

The Council for Medical Schemes is a statutory body established by the Medical Schemes Act (131 of 1998) to provide regulatory supervision of private health financing through medical schemes.

Tender Description	Tender Number	Compulsory Briefing Session	Preference Points System	Delivery Address and Closing Date
Invitation to Service Providers to serve on CMS Panel of Legal Services for a period of three (3) years.	CMS072023/24	<p>Compulsory Briefing Session Date: <b>26<sup>th</sup> February 2024</b>, at 12:00pm</p> <p>CMS will conduct a concurrent physical and online (hybrid) compulsory briefing for this tender, and on the <b>26<sup>th</sup> February 2024</b>, at 12:00pm. All interested parties must send their RSVP by <b>23<sup>rd</sup> February 2024</b> to Ms. Nthabiseng Sephadi at <a href="mailto:n.sephadi@medicalschemes.co.za">n.sephadi@medicalschemes.co.za</a></p> <p><b>Attendance is compulsory and failure to attend the briefing session will lead to automatic disqualification from the tender process.</b></p>	80/20 Preference Points System (Pricing and Specific Goals)	<p>Block A, Eco Glades 2 Office Park, 420 Witch-Hazel Avenue, Eco Park, Centurion, 0157</p> <p><b>Closing Date:</b> 11<sup>th</sup> March 2024 <b>Time:</b> 11:00</p> <p>The CMS will not accept late bids and they will be returned to the Bidder.</p>

**Tender enquiries can be directed to:**

Mr. Ludwe Madayi

Email address: [l.madayi@medicalschemes.co.za](mailto:l.madayi@medicalschemes.co.za)

Tender documents will be made available on the CMS website ([www.medicalschemes.co.za](http://www.medicalschemes.co.za)) and on the eTender publication portal from the 16<sup>th</sup> February 2024.

Late, telegraphic tenders, e-mail tenders and tenders which are not registered on the **Tender Register** and in the CMS tender box will not be considered.



### APPOINTMENT OF A PANEL OF LEGAL SERVICES FOR A PERIOD OF THREE (3) YEARS

The Council for Medical Schemes (CMS) is currently accepting bids from selected qualified service providers to the tender advertisement published titled: **Invitation to Service Providers to serve on CMS Panel of Legal Services for a period of three (3) years**. Complete specifications, requirements, and instructions for submitting proposals are set forth in this document.

RFP REFERENCE NO:	CMS07/2023/24
ISSUE DATE:	16 February 2024
CLOSING DATE AND TIME:	11 March 2024
BID VALIDITY PERIOD:	120 Calendar Days
BRIEFING SESSION:	Compulsory Briefing Session (26 <sup>th</sup> February 2024 @ 12H00pm)
DELIVERY ADDRESS FOR TENDER:	CMS – Tender Box Block A, Eco Glades 2 Office Park, 420 Witch-Hazel Avenue, Eco Park, Centurion, 0157
PREFERENTIAL PROCUREMENT SYSTEM:	80:20

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## SECTION 1: INTRODUCTION AND GENERAL PROPOSAL INFORMATION

### 1.1. BACKGROUND TO COUNCIL FOR MEDICAL SCHEMES

The Council for Medical Schemes (CMS) is a statutory body established by the Medical Schemes Act, 1998 (Act No. 131 of 1998) to provide regulatory supervision of private health financing through medical schemes; and functions as a Schedule 3A Public Entity.

### 1.2. VISION

To be an agile and transformative Regulator in order to promote affordable and accessible healthcare cover towards universal health coverage.

### 1.3. MISSION

The CMS regulates the medical schemes industry in a fair and transparent manner and achieves this by:

- **Protecting the public** and informing them about their rights, obligations and other matters in respect of medical schemes.
- Ensuring that **complaints raised by members** of the public are handled appropriately and speedily.
- Ensuring that all entities conducting the business of medical schemes, and other regulated entities, **comply with the Medical Schemes Act**.
- Ensuring the improved management and **governance** of medical schemes.
- **Advising the Minister of Health** of appropriate regulatory and policy interventions that will assist in attaining national health policy objectives.
- Ensuring collaboration with other **stakeholders** in executing our regulatory mandate.

### 1.4. PURPOSE OF THE RFP

The purpose of this Request for Proposal (RFP) is to invite qualified service providers to submit proposals for appointment of a panel of legal services for a period of three (3) years.

### 1.5. ISSUING OFFICE AND COUNCIL FOR MEDICAL SCHEMES CONTACT

This RFP, and any subsequent addenda to it, is being issued by the Corporate Services Division – Legal Services at the Council for Medical Schemes, under the auspices of the CMS' Supply Chain Management Unit. The Supply Chain Management unit is the sole point of contact regarding all procurement and contractual matters relating to the requirements described in this RFP.

### 1.6. RFP TIME SCHEDULE

Bidders interested in submitting proposals in response to this RFP should do so according to the time schedule outlined below. The CMS reserves the right to modify this schedule, as and when necessitated, in line with its best interests and in line with paragraph 1.8 (Amendments of the RFP) of this RFP. If there is a discrepancy between the dates in the table below and the dates on the cover page, the dates on the cover page take precedence.

