



# transport

Department:  
Transport  
REPUBLIC OF SOUTH AFRICA

Ref: CSS 5/11/1  
Enq: Mr. L. Mashile/Mr. T. Mkhari  
Tel Number: (012) 309-3429/3011

Dear Sir / Madam

## BID NUMBER: DOT/02/2022/MT/ WEST COAST

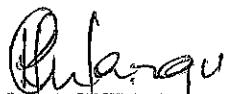
1. The Department of Transport requires the service as described per attached bid invitation and you are requested to complete the bidding documents and to submit it in accordance with the under mentioned stipulations:
  - The bid must be submitted in a sealed envelope with the name and address of the bidder with the number and closing date indicated on the envelope. The envelope must not contain documents relating to any bid other than that shown on the cover of the envelope;
  - Bids submitted per post must be sent per registered mail. The bid must still reach this office before the closing time. Couriered bid documents must be received before the closing date and time failure to do so may invalidate the bid;
  - The attached forms, if completed in detail and returned, will form part of your bid; and
  - Prices must be VAT inclusive and all other expenses/disbursements, and be valid for a period of at least **120 days** from closing date.
  - **Bidders must submit one (1) original hard copy of the Technical proposal inside an envelope marked “Technical proposal” and four PDF format CD’s of the technical proposal, and one (1) Original hard copy of the financial proposal inside market “Financial proposal” on the closing date.** If Bidders are not sure of the two envelope separation submission requirements kindly contact the administrative contacts on SBD 3.3 to avoid being disqualified.
  - **Compulsory Briefing Session will be held as follows:**  
**Date: 08 June 2022**  
**Time: 12:00**
  - **Venue: Transnet National Ports Authority, Durban (N-Shed)**
  - **See additional submission requirements in paragraph 5 of this document.**
- 2 You are advised to acquaint yourself with the contents of the attached general conditions of contract and the checklist.

- 3 It will be expected of the successful bidder to sign a formal contract at this office within seven (7) days after receiving a letter of acceptance.
- 4 Kindly take note that this is a two-envelope system (Technical and Financial) proposals must be marked and put in separate envelopes). Annexure A which will be for Technical proposal and Annexure B for Financial proposal. Bids that do not comply with a two-envelope system will be disqualified.

**5 Please note the following important information:**

- (a) 2 Separate bids are advertised under DOT/01/2022/MT/ EAST COAST and DOT/02/2022/MT/WEST COAST.
- (b) Envelopes/Proposals must clearly indicate which bid it responds to (e.g. West/ East Coast and Financial proposals (second envelope)).
- (c) Bidders may opt to bid for either DOT/01/2022/MT/EAST COAST or both No bidders is prohibited from bidding for both.
- (d) If a bidder does submit proposals for both, they must submit two separate proposals in separate envelopes, as these bids are evaluated separately.

Kind Regards

  
for ACTING DIRECTOR GENERAL: TRANSPORT  
DATE: 24/05/2022

**ANNEXURE A**

**TECHNICAL**

**PROPOSALS**

**CHECKLIST: DOT/02/2022/MT/WEST COAST: APPOINTMENT OF A SERVICE PROVIDER FOR POLLUTION PREVENTION AND EMERGENCY RESPONSE ON THE SOUTH AFRICAN ECONOMIC EXCLUSIVE ZONE AND BEYOND IN FULFILMENT OF THE IMO OBLIGATION FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF FIVE YEARS FOR WEST COAST.**

