the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

REQUEST FOR BID (RFB)

| | |
|---|---|
| DOCUMENT NUMBER: | RFB 01-2024 |
| RFB ISSUE DATE: | 27 May 2024 |
| BRIEFING SESSION DATE | 31 May 2024 @ 10h00am |
| CLOSING DATE FOR WRITTEN QUESTION | 04 June 2024 |
| PUBLISHING OF ANSWERS IN DEPARTMENTAL WEBSITE | 10 June 2024 |
| RFB CLOSING DATE AND TIME: | 18 June 2024 at 11h00am. |
| RFB VALIDITY PERIOD: | 90 Days |
| DESCRIPTION: | APPOINTMENT OF A SERVICE PROVIDER FOR PROCUREMENT OF INTERNATONAL LIBRARY SUBSCRIPTIONS (INCLUSIVE OF INTERNATIONAL ONLINE SERVICES AND INTERNATIONAL PRINTED SERVICE ) FOR THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT, THE OFFICE OF THE CHIEF JUSTICE, THE NATIONAL PROSECUTING AUTHORITY AND THE INFORMATION REGULATOR FOR A PERIOD OF THREE (3) YEARS. |
| PERIOD: | THIRTY SIX (36) MONTHS |
| BRIEFING SESSION: | Non-Compulsory Briefing session to be held Virtually (Online) @ 10h00am |
| RESPONSES TO THIS RFB MUST BE FORWARDED TO: | BID RESPONSE DOCUMENTS MUST BE DEPOSITED IN THE TENDER / BID BOX SITUATED AT, MOMENTUM BUILDING, 329 PRETORIUS STREET, DOJCD)PRETORIA CENTRAL |
| ENQUIRIES: | E-Mail Address: SCM@justice.gov.za |

27/05/2024

Contents

# ANNEXURE A - INTRODUCTION

# 1. PURPOSE AND BACKGROUND

## 1.1. PURPOSE

The Department of Justice and Constitutional Development, (hereinafter referred to as "the DOJ&CD") invites bidders to bid for the procurement of International Library subscriptions (inclusive of international online services and international printed service) for the DOJ&CD, the Office of the Chief Justice (OCJ), the National Prosecuting Authority (NPA) and the Information Regulator (IR) for a three (3) years.

## 1.2. BACKGROUND

1.2.1. The DOJ&CD is currently subscribed to International online and printed service and providing this service to the Constitutional Court, Superior Courts, Magistrate Courts, State Attorneys, Masters' Offices, Family Advocate Offices, State Law Advisors, National Office and Provincial Offices, Justice College, South African Law Reform Commission and the OCJ.

1.2.2. This service is to be extended to include the National Prosecuting Authority as well as the Information Regulator.

1.2.3. The new tender for the procurement of International online and printed service will remain a shared service between the DOJ&CD and Entities.

1.2.4. The list of offices for the DOJ&CD and Entities are attached as follows:

(a) DOJ&CD offices are attached as Schedule A1
(b) The OCJ superior courts are attached as Schedule A2
(c) The NPA offices are attached as Schedule A3
(d) The IR office is attached as Schedule A4

1.2.5. The abovementioned Offices are spread across nine Provinces.

# 2. SCOPE OF BID

## 2.1. SCOPE OF WORK

2.1.1. The bidder(s) must indicate the service/goods for which they are bidding for, as indicated on the product schedules below.

2.1.1.1. Online International Publications Service – Schedule B, C, E, H and I **(as quoted or equivalent)**.

2.1.1.2. Printed International Publications – Schedule D, F and G **(as quoted or equivalent)**.

2.1.2. These bids will form a catalogue of Services/Publications from which the Departments/Entities will place orders.

2.1.3. The period of the contract for the supply of all International library publications shall be for three (3) years, commencing from the date stipulated in the letter of award.

### 2.2. DELIVERY ADDRESS

The respective delivery addresses for the Department, to where the Printed publications are to be delivered are contained in Schedule A1, A2, A3 and A4

## 3. REQUIREMENTS

### 3.1. PRODUCT/ SERVICE / DELIVERABLES/SOLUTION REQUIREMENTS

The bidder(s) must provide all or any of the following services/goods:

3.1.1. Online Subscriptions of International Legislation, Law Reports, Journals and Serials including ongoing user training pertaining to the international online platforms.
3.1.2. Printed International Publications including Serials, Loose leaves Updated and Textbooks.

## 4. BID EVALUATION STAGES

**4.1.1** The bid evaluation process consists of several stages that are applicable according to the nature of the bid as defined in the table below.

**4.1.2 The bidder must qualify for each stage to be eligible to proceed to the next stage of the evaluation.**

| Stage | Description | Applicable for this bid YES/NO |
|---|---|---|
| Stage 1 | Administrative pre-qualification verification | Yes |
| Stage 2 | Technical Mandatory requirement evaluation | Yes |
| Stage 3 | Technical Functionality requirement evaluation | Yes |
| Stage 4 | Special Conditions of Contract verification | Yes |
| Stage 5 | Price / Specific goals evaluation | Yes |

# 5. ADMINISTRATIVE PRE-QUALIFICATION REQUIREMENTS

## 5.1. ADMINISTRATIVE PRE-QUALIFICATION VERIFICATION

5.1.1 The bidder **must comply** with ALL of the bid pre-qualification requirements in order for the bid to be accepted for evaluation.

5.1.2 If the Bidder failed to comply with any of the administrative pre-qualification requirements, or if the DOJ&CD is unable to verify whether the pre-qualification requirements are met, then DOJ&CD reserves the right to-

(a) Reject the bid and not evaluate it.

## 5.2. ADMINISTRATIVE PRE-QUALIFICATION REQUIREMENTS

(1) **Submission of bid response**: The bidder has submitted a bid response documentation pack –

(a) that was delivered at the correct physical or postal address and within the stipulated date and time as specified in the "Invitation to Bid" cover page, and;

(2) Attendance of non-compulsory briefing session: Briefing session to be held virtually online.