ACTION	DATE
Advertisement placed in the eTender Portal and CMS Website	16 February 2024
Compulsory briefing session <b>Block A, Eco Glades 2 Office Park, 420 Witch-Hazel Avenue, Eco Park, Centurion, 0157</b>	26 February 2024 @12:00PM
Deadline for Submission of Questions	06 March 2024
Deadline for Submission of Proposals (11:00am)	11 March 2024

### 1.7. QUESTIONS REGARDING THE RFP

All enquiries, questions, and requests for clarification of the contents of this RFP must be in writing and addressed to the CMS contact persons indicated below. A listing of Bidder enquiries (without identifying the source of the inquiry) and the CMS' responses thereto, will be distributed to all Bidders who submit questions. Whenever a response to an enquiry would constitute a modification or addition to the original RFP, the reply will be made in the form of an Amendment Notice to the RFP. All enquiries must include:

1. The company's name, address, and telephone number.
2. A clear and concise question; and
3. References to specific points within this RFP.

***All questions, in writing, must be submitted before the deadline for the submission of questions specified in the RFP time schedule above, by email, quoting the RFP no. listed on the cover page.***

- All technical questions and requests for clarification should be addressed to [I.madayi@medicalschemes.co.za](mailto:I.madayi@medicalschemes.co.za) and quote the RFP Reference Number.
- All Supply Chain Management requests, concerning this RFP should be addressed in writing by email to: [I.madayi@medicalschemes.co.za](mailto:I.madayi@medicalschemes.co.za)
- Always quote the RFP Reference Number in the subject line of the email.
- No one other than the CMS contact persons identified herein, is authorised to respond to questions regarding this RFP. No meetings or telephonic enquiries will be entertained with qualifying bidders.

### 1.8. AMENDMENTS TO THE RFP

The CMS may revise or add to the RFP prior to the deadline for Proposals and, at its own discretion, extend the deadline for all potential Bidders. Any changes to the RFP will be in written form issued by the CMS. Such amendments will be sent by email to all Bidders, with a request for acknowledgement of receipt. Amendments will be clearly marked as such. Each amendment will be numbered consecutively and will become part of this RFP. Any Bidder who fails to receive such amendments shall not be relieved of any obligation under its proposal as submitted. Except as stated in this paragraph, no one is authorised to amend any part of this RFP, in any respect, either in writing or by oral statement.

## 1.9. COMPULSORY BRIEFING SESSION

- 1.9.1. CMS will conduct a concurrent physical and online (hybrid) compulsory briefing for this tender, and on the **26<sup>th</sup> February 2024**, at 12:00pm. All interested parties must send their RSVP by **23<sup>rd</sup> February 2024** to Ms. Nthabiseng Sephadi at [n.sephadi@medicalschemes.co.za](mailto:n.sephadi@medicalschemes.co.za)
- 1.9.2. All interested bidders must join the meeting 30 minutes prior to the start of the meeting to avoid any technical delays or disruptions. Interested Bidders have the option to attend physically at CMS Offices if they are or will experience load shedding on the day of the briefing session. CMS will not be held liable for any technical challenges related to connectivity on the day of the briefing session.
- 1.9.3. ***Failure to attend the compulsory briefing session will lead to automatic disqualification and the bidder will not be considered for further evaluation.***

## SECTION 2: TERMS OF REFERENCE/ SCOPE OF WORK

### 1. OBJECTIVE

The objective of this bid is to appoint suitable, qualified and competent Firms of Attorneys with adequate capacity and experience in dealing with legal issues to a panel of legal services for a period of three years.

### 2. SCOPE OF WORK

2.1. The successful firms of Attorneys will, as and when required by the CMS, render legal services on a wide range of specialized areas, including but not limited to:

- a) Representing and acting on behalf of the CMS in litigation matters before various Courts including handling applications for interdicts, including briefing of Advocates in consultation with CMS in line with the Legal Practice Act, Regulations and Code of Conduct.
- b) Provision of Corporate, Commercial and Regulatory Compliance legal advice.
- c) Representing and acting on behalf of the CMS in Labour related matters.
- d) Representing and acting on behalf of the CMS by chairing and resolving disputes lodged with the CMS in terms of the Act.
- e) Legislative Review and Drafting.
- f) Training on various pieces of legislation and any other related legal issues.

#### 2.2. Type of legal services required by CMS:

- a) The required legal advisory services have been categorized into five (5) categories as reflected below. The bidder must indicate, in the table below, with a tick (✓) or preferably in a letter indicating the category the bidder is bidding for:
- b) Bidders are encouraged to submit different proposal per Category and the comprehensive proposal must be submitted in Annexures (i.e. **Annexure A- Category A, Annexure B- Civil Law**) depending on the Category the bidder is bidding for.
- c) **The CMS has provided a table of scope of work below, which the bidders need to comply with as provided:**

Area of Work	Scope of Work	Skills required
<b>Constitutional, Administrative &amp; Medical Law- Category A</b>	<ul style="list-style-type: none"> <li>• Provide legal opinions in respect of constitutional, administrative and international law matters.</li> <li>• Assist in drafting of public or private international law agreements to be entered into</li> <li>• Ensure technical quality, adherence to best practice and consistency with the Constitution and other Act of Parliament.</li> <li>• Advise on the legal interpretation and legal implications of existing or proposed public or private international agreements to be entered into</li> </ul>	<ul style="list-style-type: none"> <li>• Experience in providing opinions in constitutional, administrative and international law matters</li> <li>• Extensive knowledge of international law</li> <li>• Extensive experience in the drafting, vetting and interpretation of public and private international law</li> <li>• Understand regulatory framework governing international dispute resolution</li> <li>• Understanding medical aid schemes related issues</li> </ul>