<b>NB</b>	<b>SERVICE PROVIDERS MUST INDICATE WITH A TICK</b>	<b>YES</b>	<b>NO</b>
1	Did you take note that bids submitted per mail must be sent per registered mail and reach the Department in time to be <b>deposited in the Tender Box before the closing date and time?</b>		
2	Are you familiar with the contents of the SBD 1 Form? Did your authorised official <b>complete and sign the SBD 1 Form?</b>		
3	Did you submit an <b>original and valid Tax Clearance Certificate?</b> In bids where consortia/joint ventures/sub-contractors are involved, <b>each party must submit a separate Tax Clearance Certificate</b> (paragraph 4 of the SBD 2 Form)		
4	Please note that SBD 1 and 3.3 must form part of the financial proposal. ( <b>The envelope must be marked Financial proposal</b> )		
10	Have you taken note of the General Conditions of Contract and <b>signed</b> the bottom of each page thereof?		
11	<b>Is your bid/proposal complete and responsive in all respects to the specifications/terms of reference?</b>		
12	<b>Please note that late bids will not be considered.</b>		
13	<b>CSD registration report is attached, and all companies forming a JV/Consortium/Subcontract submitted their CSD report?</b>		

**Declaration:** I, the undersigned (Full Name).....  
certify that I have noted the contents of the above-mentioned checklist and have complied with the stipulations contained therein.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

**PART A**  
**INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)</b>					
BID NUMBER:	DOT/02/2022/MT/WEST COAST	CLOSING DATE:30 JUNE 2022		CLOSING TIME:	11:00 AM
DESCRIPTION	APPOINTMENT OF A SERVICE PROVIDER FOR POLLUTION PREVENTION AND EMERGENCY RESPONSE ON SOUTH AFRICAN ECONOMIC EXCLUSIVE ZONE AND BEYOND IN THE FULFILMENT OF THE IMO OBLIGATION FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF FIVE YEARS.				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
159 FORUM BUILDING, CORNER BOSMAN & STRUBEN STREET, NATIONAL DEPARTMENT OF TRANSPORT.					
PRIVATE BAG X 193					
PRETORIA					
0001					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	JOHN MASHININI/MR LUCKY MASHILE		CONTACT PERSON	MR METSE RALEPHENYA	
TELEPHONE NUMBER	012 309-3445/3429		TELEPHONE NUMBER	012 309- 3032	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	<a href="mailto:MashiniJ@dot.gov.za">MashiniJ@dot.gov.za</a> <a href="mailto:MashileL@dot.gov.za">MashileL@dot.gov.za</a>		E-MAIL ADDRESS	ralephem@dot.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:		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>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No
	[IF YES ENCLOSURE PROOF]				[IF YES, ANSWER PART B:3]
<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**

**1. BID SUBMISSION:**

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

**2. TAX COMPLIANCE REQUIREMENTS**

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

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

**SIGNATURE OF BIDDER:** .....

**CAPACITY UNDER WHICH THIS BID IS SIGNED:** .....  
(Proof of authority must be submitted e.g. company resolution)

**DATE:** .....

## BIDDER'S DISCLOSURE

### 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

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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.

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

2.2.1 If so, furnish particulars:

.....  
.....

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

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.

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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.

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

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

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

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

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

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

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

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

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**1. GENERAL CONDITIONS**

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

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

1.2

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

1.3 Points for this bid shall be awarded for:

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

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

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

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

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

## 2. DEFINITIONS

- (a) “**B-BBEE**” means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) “**B-BBEE status level of contributor**” means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) “**bid**” means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) “**Broad-Based Black Economic Empowerment Act**” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) “**EME**” means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) “**functionality**” means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) “**prices**” includes all applicable taxes less all unconditional discounts;
- (h) “**proof of B-BBEE status level of contributor**” means:
  - 1) B-BBEE Status level certificate issued by an authorized body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) “**QSE**” means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) “**rand value**” means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

## 3. POINTS AWARDED FOR PRICE

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

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

<b>80/20</b>	<b>or</b>	<b>90/10</b>
--------------	-----------	--------------

$$Ps = 80 \left( 1 - \frac{Pt - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad Ps = 90 \left( 1 - \frac{Pt - P_{\min}}{P_{\min}} \right)$$

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmin = Price of lowest acceptable bid

## 4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

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

## 5. BID DECLARATION

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

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

6.1 B-BBEE Status Level of Contributor: . . = .....(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

## 7. SUB-CONTRACTING

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

*(Tick applicable box)*

YES	NO	
-----	----	--

7.1.1 If yes, indicate:

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

*(Tick applicable box)*

YES	NO	
-----	----	--

- Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

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

Black people who are military veterans		
OR		
Any EME		
Any QSE		

## 8. DECLARATION WITH REGARD TO COMPANY/FIRM

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

8.2 VAT registration number:.....

8.3 Company registration number:.....

### 8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

### 8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....  
.....  
.....  
.....  
.....

### 8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

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

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

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

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

WITNESSES

- 1. .....
- 2. .....

SIGNATURE(S) OF BIDDERS(S)

DATE: .....

ADDRESS .....

.....

.....



**TERMS OF REFERENCES FOR THE APPOINTMENT OF SERVICE PROVIDER FOR POLLUTION PREVENTION AND EMERGENCY RESPONSE ON THE SOUTH AFRICAN ECONOMIC EXCLUSIVE ZONE AND BEYOND: WEST COAST**

**DOT/02/2022/MT/WEST COAST**

To be attached by bid office during publishing

**CONTACT DETAILS**

Administrative Contact	Technical Contact
<b>Bidding Office</b>	<b>Project Manager</b>
Name:	Name: Mr Metse Ralephenya
Directorate: Supply Chain Management	Directorate: Safety, Security & Environment
Tell:	Tel: 012 309 3032
E-mail:	E-mail: ralephem@dot.gov.za

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## TERMS OF REFERENCES FOR THE APPOINTMENT OF A SERVICE PROVIDERS /CONSULTANTS FOR POLLUTION PREVENTION AND EMERGENCY RESPONSE ON THE SOUTH AFRICAN ECONOMIC EXCLUSIVE ZONE AND BEYOND: WESTCOAST

### 1 BACKGROUND

The Department of Transport ("DOT") through its agency the South African Maritime Safety Authority (SAMSA) is responsible for Marine Environmental Protection.

It should be noted that whilst ETVs will reduce the risk of pollution incidents from shipping they do not offer a comprehensive preventative measure. The maritime environment is a highly complex and unpredictable domain where multiple and cumulative factors, such as meteorological, human error and equipment failure influence the probability of incident. The costs incurred from oil spills can lead to significant economic losses by industries and individuals dependant on coastal economic activity. The tourism and fisheries sectors are typically where the largest impact is felt, however, there are many other business activities and sectors which suffer losses. For this study, the effect of oil spilled on the economy of coastal areas considers the following economic factors:

- Aquaculture sites;
- Fishing (value);
- Ports and terminals ;
- Seaside towns.

DOT has opted to invite separate and individual proposals for ETV's, for the East and West Coasts that will be on standby in our coast around South Africa.

The primary aim of the contract separate, or individual promote the net benefit to society as a result of risk mitigation through the provision of ETVs

For this TOR, ETV will be placed at the West Coast covering the geographical area from Gqeberha to Saldanha Bay. Furthermore, this vessel may be required to do additional work in and outside the South African waters as may be necessary.

Contracting independent service providers will promote transformation and allow new entrants into the market. This means providing opportunities to South Africans in terms of full and effective participation in the maritime sector.

This request for proposal (RFP) aims to provide guidelines to all interested parties in order to submit proposals at competitive rates. It is important for parties that are bidding to adhere to the suggested format of the proposal included in this RFP document. Furthermore, interested parties are requested to pay special attention to the disclaimer, terms and conditions in this document.

The Department intends to conclude new contract and now invites proposals from the maritime industry for the provision of marine pollution prevention plan and service that will meet the requirements of this bid.

Statutory pollution prevention and response powers are provided in the Marine Pollution (Control and Civil Liability) Act, 1981, and in the Marine Pollution (International) Act, 1987. These Acts give powers in respect of Pollution incidents and casualties in so far as pollution threats and incidents within waters under South African jurisdiction, being waters comprising the internal and territorial waters, the exclusive economic zone, and in certain cases, also water above the continental shelf. The South African Government's strategy supporting these statutory powers includes provision of an effective sea borne pollution prevention and response capability.