(3) **Registered Supplier.** The bidder is, in terms of National Treasury Instruction Note 4A of 2016/17, registered as a Supplier on National Treasury Central Supplier Database (CSD).

| **RETURNABLE DOCUMENT THAT MUST BE SUBMITTED** | | |
|---|---|---|
| **DECLARATION OF INTEREST – SBD 4** | **YES** | • Complete and sign the supplied pro forma document (SBD 4). |
| **PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022 – SBD 6.1** | **YES** | • Complete and sign the supplied pro forma document (SBD 6.1). |
| **GOOD STANDING ON TAX AFFAIRS** | **YES** | • The bidders must be in good standing with SARS in respect of any relevant legislative tax commitments and must provide together with the bid response a SARS pin number for verification purposes. |

| RETURNABLE DOCUMENT THAT MUST BE SUBMITTED | | |
|---|---|---|
| **REGISTRATION ON CENTRAL SUPPLIER DATABASE (CSD)** | **YES** | Bidders must be registered on the Central Supplier Database (CSD).<br>• If you are not registered proceed to complete the registration of your company prior to submitting your Bid. Visit https://secure.csd.gov.za to obtain your vendor number.<br>• Must submit CSD MAAA number |

# 6. TECHNICAL MANDATORY

## 6.1. INSTRUCTION AND EVALUATION CRITERIA

6.1.1 The bidder **must comply with ALL the requirements by providing substantiating evidence** in the form of documentation or information, failing which it will be regarded as "NOT COMPLY".

6.1.2 The bidder **must provide a unique reference number** (e.g. binder/folio, chapter, section, page) to locate substantiating evidence in the bid response. During evaluation, DOJ&CD reserves the right to treat substantiation evidence that cannot be located in the bid response as "NOT COMPLY".

6.1.3 The bidder **must complete the declaration of compliance** as per section 6.3 below by marking with an "X" either "COMPLY", or "NOT COMPLY" with ALL of the technical mandatory requirements, failing which it will be regarded as "NOT COMPLY".

6.1.4 The bidder must comply with **ALL the TECHNICAL MANDATORY REQUIREMENTS** in order for the bid to proceed to the next stage of the evaluation.

6.1.5 **No URL references or links will be accepted as evidence**.

## 6.2. TECHNICAL MANDATORY REQUIREMENTS

**NB: All certified stamped copies must not be older than six (6) months before the closing date of the BID. The DOJ&CD reserves the right to verify the accreditation.**

**NB: In case of Sole Service Provider, this must be supported by evidence.**

| ***TECHNICAL MANDATORY REQUIREMENTS*** | ***Substantiating evidence of compliance*** *(used to evaluate bid)* | **Compulsory** | ***Evidence reference*** |
|---|---|---|---|
| **Accreditation** | **Accreditation Letters from an established service provider/s or Proof of License for the required services** | YES | <provide unique reference to locate substantiating evidence in the bid response – see Annex number and page number> |
| **The Bidder must indicate whether the Bid is for Online Services or Printed Publications or Both by ticking the relevant tick Box/Es** | **ONLINE** ☐<br>and/or<br>**PRINTED** ☐ | YES | <provide unique reference to locate substantiating evidence in the bid response, for example, see Annexure number and page number. |

### 6.3. DECLARATION OF COMPLIANCE

| | Comply | Not Comply |
|---|---|---|
| The bidder declares by **indicating with an "X"** in either the "COMPLY" or "NOT COMPLY" column that –<br><br>6.3.1 The bid complies with each and every TECHNICAL MANDATORY REQUIREMENT as specified in SECTION 6.2 above; AND<br><br>6.3.2 Each and every requirement specification is substantiated by evidence as proof of compliance. | | |

## ANNEX A.2: TECHNICAL FUNCTIONALITY EVALUATION REQUIREMENTS

# 7. TECHNICAL FUNCTIONALITY EVALUATION REQUIREMENTS

## 7.1. INSTRUCTION AND EVALUATION CRITERIA

7.1.1 The bidder **must complete in full all of the TECHNICAL FUNCTIONALITY requirements (as per paragraph 7.2. and 7.3 below)**.

7.1.2 Where necessary, the bidder **must provide a unique reference number** (e.g. binder/folio, chapter, section, page number) to locate substantiating evidence in the bid response. During evaluation, the DOJ&CD reserves the right to treat lack of substantiating evidence that cannot be located as per the bidder's reference in the bid response as "NO - RESPONSIVE".

7.1.3 **Evaluation per requirement**. The evaluation (scoring) of bidders' responses to the requirements will be determined by the completeness, relevance and accuracy of substantiating evidence. Each TECHNICAL FUNCTIONALITY EVALUATION requirement will be evaluated using a rating –as indicated per functionality requirement.

7.1.4 A panel representing the DOJ&CD will evaluate the proposals received according to a set of evaluation criteria. In respect to the evaluation matrix, the prospective service bidders will be rated from 0 to 5 in that:

| Score | Meaning | Explanation |
|---|---|---|
| **0** | o No evidence<br>o Nonresponsive | Does not comply, no evidence / no reference / no information / no inputs. |
| **1** | o Very poor | Information provided does not meet the technical requirements. |
| **2** | o Poor<br>o Inadequate | Not satisfactory. Information and/or evidence provided is not enough to clearly substantiate the bidder's capabilities and/or experience in that service category. |
| **3** | o Average | Average. The bidder displays a partial understanding of the service requirements and the Information and/or evidence provided is not enough to display their capabilities and/or experience to deliver the service. |
| **4** | o Good<br>o Fully meet requirement | Fully meets the specification requirement. The bidder displays a good (above average) understanding of the service requirements and the Information and/or evidence provided is enough to clearly substantiate their capabilities and/or experience to deliver the service. |
| **5** | o Exceed requirements | Exceeds the specification requirement. The bidder displays an excellent understanding of the service requirements and |

| Score | Meaning | Explanation |
|---|---|---|
| | ○ Very good / Best practice | the Information and/or evidence provided clearly proves that the bidder is without a doubt capable of delivering the service. |

