

## PART A INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)</b>							
BID NUMBER:	DPSA006/2022	CLOSING DATE: 23 NOVEMBER 2022		CLOSING TIME: 11:00			
DESCRIPTION	APPOINTMENT OF A SERVICE PROVIDER TO BE A CO-SOURCE PARTNER IN THE DEVELOPMENT AND IMPLEMENTATION OF A BUSINESS CONTINUITY MANAGEMENT SYSTEM (BCMS) AND RESILIENCE PROGRAMME WITHIN THE DPSA FOR A PERIOD OF TWENTY-FOUR (24) MONTHS.						
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>							
Batho Pele House,							
546 Edmond Street,							
(C/O Hamilton Street),							
Arcadia							
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>				<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>			
CONTACT PERSON	Lorraine Masenya / Mmapula Kotsokoane			CONTACT PERSON	Ms. B. Motene		
TELEPHONE NUMBER	012 336 1126/1389			TELEPHONE NUMBER	012 336 1141		
FACSIMILE NUMBER	N/A			FACSIMILE NUMBER	N/A		
E-MAIL ADDRESS				E-MAIL ADDRESS	BCMTender@dpsa.gov.za		
<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:			OR	CENTRAL SUPPLIER DATABASE No:	MAAA	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX]  <input type="checkbox"/> Yes <input type="checkbox"/> No			B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX]  <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>							
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES ENCLOSE PROOF]			ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES, ANSWER PART B:3 ]	
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>							

## PART B

## TERMS AND CONDITIONS FOR BIDDING

<b>1. BID SUBMISSION:</b>
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</b>
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. <b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</b>
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
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: .....

**NB: THERE WILL BE A COMPULSORY BRIEFING SESSION ON THE 11 NOVEMBER 2022 @09H00; 3RD FLOOR AUDITORIUM; BATHO PELE HOUSE; 546 EDMOND STREET ;( C/O HAMILTON STREET); ARCADIA.**

**FAILURE TO ATTEND THE BRIEFING SESSION WILL RESULT IN YOUR TENDER/PROPOSAL BEING DISQUALIFIED.**

**PRICING SCHEDULE**  
(Professional Services)

NAME OF BIDDER: ..... BID NO.: DPSA006/2022

CLOSING TIME 11:00 ..... CLOSING DATE... 23/11/2022

**OFFER TO BE VALID FOR 90 DAYS FROM THE CLOSING DATE OF BID.**

**DESCRIPTION: APPOINTMENT OF A SERVICE PROVIDER TO BE A CO-SOURCE PARTNER IN THE DEVELOPMENT AND IMPLEMENTATION OF A BUSINESS CONTINUITY MANAGEMENT SYSTEM (BCMS) AND RESILIENCE PROGRAMME WITHIN THE DPSA FOR A PERIOD OF TWENTY-FOUR (24) MONTHS.**

NO ..... BID PRICE IN RSA CURRENCY ..... **\*\*(ALL APPLICABLE TAXES INCLUDED)**

1. The accompanying information must be used for the formulation of proposals.
2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project. R.....
3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)
4. PERSON AND POSITION ..... HOURLY RATE ..... DAILY RATE .....  
 ..... R.....  
 ..... R.....  
 ..... R.....  
 ..... R.....  
 ..... R.....
5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT  
 ..... R..... days  
 ..... R..... days  
 ..... R..... days  
 ..... R..... days
- 5.1 Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
TOTAL: R.....			

Name of Bidder: .....

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

- 5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
TOTAL: R.....			

6. Period required for commencement with project after acceptance of bid .....
7. Estimated man-days for completion of project .....
8. Are the rates quoted firm for the full period of contract? \*YES/NO
9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index. ....
- .....
- .....
- .....

## BIDDER'S DISCLOSURE

### 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

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

with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....  
 .....

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

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

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.

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

## PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.**

### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000.00 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000.00 (all applicable taxes included).

1.2

a) The value of this bid is estimated to not exceed R50 000 000.00 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable;

1.3 Points for this bid shall be awarded for:

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

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

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

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

1.6 The purchaser 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 purchaser.



## 2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“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;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise 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;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
  - 1) B-BBEE Status level certificate issued by an authorized body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise 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;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

### 3. POINTS AWARDED FOR PRICE

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

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

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

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

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

#### 4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

## 5. BID DECLARATION

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

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

6.1 B-BBEE Status Level of Contributor: . = .....(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 6.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

## 7. SUB-CONTRACTING

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

(*Tick applicable box*)

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

7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-ontractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE

(*Tick applicable box*)

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

- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		

Black people who are military veterans		
<b>OR</b>		
Any EME		
Any QSE		

**8. DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1 Name of company/firm:.....  
 .....

8.2 VAT registration number:.....

8.3 Company registration number:.....

**8.4 TYPE OF COMPANY/ FIRM**

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

[TICK APPLICABLE BOX]

**8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

.....  
 .....  
 .....  
 .....  
 .....