	<ul style="list-style-type: none"> <li>• Provide legal advice on medical aid schemes law or Act.</li> <li>• Advise on all aspects related to Competition Law</li> </ul>	<ul style="list-style-type: none"> <li>• Experience in Competition in Competition Law</li> </ul>
<b>Litigation Category B</b>	<ul style="list-style-type: none"> <li>• Conduct litigation on behalf of (e.g. handling of pleadings etc.)</li> <li>• Ensure effective and efficient litigation process is followed.</li> <li>• Provide custody of all pleadings and documents in litigation matters</li> <li>• Provide oral and written legal advice throughout litigation process.</li> <li>• Avoid prescriptions, barring and default judgments</li> </ul>	<ul style="list-style-type: none"> <li>• Experience in providing opinions in litigious matters.</li> <li>• Knowledge of litigation processes and procedures in various forums including but not limited to the High Court, SCA, Constitutional Court and Magistrate Court</li> <li>• Comprehensive and coherent understanding of all laws and regulations</li> </ul>
<b>Corporate Governance, Commercial Law and Compliance- Category C</b>	<ul style="list-style-type: none"> <li>• Advise on governance related issues</li> <li>• Advise on regulatory and compliance related issues</li> <li>• Provide legal advice on public procurement policies and processes</li> <li>• Advise on projects, transactions of corporate law nature;</li> <li>• Provide legal opinions of a corporate law nature;</li> <li>• Drafting, review and advise on commercial agreements etc.</li> <li>• Advise on legal issues arising from asset, risk and debt management</li> <li>• Provide legal opinions on insurance</li> </ul>	<ul style="list-style-type: none"> <li>• Extensive knowledge of compliance in government entities</li> <li>• Understanding regulatory framework governing public entities</li> <li>• Comprehensive and understanding on public sector procurement matters or framework</li> <li>• Experience in working with transactions of corporate law nature;</li> <li>• Excellent research and drafting skills, for purposes of preparing legal opinions of a corporate law nature</li> <li>• Ability to work and delivery of specific outputs on time</li> <li>• Experience in providing advice in general commercial</li> </ul>



		<ul style="list-style-type: none"> <li>• Comprehensive and understanding on insurance matters</li> </ul>
<b>Communication Information Technology Law- Category D</b>	<ul style="list-style-type: none"> <li>• Advice on all aspects of IT law, such as inter alia, service level agreements pertaining to system integration, software, website development etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Experience in IT law and communication, including cyber law</li> </ul>
<b>Labour and Employment Law - Category E</b>	<ul style="list-style-type: none"> <li>• Provide legal opinions on Labour, employment benefits and employment law related matters.</li> <li>• Assist in disciplinary hearings, arbitrations, and other dispute resolution.</li> <li>• Provide legal advice on pension law (social security laws)</li> </ul>	<ul style="list-style-type: none"> <li>• Experience in labour and employment law litigation.</li> <li>• Understand the regulatory framework governing public service employment.</li> <li>• An understanding of labour law and employment law jurisprudence for purposes of providing legal opinions</li> <li>• Knowledge of Bargaining Council and other dispute resolution forum</li> <li>• Understanding pension fund law legislation and administration of pension funds (social security laws)</li> </ul>

### 3.PROJECT MANAGEMENT AND PROJECT MONITORING

3.1. The appointed service provider must submit to the Registrar the following:

- Periodic Progress or Ad-hoc Reports on the outstanding legal matters; progress of the legal matters as well as on results of completed matters in a format and timelines that shall be agreed to by both parties to the Registrar and CMS designated official.
- Draft and provide final report(s) on each individual legal matter completed with clear findings and recommendations prior to tabling to the Registrar and CMS designated official.
- Provide CMS with supporting documentation/evidence/working papers and any relevant annexures to the reports.
- Complete CMS billing and monitoring schedule for each invoice submitted.

#### 4. SPECIAL TERMS AND CONDITIONS

##### 4.1. The following are the special terms and conditions applicable to this bid:

4.1.1. The appointment of a successful bidder to the Panel of Attorneys will be for a fixed period of three (3) years, which shall be subject to performance review by the CMS as set out in the Service Level Agreement concluded between the CMS and the successful bidder.

4.1.2. Each successful bidder shall be required to sign a Service Level Agreement prior to providing the Services.

4.1.3. The successful bidder will be instructed to provide Services as and when required. While the CMS will use reasonable endeavors to achieve a fair allocation of work to the firms of Attorneys on the Panel of Attorneys, the successful bidder acknowledges that their appointment to the Panel does not guarantee allocation of work.

4.1.4. The CMS will as and when it requires the Services, in its sole discretion, issue an instruction letter to any firm of Attorneys on the Panel of Attorneys.

4.1.5. The CMS may, in its sole discretion, instruct a matter or any part thereof to more than one firm of Attorneys.

4.1.6. A firm of Attorneys assigned any work may not cede, assign or sub-contract any part thereof to any third party unless with the prior written consent of the CMS.

4.1.7. The successful firms of Attorneys shall report directly to the **Senior Manager: Legal Services** or any person delegated by the CMS in writing with regard to finalizing court papers, further instructions, status update reports, all administration pertaining to any particular instruction and any matters arising from this RFP.

4.1.8. The CMS shall be entitled in its sole discretion, to remove a successful firm of Attorneys from the Panel of Attorneys before the expiry of the three (3) year's period by written notice for non-compliance with any obligation contained in this RFP, applicable laws and/or breach of the Service Level Agreement and recall all the files in the firm of Attorneys' possession.

4.1.9. Notwithstanding the establishment of a Panel of Attorneys, the CMS reserves the right to procure the provision of legal services from any firm of Attorneys outside the Panel in accordance with applicable laws.

