance with section 2(1)(f) of the PPPFA (Act 5 of 2000)
- b) To negotiate with one or more preferred bidder(s) identified in the evaluation process, regarding any terms and conditions, including price without offering the same opportunity to any other bidder(s) who has not been awarded the status of the preferred bidder(s).
- c) To accept part of a tender rather than the whole tender
- d) To carry out site inspections, product evaluations or explanatory meetings in order to verify the nature and quality of the services offered by the bidder(s), whether before or after adjudication of the Bid.
- e) To correct any mistakes at any stage of the tender that may have been in the Bid documents or occurred at any stage of the tender process.
- f) To cancel and/or terminate the tender process at any stage, including after the Closing Date and/or after presentations have been made, and/or after tenders have been evaluated and/or after the preferred bidder(s) have been notified of their status as such.
- g) Award to multiple bidders based either on size or geographic considerations.

## **13. HSRC REQUIRES BIDDER(S) TO DECLARE**

In the Bidder's Technical response, bidder(s) are required to declare the following:

Confirm that the bidder(s) is to: –

- a) Act honestly, fairly, and with due skill, care and diligence, in the interests of the HSRC
- b) Have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of the services;
- c) Act with circumspection and treat the HSRC fairly in a situation of conflicting interests;
- d) Comply with all applicable statutory or common law requirements applicable to the conduct of business;
- e) Make adequate disclosures of relevant material information including disclosures of actual or potential own interests, in relation to dealings with the HSRC
- f) Avoidance of fraudulent and misleading advertising, canvassing and marketing;

- g) To conduct their business activities with transparency and consistently uphold the interests and needs of the HSRC as a client before any other consideration; and
- h) To ensure that any information acquired by the bidder(s) from the HSRC will not be used or disclosed unless the written consent of the client has been obtained to do so.

#### **14. CONFLICT OF INTEREST, CORRUPTION AND FRAUD**

The HSRC reserves its right to disqualify any bidder who either itself or any of whose members (save for such members who hold a minority interest in the bidder through shares listed on any recognised stock exchange), indirect members (being any person or entity who indirectly holds at least a 15% interest in the bidder other than in the context of shares listed on a recognised stock exchange), directors or members of senior management, whether in respect of HSRC or any other government organ or entity and whether from the Republic of South Africa or otherwise ("Government Entity")

- a) Engages in any collusive tendering, anti-competitive conduct, or any other similar conduct, including but not limited to any collusion with any other bidder in respect of the subject matter of this bid;
- b) Seeks any assistance, other than assistance officially provided by a government entity, from any employee, advisor or other representative of a government entity in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a government entity;
- c) Makes or offers any gift, gratuity, anything of value or other inducement, whether lawful or unlawful, to any of the HSRC's officers, directors, employees, advisors or other representatives;
- d) Makes or offers any gift, gratuity, anything of any value or other inducement, to any government entity's officers, directors, employees, advisors or other representatives in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a government entity;
- e) accepts anything of value or an inducement that would or may provide financial gain, advantage or benefit in relation to procurement or services provided or to be provided to a Government Entity;
- f) pays or agrees to pay to any person any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or results from, the award of any tender,

contract, right or entitlement which is in any way related to procurement or the rendering of any services to a Government Entity;

- g) has in the past engaged in any matter referred to above; or
- h) has been found guilty in a court of law on charges of fraud and/or forgery, regardless of whether or not a prison term was imposed and despite such bidder, member or director's name not specifically appearing on the List of Tender Defaulters kept at National Treasury.

## **15. MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT**

The bidder should note that the terms of its Tender will be incorporated in the proposed contract by reference and that the HSRC relies upon the bidder's Tender as a material representation in making an award to a successful bidder and in concluding an agreement with the bidder.

- a) It follows therefore that misrepresentations in a Tender may give rise to service termination and a claim by the HSRC against the bidder notwithstanding the conclusion of the Service Level Agreement between the HSRC and the bidder for the provision of the Service in question. In the event of a conflict between the bidder's proposal and the Service Level Agreement concluded between the parties, the Service Level Agreement will prevail.