**8.6 COMPANY CLASSIFICATION**

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

[TICK APPLICABLE BOX]

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

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the

purchaser may, in addition to any other remedy it may have –

- (a) disqualify the person from the bidding process;
- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

WITNESSES

1. ....

2. ....

.....  
SIGNATURE(S) OF BIDDERS(S)

DATE: .....

ADDRESS .....

.....  
.....



the dpsa

Department:  
Public Service and Administration  
REPUBLIC OF SOUTH AFRICA

### INFORMATION SESSION CERTIFICATE

This is to certify that the company.....  
attended a briefing session for the above services at **THE**  
**AUDITORIUM,DPSA** on the **11<sup>TH</sup> NOVEMBER 2022.**

\_\_\_\_\_  
Signed for the DPSA

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed for the Bidder

\_\_\_\_\_  
Date

**NB: THIS CERTIFICATE MUST BE SIGNED BY BOTH PARTIES AND  
MUST FORM PART OF THE BID DOCUMENT**



**the dpsa**

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Department:  
Public Service and Administration  
**REPUBLIC OF SOUTH AFRICA**

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## **1 INTRODUCTION AND BACKGROUND**

- 1.1 The mission of the Department of Public Service and Administration (DPSA) is to establish norms and standards to ensure that the state machinery functions optimally, that such norms and standards are adhered to; implement interventions to maintain a compliant and functioning public service; promote an ethical public service through programmes, systems, frameworks and structures that detect, prevent and combat corruption; and contribute towards improved public administration in Africa and internationally through dialogue and sharing of best practices provide a professional, productive and responsive Public Service and administration.
- 1.2 It is the intention to improve the preparedness in ensuring continuity of operations, availability of critical resources, minimization of interruptions to business processes, and full recovery of business infrastructure and applications in the event of a disaster. To achieve this the DPSA wishes to develop and implement a comprehensive Business Continuity Management System (BCMS) that will achieve this objective in a timely, effective, and efficient manner.
- 1.3 Effective business continuity measures are critical for any business entity. The DPSA is committed to protecting its staff and assets to ensure the continuity of critical business and support processes in order to protect the organization, mitigate risk, sustain both a stable financial service provision and public confidence.
- 1.4 The BCMS is not operating in a risk-free environment, like all other organizations, it is exposed to various risks, threats and vulnerabilities. These risks, threats or vulnerabilities may be due to internal or external events. While the DPSA may somehow have minimum processes to deal with some of the internal events, at the moment it does not have measures in place to deal with disruptions due to external events.
- 1.5 The development, implementation, testing and maintenance of an effective BCMS is required to sustain these objectives.
- 1.6 To further the commitment in the event of a significant business disruption, as well as to meet all regulatory requirements, the DPSA's approach will include



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staff training on the BCMS to ensure that the newly designed and pilot-tested BCMS activities will be adequate to manage business lines and functions' relocation and recovery in the event of a disaster situation.

### **2 PURPOSE**

2.1 The purpose of the Terms of Reference (ToR) is to request proposals from prospective service providers to develop and implement the BCMS and resilience programme within the DPSA.

### **3 SCOPE OF WORK**

3.1 To develop a maintenance and support plan to identify ongoing improvements to the BCMS implementation and the level of resilience.

3.2 Assist with the establishment and implementation of the BCMS, which applies to all business operations, and service areas of the DPSA. The BCMS would operate at three different levels, namely;

- a) Strategic - where decisions are made and policy is determined
- b) Tactical - where operations are coordinated and managed; and
- c) Operational - where activities are undertaken

### **4 REQUIREMENTS**

The BCMS requirements will include the following:

#### **4.1 BCMS framework**

4.1.1 Develop the BCMS framework to support the DPSA BCMS policy and ensure successful implementation thereof. Ensure alignment of the BCMS framework and the BCMS policy.

#### **4.2 Policy and Programme Management**

4.2.1 Assist by ensuring that the BCMS policy and BCMS governance structure are aligned to the scope and governance requirement of ISO 22301.

4.2.2 Assist to improve the DPSA's BCMS capability and operational resilience with successive repetition of the BCM Lifecycle.