7.1.5 **Weighting of requirements**: The full scope of requirements will be determined by the following weights:

| No. | Technical Functional requirements | Weighting (%) |
|---|---|---|
| a. | SERVICE/PRODUCT REQUIREMENTS (Online Service/Printed Publications) | 50 |
| b | EXPERIENCE | 30 |
| c. | FINANCIAL STABILITY | 20 |
| TOTAL | | 100% |

7.1.5 **Minimum threshold**. To be eligible to proceed to the next stage (Pricing and Specific goals as per SBD6.1) of the evaluation the bid must achieve a minimum threshold score of **70%**

### 7.2 EVALUATION MATRIX for Online Services

Bidder to ensure submission is aligned to the score sheet below when the bidder responds to the online services requirement.
Where the bidder selects both Online and Printed, the score sheet as per paragraph 7.2. **will also be scored separately.**

| ***TECHNICAL FUNCTIONALITY MANDATORY REQUIREMENTS*** | ***Substantiating evidence of compliance*** *(used to evaluate bid)* | *Weighting (%)* | ***Evidence reference*** *(to be completed by bidder)* |
|---|---|---|---|
| **a) APPROACH AND METHODOLOGY to Online Service requirements** | | | |
| **The criteria is only applicable to <u>Online Services</u>**<br><br>Proposed Methodology and capability of bidder that would be necessary to carry out the following deliverables:<br>• Access to online platforms 24 hours 7 days a week and description of access options and benefits.<br>• Functional searching tools delivering results 24 hours 7 days per week.<br>• Availability of full-text content 24 hours 7 days a week and regular updating service for new content for each Department/ entity i.e. DOJ&CD, OCJ, NPA and IR. | Bidders must provide a detailed approach and methodology to respond to the specific deliverables indicated. | **50** | |

| *TECHNICAL FUNCTIONALITY MANDATORY REQUIREMENTS* | ***Substantiating evidence of compliance*** *(used to evaluate bid)* | *Weighting (%)* | ***Evidence reference*** *(to be completed by bidder)* |
|---|---|---|---|
| • Availability of trainers within 2 weeks of request.<br><br>Rating scale:<br>Details provided for all four deliverables and contingency plans for breaks in service and commitments for soonest updates for platform to be most relevant (rating = 5)<br>Details provided for all four deliverables (rating = 4)<br>Details provided for three deliverables (rating = 3)<br>Details provided for two deliverables (rating = 2)<br>Details provided for one deliverable (rating = 1)<br>Non-responsive/ no related details (rating = 0) | | | |
| **b) EXPERIENCE** | | | |
| The bidder must demonstrate an in-depth experience and expertise in the field of Publication and Digital/Online Library Services within Government and or the Private Sector.<br><br>**RATING SCALE**<br>5 years' experience or more (rating = 5)<br>4 years' experience (rating = 4)<br>3 years' experience (rating = 3)<br>2 years' experience (rating = 2)<br>1-year experience (rating = 1)<br>Less than a year / non-submission (rating = 0) | Bidders must submit evidence in a form of award letters / contracts/Purchase orders of Digital Publications / Online Library Services rendered where the period of the service is indicated and contact details of the author. | **30** | Provide unique reference to locate substantiating evidence in the bid response, for example, see Annexure number and page number. |
| **c) FINANCIAL STABILITY** | | | |
| Financial capability and capacity whether the tenderer has access to sufficient financial resources to deliver the goods or services described in the tender documentation (including fulfilling any guarantees or warranty claims). | Bidders must provide a Letter from the bank to confirm their cash flow and/or proof of bridging finance or overdraft facilities. | **20** | |

| *TECHNICAL FUNCTIONALITY MANDATORY REQUIREMENTS* | ***Substantiating evidence of compliance*** *(used to evaluate bid)* | *Weighting (%)* | ***Evidence reference*** *(to be completed by bidder)* |
|---|---|---|---|
| Letter from the bank to confirm their cash flow and/or proof of bridging finance or overdraft facilities.<br><br>*Rating Scale*<br><br>*R 3 million*<br>*rating score = 5*<br>*R2,5 million*<br>*rating score = 4*<br>*R2 million*<br>*rating score = 3*<br>*R1,5 million*<br>*rating score = 2*<br>*R1 million*<br>*rating score = 1*<br>*Below R1 million and Non-responsive score = 0* | | | |

### 7.3 EVALUATION MATRIX for Printed Publications

Bidder to ensure submission is aligned to the score sheet below when the bidder responds to the Printed Publication service requirement.
Where the bidder selects both Online and Printed, the score sheet as per paragraph 7.3 will also be scored separately.

| *TECHNICAL FUNCTIONALITY MANDATORY REQUIREMENTS* | ***Substantiating evidence of compliance*** *(used to evaluate bid)* | *Weighting* | ***Evidence reference*** *(to be completed by bidder)* |
|---|---|---|---|
| **a) APPROACH AND METHODOLOGY to Printed Publication requirements** | | | |
| **The criteria is only applicable to <u>Printed publications</u>**<br><br>The proposed methodology and capability of bidder that would be necessary to carry out the following deliverables:<br><br>• Timeous dispatch of latest print publications<br>• Volumes must be sequential and continuous<br>• Packaging must be appropriate for the publication to prevent damage | The bidder must provide a detailed proposed methodology and approach that would be necessary to carry out the required deliverables | **50** | |

