

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DEPARTMENT OF SPORT, ARTS AND CULTURE			
BID NUMBER:	DSAC-005-2022	CLOSING DATE: 16 SEPTEMBER 2022	CLOSING TIME: 11:00 AM
DESCRIPTION	PROVISION OF DIGITAL E-LENDING LIBRARY SUBSCRIPTION (E-BOOKS) FOR THE NORTHERN CAPE PROVINCIAL LIBRARY SERVICES FOR A PERIOD OF THREE (3) YEAR"		
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT THE DEPARTMENT			
BID RESPONSE DOCUMENTS MUST BE SUBMITTED IN THE TENDER BOX SITUATED AT THE MAIN RECEPTION AREA:			
DEPARTMENT OF SPORT, ARTS AND CULTURE			
MERVIN J ERLANK SPORT PRECINCT (MJESP) BUILDING			
24 – 28 CHURCH STREET			
FLORIANVILLE			
KIMBERLEY			
8301			
SUPPLIER INFORMATION			
NAME OF BIDDER			
POSTAL ADDRESS			
STREET ADDRESS			
TELEPHONE NUMBER	CODE		NUMBER
CELLPHONE NUMBER			
FACSIMILE NUMBER	CODE		NUMBER
E-MAIL ADDRESS			
VAT REGISTRATION NUMBER			
TAX CLEARANCE CERTIFICATE AND SARS TAX STATUS PIN LETTER (GOOD STANDING) BEEN SUBMITTED			<input type="checkbox"/> Yes <input type="checkbox"/> No
CSD SUPPLIER NUMBER: MAAA.....			
HAS AN ORIGINALLY CERTIFIED COPY OF THE BIDDER'S B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE OR SWORN AFFIDAVIT BEEN SUBMITTED?			<input type="checkbox"/> Yes <input type="checkbox"/> No
IF YES, WHO WAS THE CERTIFICATE ISSUED BY?			
AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) AND NAME THE APPLICABLE IN THE TICK BOX	<input type="checkbox"/>	AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)	
	<input type="checkbox"/>	A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS)	
	<input type="checkbox"/>	A REGISTERED AUDITOR	
		NAME:	
[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?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ANSWER PART B:3 BELOW]
SIGNATURE OF BIDDER	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)			
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE (ALL INCLUSIVE)	
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT OF SPORT, ARTS AND CULTURE		CONTACT PERSON	Mr. V Midzi
CONTACT PERSON	Mr. Heinrich Nieuwenhuizen	TELEPHONE NUMBER	063 691 8831
TELEPHONE NUMBER	082 605 4028	E-MAIL ADDRESS	vmidzi@ncpg.gov.za
E-MAIL ADDRESS	hnieuwenhuizen@ncpg.gov.za		

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 AND MUST NOT TO BE RE-TYPED, FAXED OR SCANNED DOCUMENT TO SCM OFFICIALS WILL NOT BE CONSIDERED.
1.3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
1.4. WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
1.5. 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 LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.
2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A

SEPARATE PROOF OF TCS / PIN / CSD NUMBER.

2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- 3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? YES NO
- 3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA? YES NO
- 3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? YES NO
- 3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? YES NO

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

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

**PRICING SCHEDULE – NON-FIRM PRICES
(PURCHASES)**

NOTE: PRICE ADJUSTMENTS WILL BE ALLOWED AT THE PERIODS AND TIMES SPECIFIED IN THE BIDDING DOCUMENTS.

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

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

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

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
-	Required by:	
-	At:	
-	Brand and model	
-	Country of origin	
-	Does the offer comply with the specification(s)?		*YES/NO
-	If not to specification, indicate deviation(s)	
-	Period required for delivery	
-	Delivery:		*Firm/not firm

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

*Delete if not applicable

B PRICES SUBJECT TO RATE OF EXCHANGE VARIATIONS

1. Please furnish full particulars of your financial institution, state the currencies used in the conversion of the prices of the items to South African currency, which portion of the price is subject to rate of exchange variations and the amounts remitted abroad.