**APPOINTMENT OF A SERVICE PROVIDER TO BE A CO-SOURCE PARTNER IN THE DEVELOPMENT AND IMPLEMENTATION OF A BUSINESS CONTINUITY MANAGEMENT SYSTEM (BCMS) AND RESILIENCE PROGRAMME WITHIN THE DPSA FOR A PERIOD OF TWENTY-FOUR (24) MONTHS**

**4.3 Embedding Business Continuity Management System**

- 4.3.1 Assist with the integration of the BCMS with the organization's strategic and day-to-day management as well as alignment with business priorities.
- 4.3.2 The service provider in collaboration with the DPSA to develop the awareness training program
- 4.3.3 The Service Provider to provide awareness training to 150 employees within the department. This is to ensure that staff understands their BCMS roles and responsibilities.
- 4.3.4 Guide the DPSA to inculcate the BCMS culture (roadmap).
- 4.3.5 Provide skills transfer during project implementation.

**4.4 Business Impact Analysis**

- 4.4.1 Conduct the Business Impact Analysis (BIA) to identify and prioritise critical business activities, resources and recovery requirements for the DPSA.

**4.5 Design**

- 4.5.1 The Service Provider will be expected to assist in the identification and selection of appropriate strategies and tactics to determine how continuity and recovery from disruption will be achieved by appropriate response options using information supplied during the analysis phase;

**4.6 Implementation**

- 4.6.1 The Service Provider will be expected to assist the DPSA with the development of the response and continuity plans.

**4.7 Validation**

- 4.7.1 The testing to confirm that the BCMS program meets the objectives set in the BCMS Policy.

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**5 DELIVERABLES**

5.1 Table 1 below outlines the deliverables

*Table 1: Deliverables*

No.	Deliverables	Project Stage
Project Management and Planning		
1)	Project Kick-off meeting	Project execution stage
	Planning workshop with DPSA management after kick-off	Project execution stage
	Produce a draft project plan and project schedule	At bidding stage
	Produce a statement of work (SOW), project charter, project plan and project schedule.	Project execution stage
	Produce a communication plan	Project execution stage
	Produce project meeting minutes	Project execution stage
Understanding Business Environment		
2)	Conduct Threat and Risk Assessment (TRA) & develop a Report	Project execution stage
	Conduct Business Impact Analysis (BIA) & develop a Report	
Develop resilience strategies		
3)	Develop Business Continuity (BC) component strategies	Project execution stage
Develop Business Continuity plans		
4)	Develop Business Continuity plans	Project execution stage
Implement business continuity elements		
5)	BCMS test reports	Project execution stage
	Status reports	Project execution stage
	BCMS review process	Project execution stage
	BCMS maintenance plan	Project execution stage
BCM governance and culture		
6)	Development BCMS framework	Project execution stage
	Alignment of policy and governance structures	Project execution stage
	BCMS change management process	Project execution stage
	BCMS roles and responsibilities	Project execution stage
Skills Transfer		
7)	Provide skills transfer to the DPSA project team. Skills transfer plan to be provided.	Project execution stage

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No.	Deliverables	Project Stage
	Awareness training manual and reports	Project execution stage

## **6 SKILLS, KNOWLEDGE AND EXPERIENCE REQUIRED**

- 6.1 The prospective service provider shall provide consistent and quality service through qualified, experienced, skillful and highly trained expert(s) and submit at least three (3) Curriculum vitae (CV) of Experts as part of the proposal as per the functionality requirement outlined on item 17.1.1.
- 6.2 Proven capability in undertaking a similar type of assignment by the Service Provider shall be supported by at least three (3) reference letters from clients that were provided with a similar service. The reference letters should clearly indicate the duration of the association and the contact details of the client for verification.
- 6.3 The service provider after being awarded the contract must provide at least 3 or more Technical Support Team.

## **7 LEGISLATIVE FRAMEWORK OF THE BID**

### **7.1 Tax Legislation**

- 7.1.1 Bidders must be compliant upon awarding and provision is made for the prospective bidder to fix a non-compliant status within 7 working days.
- 7.1.2 Bidders are required to remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).
- 7.1.3 It is a condition of this bid that the tax matters of the successful bidder be in order, or that satisfactory arrangements have been made with the South African

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Revenue Service (SARS) to meet the bidder's tax obligations upon awarding of the Bid.

7.1.4 Bidders are required to be registered on the Central Supplier Database with the National Treasury. Bidder's tax compliance status shall be verified through the Central Supplier Database.

7.1.5 Where Joint Ventures and Consortia, as well as Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.

**7.2 Procurement Legislation**

7.2.1 The DPSA has a detailed evaluation methodology premised on Treasury Regulation 16A3 promulgated under Section 76 of the Public Finance Management Act, 1999 (Act, No. 1 of 1999), the Preferential Procurement Policy Framework Act 2000 (Act, No.5 of 2000), Preferential Procurement Regulations of 2017 and the Broad-Based Black Economic Empowerment Act, 2003 (Act, No. 53 of 2003).