| *TECHNICAL FUNCTIONALITY MANDATORY REQUIREMENTS* | ***Substantiating evidence of compliance*** *(used to evaluate bid)* | *Weighting* | ***Evidence reference*** *(to be completed by bidder)* |
|---|---|---|---|
| • Commitment to provide invoice with the delivery of the items or electronically on delivery time.<br><br><u>Rating scale:</u><br>Details provided for all four deliverables and contingency plans for breaks in service and commitments for soonest updates for platform to be most relevant (rating = 5)<br>Details provided for all four deliverables (rating = 4)<br>Details provided for three deliverables (rating =3)<br>Details provided for two deliverables (rating = 2)<br>Details provided for one deliverable (rating = 1)<br>Non-responsive/ no related details (rating = 0) | | | |
| **b) EXPERIENCE** | | | |
| The bidder must demonstrate an in-depth experience and expertise in the field of Printed Publications within Government and or the Private Sector.<br><br>**RATING SCALE**<br>5 years' experience or more (rating = 5)<br>4 years' experience (rating = 4)<br>3 years' experience (rating = 3)<br>2 years' experience (rating = 2)<br>1-year experience (rating = 1)<br>Less than a year / non-submission (rating = 0) | Bidders must submit evidence in a form of award letters / contracts/Purchase orders of Printed Publications rendered where the period of the service is indicated including contact details of the author. | **30** | Provide unique reference to locate substantiating evidence in the bid response, for example, see Annexure number and page number. |
| **c) FINANCIAL STABILITY** | | | |
| Financial capability and capacity whether the tenderer has access to sufficient financial resources to deliver the goods or services described in the tender documentation (including fulfilling any guarantees or warranty claims). | Bidders must provide a Letter from the bank to confirm their cash flow and/or proof of bridging finance or overdraft facilities. | **20** | |

| ***TECHNICAL FUNCTIONALITY MANDATORY REQUIREMENTS*** | ***Substantiating evidence of compliance*** *(used to evaluate bid)* | *Weighting* | ***Evidence reference*** *(to be completed by bidder)* |
|---|---|---|---|
| Letter from the bank to confirm their cash flow and/or proof of bridging finance or overdraft facilities.<br><br>*Rating Scale*<br><br>*R 3 million*<br>*rating score = 5*<br>*R2,5 million*<br>*rating score = 4*<br>*R2 million*<br>*rating score = 3*<br>*R1,5 million*<br>*rating score = 2*<br>*R1 million*<br>*rating score = 1*<br>*Below R1 million and Non-responsive score = 0* | | | |
| | | | |

# ANNEX A.3: SPECIAL CONDITIONS OF CONTRACT (SCC)

## 8. SPECIAL CONDITIONS OF CONTRACT

### 8.1. INSTRUCTION

8.1.1. The successful bidder will be bound by Government Procurement: General Conditions of Contract (GCC) (Annexure A. 4 below) as well as these Special Conditions of Contract (SCC), which will form part of the signed contract with the successful bidder.

8.1.2. The bidder must **complete the declaration of acceptance** as per section 8.3 below by marking with an **"X"** either "ACCEPTS ALL" or "DO NOT ACCEPT ALL", failing which the declaration will be regarded as "DO NOT ACCEPT ALL".

8.1.3. In the event that the bidder qualifies the proposal with own conditions and does not specifically withdraw such own conditions when called upon to do so the declaration will be regarded as "DO NOT ACCEPT ALL" and the bid will be disqualified.

### 8.2. SPECIAL CONDITIONS OF CONTRACT

**CONTRACTING CONDITIONS**

8.2.1 **Formal Contract.** The Supplier must enter into a formal written Contract (Agreement) with DOJ&CD.

8.2.2 **Right of Award.** The DOJ&CD reserves the right to award the tender in parts, or not award part of the tender or make no award at all or to appoint different bidder(s) for different services. The pricing in the bid must be done in accordance with the prescripts under paragraph 9.3.

8.2.3 **Right to Audit. The** DOJ&CD reserves the right to conduct a financial audit or probity to ascertain whether a qualifying bidder has the financial wherewithal or technical capability to provide the goods and services as required by this tender.

8.2.4 All information, documents, and reports regarding this bid must be regarded as confidential and may not be made available to any unauthorized person or institutions without the written consent of the Accounting Officer of the DOJ&CD of his/her delegate.

8.2.5 The DOJ&CD reserves the right to cancel the award in the case of any misrepresentation by the bidder and report the matter to National Treasury.

8.2.6 The DOJ&CD reserves the right to contact all references provided to verify provided information.

8.2.7 The contract to be concluded with the successful bidders(s) will be valid as from the date of commencement and, the service level agreement and/or execution plan must be signed by the delegated authority and service provider within 90 days from the date of acceptance of the letter of award or at a date agreed upon.

8.2.8 The DOJ&CD reserves the right to increase or decrease the provision of publications/services to offices/courts with a one (1) month's written notice to the successful bidder.

8.2.9 **DELIVERY ADDRESS**. Deliveries will be done as stipulated in the DOJ&CD purchase orders. The bidder will be required to deliver at the physical locations as specified per DOJ&CD and Entities in annexure A1 – A4.

8.2.10 These lists are subject to changes when districts are re-demarcated and for the establishment of new service delivery points.

**SCOPE OF WORK AND DELIVERY SCHEDULE**

8.2.11 The bidder is responsible to perform the work as outlined in the following Work Breakdown Structure (WBS):

| WBS | Statement of Work for Service Required | Delivery Timeframe |
|---|---|---|
| 1. | Online International Publications Service | Access 24 hours and seven days a week. A Maximum two-hour offline period for critical system maintenance is allowed, which must be conducted after working hours (before 08h00 and after 17h00).<br><br>Training for online platform to be delivered within two weeks from request. |
| 2. | Printed International Publications | Print Publications other than loose leaf to be delivered within eight to twelve weeks from date of order. All loose leaf publications / updates to be delivered in accordance to their updates time frames, be it Monthly /quarterly/bi-annual/annual as applicable. |

8.2.12 The bidder must allow the DOJ&CD access to a management web-portal to monitor online user activity.

8.2.13 The bidder must confirm with the DOJ&CD, the OCJ, the NPA and IR if the publications are available or not within one (1) week of receiving an order.

8.2.14 The subscription publication schedule for a particular delivery must be released by the bidder to the DOJ&CD prior to delivery.

8.2.15 Updates /amendments and subscriptions to parts/volumes are to be delivered to the DOJ&CD offices without any delays. A maximum timeframe shall be eight weeks and the DOJ&CD reserve the right to cancel any order not delivered within the specified period.

8.2.16 The online service must be accessible from all domains for the DOJ&CD on a simultaneous user basis.

8.2.17 The bidder must provide any replacement pages not received or received in a defective or damaged state. Only original loose-leaf replacement pages will be accepted.

8.2.18 The bidder will be responsible for replacement of any misplaced/lost deliveries and defective, damaged or poorly bound publications received.