#### 5. EVALUATION PROCESS AND CRITERIA

5.1. Table 1 - Evaluation of bids will be conducted in three (3) phases as follows:

Stage	Details
Phase 1	<b>Administrative evaluation criteria:</b> The purpose of this criteria is to evaluate the bidders completeness of the tender documents.
Phase 2	<b>Mandatory evaluation criteria:</b> The purpose of this criteria is to evaluate the bidders on their eligibility and compliance to applicable laws and regulations.
Phase 3	<b>Technical / Functional evaluation criteria:</b> The purpose of this criteria is to evaluate the bidders on their technical competencies.

##### 5.2. Phase 1 – Administrative Evaluation

5.2.1. The Bidder must meet all the following requirements to pass the Administrative Evaluation:

- a) The Bidder must fully comply with the Instruction for Submitting Proposals, outlined in **Section 4** of this tender document and must ensure that they complete and sign all the bidding documents in this section.
- b) All the documents listed in **Sections 4 and 5** of the tender document must be submitted and completely signed. Failure to submit and sign the requested documents may result in disqualification at this stage.
- c) Any Bidder that fails to meet the Administrative Evaluation Criteria may be disqualified and may not be considered for further evaluation.

### 5.3. Mandatory Technical Criteria

5.3.1. Bidders must meet all the following criteria to be considered for further evaluation. Failure to meet all the following criteria will lead to automatic disqualification:

**Table 2 - Mandatory Technical Criteria**

Mandatory Technical Criteria	Comply	Does not Comply	X-Cross Reference/ Comments. (Bidder to complete this column)
1. A company profile of the firm stating when the firm was established and its area(s) of specialization.			
2. Certified copies of Admission as an Attorney (Legal Practitioner) and a Right of Appearance in the High Court certificates for the Lead Attorney and/or Legal Practitioner (Director/ Sole Proprietor or Partner).			
3. A valid Attorney's <b>Fidelity Fund certificate</b> issued in terms of the Legal Practice Act ( <b>Act No.28 of 2014</b> ) for the Lead Attorney/ Legal Practitioner (Director).			
4. A valid letter of good standing from the relevant <b>Legal Practice Council</b> for the Lead Attorney/ Legal Practitioner.			
5. Certified proof of qualification(s) of the Lead Attorney and/or Legal Practitioner			
6. Attendance of Compulsory Briefing Session			
7. Submission of tender documents before or on the closing date and time. All bids must be submitted, before the Tender Closing Date and Time, in the tender box at the address noted on the cover page. All bids submitted after the Closing Date and time will not be considered			

### 5.4. Functional Technical Criteria

Bidders will be evaluated in terms of the prevailing supply chain policy applicable to Council for Medical Schemes and it should be noted that:

- (a) The overall combined score must be equal to or above **70 points out of 100 points** to be on the panel.
- (b) The Council for Medical Schemes will analyse and assess technical capability and therefore the bidder should demonstrate the following:

**Table 3: Technical/ Functional Evaluation Criteria**

CRITERIA	SUB-CRITERIA	WEIGHTING/POINTS	CROSS-REFERENCE TO RESPONSE SUPPORTING
<b>A) Organizational Capacity, Capabilities and Experience</b>	<p>1.The Bidder must demonstrate and provide comparative projects undertaken within public sector or record of attendance and a brief summary of three matters under the areas of specialization in <b>Section 2 (Scope of Work) (40 Points):</b></p> <ul style="list-style-type: none"> <li>• Execution of 3 similar projects <b>(40 Points)</b></li> <li>• Execution of 2 similar projects <b>(30 Points)</b></li> <li>• Execution of 1 similar project <b>(15 Points)</b></li> <li>• 0 Execution of similar projects <b>(0 Point)</b></li> </ul>	40	
<b>B) Capacity and experience of the proposed team</b>  <b>(Attach CV's, Qualifications, Profile and Past &amp; Current Projects)</b>	<p>1.The proposed team must demonstrate experience, qualifications and capabilities including those of team leader/s or Lead Attorney/s with at least 5 years' ( ) experience as the Lead Attorney <b>(60 Points)</b></p> <p>1.1. Provide detailed CV's of the Lead Attorney CV of the Lead Attorney who will be directly involved in providing the required services should specify areas of specialization as referred to in this RFP. The Lead Attorney must have at least one (1) year post admission working experience in the identified areas of specialization. Certified copies of qualifications of the Lead Attorney should be attached as evidence <b>(30 Points):</b></p> <ul style="list-style-type: none"> <li>• 7 or more years' experience <b>(30 Points)</b></li> <li>• 6 years' post admission experience <b>(25 Points)</b></li> <li>• 3 - 5 years' post admission experience <b>(15 Points)</b></li> <li>• .1 - 2 years' post admission experience <b>(10 Point)</b></li> <li>• Less than 1 year post admission experience <b>(0 Points)</b></li> </ul> <p>1.2. Provide CVs of Key Staff/team members supporting the Lead Attorney CVs of Candidate Legal Practitioners, as defined in section 1 of the Legal Practice Act (No. 28 of 2014.) supporting the Lead Attorney <b>(20 Points):</b></p> <ul style="list-style-type: none"> <li>• 5 Key Staff Member <b>(20 Points)</b></li> <li>• 4 Key Staff member <b>(15 Points)</b></li> <li>• 3 Key Staff members <b>(10 Points)</b></li> <li>• 2 Key Staff members <b>(7 Points)</b></li> </ul>	60	

	<ul style="list-style-type: none"> <li>1 Key Staff members (<b>5 Points</b>)</li> </ul> <p>1.3. The Bidder must demonstrate general experience and relevant qualifications of the Associate, Professional Assistant, Candidate Attorney and Administrative Personnel (<b>10 Points</b>):</p> <ul style="list-style-type: none"> <li>LLB/ B-Degree or above; (NQF 8): (<b>5 Points</b>)</li> <li>Advanced Diploma/ National Diploma/Advanced Certificate (NQF 6) (<b>5 Points</b>)</li> <li>Below National Diploma/ Advanced Certificate (NQF 6) (<b>0 Point</b>)</li> </ul>		
<b>Total Points</b>		<b>100</b>	

#### 5.5. PHASE 4: PRICE AND SPECIFIC GOALS EVALUATION CRITERIA

The preference points system will be applicable once the panel has been established during the Request for Quotation process, with a maximum of 80 points being for pricing and a maximum 20 points allocation specific goals points. This criterion, among others, may be used as an when quotations are requested from the panel.

**Table 4- Price and Specific Goals**

CRITERIA	SUB-CRITERIA	WEIGHTING/POINTS		
Price	Detailed Breakdown	80		
Specific goals	Specific goals	20		
			<b>a) Historically Disadvantaged Individuals (7 Points)</b>	
			80% - 100% Black Owned	7 Points
			50% - 79.99 Black Owned	5 Points
			20% - 49.99% Black Owned	3 Points
			1% - 19.99 Black Owned	1 Points
			Below 1% Black Owned	0 Points
			<b>b) Size of the company (5 Points)</b>	
			Exempted Medium Enterprise	5 Points
			Qualifying Exempted Enterprise	3 Points
Generic Enterprise	1 Points			
<b>c) Black Woman Owned Enterprise (5 Points)</b>				
75% - 100% Black Women Owned	5 Points			
51% - 74,99% Black Women Owned	3 Points			
Below 51% Black Women Owned	1 Points			
<b>d) Ownership by People with Disabilities (3 Points)</b>				
75% - 100% Ownership by People with Disabilities	3 Points			
51% - 74,99% Ownership by People with Disabilities	2 Points			
Below 51% Ownership by People with Disabilities	1 Points			
<b>TOTAL</b>		100		

## 5.6. GENERAL CONDITIONS TO SPECIFIC GOALS

10.6.1. Only a bidder who has completed and signed the declaration (SBD 6.1.) part of the bid documentation will be considered for preference points.

5.6.2. CMS may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made with regard to preference.

### 5.6.3. Submission of mandatory documents

5.6.3.1. Bidders must submit the following documents for verification of specific goals points:

5.6.3.2. Attach certified copy/ copies of South African ID of Directors/ Owners/ Shareholders to claim points for

**Historically Disadvantaged Individuals (HDI)**

5.6.3.3. B-BBEE Certificate and Sworn Affidavit to claim points for **Size of the Company**

5.6.3.4. Attach medical certificate/ letter from the accredited Health Professional to claim points for **Ownership for People Disability**

5.6.3.5. Attach copy of B-BBEE Certificate/ sworn affidavit, certified ID copy/ copies, CIPC document to claim points for **Black Women Owned Enterprise**

5.6.3.6. Fully completed and signed **SBD 6.1**.

5.6.4. A trust, consortium, or joint venture will qualify for points for their Specific Goals as a legal entity, provided that the entity submits all documents listed in **paragraph 17 of Section 3** of this bid document of each entity.

5.6.5. Failure on the part of a bidder to submit proof and above-mentioned documentation, complete and sign as required in SBD 6.1. in terms of this bid to claim points for specific goals with the bid, will interpret to mean that the preference points for specific goals are not claimed.



**SECTION 3: TERMS AND CONDITIONS OF TENDER****1. CONTRACT NEGOTIATION AND FORMATION**

Any contract awarded pursuant to this RFP will incorporate the requirements, specifications, terms, and conditions contained in this RFP, as well as the contents of the Bidder's proposal as accepted by the CMS. The CMS reserves the right to negotiate the modification of proposed terms and conditions with the apparent successful bidder in conjunction with the award criteria contained herein, prior to the execution of a contract to ensure a satisfactory product or service. If the parties are unable to reach an agreement, the CMS may go to the next Bidder with the second highest score. The successful bidder will be required to fill out, sign and submit a written contract form in terms of the CMS Supply Chain Management Policy.

**2. REJECTION OR ACCEPTANCE OF BIDS**

CMS reserve the right to accept or reject bids on each item separately, or as a whole, and to waive any irregularities in a submitted bid. In addition to the above, the successful bidder will be checked against the Register of Defaulters and the List of Restricted Suppliers on the National Treasury database.

**3. PROPOSAL PREPARATION COSTS**

All costs incurred in the preparation and submission of proposals and related documentation, including the Bidder's presentation to the CMS, will be borne by the Bidder.

**4. PROPOSAL ACCEPTANCE PERIOD**

Acceptance Period' as indicated in this RFP, means the number of calendar days available to the CMS for awarding a contract. All bids shall remain available for the CMS' acceptance for a minimum of 120 days following the RFP closing date.

**5. CLARIFICATION OF BIDS**

Prior to the awarding of the contract, the CMS may, at its sole discretion, seek clarification from any Bidder regarding proposal information, and may do so without notification to any other Bidder.

**6. SITE VISITS AND REFERENCE CHECKS**

Vendors may be subjected to a site visit and/or reference checks during the procurement process.