**7.3 Technical Legislation and/or Standards**

7.3.1 Bidders should be cognisant of the legislation and/or standards specifically applicable to the services, such as:

7.3.1.1 The Minimum Information Security Standard (MISS)

7.3.1.2 ISO 22301

7.3.1.3 Business Continuity Management Good Practice Guideline 2018

**8 COMPULSORY BRIEFING SESSIONS**

8.1 There will be a compulsory briefing session for this Bid which will be held at DPSA Offices, Batho Pele House, 546 Edmond Street, Arcadia, Pretoria on the time and date reflected on the bid document.

**9 TIMELINE OF THE BID PROCESS**

9.1 The period of validity of the Bid and the withdrawal of offers, after the closing date and time is 90 days.

9.2 All dates and times in this bid are South African standard Telkom time.

9.3 Any time or date in this bid is subject to change at the DPSA's discretion.

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9.4 The indication of date and time in this bid does not create an obligation on the part of the DPSA 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.

9.5 The bidder accepts that, if the DPSA extends the closing date for bid submission for any reason, the requirements of this bid apply equally to the extended closing date.

**10 CONTACT AND COMMUNICATION**

10.1 Technical enquiries must be done in writing to Ms. B. Motene on this email address: [BCMTender@dpsa.gov.za](mailto:BCMTender@dpsa.gov.za). Supply Chain Management enquiries should be directed to Ms. Lorraine Masenya Tel: 012 336 1126/1389 email: [Lorraine@dpsa.gov.za](mailto:Lorraine@dpsa.gov.za) & [Mmapulak@dpsa.gov.za](mailto:Mmapulak@dpsa.gov.za). Bidders must reduce telephonic enquiries to writing and send them to the above email addresses.

10.2 The delegated official of the DPSA may communicate with bidders where clarity is sought on the bid proposal.

10.3 Any communication by the bidders with an official or a person acting in an advisory capacity for the DPSA in respect of the bid between the closing date and the award of the bid, is prohibited.

**11 LATE BIDS**

11.1 Bids received after the closing date and time, at the address indicated in the bid documents, will not be accepted for consideration and where practicable, be returned unopened to the bidders.

**12 COUNTER CONDITIONS**

12.1 Bidders' attention is drawn to the fact that amendments to any of the bid conditions or setting of counter conditions by bidders or qualifying any bid conditions will result in the invalidation of such bids.

**13 FRONTING**

13.1 Government supports the spirit of broad-based black economic empowerment (B-BBEE) and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the

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Constitution of the Republic of South Africa and in an honest, fair, equitable, transparent and legally compliant manner. Against this background the Government condemns any form of fronting.

- 13.2 The Government, in ensuring that bidders honestly conduct themselves will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry, be established during such enquiry/investigation, the onus will be on the bidder/contractor to prove that fronting does not exist. Failure to do so within a period of 14 days from the date of the notification may invalidate the bid/contract and may also result in the restriction of the bidder or contractor to conduct business with the public sector for a period not exceeding ten years, in addition to any other remedies the DPSA may have against the bidder/contractor concerned.

**14 SUPPLIER DUE DILIGENCE**

- 14.1 The DPSA 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 to determine possible risks such as the availability of adequate facilities, financial standing, capacity and capability to deliver, previous performance in terms of quality and service delivery, as well as attainment of goals.

**15 SUBMISSION OF PROPOSALS**

- 15.1 Bid documents must be endorsed with the words 'BCMS Tender' and must be hand-delivered and deposited into the tender box situated at the ground floor of the DPSA.
- 15.2 Bid documents will only be considered if received by the DPSA on or before closing time and date.

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15.3 The bidder(s) are required to submit four (4) copies of each file and one (1) original by the closing date and time of the Bid. Each file must be labelled and submitted in the following format

Table 3: Format of Bid Submission

FILE 1 (TECHNICAL FILE)	FILE 2 (PRICE & BBBEE)
<b>Exhibit 1:</b> Pre-qualification documents <i>(Refer to Table 5 below)</i>	<b>Exhibit 1:</b> Pricing Schedule SBD 3.3 SBD 6.1 B-BBEE Certificate / Sworn Affidavit (whichever is applicable)
<b>Exhibit 2:</b> <ul style="list-style-type: none"> <li>• Technical response</li> </ul>	
<b>Exhibit 3:</b> <ul style="list-style-type: none"> <li>• General Conditions of Contract (GCC)</li> <li>•</li> </ul>	
<b>Exhibit 4:</b> <ul style="list-style-type: none"> <li>• Company Profile</li> <li>• Any other supplementary information</li> </ul>	

15.4 This is a two stage bidding process and therefore the price may not be included anywhere in File 1. The pricing must be sealed in a separate envelope marked as File 2. Failure to submit two (2) separate files will result in the bid being disqualified.

15.5 Bidders are requested to initial each page of the tender document including all supporting documentation and pricing schedules.

## **16 PRESENTATION OR DEMONSTRATION**

16.1 The DPSA reserves the right to request presentations from the shortlisted bidders as part of the bid evaluation process.



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**17 EVALUATION AND SELECTION CRITERIA**

The DPSA has set minimum standards known as gates, which are minimum standards that bidders need to meet in order to be evaluated and selected as successful bidders. The minimum standards consist of the following as reflected in table 4:

*Table 4: Evaluation Stages*

<b>Mandatory Criteria (Gate 0)</b>	<b>Technical Evaluation Criteria (Gate 1)</b>	<b>Price and B-BBEE Evaluation (Gate 2)</b>
Bidders must submit all documents as outlined in Table 5 below. Only bidders that comply with ALL these criteria will proceed to Gate 1.	Bidder(s) are required to achieve a minimum of 70 points out of 100 points to proceed to Gate 2 (Price and B-BBEE). See table 8	Bidder(s) will be evaluated out of 100 points and Gate 2 will only apply to the bidder(s) who have met and exceeded the threshold of 70 points in Gate 1

*Table 5: Pre-qualification Documents*

<b>DOCUMENTS THAT MUST BE SUBMITTED TO DPSA</b>		
<b>MANDATORY DOCUMENTS</b>	<b>HOW TO COMPLETE THE DOCUMENTS</b>	<b>DISQUALIFICATION FOR NON SUBMISSION</b>
Invitation to Bid – SBD 1	Complete and sign the supplied pro forma document	Yes
Pricing Schedule Firm Prices- SBD 3.3 ( <b>Attach Separately</b> )	Complete the supplied pro forma document	Yes
Declaration of Interest – SBD 4	Complete and sign the supplied pro forma document	Yes
Preference Point Claim Form – SBD 6.1 ( <b>Attach Separately</b> )	Non-submission of proof of B-BBEE status level of contributor (i.e. B-BBEE Verification Certificate / Sworn Affidavit (whichever is applicable) in addition to SBD 6.1 will lead to a zero (0) score on B-BBEE.	Yes

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<b>DOCUMENTS THAT MUST BE SUBMITTED TO DPSA</b>		
<b>MANDATORY DOCUMENTS</b>	<b>HOW TO COMPLETE THE DOCUMENTS</b>	<b>DISQUALIFICATION FOR NON SUBMISSION</b>
Registration on Central Supplier Database (CSD)	The Service provider 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.	Yes
One original proposal consisting of File 1 and File 2  Plus  Four copies of File 1 and File 2	Refer to section 15.3 and 15.4	Yes
Individual Accreditation	Valid individual accreditation and or certification relevant to the BCMS.	Yes
Reference Letters	The service provider must attach at least three (3) letter(s) with contactable references where Business Continuity Management Systems Services were provided during the past five (5) years and complete Table 6 below in line with the attached reference letters.	Yes
Abridged CV of the project personnel	The service provider must attach the abridged CV of the project personnel with the experience regarding the Business Continuity Management specified.	Yes

*Table 6: Reference letters information*

Company name of main contractors	Name of Sub Contractor	% Work of Sub Contractor	Name of Department or Company	Date work done		Value of contract in Rands	Contact details	
				Start date	End date		Telephone	Email Address

### 17.1.1 Gate one (1): Functionality Requirements

- 17.1.1.1 The evaluation criteria for functionality aims to assess the bidders' capability, reliability and ability to execute the contract. The minimum points that bidders must obtain in order to progress to the next stage of evaluation is 70.
- 17.1.1.2 Bids that scored less than 70 points on functionality will be disqualified and will not progress to the next stage of evaluation.
- 17.1.1.3 Proposals will be evaluated and points will be allocated on the following criteria as listed below.