8.2.19 All parcels and packages must be delivered and be clearly addressed to the respective designated officials at the court/ office as indicated on the purchase order and responsible for the costs of re-shipment where an order is delivered incorrectly. All orders delivered must be confirmed with the court/office.

8.2.20 The bidder must have a disaster recovery plan and must be made available within twenty-four (24) hours to the DOJ&CD on request.

## MONTHLY CONSOLIDATED STATEMENT

8.2.21 The monthly consolidated statement will form part of the Service Level Agreement, which will be entered into with the successful bidder. The bidder must supply the DOJ&CD with a monthly consolidated statement in the format below:

| Order Number | Title of Publication / Online Service | Quantity | Invoice Date | Invoice No | Invoice Amount | Quantity delivered | Office/ Court | Amount paid to date | Outstanding Amount |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

## PAYMENT

8.2.22 The bidder must invoice the DOJ&CD separately in respect of each official order and part-payments will be made after the end of the month in which the service was rendered.

8.2.23 Each invoice must specify the correct title, quantity and to which office it was delivered.

8.2.24 Each invoice shall reflect one purchase order number and must be submitted to the Department, together with proof of the delivery (from Courier) as well as the order confirmation (from the Library official) of the publication or updates/amendments.

8.2.25 The Library official as the intended recipient at the various delivery sites, will provide the bidder with an “order confirmation” which will confirm that the specified items delivered correspond to the delivery note and the relevant order and are all in good condition.

8.2.26 If the batch delivered is not in order, the bidder will rectify the required delivery within two (2) weeks and once delivered request the Library official to provide the order confirmation.

8.2.27 Payment will be affected within 30 days of receipt of all the required documentation which should be correct in every respect.

8.2.28 Payments shall be made in South African Rand (ZAR).

8.2.29 If there are any discrepancies between the quoted prices and the invoiced price, payment will be done in accordance with the quoted prices as stipulated in the pricing schedule.

**PENALTIES**

8.2.30 It the bidder fails to perform any of the services listed below, the DOJ&CD, the OCJ, the NPA the IR has the right to, without any prejudice to its other remedies under the contract, deduct penalties in a sum prescribed below:

(a) **International Online Service**

A penalty of two (2) % of the annual subscription fee will apply in the event that the service is unavailable for a period longer than twenty-four (24) hours. Should the service be unavailable for a period longer than forty-eight (48) hours then a penalty of five (5%) of the next annual invoice will be imposed.

(b) **International Printed Publications**

The bidder must notify the DOJ&CD of the supply of new volumes/parts published and dispatched. If the DOJ&CD have not received these volumes/ parts within ninety (90) days of notification then penalties in the amount of ten (10) % on the total of the specific order's amount invoiced for the office/court for that month will be applied.

**MONTHLY USAGE REPORTING FOR ONLINE SERVICE**

8.2.31 The monthly usage reporting for online will form part of the Service Level Agreement that will be entered into with the successful bidder and, the bidder shall be required to provide a report for International online services on a monthly basis to the DOJ&CD as per the template below and shall include but not be limited to the following information:

| Month | Name of publication/title accessed | Number of times/pages viewed | Concurrency failures | Content Downloaded | Content Printed/ Emailed |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |

**MONITORING AND EVALUATION**

8.2.32 Monitoring and evaluation will form part of the Service Level Agreement that will be entered into with the successful bidder and, the bidder must complete and submit to the Department's Contract management unit, the following contract performance report monthly:

| SERVICE LEVEL PERFORMANCE | COMPLIANT/NOT COMPLIANT | CHALLENGES | STEPS TAKEN TO RECTIFY |
|---|---|---|---|
| Accessibility to all International online publications. | | | |
| Accessibility to Africa online publications. | | | |
| Accurate delivery of goods as per the purchase order. | | | |
| Submission of monthly reports as per the prescribed format. | | | |
| **BUDGETARY CONTROL** | | | |
| Accurate and timeous submission of invoices. | | | |
| Monthly submission of consolidated statements as per the prescribed format. | | | |
| **COMPLIANCE** | | | |
| Compliance to Service Level Agreement. | | | |

8.2.32 It shall be required for good governance that the bidder consult with representative(s) of the National Office of the DOJ&CD when the need arises.

**LOGISTICAL CONDITIONS AND SUPPORT FOR ONLINE SERVICES**

8.2.34 In the event that the DOJ&CD grants the bidder permission to remotely access DOJ&CD, OCJ, NPA and IR ICT environment (inclusive of hardware, software, internet facilities, data, telecommunication facilities and/or network facilities), the Supplier must adhere to the DOJ&CD relevant policies and procedures (which policy and procedures are available to the bidder on request) or in the absence of such policy and procedures, in terms of best industry practice.

8.2.35 The bidder must be available remotely.

**REGULATORY, QUALITY AND STANDARDS**

8.2.36 The bidder must for the duration of the contract ensure compliance with Protection of Personal Information Act, 2013 (POPIA).

8.2.37 The bidder must provide the service in a good and workmanlike manner and in accordance with the practices and high professional standards used in well-managed operations performing similar services.

8.2.38 The bidder must perform the services in the most cost-effective manner consistent with the level of quality and performance as defined in Statement of Work/ Service Definition.

**CONFIDENTIALITY AND NON-DISCLOSURE CONDITIONS**

8.2.39 The bidder, including its management and staff, must before commencement of the Contract, sign a non-disclosure agreement regarding Confidential Information.