PARTICULARS OF FINANCIAL INSTITUTION	ITEM NO	PRICE	CURRENCY	RATE	PORTION OF PRICE SUBJECT TO ROE	AMOUNT IN FOREIGN CURRENCY REMITTED ABROAD
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		

2. Adjustments for rate of exchange variations during the contract period will be calculated by using the average monthly exchange rates as issued by your commercial bank for the periods indicated hereunder: (Proof from bank required)

AVERAGE MONTHLY EXCHANGE RATES FOR THE PERIOD:	DATE DOCUMENTATION MUST BE SUBMITTED TO THIS OFFICE	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE	DATE UNTIL WHICH NEW CALCULATED PRICE WILL BE EFFECTIVE

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling 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

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.

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

2.2.1 If so, furnish particulars:

.....
.....

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

2.3.1 If so, furnish particulars:

.....
.....

3 DECLARATION

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or 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

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.

institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

.....
Signature	Date
.....
Position	Name of bidder

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

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

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

1. GENERAL CONDITIONS

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

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

1.2

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

1.3 Points for this bid shall be awarded for:

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

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

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

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

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

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

5. BID DECLARATION

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

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

6.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)
 (Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

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

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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7.1.1 If yes, indicate:

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

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

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

Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

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

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a

fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

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

<p>WITNESSES</p> <p>1.</p> <p>2.</p>

<p>..... SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE:</p> <p>ADDRESS</p> <p>.....</p> <p>.....</p>
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**DEPARTMENT OF SPORT, ARTS AND
CULTURE**

CONDITION AND UNDERTAKINGS

**PROVISION OF DIGITAL E-LENDING
LIBRARY SUBSCRIPTION (E-BOOKS) FOR
THE NORTHERN CAPE PROVINCIAL
LIBRARY SERVICES FOR A PERIOD OF
THREE (3) YEARS**

DSAC-005-2022

CONDITIONS AND UNDERTAKINGS BY BIDDERS IN RESPECT OF THIS BID

1. Proprietary Information

Department of Sport, Arts and Culture (DSAC) considers this bid and all related information, either written or verbal, which is provided to the respondent, to be proprietary to DSAC. It shall be kept confidential by the respondent and its officers, employees, agents and representatives. The respondent shall not disclose, publish, or advertise this bid or related information to any third party without the prior written consent of DSAC.

2. You are hereby invited to submit your bid for the provision of digital E-lending library subscription (E-Books) for the Northern Cape Provincial Library Services for a period of three (3) years.
3. Service providers should check the numbers of the pages to satisfy themselves that none are missing or duplicated. No liability will be accepted by DSAC in regard to anything arising from the fact that pages are missing or duplicated.

4. Validity Period

Responses to this bid must be valid for a period of **90 days** counted from the closing date of the bid.

5. Submission for bid proposal

5.1 Request for proposal (**RFP**) **should be submitted** with clear reference to each document attached and all bound in a sealed envelope endorsed, "**DSAC-005-2022: PROVISION OF DIGITAL E-LENDING LIBRARY SUBSCRIPTION (E-BOOKS) FOR THE NORTHERN CAPE PROVINCIAL LIBRARY**"

SERVICES FOR A PERIOD OF THREE (3) YEAR". The sealed envelope must be placed in the Bid Box at the Main Reception Area of the Mervin J Erlank Sport Precinct Building (MJESP) at 24-28 Church Road, Florianville, Kimberley, 8301 by no later than 11h00 on Friday, 16 September 2022. The closing date, company name and the return address must also be endorsed on the envelope.

5.2 If a courier service company is being used for delivery of the bid document, **the bid description must be endorsed on the delivery note/courier packaging to ensure that documents are delivered into the correct bid box.**

5.3 The bidder will carry the risk to ensure that his/her bid document is submitted in the bid box of the Department of Sport, Arts and Culture if services of the South African Post Office are used.

5.4 All documents attached to the bid must be submitted on the official forms provided and **MUST NOT BE RE-TYPED.**

5.5 No bids received by fax or email or similar medium will be considered.

5.6 Where a bid document is not in the bid box at the time of the bid closing, such a bid document will be regarded as a late bid. **Late bids will not be considered.** Bidders are encouraged to ensure that bids are delivered timeously to the correct address. The bid box is generally open 24 hours a day, 7 days a week.