The DoT's intention is that South Africa has on contract a deep-sea salvage tugs on standby until it builds its own tugs.

## **2 SCOPE OF WORK**

### **2.1 GOAL**

The Department has defined the protection and enhancement of the country's environmental assets and natural resources as one of its key supporting outcomes in its Medium-Term Strategic Framework for the period 2020 – 2025.

The standby tugs primary functions are to prevent pollution by:

- (a) Towing casualties away from the coast.
- (b) Standing by stricken vessels.
- (c) Assist vessels that are in distress
- (d) Assisting in pulling grounded vessels off the coast and, in general.
- (e) Any other emergency requirements that might arise.

### **2.2 OBJECTIVES (SCOPE OF WORK)**

South Africa is mandated through the various International Conventions and South African legislation to prevent and manage the coast within its jurisdiction and prevent marine pollution.

The objectives of SAMSA, an agency of the Department, per the South African Maritime Safety Authority Act 5 of 1998 include preventing and combating pollution from vessels operating in the marine environment, as well as promoting South Africa's maritime interests.

The call for South Africa to own the Emergency Towing Vessels (ETVs) was again emphasized by the Policy statement 22(b) of the Comprehensive Maritime Transport Policy (CMTP), which stipulates that the Department shall ensure that there is pollution prevention Emergency Towing Vessels as defensive mechanism to stave off any marine pollution threats along South African Coastline

## **2.3 DELIVERABLES**

The deliverables or output of the project:

- Reduce level of pollution at sea
- Marine pollution prevention and response vessel capability.

The use of ETV is crucial in the prevention of marine pollution by other ships as well as the efficient and expedient reporting of marine accidents to alleviate the damage as quickly as possible.

In order to support its legislative objectives of preventing and combating the pollution of the marine environment by ships and to ensure the safety of life and property at sea, SAMSA, through the Department, has contracted the services of an emergency towing vessel.

The Department further envisage that the Project should include an emergency marine towing service that will enable SAMSA to respond to pollution threats from vessels operating in South Africa's exclusive economic zone in accordance with the requirements of the Marine Pollutions (Prevention of Pollution from Ships) Act (2 of 1986) and in support of SAMSA's legislative objectives.

### **Capabilities of ETV**

In order to respond effectively to an oceangoing vessel in heavy South African weather offshore, an ETV must have:

- 2.3.1. Sufficient free running speed of at least 14 knots and above to reach the affected vessel in time to prevent a casualty.
- 2.3.2. The ability to make headway in heavy seas while steaming toward the affected vessel.
- 2.3.3. Good seakeeping characteristics for safe operation in heavy weather and to allow the
- 2.3.4. crew to make up a towing connection to the affected vessel in a timely manner.
- 2.3.5. Excellent manoeuvring/station keeping capabilities in order to maintain position relative to the affected vessel.
- 2.3.6. All equipment necessary to establish a towing connection safely, efficiently, and reliably to the affected vessel.
- 2.3.7. Bollard pull sufficient to arrest the drift of the affected vessel (at minimum of 180 tones and above).
- 2.3.8. Towing equipment (both towing gear and deck machinery) able to handle dynamic towline loads experienced during the towing operation.
- 2.3.9. Sufficient range and endurance to intercept the affected vessel and tow it to safe harbour, or until the ETV is relieved by a commercial salvage vessel.

2.3.10. Crew with adequate training, experience, and numbers to accomplish the mission.

## 2.4 Summary

2.4.1 The DOT seeks to approve proposals for the provision of marine pollution prevention response plan and service on the South African Coast for a minimum period for **five (5) years**. The specific characteristics to be displayed by the Bidders include the following:

2.4.1.1 Design features and construction of the vessel must be suitable to operate in the severest winter weather conditions off the South African coast in respect of stability, sea handling capabilities, manoeuvrability, etc.