8.2.40 Confidential Information means any information or data, irrespective of the form or medium in which it may be stored, which is not in the public domain and which becomes available or accessible to a Party as a consequence of this Contract, including information or data which is prohibited from disclosure by virtue of:

(i) the Promotion of Access to Information Act, 2000 (Act no. 2 of 2000);

(ii) being clearly marked "Confidential" and which is provided by one Party to another Party in terms of this Contract;

(iii) being information or data, which one Party provides to another Party or to which a Party has access because of Services provided in terms of this Contract and in which a Party would have a reasonable expectation of confidentiality;

(iv) being information provided by one Party to another Party in the course of contractual or other negotiations, which could reasonably be expected to prejudice the right of the non-disclosing Party;

(v) being information, the disclosure of which could reasonably be expected to endanger a life or physical security of a person;

(vi) being technical, scientific, commercial, financial and market-related information, know-how and trade secrets of a Party;

(vii) being financial, commercial, scientific or technical information, other than trade secrets, of a Party, the disclosure of which would be likely to cause harm to the commercial or financial interests of a non-disclosing Party; and

(viii) being information supplied by a Party in confidence, the disclosure of which could reasonably be expected either to put the Party at a disadvantage in contractual or other negotiations or to prejudice the Party in commercial competition; or

(ix) information the disclosure of which would be likely to prejudice or impair the safety and security of a building, structure or system, including, but not limited to, a computer or communication system; a means of transport; or any other property; or a person; methods, systems, plans or procedures for the protection of an individual in accordance with a witness protection scheme; the safety of the public or any part of the public; or the security of property; information the disclosure of which could reasonably be expected to cause prejudice to the defence of the Republic; security of the Republic; or international relations of the Republic; or plans, designs, drawings, functional and technical requirements and specifications of a Party, but must not include information which has been made automatically available, in terms of the Promotion of

Access to Information Act, 2000; and information which a Party has a statutory or common law duty to disclose or in respect of which there is no reasonable expectation of privacy or confidentiality;

8.2.41 Notwithstanding the provisions of this Contract, no Party is entitled to disclose Confidential Information, except where required to do so in terms of a law, without the prior written consent of any other Party having an interest in the disclosure;

8.2.42 Where a Party discloses Confidential Information which materially damages or could materially damage another Party, the disclosing Party must submit all facts related to the disclosure in writing to the other Party, who must submit information related to such actual or potential material damage to be resolved as a dispute;

8.2.43 Parties may not, except to the extent that a Party is legally required to make a public statement, make any public statement or issue a press release which could affect another Party, without first submitting a written copy of the proposed public statement or press release to the other Party and obtaining the other Party's prior written approval for such public statement or press release, which consent must not unreasonably be withheld.

**INTELLECTUAL PROPERTY RIGHTS**

8.2.44 The DOJ&CD retains all Intellectual Property Rights in and to their Intellectual Property. As of the Effective Date, the bidder is granted a non-exclusive license, for the continued duration of this Contract, to perform any lawful act including the right to use, copy, maintain, modify, enhance and create derivative works of the DOJ&CD's, the OCJ's, the NPA's and the IR's Intellectual Property for the sole purpose of providing the Products or Services to the DOJ&CD pursuant to this Contract; provided that the bidder must not be permitted to use the DOJ&CD's , the OCJ's, the NPA's and the IR's Intellectual Property for the benefit of any entities other than DOJ&CD without the written consent of the Department, which consent may be withheld in the DOJ&CD's, the OCJ's, the NPA's and the IR's sole and absolute discretion. Except as otherwise requested or approved by the Department, which approval is in DOJ&CD's, OCJ's, NPA's and IR's sole and absolute discretion, the bidder must cease all use of DOJ&CD's, OCJ's, NPA's and IR's Intellectual Property, at of the earliest of:

(i) termination or expiration date of this Contract;

(ii) the date of completion of the Services; and

(iii) the date of rendering of the last of the Deliverables.

8.2.45 If so required by the Department, the Supplier must certify in writing to the DOJ&CD that it has either returned all the DOJ&CD Intellectual Property to the DOJ&CD or destroyed or deleted all other DOJ&CD, OCJ, NPA and IR Intellectual Property in its possession or under its control.

8.2.46 The DOJ&CD at all times, owns all Intellectual Property Rights in and to all Bespoke Intellectual Property.

8.2.47 Save for the license granted in terms of this Contract, the bidder retains all Intellectual Property Rights in and to the bidder's pre-existing Intellectual Property that is used or supplied in connection with the Products or Services.

## 8.3 DECLARATION OF COMPLIANCE

| | ACCEPT ALL | DO NOT ACCEPT ALL |
|---|---|---|
| 8.3.1 The bidder declares to ACCEPT ALL relevant Special<br>Conditions of Contract as specified in section 8.2 above by indicating with an "X" in the "ACCEPT ALL" column, Or<br>8.3.2 The bidder declares to NOT ACCEPT ALL relevant Special Conditions of Contract as specified in section 8.2 above by Indicating with an "X" in the "DO NOT ACCEPT ALL" column. | | |

# ANNEX A.4: GENERAL CONDITIONS OF CONTRACT

**GOVERNMENT PROCUREMENT GENERAL CONDITIONS OF CONTRACT**
**NOTES**

The purpose of this document is to:

(i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and

(ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

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

• The 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.

**TABLE OF CLAUSES**

| | |
|---|---|
| 1. Definitions<br>2. Application<br>3. General<br>4. Standards<br>5. Use of contract documents and information; inspection<br>6. Patent rights<br>7. Performance security<br>8. Inspections, tests and analysis<br>9. Packing<br>10. Delivery and documents<br>11. Insurance<br>12. Transportation<br>13. Incidental services<br>14. Spare parts<br>15. Warranty<br>16. Payment<br>17. Prices | 18. Contract amendments<br>19. Assignment<br>20. Subcontracts<br>21. Delays in the supplier's performance<br>22. Penalties<br>23. Termination for default<br>24. Dumping and countervailing duties<br>25. Force Majeure<br>26. Termination for insolvency<br>27. Settlement of disputes<br>28. Limitation of liability<br>29. Governing language<br>30. Applicable law<br>31. Notices<br>32. Taxes and duties<br>33. National Industrial Participation Programme (NIPP)<br>34. Prohibition of restrictive practices |

**General Conditions of Contract**

**1. Definitions**

**1. The following terms shall be interpreted as indicated:**

1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.

1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.

1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.

1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

1.7 "Day" means calendar day.

1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.

1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.

1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

1.12" Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

1.14 "GCC" means the General Conditions of Contract.

1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.

1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.

1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.

1.20 "Project site," where applicable, means the place indicated in bidding documents.

1.21 "Purchaser" means the 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 ancillaries to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

## 2. Application

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

## 3. General

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

**4. Standards**

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

**5. Use of contract documents and information; inspection.**

5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

**6. Patent rights**

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

**7. Performance security**

7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

(a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or

(b) a cashier's or certified cheque

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

**8. Inspections, tests and analyses**

8.1 All pre-bidding testing will be for the account of the bidder.

8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the DOJ&CD or an organization acting on behalf of the Department.

8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

8.7 Any contract supplies may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with 7 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 8 (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 fulfilment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

**17. Prices**

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

**18. Contract amendments**

18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

**19. Assignment**

19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

**20. Subcontracts**

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

**21. Delays in the supplier's performance**

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

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

**22. Penalties**

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

**23. Termination for default**

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

(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 antidumping 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, 12 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.

**29. Governing language**

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

**30. Applicable law**

30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

**31. Notices**

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

**32. Taxes and duties**

32.1 An International supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the DOJ&CD must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

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

33.1 The NIP Programme administered by the DOJ&CD of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

34. **Prohibition of Restrictive practices**

34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No.89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is /are or a contractor(s) was/ were involved in collusive bidding (or bid rigging).

34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has/ have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No.89 of 1998.

34.3 If a bidder(s) or contractor(s), has /have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and or terminate the contract in whole or part, and/or restrict the bidder (s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and/or claim damages from the bidder(s) or contractor concerned.

# 9. COSTING AND PRICING

## 9.1. COSTING AND PRICING EVALUATION

9.1.1 In terms of Preferential Procurement Policy Framework Act (PPPFA), the following preference point system is applicable to all bids:

9.1.1.1 the 80/20 system (80 Price, 20 Specific Goals) for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); or

9.1.1.2 the 90/10 system (90 Price and 10 Specific Goals) for requirements with a Rand value above R50 000 000 (all applicable taxes included).

9.1.2 This bid will be evaluated using the preferential point system of 80/20, subject to the following conditions –

9.1.2.1 If the lowest acceptable bid price is up to and including R50 000 000 (all applicable taxes included) then the 80/20 preferential point system will apply to all acceptable bids; or

9.1.2.2 If the lowest acceptable bid price is above R50 000 000 (all applicable taxes included) then the 90/10 preferential point system will apply to all acceptable bids;

9.1.3 The bidder must **complete the declaration of acceptance** as per section 9.4 below by marking with an "X" either "ACCEPT ALL", or "DO NOT ACCEPT ALL", failing which the declaration will be regarded as "DO NOT ACCEPT ALL".

9.1.4 The bidder will be bound by the following general costing and pricing conditions and the DOJ&CD reserves the right to negotiate the conditions or automatically disqualify the bidder for not accepting these conditions. These conditions will form part of the Contract between DOJ&CD, OCJ, NPA and IR and the bidder. However, DOJ&CD, OCJ, NPA and IR reserves the right to include or waive the general costing and pricing condition in the Contract.

## 9.2 COSTING AND PRICING CONDITIONS

9.2.1 SOUTH AFRICAN PRICING. The total prices for International Online services and Printed publications must be VAT inclusive and be quoted in South African Rand (ZAR).

### 9.2.2 TOTAL PRICE

9.2.2.1 All quoted prices are the total price for the entire scope of the required online services /printed publication deliverables to be provided by the bidder.

9.2.2.2 The cost of administration, subscription, membership fees, license fees, consolidation services, delivery, handling fees, landing costs (import duties), custom duties, postage, shipping fees, courier, labour, travel and subsistence, overtime, training, consultation etc. must be included in the bid price per product/service.

9.2.2.3 Should the pricing in the bid not be done in accordance with the prescripts under paragraph 9.3, the bid will be regarded as non-responsive.

## 9.3 BID PRICING SCHEDULES

9.3.1 Pricing must be provided strictly as prescribed below and, on the schedules, provided.

9.3.2 **The prices as quoted by the bidder shall be regarded as fixed for the first year of the contract. Any price adjustment will be in accordance with the CPI for the second and third year of the contract.**

9.3.3 **DOJ&CD reserves the right to negotiate pricing with the successful bidder prior to the award as well as envisaged quantities as per the catalog of services/products to be established on Schedules B-I.**

### 9.3.4 Online Service:

9.3.4.1 The bidder must provide price quotations for International Online services as per category of users as described in Schedule B, C, E, H and I.

9.3.4.2 All prices quoted to be for simultaneous access to the online service and specific publications.

### 9.3.5 Printed publications:

9.3.5.1 The bidder must provide a price quotation for Printed publications per title (bound/loose leaf)/product as in schedule D, F and G

9.3.5.2 The bidder must provide the price for Printed publications as follows:

9.3.5.2.1 An all-inclusive price per title -content and binders for new orders;

9.3.5.2.2 An all-inclusive subscription price for volumes/parts of future updates.

## 9.4 DECLARATION OF ACCEPTANCE

| | ACCEPT ALL | DO NOT ACCEPT ALL |
|---|---|---|
| 9.4.1 The bidder declares to ACCEPT ALL the Costing and Pricing conditions as specified in section 9.2 above by indicating with an "X" in the "ACCEPT ALL" column, or<br>9.4.2 The bidder declares to NOT ACCEPT ALL the Costing and Pricing Conditions as specified in section 9.2 above by -<br>9.4.3 Indicating with an "X" in the "DO NOT ACCEPT ALL" column. | | |

## 10. ABBREVIATIONS

| | |
|---|---|
| CSD | Supplier on National Treasury Central Supplier Database |
| DOJ&CD | Department of Justice and Constitutional Development |
| GCC | General Conditions of Contract |
| IR | The Information Regulator |
| NPA | The National Prosecuting authority |
| OEM | Original Equipment Manufacturer |
| POPIA | Protection of Personal Information Act, 2013 |
| PPPFA | Preferential Procurement Policy Framework Act |
| R | South African Rand |
| SARS | South African Revenue Services |
| SBD | Standard Bidding Document |
| SCC | Special Conditions of Contract |
| SCM | Supply Chain Management |
| WBS | Work Breakdown Structure |
| VAT | Value added Tax |
| ZAR | South African Rand |

