



SOUTH AFRICAN LOCAL  
GOVERNMENT ASSOCIATION

# SALGA

*Inspiring service delivery*

**TERMS OF REFERENCE FOR THE APPOINTMENT OF AN EMPLOYER'S ORGANISATION TO HANDLE EMPLOYMENT RELATIONS MATTERS ON BEHALF OF SALGA, "ON AN AS AND WHEN REQUIRED BASIS" OVER A THREE-YEAR PERIOD.**

**BID NO. SALGA 25/2023**

**Closing date and time: 09 May 2023, 11h00**

**Bid Validity Period: 120 Days**

**TENDER BOX ADDRESS:**

**Menlyn Corporate Park**

**C/o Garsfontein and Corobay Avenue**

**Waterkloof Glen**

**TEL: (012) 369 8000**

**EMAIL: [scm@salga.org.za](mailto:scm@salga.org.za)**

**WEBSITE: [www.salga.org.za](http://www.salga.org.za)**

## **1. DEFINITION OF TERMS**

A **Service Provider** is a person or firm that undertakes a contract to provide materials or labour to perform a service or do a job.

An **Employee** is any other person who in any manner assists in carrying on or conducting the business of an employer.

A **Policy** is a formal statement of a principle or rule that members of an organisation must follow.

A **procedure** tells members of the organisation about how to carry out or implement a policy.

The **NEC** refers to SALGA's National Executive Committee.

## **2. INTRODUCTION**

The South African Local Government Association (SALGA) is a public entity established by the Organised Local Government Act (Act 52 of 1997) to assist in the comprehensive transformation of local government in South Africa. SALGA is managed within the framework of the Public Finance Management Act (Act 1 of 1999) and is listed as a schedule 3A public entity. Its main objectives are to:

- Represent, promote, and protect the interests of local government.
- Transform local government to enable it to fulfil its developmental role.
- Enhance the role and status of its members as provincial representatives and consultative bodies of local government.
- Enhance the role and status of municipalities.
- Be recognised by national and provincial governments to be the representative and consultative body in respect of all matters concerning local government and to make representations to both provincial and national governments in respect of any matter concerning local government.
- Ensure the full participation of women in organised local government.
- Be the National Employers' Association representing all municipal members and, by agreement, associate members.

## **3. SALGA MANDATE**

Developmental Local Government is an essential component of the machinery of government. In accordance with its constitutional mandate, SALGA is obliged to transform the local government sector to one that has the required capacity to make a meaningful contribution to poverty alleviation, economic development, and all socio-economic opportunities that the state has geared itself to provide for its people.