- 5.7 The bidder is responsible for all the cost that he/she shall incur related to the preparation and submission of the bid document.
- 5.8 An Exempted Micro Enterprise (EME) is required to submit an original certified sworn affidavit confirming their annual total revenue of R10 million or less and level of black ownership to claim points as prescribed by Regulation 6 and 7 of the Preferential Procurement Regulations 2017.**
- 5.9 The Department of Sport, Arts and Culture reserves the right not to appoint a service provider and is also not obliged to provide reasons for the rejection of any proposal. The Department reserves the right to:
- 5.9.1 Reject all bids;**
 - 5.9.2 Not to accept the lowest bid or any bids in part or in whole;**
 - 5.9.3 Consider any bids that may not conform to any aspect of the bidding requirements;**
 - 5.9.4 Decline to consider any bids that do not conform to any aspect of the bidding requirements;**
 - 5.9.5 Request further information from any service provider after closing date;**
 - 5.9.6 Negotiate pricing with the recommended bidder due to budget constraints;**
 - 5.9.7 Cancel this bid or any part thereof at any time.**
- 5.10 SARS "TAX CLEARANCE STATUS PIN" to validate the bidder's tax matters must be included in the bid document. Failure to do so might invalidate your bid. Bidders must ensure compliance with their Tax Obligations. The Department is unable to award a bid/contract

to a company whose tax affairs are not in order as determined by the South African Revenue Services (SARS). A contract will not be awarded to a bidder that cannot provide proof that their tax matters are in order at the time of the award of the bid. The Department will inform bidders at various stages during the bid evaluation process if their tax compliance status has changed. Bidders are advised to ensure that they are tax compliant before an award is considered.

5.11 All communication (SCM & Technical Enquiries) between the bidder and the Department must be done in writing.

5.12 Any corrections on the bid document made by the bidder must be initialled.

5.13 Use of correcting fluid is prohibited.

5.14 The bid will be opened in public as soon as practicable after the closing time. No prices will be announced.

5.15 The bid document must be completed in ink. Non adherence to this condition will invalidate the bid.

5.16 The bid document should be submitted on the official bid document as advertised. Suppliers are advised to print out the whole document and complete it in pen. The document must be submitted in its' entirety, i.e. as a whole without any changes being affected. The supplier should not change the Departmental Format of the bid document. If any other forms are used that do not form part of the bid document, DSAC may disqualify the bid of the supplier.

5.17 SUB-CONTRACTING

5.17.1 Should the appointed company use the services of any sub-contractors, the information must be supplied on the bidding document / be indicated on the NCP 6.1 form.

5.17.2 Please take note of the following Preferential Procurement Regulations, 2017 in terms of sub-contracting:

- ✓ **A person must not be awarded points for B-BBEE status level if it is indicated in the tender documents that such a tenderer intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a tenderer qualifies for, unless the intended subcontractor is an exempted micro enterprise that has the capability and ability to execute the sub-contract.**
- ✓ **A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status than the person concerned, unless the contract is sub-contracted to an exempted micro enterprise that has the capability and ability to execute the sub-contract.**
- ✓ **Changing of sub-contractors after award of the bid must be pre-approved by the Department. The new sub-contractor must be assessed against the same quality standards as used during the bidding process by the Department.**

5.18 **Bid – Compliance Evaluation.** The bidder must submit the following returnable documents for pre-qualification:

Stage 1: Compliance Evaluation

Document that must be submitted	Non submission may result in disqualification		Attached (To be completed by the bidder)
Non Compulsory Virtual Briefing Session	NO	Non Compulsory virtual briefing session will be held on Friday, 02 September 2022 Time: 12:00PM to 13:00 PM. (Bidders should ensure that they request the link for the meeting well in advance in order to log in at least 30 minutes before the meeting to allow sufficient time for any network challenges, preferable one (1) day before the non compulsory virtual briefing session.	
Invitation to bid – NCP 1	YES	Complete and sign the supplied pro forma document.	
NCP 3.1 Pricing Schedule Firm prices (purchases)	YES	Complete and sign the supplied pro forma document.	
NCP 3.2 Pricing Schedule Non Firm Prices (purchases)	YES	Complete and sign the supplied pro forma document.	
SBD 4 – Bidders Disclosure	YES	Complete and sign the supplied pro forma document.	
Preference Points Claim Form in terms of Preferential Procurement Regulations 2017 – NCP 6.1	NO	Non submission will lead to a zero (0) score on BBBEE.	
Joint venture bidders must individually complete SBD 4 – Bidders Disclosure	YES	Joint venture bidders must individually complete: i. SBD 4.	
Signed joint venture agreement by bidders stipulating the work	YES	Signed joint venture agreement by both parties.	