## **16. PREPARATION COSTS**

- a) The Bidder will bear all its costs in preparing, submitting and presenting any response or Tender to this bid and all other costs incurred by it throughout the bid process.
- b) Furthermore, no statement in this bid will be construed as placing the HSRC, its employees or agents under any obligation whatsoever, including in respect of costs, expenses or losses incurred by the bidder(s) in the preparation of their response to this bid.

## **17. INDEMNITY**

If a bidder breaches the conditions of this bid and, as a result of that breach, the HSRC incurs costs or damages (including, without limitation, the cost of any investigations, procedural impairment, repetition of all or part of the bid process and/or enforcement of intellectual property rights or confidentiality obligations), then the bidder indemnifies and holds the HSRC harmless from any and all such costs which the HSRC may incur and for any damages or losses the HSRC may suffer.

## **18. PRECEDENCE**

This document will prevail over any information provided during any briefing session whether oral or written, unless such written information provided, expressly amends this document by reference.

## **19. LIMITATION OF LIABILITY**

A bidder participates in this bid process entirely at its own risk and cost. The HSRC shall not be liable to compensate a bidder on any grounds whatsoever for any costs incurred or any damages suffered as a result of the Bidder's participation in this Bid process.

## **20. TAX COMPLIANCE**

- a) No tender shall be awarded to a bidder who is not tax compliant. The HSRC reserves the right to withdraw an award made, or cancel a contract concluded with a successful bidder in the event that it is established that such bidder was in fact not tax compliant at the time of the award, or has submitted a fraudulent Tax Clearance
- b) Certificate to the HSRC, or whose verification against the Central Supplier Database (CSD) proves non-compliant. The HSRC further reserves the right to cancel a contract with a successful bidder in the event that such bidder does not remain tax compliant for the full term of the contract.

## **21. TENDER DEFAULTERS AND RESTRICTED SUPPLIERS**

No tender shall be awarded to a bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. The HSRC reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been blacklisted with National Treasury by another government institution.

## **22. AVAILABILITY OF FUNDS**

Should funds no longer be available to pay for the execution of the responsibilities of this bid, the HSRC may terminate the Agreement at its own discretion or temporarily suspend all or part of the services by notice to the successful bidder who shall immediately make arrangements to stop the performance of the services and minimize further expenditure: Provided that the successful bidder shall thereupon be entitled to payment in full for the services delivered, up to the date of cancellation or suspension.

**PART A**  
**INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)</b>					
BID NUMBER:	<b>HSRC/12/2023/24</b>	CLOSING DATE:	<b>28/02/2024</b>	CLOSING TIME:	<b>11:00</b>
DESCRIPTION	<b>APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE KASPERSKY MANAGED DETECTION AND RESPONSE (MDR) FOR A PERIOD OF THREE (3) YEARS</b>				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
<b>HSRC Building</b>					
<b>134 Pretorius Street</b>					
<b>Pretoria</b>					
<b>0002</b>					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	<b>Hilton Tsibande</b>	CONTACT PERSON			
TELEPHONE NUMBER	<b>012 302 9269</b>	TELEPHONE NUMBER			
FACSIMILE NUMBER	<b>n/a</b>	FACSIMILE NUMBER		<b>n/a</b>	
E-MAIL ADDRESS	<b>HTsibande@hsrc.ac.za</b>	E-MAIL ADDRESS			
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		<b>OR</b>	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION	TICK APPLICABLE BOX]		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX]

CERTIFICATE	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No
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**[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]**

<b>1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	<b>2 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]
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**QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

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

☐ YES ☐ NO

DOES THE ENTITY HAVE A BRANCH IN THE RSA?

☐ YES ☐ NO

DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?

☐ YES ☐ NO

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

☐ YES ☐ NO

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

☐ YES ☐ NO

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

**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, 2017, 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 (SBD7).**

**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 VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.6 WHERE NO TCS 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: .....

PRICING SCHEDULE – FIRM PRICES  
(PURCHASES)

NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of bidder.....	Bid
number.....	
Closing Time 11:00	Closing
date.....	

OFFER TO BE VALID FOR.....DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY ** (ALL APPLICABLE TAXES INCLUDED)
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- Required by:

.....
- At:

.....

.....
- Brand and model

.....
- Country of origin

.....
- Does the offer comply with the specification(s)?

\*YES/NO
- If not to specification, indicate deviation(s)

.....
- Period required for delivery

.....

\*Delivery: Firm/not firm



- Delivery basis .....