*Table 8: Functionality Scoring*

No	CRITERIA	WEIGHT
1)	<p><b>Track Record</b></p> <p>Bidders are requested to provide letters with contactable references signed and dated by the clients on the client's letter head as proof where the BCMS program was successfully developed and/or implemented and maintained in the last five (5) years. Letters must include the name of the organisation, name and contact details of the project sponsor, contract value, contract duration and scope of the work.</p> <ul style="list-style-type: none"><li>Record of written references (as a company) in providing a service of this nature and magnitude from more than 6 organizations. <b><u>5 points</u></b></li><li>Record of written references (as a company) in providing a service of this nature and magnitude from 6 organizations. <b><u>4 points</u></b></li><li>Record of written references (as a company) in providing a service of this nature and magnitude from 5 organizations <b><u>3 points</u></b></li><li>Record of written references (as a company) in providing a service of this nature and magnitude from 4 organizations. <b><u>2 points</u></b></li><li>Record of written references (as a company) in providing a service of this nature and magnitude from 3 organizations. <b><u>1 point</u></b></li></ul>	10
2.	<p><b>Project Plan</b></p> <ul style="list-style-type: none"><li>A comprehensive high level project plan describing all activities in logical sequence with clear time frames commensurate with the terms of reference <b><u>5 points</u></b></li><li>Project plan describes all high level activities, supplemented with further sub-activities in logical sequence with clear time frames commensurate with the terms of reference <b><u>4 points</u></b></li><li>Project plan describes all high level activities in logical sequence with clear time frames commensurate with the terms of reference. <b><u>3 points</u></b></li><li>Project plan describes high level activities with timeframes not compatible with the terms of reference. <b><u>2 points</u></b></li><li>Project plan activities do not commensurate with the deliverables in the terms of reference. <b><u>1 point</u></b></li></ul>	20

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No	CRITERIA	WEIGHT
3.	<p><b>BCMS Program</b></p> <p>The bidder must provide a detailed proposal on the development and implementation of the BCMS and resilience program within the DPSA clearly outlining the following:</p> <ul style="list-style-type: none"> <li>• The proposal indicates a detailed methodology and approach with the full scope of the deliverables (outputs) in the ToR on developing, implementing BCMS and resilience program within the DPSA. = <b><u>5 points</u></b></li> <li>• The proposal indicates a brief methodology and approach with the brief scope of the deliverables (outputs) in the ToR on developing, implementing BCMS and resilience program within the DPSA = <b><u>4 points</u></b></li> <li>• The proposal indicates a brief methodology and approach without the deliverables (outputs) in the ToR on developing, implementing BCMS and resilience program within the DPSA = <b><u>3 points</u></b></li> <li>• The proposal does not indicate the methodology and approach with brief scope of the deliverables (outputs) in the ToR on developing, implementing BCMS and resilience program within the DPSA = <b><u>2 points</u></b></li> <li>• The proposal does not indicate the methodology and approach with no scope of deliverables (outputs) in the ToR on developing, implementing BCMS and resilience program within the DPSA = <b><u>1 points</u></b></li> </ul>	20
4.	<p><b>Experience of Project Personnel</b></p> <p>Demonstrate the ability to provide leadership and innovation within the project consolidated years of experience and not individual years of experience.</p> <ul style="list-style-type: none"> <li>• Sixteen (16) or more years' experience in the establishment, implementation and management of the BCMS = <b><u>5 points</u></b></li> <li>• Eleven (11) to fifteen (15) years' experience in the establishment, implementation and management of the BCMS = <b><u>4 points</u></b></li> <li>• Eight (8) to ten (10) years' experience in the establishment, implementation and management of the BCMS = <b><u>3 points</u></b></li> <li>• Six (6) to seven (7) years' experience in the establishment, implementation and management of the BCMS = <b><u>2 points</u></b></li> <li>• Five (5) years' experience in the establishment, implementation and management of the BCMS = <b><u>1 point</u></b></li> </ul>	25
5.	<p><b>Certification of Project Personnel</b></p> <ul style="list-style-type: none"> <li>• Any Qualification NQF Level 8 (Postgraduate) and above with the Certified Business Continuity Implementer ISO 22301 (CBCI) / Associate Business Continuity Implementer ISO 22301 (ABCI) / Master Business Continuity Implementer ISO 22301 (MBCI) / Fellow Business Continuity Implementer ISO 22301 (FBCI)(CBCI/ABCI/MBCI/FBCI) Certification = <b><u>5 points</u></b></li> <li>• Any Qualification NQF Level 7 (Degree) with the Certified Business Continuity Implementer ISO 22301 (CBCI) / Associate Business Continuity Implementer ISO 22301 (ABCI) / Master Business Continuity Implementer ISO 22301 (MBCI) / Fellow Business Continuity Implementer ISO 22301 (FBCI) (CBCI/ABCI/MBCI/FBCI) Certification = <b><u>4 points</u></b></li> <li>• Any Qualification NQF Level 6 (National Diploma) with the Certified Business Continuity Implementer ISO 22301 (CBCI) / Associate Business Continuity Implementer ISO 22301 (ABCI) / Master Business Continuity Implementer ISO 22301 (MBCI) / Fellow Business Continuity Implementer ISO 22301 (FBCI) (CBCI/ABCI/MBCI/FBCI) Certification = <b><u>3 points</u></b></li> </ul>	25

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No	CRITERIA	WEIGHT
	<ul style="list-style-type: none"> <li>Any Qualification below NQF Level 6 and a CBCI/ ABCI/MBCI/FBCI Certification = <b><u>2 points</u></b></li> <li>Any CBCI/ ABCI/MBCI/FBCI Certification without any qualification = <b><u>1 point</u></b></li> </ul>	
	<b>TOTAL</b>	<b>100</b>