2.4.1.2 Guaranteed Free running speed of at 14 knots and above.

2.4.1.3 Guaranteed Bollard pull of 180 tones and above.

2.4.1.4 24-hour capacity with an acceptable reaction time

2.4.1.5 Cost efficient operations.

2.4.1.6 The age of the vessel must be less than 15 years as minimum requirements

2.4.2 It is required that the vessel and its operator be stationed in South Africa with a management team and suitable back-up services available.

2.4.3 The proposal should be structured in a manner that ensures that maximum socio-economic benefit is derived to South Africa, particularly in respect of:

2.4.3.1 SA Nationality requirement in respect of crewing -Training commitments

2.4.3.2 Crewing of the vessel – Employment of crew be 100% South African nationality

2.4.3.3 Maximum local content with respect to parts, maintenance, services & supplies

2.4.3.4 Ship registration – SA flag.

2.4.3.5 the vessel on charter on the onward of the contract be registered in South Africa

2.4.3.6 Cost efficient operations

2.4.4 The department will appoint an ETV, that will be placed at the West Coast **covering the geographical area from Gqeberha to Saldanha Bay**. The selected preferred bidder will be required to immediately provide ETV that will meet the requirements highlighted above. Furthermore, the selected preferred bidder will need to demonstrate financial viability to the Department that will exhibit ability to execute the required mandate:

2.4.4.1 immediately provide ETV that meet the requirements

#### 2.4.4.2 Strong salvage capacity

#### 2.4.3.3 Cost saving mechanisms to the Department.

#### 2.4.5 Strong technical capacity and experience to do the work

#### 2.4.6 Well qualified technical crew, meeting the SAMSA, STCW standards or any certification approved by SAMSA. SAMSA will verify the presented credentials.

### 2.5 Minimum Proposal Requirement

The following information must be provided:

- 2.5.1 Vessels principal particulars (length, beam, depth, draught, tonnages, speed etc.);
- 2.5.2 Vessels build (date, shipyard, classification society, etc.) and history of operation;
- 2.5.3 General arrangement drawing of the vessels plus summary plus a summary of all supporting document and drawing for the vessel;
- 2.5.4 Summary of the vessel's principal machinery and equipment (propulsion and auxiliary machinery towing equipment, navigation equipment, communications equipment, rescue boats etc.);
- 2.5.5 Summary of the vessel's capability, which must, as a minimum, include:

2.5.5.1 The vessel shall comply with the speed of 14 knots and above;

2.5.5.2 The vessel should be an anchor handling tug (A closed stern will be an added advantage), and should not be older than fifteen (15) years (15 years as minimum requirements);

2.5.5.3 The vessel should have a guaranteed continuous Bollard pull of at least 180 tonnes and above;

2.5.5.4 The vessel should have 24-hour reaction capacity with an acceptable response time; and

2.5.5.5 The vessel should implement Cost efficient operations. It is required that the vessel and its operator be stationed in South Africa with a management team and suitable back-up services available.

2.5.5.6 Additional capabilities, e.g. fire-fighting, anchor handling, rescue boats, communication equipment such as radio, emails and voice recording, pollution response search and rescue, minimum area of storage for oil response equipment, oil-detecting radar,

adequate headlights for search and rescue, redundant propulsion system, sufficient equipment for towing vessel, BP certificate, map system, etc.