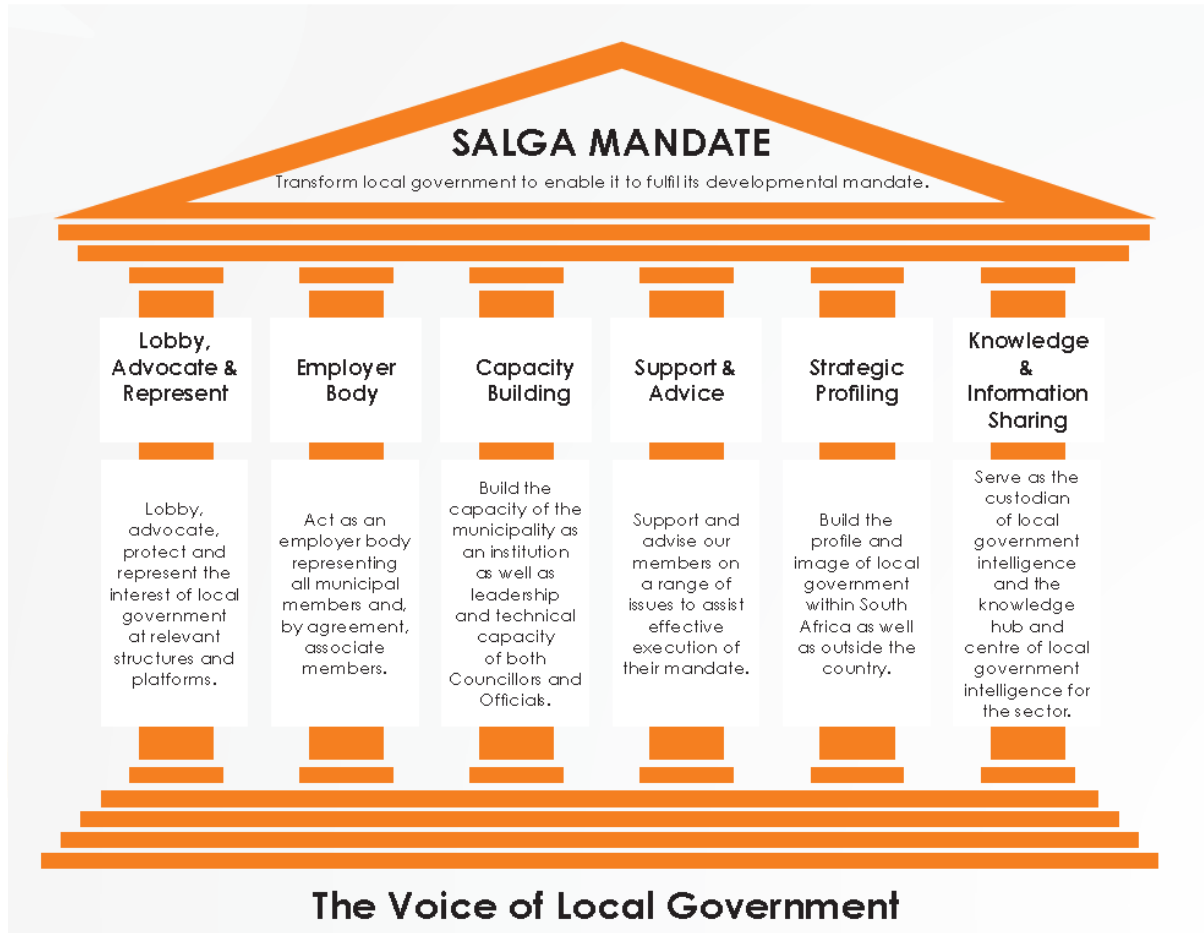
SALGA also serves as the representative voice of all 257 municipalities in the country. For the past 21 years, since its establishment, SALGA has endeavoured to bring focus to its mandate of supporting local government transformation in a complex environment, characterised by a highly diverse and diffuse membership-base of municipalities. In terms of its amended Constitution, SALGA is a unitary body that consists of a national association and nine provincial offices. Its mandate rests on six primary pillars:

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- a) **Representation, Advocacy and Lobbying** refers to representing the interests of members in legislatures and other policy making and oversight structures. It also refers to engaging with various stakeholders, public debates etc. in the interest of Local Government.
- b) **Employer Body** refers to being an effective employer representative for members. Employer representation is carried out through collective bargaining (in terms of the Labour Relations Act) in various structures including but not limited to those established in the South African Local Government Bargaining Council.
- c) **Capacity Building** refers to facilitating capacity building initiatives through among others, representing member interests in the Local Government Sector Education Authority (LGSETA). SALGA strives to facilitate a coherent, well-co-ordinated capacity building programme for municipal councillors and officials.
- d) **Support and Advice** refers to the provision of tools and services that enable municipalities to understand and interpret trends, policies and legislation affecting Local Government and to implement the said policies and plans.
- e) **Strategic Profiling** of Local Government refers to enhancing the profile and image of local government as an important and credible agent for the delivery of services. Profiling focuses within South Africa, the African continent, and the rest of the world.
- f) **Knowledge and Information Sharing** refers to building and sharing a comprehensive hub of Local Government knowledge and intelligence that will enable informed delivery of other SALGA mandates. The knowledge hub is also a useful reference point for all who seek Local Government information.

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**Diagrammatically the mandate is depicted as follows:**



#### **4. PURPOSE**

The purpose of this document is to call for proposals from established Employer's organisations to handle Employment Relations matters on a fixed monthly on behalf of SALGA for a three-year period as follows:

- To provide labour law opinions to SALGA
- To investigate and initiate cases on behalf of SALGA.
- To chair internal disciplinary hearings
- To chair grievances
- To manage internal appeals
- To represent SALGA at CCMA, Labour Court, and Labour Appeal Court.
- To manage collective labour law matters

## **5. BACKGROUND**

SALGA has Nine (9) provincial offices and seven (7) clusters which consist of employees ranging from twenty to forty. The offices are serviced by three (3) HR business partners and 1 Senior Manager. From time to time, employee relations matters arise, and internally there's lack of capacity to handle the matters. This then puts the organisation at risk since Employment Relations matters are often tied to legislative timelines. This then compels us to procure the services of a panel of an Employer's organisation to assist SALGA with Employee Relations matters speedily. SALGA prides itself as a high-performance driven organisation therefore the appointment of such a service provider will assist SALGA with achieving its mandate towards its clients.

## **5. SCOPE OF WORK**

The scope of work for the provision of these services includes the following:

- 5.1 Conducting Investigations, chairing of hearings (misconduct and grievances)
- 5.2 Participating in SALGA's appeals committee.
- 5.3 Represent SALGA at CCMA, labour court, and labour appeal court.
- 5.4 Handle negotiations and consultations on behalf of SALGA when required.
- 5.5 Audit SALGA policies and procedures and provide guidance.
- 5.6 Provide access to user licenses to labour law websites.
- 5.7 Handle labour court reviews and interdicts.
- 5.8 Legal correspondence
- 5.8 Provide legal cover and damage cover where matters have been lost.
- 5.9 Provide training to staff.
- 5.10 24-hour telephonic labour law assistance and help line.
- 5.11 Strike Handling
- 5.12 Handling of Section 189 retrenchments

## **Disbursements**

The service provider is expected to:

- Assume the costs for their own travel and accommodation where applicable.
- Have a fixed monthly rate for the services required.

## **Team Composition**

The service provider is expected to assemble a team with the following expertise:

- Qualified employment relations specialists
- Only service providers registered with Department of employment and labour as an employer's organisation and have certificate of registration will be considered.
- An understanding of the Local government sector and the internal HR processes, Legal processes and organisations and courts where might be involved.
- Team of labour law experts and employee relations specialists nationally

## **Duration**

The duration of the contract is three (3) years, or thirty-six (36) months based on performance which will be assessed on a quarterly basis and reviewed on annual basis.

### **6.1 BIDDER REQUIREMENTS**

The bidder will be expected to demonstrate technical ability and capacity to undertake an assignment of this complexity.

## **Mandatory Requirements**

The following requirements are crucial -under the above scope of service:

- a) Ten (10) years' broad knowledge and understanding of employment relations and representation at CCMA, Labour Court, and Labour Appeal Court processes.
- b) Ten (10) years' registration with Department of employment and labour as employer organisation and proof of current membership to be submitted.
- c) Proof that they are representing companies in employment relations matters in small, medium, and large business.
- d) National footprint

### **6.2 BIDDER COMPETENCIES**

SALGA wishes to engage the successful bidder with appropriate skills/expertise in the following areas:

- Minimum of Ten (10) years proven experience in providing employment relations services, and understanding of Labour Legislations
- National footprint
- Experience in drafting policies.
- Experience in Employee Relations training
- 24-hour telephonic labour law assistance and help line



### **6.3 CONTENT OF PROPOSAL**

*(Information to be submitted by the bidders)*

The proposal should include.

- 6.3.1 all relevant perceived strengths and weaknesses of the firm bidding for the service, e.g., similar previous experience, in-house skills, etc; providing information which will assist SALGA to assess its capabilities, competitive advantages, etc.
- 6.3.2 the summary of the bidder's mission statement, the vision statement, values and long-term strategies and objectives as comprehensively as possible.
- 6.3.3 a list of references of previous and current appointments relevant to the required services; examples of such services capabilities and experience and more specifically the number and size of organisations where service rendered in specific sectors in government and areas of expertise.
- 6.3.4 an organogram or list of partners, managers, specialists, together with the *curriculum vitae* of the staff who will be available for the duration of the work; any staff changes regarding staff allocated to SALGA must be done in consultation with the Project Manager representing the organisation. The successful bidder should provide experienced specialists relevant to the required services.
- 6.3.5 Expenditure incurred without the prior approval of SALGA will not be reimbursed. An analysis of costs must be given to cover the full amount, and where possible, costs should be linked with specific tasks to be undertaken. All other incidental costs should be included in the budget breakdown.
- 6.3.6 In so far as is possible, a comprehensive budget, showing the service of activities proposed, with charge-out rates and budgeted hours per activity, detailing all assumptions made in arriving at a proposed budget, including all cost factors such as traveling.
- 6.3.7 How the bidder proposes to provide governance assistance to SALGA; and
- 6.3.8 In so far as is possible, provide an overview of the methodology to be applied.

### **6.4 APPOINTMENT, COMMENCEMENT AND DURATION**

The appointed bidder is anticipated to commence the work upon appointment **on an as and when required basis" over a three-year period.**

### **6.5 DESCRIPTION AND EXTENT OF WORK (PROJECT MANAGEMENT)**

#### **6.5.1. Performing of assignments**

Assignments are to be performed in accordance with the industry/profession standards as well as the terms of reference. All reports will be reviewed by the relevant project manager representing the organisation.



All working papers and reports and documents will become the property of SALGA.

The successful bidder shall work with the Portfolio Head: Human Capital and Corporate Services together with the Human Capital team and must be prepared to report the progress as and when required.

#### **6.5.2 Timing of assignments**

The performance of this assignment shall be in accordance with the approved plan by the Portfolio Head: Human Capital and Corporate Services. The final responsibility of approving the scope and extent of the work resides with the relevant project manager.

#### **6.5.3 Quality assurance reviews of the work**

The bidder shall ensure that all work conforms to the required quality assurance standards.

#### **6.5.4 Monitoring progress of assignments**

On a mutually agreed basis, the bidder shall meet with the Portfolio Head: Human Capital and Corporate Services and team to report progress of the work.

#### **6.5.5 Payments**

SALGA undertakes to pay out within a reasonable time all valid claims for work done to its satisfaction upon presentation of a substantiated claim. No payment will be made on outstanding information not submitted by the bidder.

The parties shall, upon appointment of the bidder, sign a service level agreement to govern their business relationship.

Acceptance of any bid does not mean that work on an uninterrupted basis is guaranteed for the duration of the contract.

#### **6.5.6 Expenditure incurred by the bidder.**

The SALGA will not be held responsible for any costs incurred by the bidder in the preparation and submission of the bid.

### **7. INSTRUCTION TO BIDDERS**

#### **7.1 General Instructions**

This document constitutes a Request for Proposal (RFP), which specifies SALGA's requirements for the appointment of an employer body to provide employee relations services mentioned herein above "on an as and when required basis" over a three-year period. The information contained herein provides a format to facilitate bidder's responses to this RFP. It is important that the format be followed closely to help maintain the decision-making. Responses must be presented in the same order as the requirements appear, section by section, and numbered accordingly, with acknowledgement of all clauses. All pricing information should be fully disclosed with all charges clearly defined, i.e., fixed monthly fee reviewable on an annual basis.

## 7.2 Objectives

SALGA's calls for the appointment of an employer body to provide employee relations services "on an as and when required basis" over a three-year period.

## 7.3 Terms of Contract

The term of the contract shall be regulated by the Service Level Agreement (SLA) to be concluded with the winning bidder. It is anticipated that the term of the contract shall be for the duration of the assignment and shall expire upon fulfilment of the scope of work. The contract may be extended by mutual agreement. Thirty (30) days written notice must be given if either party wishes to terminate the agreement prior to the contract's expiry date.

## 7.4 Questions during Proposal Process

Any enquiries regarding this RFP should be directed to **Moses Magolego**, Senior Buyer: SCM at [scm@salga.org.za](mailto:scm@salga.org.za), located at the SALGA National Office – 012 369 8000. Questions will only be taken up to four days prior the closing date.

Bidders finding apparent discrepancies or omissions in the RFP should notify Acting Head: Supply Chain Management at [scm@salga.org.za](mailto:scm@salga.org.za) at once. Bidders may during the bidding period, be advised by Addenda, of any additions, clarifications, deletions, or alterations to these specifications. All such changes should be covered by the bidder's proposal. Information used in the preparation of a proposal from other than this RFP and any written addenda (considered as the proposal documents) will not be considered as valid or official.

No further addenda will be issued by SALGA after 11:00 am, seven business days prior to RFP closing without providing an extension of time.

## 7.5 Submission of Proposal

Submit four copies of the original proposal (One Original and three copies of the original), in sealed opaque envelopes. In addition, is a separate pricing sheet, as well as an electronic version in a USB flash drive or memory stick and marked RFP RESPONSE – Proposals for the appointment of an employer's organisation to handle employment relations on behalf of SALGA, "on an as when required basis" over a three-year period, should be, addressed to: SCM @ SALGA

### Or physical address:

South African Local Government Association (SALGA)  
Menlyn Corporate Park  
Block B; 175 Corobay Avenue  
Corner Garsfontein & Corobay Avenue  
Waterkloof Glen ext. 11  
PRETORIA  
0181

**Attention: Moses Magolego**

Proposals will be received at the reception desk on the first floor, during regular business hours only, up to **11h00** am on the **09 May 2023**. Late submissions will not be accepted.

Bidders remain solely responsible for the method of conveyance of their proposal to the receiving point. Fax transmissions or any other electronic communications are not acceptable.

SALGA will not be responsible for any costs incurred by the bidders associated with the preparation of responses to the RFP.

Proposals received past the time stated above will not be considered and will be returned to the bidder unopened.

Proposals will not be opened in public.

All proposals will remain in force and will be irrevocable for **hundred and twenty days** after the proposal closing.

Proposals shall be stipulated sums without escalator clauses or other qualifications.

#### **7.6. Contract Award**

SALGA reserves the right to accept any proposal submitted or reject all proposals.

Any proposal submitted, that is not in complete compliance with the requirements of the proposal documents may be accepted or disqualified, at the option of SALGA.

Please outline in your proposal the assistance your institution is prepared to provide to meet the estimated contract duration period for the full implementation of the scope of work.

#### **7.7 Termination of Contract**

SALGA reserves the right to terminate the agreement with 30 days written notice to the winning bidder subject to the following:

- 7.7.1** the winning bidder fails to perform in accordance with the specified service requirements as set out in the RFP.
- 7.7.2** the winning bidder fails to provide project deliverables as defined **above** without written explanation.
- 7.7.3** the winning bidder otherwise violates the provisions of the RFP to a substantial degree.

#### **7.8 Liability**

SALGA will not be held liable for any actions of the winning bidder and/or its employees.

#### **7.9 Important Dates**

Please note that some of the dates are based on estimated project timeframes.

**8. CONDITIONS OF BID (FAILURE TO MEET ANY OF THE REQUIREMENTS BELOW MAY RENDER YOUR BID PROPOSAL NON-RESPONSIVE)**

- 8.1 The requirement for content of the project proposal section below outlines the information that must be included in bid offers. **Failure to provide all or part of the information may result in your bid being excluded from the evaluation process.**
- 8.2 A contract will be signed with the appointed bidder.
- 8.3 The Bidder will be required to sign confidentiality and indemnity agreements with SALGA.
- 8.4 SALGA may at its own discretion vary an instruction to include more work.
- 8.5 Failure to comply with any condition of this request for a proposal will invalidate respective tender proposal.
- 8.6 In the event that any conflict of interest is discovered during the assignment, SALGA reserves the right to summarily cancel the agreement and demand that all the information, documents and property of SALGA be returned forthwith.
- 8.7 SALGA reserves the right to request new or additional information regarding each bidder and any individual or other persons associated with its project proposal.
- 8.8 Bidders shall not make available or disclose details pertaining to their project proposal with anyone not specifically involved, unless authorized to do so by SALGA.
- 8.9 Bidders shall not issue any press release, social media or other public announcement pertaining to the details of their project without the prior written approval of SALGA.
- 8.10 Bidders are required to declare any conflict of interest they may have in the transaction for which the bid is submitted or any potential conflict of interest. SALGA reserves the right not to consider further any bid where such a conflict of interest exists or where such potential conflict of interest may arise.
- 8.11 The bid offers and proposals should be valid and open for acceptance by SALGA for a period of 120 days from the date of submission.
- 8.12 Bidders are advised that submission of a project proposal gives rise to no contractual obligations on the part of SALGA.
- 8.13 Disputes that may arise between SALGA and a bidder must be settled by means of mutual consultation, mediation (with or without legal representation) or, when unsuccessful, in a South African court of law.
- 8.14 In addition to adherence to the specific terms and conditions of proposals, provided in this document, the bidder shall be bound by the provisions of the General Conditions of Contract attached hereto, an originally signed copy of which must be submitted together with all other bid documentation.
- 8.15 All returnable bid documents must be completed in full and submitted together with the bidder's proposal.
- 8.16 SALGA will not be liable for costs incurred during the site visits or any other cost related to the submission of the bid.
- 8.17 Completion of the Standard Bidding Documents stated herein below is **mandatory**, failure to do so **may** render your bid offer invalid.

## **8.18. Standard Bidding Forms**

### **8.18.1. Invitation to Bid**

Form SBD 1 - Bidders must complete this document in full.

### **.....8.18.2 Pricing Schedule**

Form SBD 3.3 - Bidders must complete this document in full.

### **8.18.3. Bidders Disclosure**

Form SBD 4 - Bidders must complete this document in full.

### **8.18.4. Preference points claim form.**

Form SBD 3.3 - Bidders must complete this document in full.

## **9. EVALUATION**

The following evaluation method will be used:

- After the closing date of the bid invitation, an appointed evaluation committee of SALGA officials and possibly other external parties will evaluate the proposals of the bidders.
- The committee will individually evaluate each of the bid proposals received against the appointed criteria as provided for in Preferential Procurement Regulations, 2022
- A shortlist will be determined, and the Service Providers will be invited to make a presentation to the evaluation committee.

All proposals submitted will be evaluated on three categories:

- Functionality (technical content)
- Price
- Specific goals

Bids will be evaluated in accordance with the Preferential Procurement Regulations, 2022, using the 80/20 split. The 80/20 preference points system applies for acquisition of goods or services for Rand value equal or above R30 000 and up to R50 million.

Firstly, the assessment of functionality will be done in terms of the evaluation criteria and the minimum threshold value of 70 points. A bid will be disqualified if it fails to meet the minimum threshold value for functionality as per the bid invitation.

A Bid Evaluation Committee will review and evaluate the proposals. Bidders may be invited to present their proposal for the purpose of providing clarification and answers to questions by the committee. If presentations are necessary, they will be made on the date, time and location to be confirmed.



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Thereafter, only the qualifying bids after the presentation and demonstration will be evaluated in terms of the 80/20 preference points systems, 80 points will be used for price only and the 20 points will be used for Specific goals. The price points will be calculated in accordance with the formula prescribed in Regulation 6. (1) of the Preferential Procurement Regulations, 2022.

A recommendation for the awarding of the contract will be made at the meeting of the Bid Adjudication Committee to be confirmed, where applicable.

For functionality, the following criteria will be applicable and the maximum value of points breakdown for each criterion using these scale level descriptors:

SCALE LEVEL DESCRIPTIONS	RATING
No relevant response or information given to enable evaluation	0
<b>Very poor</b> response based on expected standard	1
<b>Poor</b> response based on expected standard	2
<b>Average</b> response based on expected standard	3
<b>Good</b> response based on expected standard	4
<b>Excellent</b> response based on expected standard	5

Points Breakdown:

CRITERIA FOR FUNCTIONALITY	BREAKDOWN OF POINTS	WEIGHTS
Knowledge and experience of the subject matter (as detailed in the scope of work)	<p>Employment Relations processes and procedures clearly detailed, knowledge and proven track record in respect of the subject matter.</p> <p><b>Points allocation:</b></p> <p>5 points - (covers 100% and above of all the elements stated in scope of services)  4 points - (covers 80% and above of all the elements stated in scope of services)  3 points - (covers 60% and above of all the elements stated in scope of services)  2 points - (covers 40% and above of the elements stated in the scope of work)  1 point - (covers 20% and above of elements stated in scope of work.  0 point - (covers no response or information).</p>	<b>40</b>

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<p>Previous Experience (refers to bidder's past experience in delivering similar projects)</p>	<p>At least eight (8) references from Clients in their letterheads (Testimonial letters) of relevant or similar type of service as stated in paragraph 5 under scope of service:</p> <p><b><u>Points allocation:</u></b></p> <ul style="list-style-type: none"> <li>• 5 points – eight (8) and more of references on company letterhead.</li> <li>• 4 points – six (6) and more of references on company letterhead</li> <li>• 3 points – four (4) and more of references on company letterhead</li> <li>• 2 points – Two (2) and more references on company letterhead.</li> <li>• 1points – one (1) and more references on company letterhead.</li> <li>• 0 point - (covers no response or information)</li> </ul>	<p><b>30</b></p>
<p>Past experience and skills of leading or professional assigned personnel) in relation to the scope of work</p>	<p>In respect of each staff member assigned to the scope of work, Bidders are required to indicate the following:</p> <ul style="list-style-type: none"> <li>• general qualifications. adequacy of specific field; Knowledge and expertise in the field in support of the above, Bidders are to submit CVs of each representative per province, which provides each member's experience in similar work.</li> </ul> <p><b><u>Points allocation:</u></b></p> <ul style="list-style-type: none"> <li>• 5 points - (10 years' experience and above)</li> <li>• 4 points - (8 years' experience and above</li> <li>• 3 points - (6 years' experience and above</li> </ul>	<p><b>30</b></p>



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	<ul style="list-style-type: none"> <li>• 4 points - (4 years' experience and above)</li> <li>• 1 point - (2 years' experience and above)</li> <li>• 0 point - (covers no response or information)</li> </ul>	
<b>Total</b>		<b>100</b>
<b>Threshold</b>		<b>70</b>

Bidders who score 70 (average) points and above will be considered in phase 2 of the evaluation.

The 80/20 points system will be used when evaluating this Request for Proposal.

The remaining 20 points will be allocated in terms of Regulation 6(2) and 6(3) of the Specific Goals, 2022, preference points must be awarded to a bidder for attaining the Specific Goals accordance with the table below:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of points (80/20 system)</b>
1	10
2	9
3	7
4	6
5	4
6	3
7	2
8	1
<b>Specific Goals</b>	
SMME's	4
100% Black Women owned	3
100 % Youth	3
<b>Total Points</b>	<b>20</b>

Bidders must submit proof of their B-BBEE status level of contributor.

A bidder failing to submit proof of B-BBEE status level of contribution or is a non-compliant contributor to B-BBEE may not be disqualified but may only score point out of 80 for price and score 0 points out of 20 for B-BBEE.

## **8 GENERAL CONDITIONS**

The following should be noted by interested parties:

- Intellectual property and ownership of all materials and products developed in the execution of the contract will be vested in SALGA.
- Materials and products may not be made available to any unauthorized person or institution or sold for profit without prior written consent from SALGA.
- On completion or termination of the agreement, all materials and products must be handed over to SALGA.
- No information concerning the tender or award of the tender may be made available by the bidder to other parties without prior consultation and written approval from SALGA.
- SALGA may at its own discretion vary this instruction to include more scope / work or to exclude work/service areas. In the case of the latter, the bidder shall not be entitled to claim for any work not required and may engage SALGA on the pricing of the additional work/ service proposed.
- All copyright and intellectual property rights that may result because of the work to be performed shall reside with SALGA and the bidder shall be required to sign an agreement of confidentiality.
- SALGA may dictate the framework in which documents (policies, plans, report etc.) shall be submitted; however, the bidder should be able to submit a proposal on the layout of his/her choice for consideration by SALGA.
- SALGAs (general conditions of bid, contract, and order) shall be applicable to this bid.
- The bidder shall be required to conclude and sign a Service Level Agreement (SLA) after the appointment.
- SALGA reserves the right not to award the bid to any bidder at its own discretion.
- Materials and products may not be made available to any unauthorized person or institution or sold for profit without prior written consent from SALGA.

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**Reviewed and supported by Chairperson: Bid Specifications Committee**

## PART A INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)</b>							
BID NUMBER:	SALGA/25/2023	CLOSING DATE:	09 MAY 2023	CLOSING TIME:	11:00		
DESCRIPTION	Request for Proposals for the Appointment of an employer's organization to handle employment relations matters on behalf of SALGA, "on an as when required basis" over a three-year period						
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>							
CONTACT PERSON				CONTACT PERSON			
TELEPHONE NUMBER				TELEPHONE NUMBER			
FACSIMILE NUMBER				FACSIMILE NUMBER			
E-MAIL ADDRESS				E-MAIL ADDRESS			
<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>							
<b>SUPPLIER INFORMATION</b>							
NAME OF BIDDER							
POSTAL ADDRESS							
STREET ADDRESS							
TELEPHONE NUMBER	CODE		NUMBER				
CELLPHONE NUMBER							
FACSIMILE NUMBER	CODE		NUMBER				
E-MAIL ADDRESS							
VAT REGISTRATION NUMBER							
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA		
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX]		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX]		
	<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>[AN UPDATED CSD REPORT MUST BE SUBMITTED IN ORDER TO QUALIFY FOR SPECIFIC GOALS AT PPPFA EVALUATION]</b>							
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER 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 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>
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED– (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

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

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

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

DATE:

.....

**PRICING SCHEDULE**  
(Professional Services)

NAME OF BIDDER: .....	BID NO.: SALGA/25/2023.....
CLOSING TIME 11:00	CLOSING DATE 09 May 2023.....