**17.2 Gate two (2): Price and BBEE Evaluation (80+20) = 100 points**

17.2.1 Only bidders that have scored seventy (70) points and above in Gate 1 will be evaluated in Gate 2 for price and B-BBEE. Price and B-BBEE will be evaluated as follows:

17.2.2 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:

- The bid price (maximum 80 points)
- B-BBEE status level of contributor (maximum 20 points)

17.2.3 Stage 1 – Price Evaluation (80 Points)

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

Where

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

$P_t$  = Comparative price of bid under consideration

$P_{min}$  = Comparative price of lowest acceptable bid

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

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17.2.4 Gate 2 – B-BBEE Evaluation (20 Points)

17.2.5 Gate 2 (80 + 20 = 100 points)

17.2.6 The Price and B-BBEE points will be consolidated.

17.2.7 B-BBEE Points allocation

- a) A maximum of 20 points may be allocated to a bidder for attaining their B-BBEE status level of contributor in accordance with the table 9 below:

*Table 9: B-BBEE Points Allocation*

B-BBEE level of contributor	Number of points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- b) The B-BBEE points may be allocated to bidders on submission of the following documentation or evidence:
- A duly completed Preference Point Claim Form: Standard Bidding Document (SBD 6.1); and
  - The B-BBEE Certificate / Sworn Affidavit (whichever is applicable).

21.2 Gate 2: Price and B-BBEE Evaluation (80+20) = 100 points

- Pricing must be itemised.
- The price breakdown must be completed as per the template provided below.
- Bidders must provide firm prices, not subject to rate of exchange.

## **18 TRUSTS, CONSORTIUMS AND JOINT VENTURES**

18.1 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.

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- 18.2 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 18.3 Bidders must submit concrete proof of the existence of joint ventures and/or consortium arrangements. The DPSA will accept signed agreements as acceptable proof of the existence of a joint venture and/or consortium arrangement.
- 18.4 The joint venture and/or consortium agreements 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, who shall be given the power of attorney to bind the other party/parties in respect of matters pertaining to the joint venture and/or consortium arrangement

**19 SUB- CONTRACTING**

- 19.1 Bidders who want to claim Preference points will have to comply fully with Regulations 11(8) and 11(9) of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) (PPPFA Act) with regard to sub-contracting. The following is an extract from the PPPFA Act:
- 19.1.1 Section 11(8) "A person must not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub- contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a tenderer qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub- contract.
- 19.1.2 Section 11(9) "A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract."



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**20 GENERAL CONDITIONS OF CONTRACT**

- 20.1 Any award made to a bidder under this bid is conditional, amongst others, upon:
- 20.2 The bidders accepting the terms and conditions contained in the General Conditions of Contract as the minimum terms and conditions upon which DPSA is prepared to enter into a contract with the successful bidders.
- 20.3 The bidders submit the General Conditions of Contract to DPSA together with its bid, duly signed by an authorised representative of the bidder.

**21 SERVICE LEVEL AGREEMENT**

- 21.1 The DPSA 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 DPSA or pose a risk to the organisation.

**22 SPECIAL CONDITIONS OF THIS BID**

- 22.1 The DPSA reserves the right not to make an award of any of the responses on this bid.
- 22.2 Bidders must provide an undertaking that reference checks in connection with services rendered may be conducted by the DPSA from previous clients where similar services were provided.
- 22.3 The DPSA may vary the scope outlined in this bid to include reasonable additional work within the wider scope of services required upon written agreement by both parties.
- 22.4 The bidders must be accessible to the DPSA at all times

**23 CONFLICT OF INTEREST, CORRUPTION AND FRAUD**

- 23.1 The DPSA reserves its right to disqualify any bidder who either itself or any of its 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 the DPSA or any other Government organ or entity and whether from the Republic of South Africa or otherwise "Government Entity":

**APPOINTMENT OF A SERVICE PROVIDER TO BE A CO-SOURCE PARTNER IN THE DEVELOPMENT AND IMPLEMENTATION OF A BUSINESS CONTINUITY MANAGEMENT SYSTEM (BCMS) AND RESILIENCE PROGRAMME WITHIN THE DPSA FOR A PERIOD OF TWENTY-FOUR (24) MONTHS**

- 23.1.1 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;
- 23.1.2 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;
- 23.1.3 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;
- 23.1.4 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;
- 23.1.5 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;
- 23.1.6 Has in the past engaged in any matter referred to above; or
- 23.1.7 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.