#### 2.5.5.7 Fuel reduction / saving strategies

#### 2.5.5.8 Carbon footprint mechanisms / Climate Change mitigation

### 2.6 General condition of the vessel, certification and service history

- 2.6.1 Detailed Pollution Prevention Response Plan;
- 2.6.2 Sustainability strategy i.e. period of contract, lifespan of the vessel, re-engineering requirements (if any etc.);
- 2.6.3 Home port (where will the operators responsible for the vessels be based in South Africa), what provisions will be made during maintenance periods, access to additional resources if required, etc;
- 2.6.4 The systems (or system) and methods of operation that bidders intend to use to meet these needs within the context of the specification;
- 2.6.5 Detailed costing of the service to be rendered;
- 2.6.6 Proposed formula to reduce costs to the state (The awarded service provider is encouraged to come with proposal on where the department can save)
- 2.6.7 Alternative measures to be put in place during the absence or unavailability of a tug;
- 2.6.8 Full details regarding:
  - 2.6.8.1 The source of the vessels;
  - 2.6.8.2 Participation by members of Historically Disadvantaged Group;
  - 2.6.8.3 Number, Nationality and qualifications of crew;
- 2.6.9 Record of approval of crew certification by SAMSA;
- 2.6.10 Service provider(s) should not plan dry docking of vessel(s) simultaneously. The dry docking schedule must not leave the coast line exposed with no Tug available .

## 3 EVALUATION

### 3.1 STAGE 1: MANDATORY REQUIREMENTS

- 3.1.1 **Bidders must comply with the requirements and submit all required document(s) indicated hereunder with the bid documents at the closing date and time of bid. This phase is not scored and bidders who fail to comply with all the mandatory criteria will be disqualified**

- 3.1.2 Bidders are required to be registered on the Central Supplier Database and the Department of Transport shall verify the bidder's tax compliance status through the Central Supplier Database.
- 3.1.3 Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.
- 3.1.4 It is therefore a condition of this bid that the tax matters of the bidder be in order at any point in time from the closing date of the bid. This bid will only be awarded to a bidder(s) whose tax status on Central Supplier Database is compliant.
- 3.1.5 Compliance should remain valid for the duration of the contract
- 3.1.6 Bidders are required to attend compulsory briefing sessions.
- 3.1.7 Bidders may submit bids for either the East Coast, West Coast or both Coasts (2 vessels), which will be individually and separately evaluated, awarded and contracted.

### **3.2 STAGE 2: FUNCTIONAL EVALUATION CRITERIA**

- 3.2.1 Only bidders who have complied with mandatory requirements will be evaluated for functionality. Bidders must, as part of their bid documents, submit supportive documentation for all functional requirements as indicated hereunder. The Bid Evaluation Committee (BEC) responsible for scoring the respective bids will evaluate and score all bids based on their submissions and the information provided.
- 3.2.2 The value scored for each criterion will be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for each criterion. These marks will be added and expressed as a fraction of the best possible score for all criteria.
- 3.2.3 Functionality will be evaluated on the basis of the supporting documentation supplied by the bidders in accordance with the below functionality criteria and values.
- 3.2.4 The evaluation of the functionality will be evaluated individually by Members of Bid Evaluation Committee in accordance with the below functionality criteria and values.
- 3.2.5 The applicable values that will be utilized when scoring each criteria ranges from: **1 being Poor, 2 = Average 3 = Good, 4 = Very Good & 5 = Excellent**
- 3.2.6 The Bids that fail to achieve a minimum of **70** points out of **100** points for functionality will be disqualified. This means that such bids will not be evaluated on the Preference Points System stage.