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

\*\* “all applicable taxes” includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

\*Delete if not applicable

**1. PURPOSE OF THE FORM**

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

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

**2. Bidder's declaration**

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

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

Full Name	Identity Number	Name of State institution

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

2.2.1 If so, furnish particulars:

.....  
 .....

---

1 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.

- 2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**
- 2.3.1 If so, furnish particulars:  
.....  
.....

**3 DECLARATION**

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

<sup>2</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....	.....
Signature	Date

.....	.....
Position	Name of bidder

## SBD 6.1

### PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

**NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

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#### GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

- 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).

#### To be completed by the organ of state

*(delete whichever is not applicable for this tender).*

- a) The applicable preference point system for this tender is the **90/10** preference point system.
- b) The applicable preference point system for this tender is the **80/20** preference point system.
- c) Either the **90/10 or 80/20 preference point system** will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

#### 1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS	20
Total points for Price and SPECIFIC GOALS	100

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

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

## DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“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; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

## FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

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

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

**80/20                      or                      90/10**

$$Ps=80(1- \frac{Pt-Pmin}{Pmin}) \text{ or } Ps=90(1- \frac{Pt-Pmin}{Pmin})$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

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

#### 3.2.1. POINTS AWARDED FOR PRICE

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

**80/20**

**or**

**90/10**

$$Ps=80(1+ \frac{Pt-Pmax}{Pmax}) \text{ or } Ps=90(1+ \frac{Pt-Pmax}{Pmax})$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration      Pmax =

Price of highest acceptable tender

#### POINTS AWARDED FOR SPECIFIC GOALS

4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

(a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

(b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable

preference point system, then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

**Table 1: Specific goals for the tender and points claimed are indicated per the table below.**

***(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.***

***Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)***

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
SMME (EME & QSE)	2	4		
Owned by black people (50% or more)	2	4		
Owned by black people who are youth (30% or more)	2	4		
Owned by black people who are women (30% or more)	2	4		
Owned by black people with disabilities (30% or more)	2	4		
<b>Total Points</b>	<b>10</b>	<b>20</b>		

## DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number: .....

4.5. 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
- [TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/firm for the preference(s) shown and I acknowledge that:

i) The information furnished is true and correct; ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;

iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;

iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –

(a) disqualify the person from the tendering process;

(b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

(c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

(d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, 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; and

(e) forward the matter for criminal prosecution, if deemed necessary.

.....  
**SIGNATURE(S) OF TENDERER(S)**

**SURNAME AND NAME:** .....

**DATE:** .....

**ADDRESS:** .....

.....

.....

.....

## **General Conditions of Contract**

**THE GENERAL CONDITIONS OF THE CONTRACT WILL FORM PART OF ALL  
BID DOCUMENTS AND MAY NOT BE AMENDED**

**THE NATIONAL TREASURY  
Republic of South Africa**



- 1. Definitions**
  1. The following terms shall be interpreted as indicated:
    - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
    - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
    - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
    - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
    - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
    - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
    - 1.7 “Day” means calendar day
    - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.

- 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in

the Republic where the supplies covered by the bid will be manufactured.

- 1.17 “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 “Order” means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 “Project site,” where applicable, means the place indicated in bidding documents.
- 1.21 “Purchaser” means the 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 Bid Bulletin. The Government Bid Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)
4. **Standards** 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
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 analysed 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.
    - (iii)

#### **15. Warranty**

- 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted

at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

## **16. Payment**

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

## **17. Prices**

- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

- |   |      |  |
|---|------|--|
| <b>18. Contract amendments</b>                  | 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.  |
| <b>19. Assignment</b>                           | 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.  |
| <b>20. Subcontracts</b>                         | 20.1 | The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.   |
| <b>21. Delays in the supplier's performance</b> | 21.1 | Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.  |
|   | 21.2 | If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract. |
|   | 21.3 | No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.  |
|   | 21.4 | The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.  |
|   | 21.5 | Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery   |

obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## **22. Penalties**

- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

## **23. Termination for default**

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part.
- (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 Bid 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.
  - (c)
- 28. Limitation of liability**      28.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6;
- (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.
- 29. Governing language**      29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law**      30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices**      31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.

- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties**
- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme**
- 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**
- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to

any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder