

## PART A INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/PUBLIC ENTITY)</b>					
BID NUMBER:	DBE212	CLOSING DATE:	15 June 2026	CLOSING TIME:	11:00
DESCRIPTION	CREATION OF A DATABASE FOR THE SERVICE PROVIDERS/CONSORTIUMS TO CONDUCT CONTINUING PROFESSIONAL TEACHER DEVELOPMENT NATIONALLY FROM 2026/27 TO 2028/29, RENEWABLE EVERY TWO YEARS.				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
MAIN ENTRANCE / RECEPTION, SOL PLAAJIE HOUSE					
DEPARTMENT OF BASIC EDUCATION					
222 STRUBEN STREET					
PRETORIA					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	Ms N Metula		CONTACT PERSON	Mr D Moukangwe	
TELEPHONE NUMBER	012 357 3134		TELEPHONE NUMBER	012 357 3133	
FACSIMILE NUMBER	N/A		FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS	tenders@dbe.gov.za		E-MAIL ADDRESS	tenders@dbe.gov.za	
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		<b>OR</b>	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					
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	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

## PART B TERMS AND CONDITIONS FOR BIDDING

<b>1. BID SUBMISSION:</b>
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</b></p> <p>1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.</p> <p>1.4. <b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</b></p>
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>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.</p> <p>2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p> <p>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."</p>

**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: .....

## **NOTICE TO ALL PROSPECTIVE BIDDERS**

**BID NO. : DBE212**

**CLOSING DATE : 15 June 2026**

**TIME : 11:00**

**Non-compulsory briefing session will be held as follows:**

**DATE : 21 May 2026**

**VENUE : Microsoft Teams**

**TIME : 10:00 until 11:00**

**CONTACT PERSON : Ms Nthabiseng Metula**

**TEL : (012) 357 3134**

**The Department of Basic Education (DBE) will hold a non-compulsory virtual briefing session on the date and time as published. Bidders who wish to attend are advised to join the session using the link provided. Microsoft Teams meeting**

**Join:**

<https://teams.microsoft.com/meet/36363354452846?p=h8w0GK3XKHb04UovNi>

Meeting ID: 363 633 544 528 46

Passcode: an7mS7eZ



## basic education

Department:  
Basic Education  
REPUBLIC OF SOUTH AFRICA

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### TERMS OF REFERENCE FOR SUBMISSION OF PROPOSALS OF A DATABASE OF SERVICE PROVIDERS/CONSORTIUMS TO CONDUCT CONTINUING PROFESSIONAL TEACHER DEVELOPMENT NATIONALLY FROM 2026/27 TO 2028/29, RENEWABLE EVERY TWO YEARS.

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#### 1. AIM

The purpose of this project is to create a database of service providers by the Department of Basic Education (DBE) to be contracted by both Provincial Education Departments (PEDs) and Districts to conduct Continuing Professional Teacher Development in line with the Departmental Specifications. This database will be **updated every two (2) years**.

#### 2. BACKGROUND

- a) The Continuous Professional Development (CPD) of teachers is a crucial policy imperative aimed at improving the quality of teaching and learning, and so the improvement of learning outcomes for all children.
- b) The system is committed to progressively build a community of competent teachers dedicated to providing education of high quality rooted in ethical and professional standards of conduct.
- c) The aim is to provide teachers with life-long learning opportunities through various development programmes and funding mechanisms, to better undertake their professional role and reclaim their position in society.
- d) Like in many countries, teacher development in South Africa occurs in a complex web of regulatory frameworks. The evolution of policy over the past two decades culminated in the adoption of the Integrated Strategic Planning Framework for Teacher Education and Development (ISPFTED) in 2011.
- e) The ISPFTED sought to guide, more systematically, the addressing of professional development needs on a continuum of learning and in articulation with other professional development interventions. In 2020,

the DBE in collaboration with the Department of Planning, Monitoring and Evaluation (DPME) commissioned a rapid review to take stock of what has been done to improve the quality of CPD programmes in South Africa against the backdrop of policy and structural reforms.

- f) Due to the challenges of procurement of Service Providers for CPTD, in 2024, the Sector developed a Strategy for Coordination of CPTD Programmes.
- g) Furthermore, the Sector sought to assist PEDs on procurement matters by creating a database for Service Providers for CPTD to alleviate delays in procurement of such services.
- h) CPTD Service Providers are organisations, institutions, associations that provide professional development activities/programmes to teachers. (teacher development) and these are:
  - ✓ National and Provincial Education Departments (PEDs)
  - ✓ Higher Education Institutions (HEIs)
  - ✓ Teacher Unions
  - ✓ Professional Associations (AMESA; SAPA)
  - ✓ Non-Governmental Organisations (NGOs)
  - ✓ Faith Based Organisations (FBOs)
  - ✓ Community Based Organisations (CBOs)
- i) The DBE requires a database of service providers from which Provincial Education Departments (PEDs), DBE and Districts will be able to source appropriate providers with the necessary capability to conduct CPTD in line with departmental specifications.
- j) Once the pool of service providers is created, DBE, PEDs and Districts would select the service provider on the approved list and request the service provider to submit a quotation based on the scope of training.
- k) PEDs and Districts would then finalise the contract following provincial Supply Chain Management (SCM) processes.

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

Service Providers must deliver the following CPTD programmes:

- ✓ Sciences;

- ✓ Numeracy;
- ✓ Literacy;
- ✓ Reading;
- ✓ ICT and Digital Skills (Including digital platforms);
- ✓ Technical and Vocational Subjects;
- ✓ BCM Subjects;
- ✓ Inclusive Education;
- ✓ Psychosocial support; and
- ✓ Teacher Induction.

**The Service Provider or Consortium must demonstrate capacity to train teachers in at least one phase of the schooling system (Foundation Phase: FP; Intermediate Phase: IP; Senior Phase: SP and Further Education and Training (FET) Phase).**

#### **4. DELIVERABLES AND TIME FRAMES**

The Service Providers or Consortiums will be expected to deliver the identified deliverables within the DBE and PEDs' environment from 2026/27 – 2028/29 whenever training of teachers is required in identified subjects within Quarters 1, 2 and 4 every year.

#### **5. DURATION OF THE PROJECT**

This database will be valid from 2026/27 till end of 2028/29 which is two (2) years

#### **6. BRIEFING SESSION**

##### **Non-Compulsory Briefing Session**

The Department of Basic Education (DBE) will hold a non-compulsory virtual briefing session on the date and time as published. Bidders who wish to attend are advised to join the session using the link provided. **Microsoft Teams meeting**

##### **Join:**

<https://teams.microsoft.com/meet/36363354452846?p=h8w0GK3XKHb04UovNi>

Meeting ID: 363 633 544 528 46

Passcode: an7mS7eZ

#### **7. BIDDING REQUIREMENTS**

##### **7.1. Mandatory requirements**

The bidders must comply with the following mandatory requirements:

- 7.1.1. Alteration of the Standard Bidding Documents (SBD forms) will lead to disqualification.
- 7.1.2. The Bidder must submit (a) company profile(s). In the case of a consortium or a joint venture, a profile of each company must be submitted.
- 7.1.3 **Service Providers must indicate whether their area of focus is the Foundation Phase, Intermediate Phase, Senior Phase or Further Education and Training (FET) Phase.**

**Bidders who do not comply with all of the above mandatory requirements will be disqualified.**

## **7.2. Non-Mandatory/Administrative Requirements**

- 7.2.1. Bidders should return all fully completed and signed attached SBD forms (SBD1 and SBD4).
- 7.2.2. In case of a Consortium or Joint Venture, Bidders should individually submit the fully completed and signed SBD forms separately.
- 7.2.3. If Bidding as a Consortium or Joint venture, the Consortium or Joint Venture must provide the following information and documents:
- i. The agreement signed by nominated members of both/ all consortium or joint venture partners; and
  - ii. Name of the leading company.