**7. MARKETING REFERENCES**

The successful Bidder shall be prohibited from making any reference to the CMS, in any literature, promotional material, brochures, or sales presentations without the express written consent of the CMS.

**8. ETHICS**

The successful Bidder shall comply with the CMS policies on gifts and gratuities. The vendor shall exercise reasonable care and diligence to prevent any action or conditions that could result in a conflict of interest with the CMS. During the term of the contract, the vendor shall not accept any employment or engage in any work that creates a conflict of interest with the CMS, or in any way compromises the work to be performed under the contract. The vendor and/or its employees shall not offer gifts, entertainment, payments, loans, or other consideration to the CMS employees, their families, other contractors, subcontractors, and other third parties for the purpose of influencing such persons to act contrary to the CMS interest. The vendor shall immediately notify the CMS of any and all such violations of this provision upon becoming aware of such violations.

## **9. CONFIDENTIALITY**

The Contractor, its officers, agents, employees, and investigators shall hold in confidence any information or materials identified as proprietary and/or confidential to the CMS or to any third party, to which the Contractor may have access in the course of performing its obligations under this Agreement. The Contractor shall not disclose or authorise disclosure to others, or use for its own benefit, such confidential information or materials without the express written consent of the CMS or any third-party owner. This entire RFP document should be considered proprietary and confidential to the CMS. This obligation for non-disclosure shall survive this Agreement and continue until such confidential information or materials are otherwise legally obtained or placed in the public domain.

## **10. SPECIAL CONDITIONS**

Any award(s) made as a result of this RFP will be subject to the following terms and conditions:

### **10.1. Liquidated Damages**

The successful Bidder agrees to negotiate in good faith with the CMS, a Liquidated Damages provision which will specify an amount to be payable or credited to the CMS if the Bidder fails to comply with the implementation schedule mutually agreed to, in the contract award.

### **10.2. Payment Schedule and Invoicing**

The successful Bidder agrees to negotiate in good faith with the CMS, a progress payment schedule based on significant milestones identified in the scope of work and/or the implementation schedule included in the resulting contract. Bidders should provide a suggested payment schedule as part of their proposal.

### **10.3. Prime Sponsor Terms and Conditions**

Any award which may result from this RFP will be issued subject to the terms and conditions of the prime funding agency, in this case the CMS. Proposals submitted by Bidders who are unable to accept said terms will be considered non-responsive.

## **11. REJECTION OF PROPOSALS**

CMS may reject bids which are non-responsive, including, without limitation, bids which contain the following defects:

- 11.1. Failure to conform to the rules or requirements contained in the RFP; including the instructions for submitting proposal and the proposal format guidelines.
- 11.2. Failure to sign the entire original bid documentation (including additional submissions by the Bidder).
- 11.3. Proof of collusion among Bidders, in which case all proposals involved in the collusive action will be rejected.
- 11.4. Non-compliance with any applicable law, unauthorised additions or deletions, conditional bids, incomplete bids, or irregularities of any kind which may tend to make the bid incomplete, indefinite or ambiguous as to its meaning.
- 11.5. Provisions reserving the right to accept or reject an award or to enter into a contract containing terms and conditions that are contrary to those in the solicitation.
- 11.6. Furthermore, the contract with the successful bidder may be subject to conditions, such as (i) the successful Bidder should maintain its B-BBEE status for the duration of the contract and (ii) the Bidder

should provide additional documentation such as a new tax clearance certificate upon expiry of the previous version.

## **12. CONTRACT IDENTIFICATION**

### **12.1. Prime Contractor**

The CMS prefers to work with a single prime contractor for all product and implementation services. Nevertheless, if vendors wish to partner, they must submit a single proposal with an established entity that shall be the primarily responsible point of contact and contracting.

### **12.2. Vendor Prime Contractor Responsibility**

If a vendor's proposal includes equipment, hardware, software or services to be supplied by other entities, it is desirable that the proposing vendor acts as prime contractor for the procurement of all products and services. The vendor, as the prime contractor, should be the sole point of contact, including payment of any and all charges, resulting from the purchase of the legal service. The vendor, acting as primary contractor, should take full responsibility for rendering services by its subcontractor(s). Each subcontractor used by the vendor on this project shall be required to submit full identification of their company to the CMS on the form titled Subcontractor Identification, found in Annexure F to this RFP.

## **13. ENTIRE AGREEMENT**

The contract executed pursuant to this RFP will state the entire agreement between the parties in respect to the subject matter covered therein and supersedes any previous or contemporaneous oral or written proposals, statements, discussions, negotiations, or other agreements. However, this RFP and the Bidder's response will be incorporated by reference into the contract.

## **14. ADDITIONAL INFORMATION**

CMS may request additional information either from the Bidder or others, to verify the Bidder's ability to successfully meet the requirements of this RFP.

## **15. NATIONAL TREASURY REQUIREMENTS**

- 15.1. Within ten (10) working days after the closure of the advertised competitive bid, the CMS will publish on its website the names of all bidders that submitted bids in relation to the particular advertisement.
- 15.2. Information on the successful bid will be made available on the CMS website. In addition to the above, the successful bidder will be checked against the Register of Defaulters and the List of Restricted Suppliers on the National Treasury database

## **16. REGISTRATION ON NATIONAL TREASURY CENTRAL SUPPLIER DATABASE (CSD)**

Bidders must be registered on the CSD. Confirmation of registration in the form must be submitted together with the bid documents.