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

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)	
1.	The accompanying information must be used for the formulation of proposals.		
2.	Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.	R.....	
3.	PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)		
4.	PERSON AND POSITION	HOURLY RATE	DAILY RATE
	-----	R-----	-----
	-----	R-----	-----
	-----	R-----	-----
	-----	R-----	-----
	-----	R-----	-----
5.	PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT		
	-----	R-----	----- days
	-----	R-----	----- days
	-----	R-----	----- days
	-----	R-----	----- days
5.1	Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.		
	DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY AMOUNT
	-----	.....	..... R.....
	-----	.....	..... R.....
	-----	.....	..... R.....
	-----	.....	..... R.....
		TOTAL: R.....	

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

Name of Bidder: .....

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

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

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

\*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –

Menlyn Corporate Park  
C/o Garsfontein and Corobay Avenue  
Waterkloof Glen  
TEL: (012) 369 8000  
EMAIL: scm@salga.org.za  
WEBSITE: www.salga.org.za

Or for technical information –

Menlyn Corporate Park  
C/o Garsfontein and Corobay Avenue  
Waterkloof Glen  
TEL: (012) 369 8000  
EMAIL: scm@salga.org.za  
WEBSITE: www.salga.org.za

## 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**

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

- a) The applicable preference point system for this tender is the **80/20** preference point system.
- b) Either the **90/10 or 80/20 preference point system** will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

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:

B-BBEE Status Level of Contributor	Number of points (80/20 system)	Number of points (90/10 system)
1	10	5
2	9	4



3	7	3
4	6	2
5	4	1
6	3	0
7	2	0
8	1	0
<b>Specific Goals</b>		
SMME's	4	4
100% Black Women owned	3	3
100 % Youth	3	3
Total Points	20	10

- 1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

## 2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation.
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

### 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

#### 3.1. POINTS AWARDED FOR PRICE

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

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

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \mathbf{Ps} = \mathbf{80} \left( \mathbf{1} - \frac{\mathbf{Pt} - \mathbf{Pmin}}{\mathbf{Pmin}} \right) & \mathbf{or} & \mathbf{Ps} = \mathbf{90} \left( \mathbf{1} - \frac{\mathbf{Pt} - \mathbf{Pmin}}{\mathbf{Pmin}} \right) \end{array}$$

Where

Ps = Points scored for price of tender under consideration  
Pt = Price of tender under consideration  
Pmin = Price of lowest acceptable tender

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

##### 3.2.1. POINTS AWARDED FOR PRICE

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

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \mathbf{Ps} = \mathbf{80} \left( \mathbf{1} + \frac{\mathbf{Pt} - \mathbf{Pmax}}{\mathbf{Pmax}} \right) & \mathbf{or} & \mathbf{Ps} = \mathbf{90} \left( \mathbf{1} + \frac{\mathbf{Pt} - \mathbf{Pmax}}{\mathbf{Pmax}} \right) \end{array}$$

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)
SMME's	4	4		
100% Black Women owned	3	3		
100 % Youth	3	3		

#### **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.

<p>.....</p> <p><b>SIGNATURE(S) OF TENDERER(S)</b></p>	
<b>SURNAME AND NAME:</b>	.....
<b>DATE:</b>	.....
<b>ADDRESS:</b>	.....
	.....
	.....
	.....

# **THE NATIONAL TREASURY**

**Republic of South Africa**



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## **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.

## **TABLE OF CLAUSES**

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
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14. Spare parts
15. Warranty
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17. Prices
18. Contract amendments
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20. Subcontracts
21. Delays in the supplier's performance
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23. Termination for default
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25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
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32. Taxes and duties
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34. Prohibition of restrictive practices



## **General Conditions of Contract**

### **1. Definitions**

1. The following terms shall be interpreted as indicated:
  - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of 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

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

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

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

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

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

#### **15. Warranty**

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

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

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

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

15.5 If the supplier, having been notified, fails to remedy the defect(s)

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

**16. Payment**

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

**17. Prices**

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

**18. Contract amendments**

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

**19. Assignment**

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

**20. Subcontracts**

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

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

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities



or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

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

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

## **22. Penalties**

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

## **23. Termination for default**

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

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

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

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

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

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

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

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

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

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

terms of the contract or any other contract or any other amount which may be due to him

**25. Force Majeure**

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

**26. Termination for insolvency**

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

**27. Settlement of Disputes**

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

**28. Limitation of liability**

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

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

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

Js General Conditions of Contract (revised July 2010)