EVALUATION CRITERIA	GUIDELINES FOR CRITERIA APPLICATION	WEIGHT
ABILITY AND CAPABILITY	<p><b>Company experience:</b> Experience of the firm in a services (Reference letter under the client-company letter head, with contactable details that confirms that the firm is successfully managing or has previously managed projects of a similar nature must be attached). The reference letter must state the duration and if the project was completed successfully.</p> <p>Vessel Specifications:</p> <ul style="list-style-type: none"> <li>- Running speed of 14 knots <b><u>scoring criteria</u></b> <ol style="list-style-type: none"> <li>1. Running speed of 12 knots and Less; = 1,</li> <li>2. Running speed of 14 knots and 12 knots = 2 points;</li> <li>3. Running speed of 14 knots and 16 knots =3 points;</li> <li>4. Running speed of 16 knots and 18 knots; = 4 points</li> <li>5. Running speed of 18 knots and above = 5 points</li> </ol> </li> <li>- Bollard pull of 180 tonnes <b><u>scoring criteria</u></b> <ol style="list-style-type: none"> <li>1. Less than 150 tonnes = 1,</li> <li>2. Less than 180 tonnes equal 150 tonnes = 2 points;</li> <li>3. 180 tonnes =3 points;</li> <li>4. More than 180 tonnes equals to 200 tonnes; = 4 points</li> <li>5. More than 200 tonnes = 5 points</li> </ol> </li> <li>- National crew with adequate training and experience</li> <li>- Vessel registration</li> <li>- Good seakeeping characteristics</li> <li>- Excellent maneuvering capabilities</li> <li>- Towing equipment</li> <li>- Sufficient range</li> <li>- Minimum of 15 years <b><u>scoring criteria:</u></b> <ol style="list-style-type: none"> <li>1. More than 25 years = 1,</li> <li>2. More than 15 years equal 25 years = 2 points;</li> <li>3. 15 years=3 points;</li> <li>4. Less than 15 equals to 10 years; 4 points</li> <li>5. Less than 10 years; =5 points;</li> </ol> </li> </ul> <p><b>Flexibility in customer service</b> in terms of turnaround times with regard to solving problems which may arise during the execution of the contract i.e contingency plan.</p>	20
	<b>Proposed Equipment:</b> Bidder's catalogue clearly identifying items to be supplied and equipment held by the bidder such as towing ropes, towing gear, deck machinery etc . Bidders in possession of LMO license should attach catalogue.	5

	<p><b>Training, skills development plan and transfer of skills</b>  <b>The bidder to commit to train people in marine and ship engineering.</b></p> <ul style="list-style-type: none"> <li>• Deck Officer to Class 1 Unlimited STCW in five; <b>X 5 incumbents</b></li> <li>• Marine Engineering Officer to Class 1 Unlimited <b>STCW X 5 incumbents</b></li> <li>• Ship surveyor <b>X 2 incumbents</b>,</li> <li>• Deck and Engine Rating STCW <b>X 10 incumbents</b>.</li> </ul> <p><b>The bidder must include a detailed plan on how this training is to be executed. If number of peoples to be trained indicated above are not 100% complied with over duration of contract might result in scoring Zero</b></p>	20
<b>METHODOLOGY</b>	Bidders should provide project execution plan covering the entire scope of work including maintenance, support plan and clear deliverables.	10
<b>TOTAL POINTS ON FUNCTIONALITY MUST ADD TO 100</b>		<b>100</b>

Scoring Criterion	1 Poor	2 Average	3 Good	4 Very Good	5 Excellent
<b>Company experience:</b> Experience of the firm in a ...services (Reference letter under the client-company letter head, with contactable details that confirms that the firm is successfully managing or has previously managed projects of a similar nature must be attached). The reference letter must state the duration and if the project was completed successfully.	0 to 2 year of similar knowledge and experience	3 to 4 years of similar knowledge and experience	5 to 6 years of similar knowledge and experience	Over 7 to 9 years of similar knowledge and experience	Over 10 years of similar knowledge and experience .
	More than 25 years;	More than 15 years equal 25 years;	15 years;	Less than 15 equals to 10 years;	Less than 10 years;

<b>Vessel Specifications:</b> <b>Age of the vessel;</b> <b>Running speed; Bollard pull; National crew with adequate training and experience; Vessel registration; Good seakeeping characteristics;</b> <b>Excellent maneuvering capabilities; Towing equipment; Sufficient range</b>	Running speed of 12 knots and less;	Running speed of 14 knots and 12 knots;	Running speed of 14 knots and 16 knots;	Running speed of 16 knots and 18 knots;	Running speed of 18 knots and above;
	Bollard pull of 150 tonnes and less	Bollard pull of between 180 tonnes and 150 tonnes	Bollard pull of 180 tonnes	Bollard pull of between 180 tonnes and 200 tonnes	Bollard pull of 200 tonnes and above
<b>Proposed Equipment</b>	No catalogue of the proposed Equipment	Equipment that does not meet the minimum specification requirement as per scope of work	Equipment that fully meets the minimum specification requirements as per scope of work.	Compliance to items under rating 3 and also provide additional features which are omitted but are required.	Over and above requirements on rating 4, the bidder's catalogue
<b>Flexibility in customer service</b> in terms of turnaround times with regard to solving problems which may arise during the execution of the contract i.e. contingency plan.	No Plan or irrelevant	Plan that only addresses turnaround time that is impractical	Plan indicating turnaround time in line with scope of work	Plan indicating turnaround scope	1. Plan indicating turnaround time beyond expectation