split and rand value.			
Resolution of the board of directors for the establishment of the Joint Venture.	YES	Resolution of the board of directors for the establishment of the Joint Venture must be submitted and signed by both parties.	
Originally Certified BBBEE OR Certified/Originally Certified Sworn Affidavit	NO	Non submission will lead to a zero (0) score on BBBEE during the evaluation process.	
Originally Certified BBBEE Certificate/Originally Certified Sworn Affidavit (Consolidated certificate/sworn affidavit)	NO	Non submission will lead to a zero (0) score on BBBEE during the evaluation process.	
Registration on the Central Supplier Database (CSD).	NO	The bidder must be registered as a service provider on the Central Supplier Database (CSD). If you are not registered proceed to complete the registration of your company prior to submitting your bid. If not registered you cannot be appointed. Visit https://secure.csd.gov.za/ to obtain your supplier number (MAAA...). Submit proof of registration.	
Good standing on tax affairs	YES	<ol style="list-style-type: none"> I. SARS Tax Clearance Pin to validate the bidder's tax matters must be included in the request for bid II. Proof of registration on the Central Supplier Database (Most recent CSD Report). III. Supplier Number (MAAA...) as per your CSD Report. IV. In the event where a bidder submits a hard copy of the Tax Clearance Certificate, the CSD verification outcome will take precedence. <p>(NB!!) THE BIDDER MUST BE IN GOOD STANDING WITH SARS IN RESPECT OF ANY RELEVANT LEGISLATIVE TAX COMMITMENTS.</p>	
Company experience and	NO	Non submission will lead to lower scores during	

proven track record in successfully completing projects of a similar scope, deliverables and complexity. Reference letters from clients must clearly reflect the number of years the service provider delivered services, the approximate value of goods and or services, how would the client rate the performance of the supplier (Excellent, good/average/poor), and if the client will recommend this supplier to anyone without any reservations.		functionality.	
Resources (provide proof of size of catalogue for e-books subscription)	NO	Non submission will lead to lower scores during functionality.	
Contracts/signed service level agreements with Institutions including close up reports that supports the past performance of the service provider and provides proof for the provision of e-books subscription (Current and Previous Contracts).	NO	Non submission will lead to lower scores during functionality.	
General conditions of contract	NO	Bidder to familiarised themselves with the content of this document as it entails very important information.	

6. Kindly note that the DEPARTMENT OF SPORT, ARTS AND CULTURE is entitled to amend any request for bid conditions before the closing date.

7. Requests for bids are evaluated in accordance with the Preferential Procurement Policy Framework Act, 2000 as well as the Preferential Procurement Regulations, 2017.
8. The bidder hereby offer to render all or any of the goods and or services described in the attached documents to the DEPARTMENT OF SPORT, ARTS AND CULTURE on the terms and conditions and in accordance with the specifications stipulated in this request for bid document.
9. Bids submitted by legal persons must be signed by a person or persons duly authorised thereto by a resolution of the Board of Directors, a copy of which Resolution, duly certified, be submitted with the Request for bids.
10. The bidder hereby agree that the offer herein shall remain binding upon him/her and receptive for acceptance by the DEPARTMENT OF SPORT, ARTS AND CULTURE during the validity period indicated and calculated from the closing hour and date of the requests for bids.
11. This bid and its acceptance shall be subject to the terms and conditions contained in this request for bids document.
12. The bidder furthermore confirms that he/she has satisfied himself/herself as to the correctness and validity of his/her bid response, that the price(s) and rate(s) quoted cover all the work/item(s) specified in the bid response documents and that the price(s) and rate(s) cover all his/her obligations under a resulting contract and that he/she accept that any mistakes regarding price(s) and calculations will be at his/her risk.

13. The bidder hereby accepts full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on him/her under this agreement as the Principal(s) liable for the due fulfilment of this contract.
14. **Legal Implications** – The successful service provider/s must be prepared to enter into a service level agreement with the Department of Sport, Arts and Culture.
15. **Counter conditions** – Bidders attention is drawn to the fact that amendments to any of the special conditions by bidders will result in invalidation of such bid.
16. **Prohibition of Restrictive Practices** – In terms of Section 4(1) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerned 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 is/are or a contractor/s was/were involved in:
 - 16.1 Directly or indirectly fixing a purchase or selling price or any other trading condition;
 - 16.2 Dividing markets by allocating customers, suppliers, territories or specific types of goods and services; or
 - 16.3 Collusive bidding (Request for proposal).
17. If bidders or contractor(s), in the judgment of the purchaser, has/have been engaged in any of the restrictive practices referred to above, the purchaser may, without prejudice to any other remedy provided for, invalidate the bid for such item(s) offered or terminate the contract in whole or in part and 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.