# ANNEXURE B - STANDARD BIDDING DOCUMENTS

## SBD 1 PART A INVITATION TO BID

| | | | | | |
|---|---|---|---|---|---|
| **YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT** | | | | | |
| BID NUMBER: | RFB 01 2024 | CLOSING DATE: | 18 June 2024 | CLOSING TIME: | 11h00am |
| DESCRIPTION | **PROCUREMENT OF VIRTUAL LIBRARY PUBLICATIONS (INTERNATIONAL ONLINE, SUBSCRIPTIONS TO PRINTED AND LOOSE LEAF PUBLICATIONS) FOR THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT, THE OFFICE OF THE CHIEF JUSTICE, THE INFORMATION REGULATOR AND THE NATIONAL PROSECUTING AUTHORITY FOR A PERIOD OF THREE (3) YEARS** | | | | |
| **BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT *(STREET ADDRESS)*** | | | | | |
| **The Tender Box, Momentum Centre, 329 Pretorius Street,** | | | | | |
| **c/o Sisulu & Pretorius Street, Pretoria, 0001** | | | | | |
| **BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO** | | | **TECHNICAL ENQUIRIES MAY BE DIRECTED TO:** | | |
| CONTACT PERSON | | | CONTACT PERSON | | |
| TELEPHONE NUMBER | | | TELEPHONE NUMBER | | |
| E-MAIL ADDRESS | | | E-MAIL ADDRESS | | |
| **SUPPLIER INFORMATION** | | | | | |
| NAME OF BIDDER | | | | | |
| POSTAL ADDRESS | | | | | |
| STREET ADDRESS | | | | | |
| TELEPHONE NUMBER | CODE | | NUMBER | | |
| CELLPHONE 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] ☐ Yes ☐ No | | B-BBEE STATUS LEVEL SWORN AFFIDAVIT | [TICK APPLICABLE BOX] ☐ Yes ☐ No | |
| ***[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]*** | | | | | |
| ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED? | ☐Yes ☐No [IF YES ENCLOSE PROOF] | | ARE YOU an INTERNATIONAL BASED SUPPLIER FOR **THE GOODS /SERVICES /WORKS OFFERED?** | ☐Yes ☐No [IF YES, ANSWER THE QUESTIONNAIRE BELOW] | |
| **QUESTIONNAIRE TO BIDDING INTERNATIONAL SUPPLIERS** | | | | | |
| IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? | | | | ☐ YES ☐ NO | |
| DOES THE ENTITY HAVE A BRANCH IN THE RSA? | | | | ☐ YES ☐ NO | |
| DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? | | | | ☐ YES ☐ NO | |

| | |
|---|---|
| DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? | ☐ YES ☐ NO |
| IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? | ☐ YES ☐ NO |
| **IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.** | |

## PART B: TERMS AND CONDITIONS FOR BIDDING

| | |
|---|---|
| **1.** | **BID SUBMISSION:** |
| 1.1. | BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION. |
| 1.2. | **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.** |
| 1.3. | THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT. |
| 1.4. | **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).** |

| | |
|---|---|
| **2.** | **TAX COMPLIANCE REQUIREMENTS** |
| 2.1 | BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS. |
| 2.2 | BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS. |
| 2.3 | APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA. |
| 2.4 | BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID. |
| 2.5 | IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER. |
| 2.6 | WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED. |
| 2.7 | NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE." |

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

SIGNATURE OF BIDDER: ……………………………………………

CAPACITY UNDER WHICH THIS BID IS SIGNED:

……………………………………………

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

DATE: ……………………………………………

## SBD4 - BIDDER'S DISCLOSURE

### 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.

**Bidder's declaration**

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest1 in the enterprise, employed by the state? **YES/NO**

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

| **Full Name** | **Identity Number** | **Name of State institution** |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

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

2.2.1 If so, furnish particulars:

……………………………………………………………………………………

……………………………………………………………………………………

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**

If so, furnish particulars:

…………………………………………………………………………….

…………………………………………………………………………….

### 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;

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

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 consortium2 will not be construed as collusive bidding.

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

3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

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 DOJ&CD 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

[2] 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.

## SBD 6.1 PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

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

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

---

### 1. GENERAL CONDITIONS

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

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

1.2 **To be completed by the organ of state**

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

a) The applicable preference point system for this tender is either the 80/20 or 90/10 preference point system.

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

(a) Price; and

(b) Specific Goals.

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

The maximum points for this tender are allocated as follows:

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

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

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

## 2. DEFINITIONS

(a) **"tender"** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

(b) **"price"** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

*(c)* **"rand value"** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

(d) **"tender for income-generating contracts"** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and

(e) **"the Act"** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

## 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

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

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

80/20

$$Ps = 80\left(1 - \frac{Pt - P\,min}{P\,min}\right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

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

### 3.2.1. POINTS AWARDED FOR PRICE

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

80/20

$$Ps = 80\left(1 + \frac{Pt - P\,max}{P\,max}\right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender.

## 4. POINTS AWARDED FOR SPECIFIC GOALS

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

4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20

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

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

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

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

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

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

| The specific goals allocated points in terms of this tender | Number of points allocated (80/20 system) (To be completed by the organ of state) | Number of points claimed (80/20 system) (To be completed by the tenderer) |
|---|---|---|
| Enterprises with ownership of 51% or more by person/s who are black person/s | 10 | |
| Enterprises with ownership of 51% or more by person/s who are woman | 5 | |
| Enterprises with ownership of 51% or more by person/s who are youth | 3 | |
| Enterprises with ownership of 51% or more by person/s with disability | 2 | |

## DECLARATION WITH REGARD TO COMPANY/FIRM

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

4.4. Company registration number: ……………………………………………………………….

4.5. TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

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

i) The information furnished is true and correct;

ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;

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

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

(a) disqualify the person from the tendering process;

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

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

(d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and

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

……………………………………….

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

SURNAME AND NAME: ……………………………………………………………

DATE: ………………………………………………………………

ADDRESS: ………………………………………………………………

………………………………………………………………

………………………………………………………………