## **8. FUNCTIONALITY EVALUATION**

<b>Evaluation Criteria</b>	<b>Description</b>	<b>Points/Weights</b>
<b>Qualifications</b>	The qualifications of the Project Team Leader will be allocated as follows: <ul style="list-style-type: none"> <li>• Post -graduate qualifications with a Skills Development Facilitator Certificate = 5</li> <li>• B Degree with a Skills Development Facilitator Certificate = 4</li> <li>• Diploma with a Skills Development Facilitator Certificate = 3</li> <li>• Higher Certificate with a Skills Development Facilitator Certificate = 2</li> <li>• Only Skills Development Facilitator Certificate = 1</li> <li>• No qualification = 0</li> </ul>	<b>5</b>
<b>Experience</b>	Detailed company profile indicating Human Resource capacity experience in providing training for educators.	<b>40</b>

<b>Functionality</b>	<b>Points/Weights</b>	
1.1 Human Resource capacity (must have five years or more experience in providing training for educators.	<ul style="list-style-type: none"> <li>• 5 Team members with 5 years or more experience in training</li> </ul>	<b>20</b>
<ul style="list-style-type: none"> <li>• 4 Team members with 5 years or more experience in training</li> </ul>	<b>16</b>	
<ul style="list-style-type: none"> <li>• 3 Team members with 5 years or more experience in training</li> </ul>	<b>12</b>	
<ul style="list-style-type: none"> <li>• 2 Team members with 5 years or more experience in training</li> </ul>	<b>8</b>	
<ul style="list-style-type: none"> <li>• 1 Team member with 5 years or more experience in training</li> </ul>	<b>4</b>	
<ul style="list-style-type: none"> <li>• No Team member with 5 years or more experience in training</li> </ul>	<b>0</b>	
1.2 Include Five (5) CVs of senior employees indicating five years or more experience in providing training.		
<ul style="list-style-type: none"> <li>• Five CVs indicating five years or more experience in providing training</li> </ul>	<b>20</b>	
<ul style="list-style-type: none"> <li>• Four CVs indicating five years or more experience in providing training</li> </ul>	<b>16</b>	
<ul style="list-style-type: none"> <li>• Three CVs indicating five years or more experience in providing training</li> </ul>	<b>12</b>	
<ul style="list-style-type: none"> <li>• Two CVs indicating five years or more experience in providing training</li> </ul>	<b>8</b>	
<ul style="list-style-type: none"> <li>• One CV indicating five years or more experience in</li> </ul>	<b>4</b>	

	<table border="1"> <tr> <td>providing training</td> <td></td> </tr> <tr> <td> <ul style="list-style-type: none"> <li>No CV indicating five years or more experience in providing training</li> </ul> </td> <td><b>0</b></td> </tr> </table>	providing training		<ul style="list-style-type: none"> <li>No CV indicating five years or more experience in providing training</li> </ul>	<b>0</b>							
providing training												
<ul style="list-style-type: none"> <li>No CV indicating five years or more experience in providing training</li> </ul>	<b>0</b>											
<b>Accreditation body certificate or Endorsements</b>	<p>The Accreditation Certificate or Endorsement of CPTD Programmes:  Five certificates for endorsed programmes = 10  Four certificates for programmes endorsed = 8  Three certificates for endorsed programmes = 6  Two certificates for programmes endorsed = 4  One certificate for endorsed programme = 2  No certificate for programme endorsed = 0</p> <p><b><u>Only SACE endorsed programmes OR Accreditation Bodies registered with SAQA will be considered.</u></b></p>	<b>10</b>										
<b>Reference letters</b>	<p>Signed Reference letters on a client letterhead, indicating that the Service Provider/Consortium completed similar projects <b>completed between 2020 and 2025:</b></p> <table border="1"> <thead> <tr> <th>Functionality</th> <th>Points/Weights</th> </tr> </thead> <tbody> <tr> <td>Three (3) contactable reference letters of previous projects of similar scope.</td> <td></td> </tr> <tr> <td>Three letters submitted</td> <td><b>10</b></td> </tr> <tr> <td>Two letters submitted</td> <td><b>6</b></td> </tr> <tr> <td>One letter submitted</td> <td><b>3</b></td> </tr> </tbody> </table>	Functionality	Points/Weights	Three (3) contactable reference letters of previous projects of similar scope.		Three letters submitted	<b>10</b>	Two letters submitted	<b>6</b>	One letter submitted	<b>3</b>	<b>10</b>
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One letter submitted	<b>3</b>											
<b>Project plan</b>	<p>Provide a Project Plan outlining the <b>approach and methodology</b> for a period of <b>two (2) years</b>, with:</p> <table border="1"> <thead> <tr> <th>Functionality</th> <th>Points/Weights</th> </tr> </thead> <tbody> <tr> <td>1.1 5 phases to the task directive and the 5 key deliverables.</td> <td><b>25</b></td> </tr> <tr> <td>1.2 4 phases to the task directive and the 4 key deliverables.</td> <td><b>20</b></td> </tr> <tr> <td>1.3 3 phases to the task directive and the 3 key deliverables.</td> <td><b>15</b></td> </tr> <tr> <td>1.4 2 phases to the task directive and the 2 key deliverables.</td> <td><b>10</b></td> </tr> </tbody> </table>	Functionality	Points/Weights	1.1 5 phases to the task directive and the 5 key deliverables.	<b>25</b>	1.2 4 phases to the task directive and the 4 key deliverables.	<b>20</b>	1.3 3 phases to the task directive and the 3 key deliverables.	<b>15</b>	1.4 2 phases to the task directive and the 2 key deliverables.	<b>10</b>	<b>25</b>
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1.4 2 phases to the task directive and the 2 key deliverables.	<b>10</b>											