**24 MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT**

- 24.1 The bidder should note that the terms of its bid will be incorporated in the proposed contract by reference and that the DPSA relies upon the bidder's bid as a material representation in making an award to a successful bidder and in concluding an agreement with the bidder.
- 24.2 It follows therefore that misrepresentations in a bid may give rise to service termination and a claim by the DPSA against the bidder notwithstanding the conclusion of the Service Level Agreement between the DPSA and the bidder

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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.

**25 PREPARATION COSTS**

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

**26 INDEMNITY**

If a bidder breaches the conditions of this bid and, as a result of that breach, the DPSA 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 the DPSA from any legal liability and all such costs which the DPSA may incur and for any damages or losses the DPSA may suffer

**27 CONFLICT OF INFORMATION PROVIDED**

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.

**28 LIMITATION OF LIABILITY**

Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6 of the general conditions of contract.

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

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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 TAX COMPLIANCE**

No bid shall be awarded to a bidder who is not tax compliant. The DPSA 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, whose verification against the Central Supplier Database (CSD) proves non-compliant. The DPSA 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.

### **30 TENDER DEFAULTERS AND RESTRICTED SUPPLIERS**

30.1 No bid 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 DPSA 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.

### **31 GOVERNING LAW**

31.1 South African law governs this bid and the bid response process. The bidder agrees to submit to the exclusive jurisdiction of the South African Superior Courts in any dispute of any kind that may arise out of or in connection with the subject matter of this bid, the bid itself and all processes associated with the bid.

### **32 RESPONSIBILITY FOR SUB-CONTRACTORS AND BIDDER'S PERSONNEL**

32.1 A bidder is responsible for ensuring that its personnel including agents, officers, directors, employees, advisors and other representatives, its sub-contractors, if any and personnel of its sub-contractors comply with all terms and conditions of this bid. Where that the DPSA allows a bidder to make use of sub-contractors, such sub-contractors will at all times remain the responsibility of the bidder and the DPSA will not under any circumstances be liable for any losses or damages incurred by or caused by such sub-contractors.

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**33 CONFIDENTIALITY**

- 33.1 Except as may be required by operation of law, by a court or by a regulatory authority having appropriate jurisdiction, no information contained in or relating to this bid or a bidder's tender(s), will be disclosed by any bidder or other person not officially involved with the DPSA's examination and evaluation of a tender.
- 33.2 No part of the bid may be distributed, reproduced, stored or transmitted, in any form or by any means, electronic, photocopying, recording or otherwise, in whole or in part except for the purpose of preparing a response to this bid. This bid and any other documents supplied by the DPSA, remain proprietary to the DPSA and must be promptly returned to the DPSA upon request together with all copies, electronic versions, excerpts or summaries thereof or work derived therefrom.
- 33.3 Throughout this bid process and thereafter, bidders must secure the DPSA's written approval prior to the release of any information that pertains to (i) the potential work or activities to which this bid relates; or (ii) the process which follows this bid. Failure to adhere to this requirement may result in disqualification from the bid process and civil action.

**34 DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION PROPRIETARY INFORMATION**

- 34.1 Bidder/s will on their bid cover letter make a declaration that they did not have access to any of the DPSA's proprietary information or any other matter that may have unfairly placed that bidder in a preferential position in relation to any of the other bidders.

**35 TERMINATION OF SERVICES**

- 35.1 The DPSA 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 rendering 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 the termination.

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**36 PRICING SCHEDULE**

36.1 The remuneration for the appointment of consultants will be subject to negotiation, in line with the national treasury's cost containment measures and shall not exceed the applicable rates as contained in the guideline.

36.2 The "Guide on Hourly Fee Rates for Consultants", as issued by the Department of Public Service and Administration (DPSA).

36.3 Remuneration "guidelines issued by professional service organisations or regulatory bodies, may be relevant.

36.4 Pricing should be allocated as follows:

No.	Item	Price
1)	Project Management (VAT inclusive)	
2)	Training (VAT inclusive)	
3)	Development of the BCMS Plans (VAT inclusive)	
4)	Implementation of the business continuity elements (VAT inclusive) <ul style="list-style-type: none"><li>• BCMS test reports</li><li>• Status reports</li><li>• BCMS review process</li><li>• BCMS maintenance plan</li></ul>	
5)	Any other (VAT inclusive)	
6)	Grand Total (VAT inclusive)	

# **THE NATIONAL TREASURY**

**Republic of South Africa**



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## **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](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

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.
<b>29. Governing language</b>	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.
<b>30. Applicable law</b>	30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
<b>31. Notices</b>	<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>
<b>32. Taxes and duties</b>	<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>
<b>33. National Industrial Participation Programme (NIP)</b>	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.
<b>34 Prohibition of Restrictive practices</b>	<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.