18. **Fronting** – The Department of Sport, Arts and Culture supports the spirit of Broad Based Black Economic Empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent and legally compliant manner. Against this background the Department of Sport, Arts and Culture condemns any form of fronting.
- 18.1 The Department of Sport, Arts and Culture in ensuring that bidders conduct themselves in an honest manner will as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to be determine the accuracy of the representation made in request of the bid documents.
- 18.2 Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry, be established during such enquiry/investigation, the onus will be on the bidder/contractor to prove that fronting does not exist.
- 18.3 Failure to do so within a period of 14 days from the date of notification may invalidate the bid/contract and may also result in the restriction of the bidder/contractor to conduct business with the public sector for a period not exceeding ten years, in addition to any other remedies the Department of Sport, Arts and Culture may have against the bidder/contractor concerned.

19. **Obtaining of bid document**

- ✓ RFP document will be advertised on the **Department of Sport, Arts and Culture's Website**: dsac.ncpg.gov.za/index.php/tenders
- ✓ **National Treasury E-Portal**: <https://www.etenders.gov.za>



DEPARTMENT OF SPORT, ARTS AND CULTURE

TERMS OF REFERENCE

**PROVISION OF DIGITAL E-LENDING
LIBRARY SUBSCRIPTION (E-BOOKS) FOR
THE NORTHERN CAPE PROVINCIAL
LIBRARY SERVICES FOR A PERIOD OF
THREE (3) YEARS**

DSAC-005-2022

TERMS OF REFERENCE

INVITATION TO BID FOR THE PROVISION OF A DIGITAL e-LENDING LIBRARY (E-BOOKS SUBSCRIPTION SERVICE) FOR THE NORTHERN CAPE LIBRARY SERVICE, FOR A PERIOD OF THREE (3) YEARS

1. INTRODUCTION

As per Schedule 5(a) of the Constitution of the Republic of South Africa, library services other than National are Provincial Competency. The Constitution therefore mandates the Department of Sport, Arts and Culture to provide library services to the communities of the Northern Cape Province.

2. BACKGROUND

The Directorate Library and Archive Services in the Department render library and information services to the community libraries in the local municipalities. One of the key responsibilities of the Directorate is the provision of library materials which include books and other formats which are purchased and processed centrally in Head Office and dispatched to District Libraries for further distribution to community libraries.

A digital library is an electronic version of a regular library containing printed books and other formats. The intention of this kind of a library is to increase access of library and information service to more users. Publications such as books, articles, journals, magazines or paper are stored and accessed electronically. Access can be done at a remote place through the internet by using a smart phone, a tablet, laptop or desktop computer to a collection of

electronic books to download. Downloaded material from a digital library will be stored on the patron's device within a specified time until it disappears after the due date given by the system. Registered users in affiliated libraries will gain access to the library using library membership number and personal identification created by the system.

3. SPECIFIC REQUIREMENTS

(I) STANDARD SPECIFICATION FOR DIGITAL LIBRARY SUBSCRIPTION (E-BOOKS)

3.1 DIGITAL LENDING LIBRARY SUBSCRIPTION FOR LIBRARY USERS

The following minimum specifications must be adhered to:

A digital library subscription service is required to enhance provision of library information services for those who cannot visit their physical library during opening hours, but who still need to access reading material albeit in a different format. The digital library being open 24/7 and 365 days of the year. The Northern Cape Provincial Library Services requires the provision of a subscription service to a digital/ e-lending library, offering e-books, digital audio books and other electronic media to all residents of the Northern Cape Province provided they are registered members of one of the public libraries in the Northern Cape.

3.2 APPLICATION SERVICE

The digital lending library must be:

- ✓ Branded for the Northern Cape;
- ✓ Linked to the stand-alone Digital Library through the Library Management System, or accessed direct by end-users or through a specific application (app).