## **17. JOINT VENTURE**

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. Bidders that submit bids as a Joint Venture, Consortium or Trust must comply with the following requirements:

- 17.1. In case of a Joint Venture/Consortium submission, the Bidder/s shall submit a Joint Venture agreement

signed by all parties.

- 17.2. Every member of the joint venture is registered with the professional body listed in this tender document
- 17.3. Bidders must submit concrete proof of the existence of joint ventures and/or consortium arrangements. CMS will accept signed agreements as acceptable proof of the existence of a Joint Venture and/or Consortium arrangement.
- 17.4. The Joint Venture and/or Consortium agreements must clearly set out the roles and responsibilities of the Lead Partner/ Director and the Joint Venture and/or Consortium party. The agreement must also clearly identify the Lead Partner/ Director, with the power of attorney to bind the other party/parties in respect of matters pertaining to the Joint Venture and/or Consortium arrangement.

## SECTION 4: INSTRUCTIONS FOR SUBMITTING PROPOSALS

1. **Bidders should submit their proposals in the format and manner described below. Proposals must provide a complete response to all requirements stated in the RFP. Proposals that are not compliant with the requirements, may be disqualified.**
  - (a) Bids sent via facsimile (FAX) or email will not be accepted. Late bids will not be accepted.
  - (b) There should be one signed original, two (2) additional hard copies of the original document submitted and USB. The original bid document must be initialled on every page/entire document, including all other submissions by the Bidder.
  - (c) The Pricing Schedule should be submitted in a separate sealed envelope. Pricing should not be reflected in any other part of the proposal or cover thereof.
  - (d) Bids must be sealed, and the outer package marked with the RFP number.
  - (e) Structure of the Proposal:
2. **ENVELOPE 1 - TECHNICAL PROPOSAL. The technical proposal must be structured as follows:**

Cover page. The cover page must be on the company letterhead and must include:

  - (a) Name of the Company
  - (b) RFP number and
  - (c) Bid description

### Table of Contents page

### Executive Summary

**Annexures.** All relevant forms attached as Annexures A to H to this document, must be completed in full and signed where applicable by a duly authorised official of the primary contractor / bidder.

- a) **Annexure A** – SBD 1 - Invitation to Bid
- b) **Annexure B** – Proof of authority must be submitted e.g. company resolution that the person signing SBD 1 is authorised to do so.
- c) **Annexure C** – **SBD 4 – Declaration of interest** – The vendor must certify that it has in no way entered into any contingent fee arrangement with any firm or person, and further that the vendor has not in any manner sought by collusion, to secure any advantage over other vendor(s). **This must be done by completing the “Declaration of Interest – Form SBD4” attached as Annexure C to this RFP.**
- d) **Annexure D** – Response to **MANDATORY TECHNICAL CRITERIA**
- e) **Annexure E** – Response to **Weighted TECHNICAL CRITERIA**
- f) **Annexure F** – **SBD 6.1 – Preference Points Claim form** – This must be done by completing the “Preference Points Claim Form – Form SBD 6.1” attached as Annexure D to this RFP.
- g) **Annexure G - Proposal adherence checklist – the checklist has been compiled for your ease of use and to ensure that your bid complies with the CMS administrative and technical requirements.**

## SECTION 5: RETURNABLE AND STANDARD BIDDING DOCUMENTS (SBD)

## ANNEXURE A - SBD 1

## YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE COUNCIL FOR MEDICAL SCHEMES

BID NUMBER:	CMS07/2023/24	CLOSING DATE:	11 March 2024	CLOSING TIME:	11:00am
DESCRIPTION	APPOINTMENT OF A PANEL OF LEGAL SERVICES FOR A PERIOD OF THREE (3) YEARS.				
BID/QUOTATION RESPONSE DOCUMENTS MUST BE DELIVERED TO THE FOLLOWING ADDRESS:					
Council for Medical Schemes, Block A, Eco Glades 2 Office Park, 420 Witch-Hazel Avenue, Eco Park, Centurion, 0157					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Mr. Ludwe Madayi		CONTACT PERSON	Mr John Letsoalo	
TELEPHONE NUMBER			TELEPHONE NUMBER		
FACSIMILE NUMBER	N/A		FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS	<a href="mailto:l.madayi@medicalschemes.co.za">l.madayi@medicalschemes.co.za</a>		E-MAIL ADDRESS	<a href="mailto:j.letsoalo@medicalschemes.co.za">j.letsoalo@medicalschemes.co.za</a>	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELL PHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
[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]					
1. 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]		2. ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS/SERVICES/WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	

DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>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</b>	

**1. BID SUBMISSION:**

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED– (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

**2. TAX COMPLIANCE REQUIREMENTS**

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

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

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....

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

DATE: .....

**BIDDER'S DISCLOSURE –: Annexure C****1. PURPOSE OF THE FORM**

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

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

**2. Bidder's declaration**

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

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

Full Name	Identity Number	Name of State institution

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

---

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



## 2.2.1 If so, furnish particulars:

.....

.....

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

## 2.3.1 If so, furnish particulars:

.....

.....

**3 DECLARATION**

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring 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.