	1.5	1 phase to the task directive and the 1 key deliverable.	<b>5</b>	
	1.6	No Project Plan	<b>0</b>	
<b>Risk Management Plan</b>	Risk management plan has risks identified and mentioned for the project and next to each risk identified a mitigation strategy is mentioned			<b>10</b>
	<b>Functionality</b>		<b>Points/Weights</b>	
	The risk management plan must indicate that the Service Provider has considered possible risks in the work required and in meeting project timelines, with an indication of how they plan to overcome each risk. <b>Mitigation strategies not linked to the risk will not count</b>		<b>10</b>	
	5 Risks and 5 linked mitigations = 10			
	4 Risks and 4 linked mitigations = 8			
	3 Risks and 3 linked mitigations = 6			
	2 Risks and 2 linked mitigations = 4			
	1 Risk and 1 linked mitigation = 2			
	No Risk Strategy = 0			
	<b>TOTAL</b>			<b>100</b>

1. Each of the criteria will be assessed and scored on the evaluation sheet using the above weights.
2. Bidders who do not comply with all of the above requirements will not be included in the database.
3. Bidders who score less than 50 points on functionality will not be considered in the panel of service providers.
4. Bidders who score less than 30 points on experience won't be evaluated on functionality.

## 9. SOURCING STRATEGY

- 9.1 Quotations will be requested from service providers;
- 9.2 Quotations will be requested according to services they can provide; and
- 9.3 80/20 preference points system will apply.

## 10. PAYMENT

Payment shall be affected proportionately on completion of each phase of the project as shown in **Table below** and within 30 days of receipt of valid original invoices.

<b>PHASES</b>	<b>PAYMENT PERCENTAGE (%)</b>
Phase 1	10
Phase 2	15
Phase 3	35
Phase 4	15
Phase 5	15
Phase 6	10
<b>TOTAL</b>	<b>100</b>

## 11. MONITORING AND REPORTING

11.1 PEDs will facilitate the coordination and implementation as per the implementation plan and prepare quarterly reports as per the DBE template which is stipulated on the APP indicator 3.2.2.

11.2 DBE shall monitor the implementation of the database.

## 12. CONDITIONS

12.1 Material compiled for and by the Department of Basic Education (DBE) may not be used in any form or for any purpose other than the purpose stipulated in this agreement. If the service provider wishes to use such material in any other form or for any other purpose, including, but not limited to, workshops, media releases and the like, it must submit to the DBE a written motivation for such use.

12.2 The DBE will request approval from the designated officer in who copyright vests. Only once the designated officer has granted written approval will the DBE convey such written approval to the service provider and will the service provider have permission for such usage.

12.3 In the case of material compiled, developed, researched, commented on, or evaluated on behalf of the DBE as a result of a contractual agreement with the service provider, or any other form of material, irrespective of whether in a completed form or otherwise, all intellectual property rights relating to such material will vest in the state. The service provider may not use any such material without first having obtained written approval from the DBE.

- 12.4 The Service Provider will be expected to complete all phases of the project and adhere strictly to the deadlines specified. A written report on completion of each phase is mandatory.
- 12.5 The Service Provider is expected to demonstrate credibility and perform the services as described in this document.
- 12.6 DBE will confine its contractual dealings with the primary service provider in a case where there is a consortium.
- 12.7 The appointed Service Provider shall undertake to avoid any activity of whatsoever nature that may be detrimental to the Department's interest, goodwill and reputation.
- 12.8 The DBE reserves the right to change the Terms of Reference prior to the closing of the bid.
- 12.9 The Department reserves the right not to award the tender and will not be held liable for the preparation of the bid documents by the bidders.
- 12.10 **TERMINATION FOR DEFAULT:** The Department, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier reserves the right to terminate this contract with the appointed service provider, in accordance with clause 23 of the General Conditions of Contract, should challenges be experienced with the service delivery and customer service to the Department.
- 12.11 The Bidder/s must submit proof of registration with the National Treasury's Central Supplier Database (CSD).
- 12.12 Consortiums, who possess all the functional knowledge and experience, will be considered for this proposal but proposals must clearly indicate the organization that will be the lead agency that will take full managerial and technical accountability for the outcomes of this proposal.
- 12.13 The inclusion in the database does not guarantee an appointment of a Service Providers/ Consortium.
- 12.14 DBE reserves the right to appoint a Service Provider or Consortium outside the database.

### **13. COMMUNICATION**

- 13.1 DBE Supply Chain Management (SCM) Unit shall communicate with bidders where clarity is sought after the closing date and no other communication to any DBE official or a person acting in an advisory capacity for the State in respect of this bid between the closing date and the award of the bid may be entered into.

**13.2** All communication between the bidder and the DBE must be in writing and addressed to SCM Office at [Tenders@dbe.gov.za](mailto:Tenders@dbe.gov.za)

#### **14. CONTACT DETAILS**

##### **Bid Enquiries**

Department of Basic Education: Supply Chain Management,

Tel: (012) 357 3134

E-mail: [Tenders@dbe.gov.za](mailto:Tenders@dbe.gov.za)

Enquiries must be made at least seven (12) days before the closing date of the b

## BIDDER'S DISCLOSURE

### 1. PURPOSE OF THE FORM

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

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

### 2. Bidder's declaration

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

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

Full Name	Identity Number	Name of State institution

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

2.2.1 If so, furnish particulars:

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

.....  
.....

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

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

by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

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

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

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

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

# **THE NATIONAL TREASURY**

**Republic of South Africa**



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## **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT**

**July 2010**

**GOVERNMENT PROCUREMENT**  
**GENERAL CONDITIONS OF CONTRACT**  
**July 2010**

**NOTES**

The purpose of this document is to:

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

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

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

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## General Conditions of Contract

### 1. Definitions

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

RSA.

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

obligations of the supplier covered under the contract.

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

## **2. Application**

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

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

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

## **3. General**

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

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

## **4. Standards**

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

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

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

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

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

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

## **6. Patent rights**

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

**7. Performance security**

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

**8. Inspections, tests and analyses**

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

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

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

**9. Packing**

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

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

**10. Delivery and documents**

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

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

**11. Insurance**

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

**12. Transportation**

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

**13. Incidental services**

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

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

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

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

#### **14. Spare parts**

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

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

#### **15. Warranty**

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

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

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

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

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

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

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

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

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

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

## **22. Penalties**

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

## **23. Termination for default**

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

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

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

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

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

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

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

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

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

#### **24. Anti-dumping and countervailing duties and rights**

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

may be due to him

**25. Force Majeure**

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

**26. Termination for insolvency**

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

**27. Settlement of Disputes**

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

**28. Limitation of liability**

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

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 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 Programme (NIP)** 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.