- ✓ Accessible through a virtual library that can be accessed at the public libraries and through library member devices;
- ✓ Available e-books, audio books, music and videos can be checked out on the connected compatible desktop computers, laptops, tablets, e-readers and smart phones for on or off-line access.
- ✓ Accessible remotely from a web-based browser for online/offline reading;
- ✓ In easily accessible formats and offer "responsive design" that allows for optimized viewing on any sized screen and able to be adjusted for reader preferences (font size, type face, justification on the page, line spacing, back-lighting, as well as search facilities, note taking and bookmarks);
- ✓ Available to registered library users, who have a compatible device and connectivity, with online password access through their user membership;
- ✓ Able to customize selection according to our libraries' collection development goals;
- ✓ Able to provide real-time, customizable reports that will permit library personnel to track usage of the collection; and
- ✓ Provide for digital rights management (copyright protection).

The web application should be flexible and customizable at any time to suit the departmental needs.

3.3 SUPPORT SERVICES

- ✓ Application services (maintenance and hosting);
- ✓ Provide secondary level user support (helpdesk);
- ✓ Digital collection development,

- ✓ Training and technical support to Library Service and senior departmental staff by a product support specialist;
- ✓ Provide customizable marketing resources to promote the service.

3.4 TECHNOLOGY

- ✓ Support all major mobile devices (e-Readers, smart phones and tablets);
- ✓ Digital rights management (copyright protection);
- ✓ Required bandwidth for all downloads and
- ✓ Relevant applications for e-books, audio books, music and videos.

3.5 USAGE

Northern Cape Provincial Library Services must be able to set policies for the usage and lending of users' digital titles, be able to set the lending limits for digital media, including the number of titles per patron to be checked out and the lending period per title. The provision of safe and secure patron authentication is required. The system must be able to authenticate users through a User Login Manager.

3.6 CATALOGUE/COLLECTION REQUIREMENTS

The catalogue offered by the service provider for customized selection by the library selectors must be comprehensive and suitable to the diverse needs of public library users in all categories and be selected from a wide number of publishers, including South African publishers. Provision of titles in South African languages, especially English, Afrikaans, isiXhosa and Setswana is an important requirement. **The service must be able to provide access to e-books, e-audio books, music, videos, e-publications, digital newspapers,**

digital magazines and any other electronic media that will satisfy the educational and information needs of the community.

The service provider should provide regular updates of new publications. The Catalogue should provide and maintain a minimum of 800 000 titles from which selectors can choose. New additions by the Department should replace the weeded ones. The Catalogue should clearly state lending models (open-access) allowing more than one user access to the same title at the same time.

3.7 ADMINISTRATIVE FUNCTION

The Service should provide:

- ✓ An Administrator function which includes management of the budget allocated per annum;
- ✓ A reporting module which includes the tracking of usage statistics; and
- ✓ Real-time, customizable reports that will permit library personnel to track usage of the collection. Reports must include usage by time (day, week and month) as well as by publisher, title and format. Report data must be exportable to Microsoft Excel spreadsheets for easy printing and e-mailing.

3.8 OVERALL PRODUCT REQUIREMENTS

The deliverables of the project are as follows:

- ✓ The service provider must provide access to e-books, e-audio books and any other electronic media that is comprehensive and suitable to meet

diverse information needs of community library users in all categories and for all age groups.

- ✓ The service provider must provide Northern Cape Provincial Library Services with a catalogue from which to select these materials from a wide range of publishers, including South African publishers, with a minimum of 800 000 titles from which the library selectors can choose.
- ✓ The service provider should provide regular updates of new publications.
- ✓ The catalogue will include a range of e-books allowing more than one user to access to the same title at the same time.
- ✓ Training and support of staff must be provided.
- ✓ The service provider must provide a digital lending application that is customizable to the departmental branding and that can interface with the departmental website.
- ✓ Support all major mobile devices (e-Readers, smart phones and tablets).
- ✓ Provide required bandwidth for all downloads.
- ✓ Provide training and support to library staff.
- ✓ Provide maintenance and hosting.
- ✓ Provide secondary level user support.
- ✓ Provide customizable marketing resources to promote the service.
- ✓ Provide administrator function.
- ✓ Reporting module which includes statistics.
- ✓ Rating service for users to be included on the website.