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

- 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 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
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

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

- a) The applicable preference point system for this tender is the **80/20** 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. FORMULA FOR PROCUREMENT OF GOODS AND SERVICES

#### 3.1. POINTS AWARDED FOR PRICE

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

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

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

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

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

##### 3.2.1. POINTS AWARDED FOR PRICE

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

80/20	or	90/10
$Ps = 80 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right)$	or	$Ps = 90 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right)$

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 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

(a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point

system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

- (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system, then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

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

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

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

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)										
a) Historically Disadvantaged Individuals	N/A	<div>7 Points:</div> <table><tr><td>80% - 100% Black Owned</td><td>7 Points</td></tr><tr><td>50% - 79.99 Black Owned</td><td>5 Points</td></tr><tr><td>20% - 49.99% Black Owned</td><td>3 Points</td></tr><tr><td>1% - 19.99 Black Owned</td><td>1 Points</td></tr><tr><td>Below 1% Black Owned</td><td>0 Points</td></tr></table>	80% - 100% Black Owned	7 Points	50% - 79.99 Black Owned	5 Points	20% - 49.99% Black Owned	3 Points	1% - 19.99 Black Owned	1 Points	Below 1% Black Owned	0 Points	N/A	
80% - 100% Black Owned	7 Points													
50% - 79.99 Black Owned	5 Points													
20% - 49.99% Black Owned	3 Points													
1% - 19.99 Black Owned	1 Points													
Below 1% Black Owned	0 Points													
Size of the Company/ Enterprise	N/A	<div>5 Points:</div> <table><tr><td>Exempted Medium Enterprise</td><td>5 Points</td></tr><tr><td>Qualifying Exempted Enterprise</td><td>3 Points</td></tr><tr><td>Generic Enterprise</td><td>1 Points</td></tr></table>	Exempted Medium Enterprise	5 Points	Qualifying Exempted Enterprise	3 Points	Generic Enterprise	1 Points	N/A					
Exempted Medium Enterprise	5 Points													
Qualifying Exempted Enterprise	3 Points													
Generic Enterprise	1 Points													
Black Women Owned Enterprise	N/A	<div>5 Points:</div> <table><tr><td>75% - 100% Black Women Owned</td><td>5 Points</td></tr><tr><td>51% - 74,99% Black Women Owned</td><td>3 Points</td></tr><tr><td>Below 51% Black Women Owned</td><td>1 Points</td></tr></table>	75% - 100% Black Women Owned	5 Points	51% - 74,99% Black Women Owned	3 Points	Below 51% Black Women Owned	1 Points	N/A					
75% - 100% Black Women Owned	5 Points													
51% - 74,99% Black Women Owned	3 Points													
Below 51% Black Women Owned	1 Points													
Ownership by People with Disabilities	N/A	<div>3 Points:</div>	N/A											

		75% - 100% Ownership by People with Disabilities	3 Points		
		51% - 74,99% Ownership by People with Disabilities	2 Points		
		Below 51% Ownership by People with Disabilities	1 Points		

**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: .....  
.....  
.....

## **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 regarding 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

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 conflict with these general conditions, the special conditions shall apply.

## **3. General**

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

**4. Standards**

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

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

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

**6. Patent rights**

- 6.1. The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from the 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 no 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 make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4. If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5. Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6. Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7. Any contract supplies may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8. The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

## **9. Packing**

- 9.1. The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2. The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

## **10. Delivery and documents**

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

## **11. Insurance**

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:
  - ✓ advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  - ✓ 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, except for any price adjustments authorized in SCC or in the purchaser's request for bid validity extension.

## **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 the performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding the 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 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 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 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 the 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 to impose 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, 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 money (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.

## **24. 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 wilful misconduct, and in the case of infringement pursuant to Clause 6;
- a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
  - b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

## **29. Governing language**

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

**30. Applicable law**

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

**31. Notices**

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

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

**32. Taxes and duties**

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

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

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

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

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

**34. Prohibition of Restrictive practices**

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

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

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

**Checklist (Annexure G)****ADMINISTRATIVE AND TECHNICAL RESPONSIVENESS CHECKLIST**

<b>GENERAL REQUIREMENTS</b>	
1 signed original, 2 additional hardcopy and USB	<input type="checkbox"/>
Apart from being signed, the original must also be initialed on each page.	<input type="checkbox"/>
Bids Sealed and outer package marked with Request for Proposal number.	<input type="checkbox"/>
Pricing proposal included in a different envelope to technical proposal	<input type="checkbox"/>
Executive Summary included	<input type="checkbox"/>
<b>SCM Invite to Bid – Form SBD 1 (Annexure A)</b>	
Name of Bidder and all contact details provided	<input type="checkbox"/>
VAT Registration Number supplied	<input type="checkbox"/>
Tax Clearance Certificate/ SARS Pin Document	<input type="checkbox"/>
Registered Representative indicated	<input type="checkbox"/>
Form Signed	<input type="checkbox"/>
<b>Proof of Authority to sign SBD1 (Annexure B)</b>	
Proof of Authority to sign SBD1 included (e.g. company resolution)	<input type="checkbox"/>
<b>SCM Declaration of Interest – Form SBD4 - (Annexure C)</b>	
Questionnaire completed in full and any possible conflict of interest declared.	<input type="checkbox"/>
Declaration signed by duly authorised representative	<input type="checkbox"/>
<b>Mandatory Technical Criteria (Annexure D)</b>	
Mandatory Technical Criteria template completed, and response included	<input type="checkbox"/>
Letters from companies confirming previous clients reference relevant to this tender	<input type="checkbox"/>
<b>Weighted Technical Criteria (Annexure E)</b>	
Weighted Technical Criteria Response included	<input type="checkbox"/>
<b>SCM Preference Points Claim Form – Form SBD 6.1- (Annexures F)</b>	
Claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution (SBD6.1) completed and form signed.	<input type="checkbox"/>
Valid B-BEEE status level certificate issued by Accredited verification agency submitted/ Sworn Affidavit (for EMS/QSE)	<input type="checkbox"/>