3.9 PRICE STRUCTURE

Breakdown of the cost should include annual subscription rates for a three (3) year period, which must include training, hosting, support and all other associated costs. Refer to the below pricing structure:

Description of goods and services	Annual Cost Per Year 1	Annual Cost Per Year 2	Annual Cost Per Year 3
Annual subscription fee			
Application license			
Application hosting			
Training			
Support			
Other associated costs			
Total costs per year			

Total costs for the three (3) years

.....

(Add: Year 1, Year 2 and Year 3 together). The total amount must be transferred to NCP 1.

3.10 CONTRACT

- ✓ The successful bidder will enter into a contract with the Department which will detail payments and penalties.
- ✓ The contract will be in the form of a service level agreement which will further the detail obligations of the service provider and other contractual agreements with the Department in the subscription service.
- ✓ The contract will run for a period of three (3) years.



**DEPARTMENT OF SPORT, ARTS AND
CULTURE**

EVALUATION CRITERIA

**PROVISION OF DIGITAL E-LENDING
LIBRARY SUBSCRIPTION (E-BOOKS) FOR
THE NORTHERN CAPE PROVINCIAL
LIBRARY SERVICES FOR A PERIOD OF
THREE (3) YEARS**

DSAC-005-2022

Evaluation Criteria

Bids will be evaluated in accordance with the Department's Supply Chain Management Policy and Preferential Procurement Policy Framework Regulations of 2017, issued in terms of Section 5 of the Preferential Procurement Policy Framework Act (PPPFA) No. 5 of 2000.

The evaluation of the bid will consist of the following three (3) stages:

Stage 1	Stage 2	Stage 3
Mandatory and other bid requirements	Functionality	Price and Preference Points
Compliance with mandatory and other Bid requirements. Bidders that do not comply with the compulsory requirements will be automatically eliminated.	The bid will be assessed to verify the bidder's capability and ability to execute the contract. Bidders scoring less than 62 points during this stage of the evaluation will be eliminated and shall not be considered any further.	This bid is subject to the Preferential Procurement Regulations 2017. Bidders that have migrated to this phase will be evaluated in accordance with the preference points of the attached NCP 6.1 Form.

!!NB!! THE DEPARTMENT OF SPORT, ARTS AND CULTURE MAY INVITE BIDDERS WHOSE BID PASSED THE PHASE 2 OF THE EVALUATION TO DO A PRESENTATION TO A TASKTEAM. THE PURPOSE OF THE PRESENTATION IS TO ENSURE THAT THE BIDDER HAS A CLEAR UNDERSTANDING OF THE SCOPE OF WORK, THE COMPANY'S PROJECT APPROACH IS COMPATIBLE AND RATIONALE, AND THAT THEIR TEAM IS INDIVIDUALLY AND COLLECTIVELY COMPETENT AS REQUIRED BY THE TERMS OF REFERENCE.

BIDDERS SCORING LESS THAN 62 OUT OF A MAXIMUM OF 100 WILL NOT PROCEED TO THE 3RD STAGE.

Stage 1: Administrative Compliance Requirements

- ✓ Signed NCP 1;
- ✓ Fully filled in Pricing Schedule for **firm prices** (purchases) NCP 3.1;
- ✓ Fully filled in Pricing Schedule for **non firm** prices (purchases) NCP 3.2;
- ✓ Fully filled in and signed bidder's disclosure SBD 4;
- ✓ Fully filled in, witnessed and signed preference points claim form of the Preferential Procurement Regulations 2017 NCP 6.1;
- ✓ General Conditions of Contract (To be initialled);
- ✓ Proof of registration on the National Treasury Central Supplier Database, e.g. Latest CSD Report to be attached;
- ✓ Tax compliance Status Pin Issued by SARS;
- ✓ Companies, who are registered for VAT, should include VAT on their costing;
- ✓ Valid BBBEE Certificate (BEE Accreditation is strictly required to be obtained from a South African National Accreditation System (SANAS) Registered BEE Verification Agency only. Bidders who qualify as Exempted Micro Enterprise (EME) must submit a sworn affidavit signed by the EME Representative and attested by a Commissioner of Oaths);
- ✓ Valid contact details including email addresses;
- ✓ Company profile (including organizational structure of the company, proof of previous work undertaken in this respect contactable references, credentials/CV i.e. experience and qualifications of key personnel/project team member;
- ✓ In case of a Joint Venture the following documents must be submitted:
 - (i) Valid joint venture agreement signed by all relevant parties and witnessed;

- (ii) Consolidated BBEE Certificate (if not consolidated, preference points will be zero (0));
- (iii) Tax compliance Status Pin Issued by SARS of all parties;
- (iv) Individually filled in and signed bidder's disclosure NCP 4 for each bidder;
- (v) Proof of registration on the National Treasury Central Supplier Database, e.g. Latest CSD Reports of all parties to be attached;
- (vi) Company profile of all parties.

Stage 2: Functionality

A total of 62 points are allocated for functionality evaluation according to the following criteria:

Description/Criteria	Weight	Documentary Evidence/ Scoring guideline	Value
<p>1. Bidders experience and proven track record in successfully completing projects of a similar scope, deliverables and complexity.</p>	35	<p>Provide signed and authentic reference letters on the clients letterhead reflecting the following: Number of years experience in delivering similar service (duration), approximate value of goods or services, performance of the supplier (Excellent, good/ average/poor), quality of Bid Proposal and adherence to the terms and conditions and specifications, and if the client will recommend this supplier to anyone without any reservations.</p> <p>Relevant experience greater than 5 years and more than 4 years.</p> <p>Relevant experience less than 5 years and more than 4 years.</p> <p>Relevant experience less than 4 years but more than 3 years.</p> <p>Relevant experience less than 3 years but more than 2 years.</p> <p>Relevant experience less than 2 years.</p>	<p>5 = 35</p> <p>4 = 28</p> <p>3 = 21</p> <p>2 = 14</p> <p>1 = 7</p>

<p>2. Past performance</p>	<p>35</p>	<p>Contracts/service level agreements signed with Institutions including close up reports to be attached.</p> <p>Evidence proving provision of E-books subscription to more than 5 libraries over the past 5 years.</p> <p>Evidence proving provision of E-books subscription to more than 4 libraries over the past 5 years.</p> <p>Evidence proving provision of E-books subscription to more than 3 libraries over the past 5 years.</p> <p>Evidence proving provision of E-books subscription to more than 2 libraries over the past 5 years.</p> <p>Evidence proving provision of E-books subscription to less than 2 libraries over the past 5 years.</p>	<p>5 = 35</p> <p>4 = 28</p> <p>3 = 21</p> <p>2 = 14</p> <p>1 = 7</p>
<p>3. Resources</p>	<p>30</p>	<p>Provide proof of size of catalogue Size of catalogue able to provide and maintain a minimum of more than 1 000 000 items for users to choose from.</p> <p>Provide proof of size of catalogue Size of catalogue able to provide and maintain a minimum of more than 900 000</p>	<p>5 = 30</p> <p>4 = 25</p>

		items for users to choose from.	
		Provide proof of size of catalogue Size of catalogue able to provide and maintain a minimum of more than 800 000 items for users to choose from.	3 = 20
		Size of catalogue able to provide and maintain a minimum of more than 600 000 items for users to choose from.	2 = 10
		Size of catalogue able to provide and maintain less than 500 000 items for users to choose from.	1 = 5
Total points	100		

Any bidder who does not meet the minimum threshold of 62 points will be eliminated, and will not be considered. For the purposes of comparison and in order to ensure meaningful evaluation, bidders are requested to furnish detailed information in substantiation of compliance to functionality criteria mentioned. Compulsory verification will be conducted on points 1 to 3 of the functionality by the Department and false information provided will disqualify the bidder.

Stage 3: Price and Preference Points

- ✓ This bid is subject to the Preferential Procurement Regulations 2017.
- ✓ The bid will be evaluated and adjudicated to the bidder scoring the highest points based on price and the number of BBBEE Points allocated.

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 “Day” means calendar day.
 - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
 - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
 - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such

obligations of the supplier covered under the contract.

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

2. Application

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

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

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

3. General

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

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

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

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

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

6. Patent rights

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

7. Performance security

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

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

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

12. Transportation

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

13. Incidental services

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

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

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

14. Spare parts

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

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

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

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

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

22. Penalties

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

23. Termination for default

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

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

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

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

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

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

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

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

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

24. Anti-dumping and countervailing duties and rights

- 24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which

may be due to him

25. Force Majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
 - (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

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

Js General Conditions of Contract (revised July 2010)