<b>Detailed proposed methodology of how the project will be executed</b> that covers the proposed scope of work, proposed work schedule, proposed systems to be used, proposed resources and proposed time frames.	No plan or irrelevant plan	Plan not addressing requirements	Plan indicating time frames	Plan indicating resources allocations	Plan indicating timeframes and resources allocations
<b>Training, skills development plan and transfer of skills:</b> a) Having real numbers of trained personnel b) 100% qualified South African personnel	No plan at all or irrelevant	Training and skills development plan covering only one aspect	Realistic Training and skills development plan covering	Training and skills plan covering all areas under rate-3 and beyond	Training and skills programme covering all items on rating 4 and beyond,

3.2.7 Based on the Concourt ruling relating to the Preferential Procurement Regulations, 2017 - Minister of Finance v Afribusiness NPC [2022] ZACC, National Treasury advised all Department's to cease advertising new bids, until such time that a new directive is issued, which may include new Regulations.

3.2.8 Alternatively, National Treasury advised Department's to request exemption from the PPPFA Act, in terms of Section 3(c) of the Act, as confirmed in Par 6 of the National Treasury Advisory Note dated 3 March 2022, regarding the PPPFA Regulations.

3.2.9 The Department requested exemption for specific categories, including this bid, which was approved on 28 April 2022.

**3.2.10 As such, this bid is advertised with the following conditions pertaining to evaluation:**

- 3.2.10.1 Stage 1: Mandatory requirements as specified in the TOR;
- 3.2.10.2 Stage 2: Technical evaluation of all qualifying bidders after Stage 1, based on the published evaluation criteria out of a total of a 100 points;
- 3.2.10.3 Stage 3: All qualifying bidders in Stage 2 will then be evaluated on Price out of a total of 100 points. No allocation is made for preference points, in terms of the aforementioned exemption.

**3.3 STAGE 3: EVALUATION IN TERMS PRICE**

- 3.3.1 Only bids that achieve the minimum qualifying score of **70** for functionality will be evaluated further on price, out of a total of 100 points.
- 3.3.2 **Price:** The attached **Annexure A** must be utilised for submission of pricing proposals.

3.3.3 The following formula will be used to calculate the points for price in respect of tenders/procurement with a Rand value equal to, or above R30 000:

$$Ps = 100 \left( 1 - \frac{Pt - Pmin}{Pmin} \right)$$

## **4 RULES OF BIDDING**

### **4.1 COMPULSORY INFORMATION SESSION**

4.1.1 A Briefing Session is compulsory and will be held in Durban as detailed in the advert. The compulsory Briefing and Site Inspection session provides bidders with an opportunity to clarify aspects of the process as set out in this document and to address any substantive issues that bidders may wish to raise. Any Briefing Notes which may be issued by the Department to the Service Providers should be considered as part of this project.

4.1.2 Firms may ask for clarification on this TOR or any of its Annexures up to close of business forty-eight (48) hours before the deadline for the submission of bids. Any request for clarification must be submitted by email to the Bid Office. Copies of questions and answers will be emailed to all firms that register at the briefing session.

### **4.2 FORMAT AND SUBMISSION OF BIDS**

4.2.1 Bidders must submit their bids on the stipulated closing date and time. Late bids will not be considered. All late bids must be collected within seven (7) days failing which the DOT will discard of such late proposals.

4.2.2 Bids must be submitted in two (2) envelopes, one (1) with the technical proposal and the other pricing. Supporting documents required for compliance including all the SDB documents except for SBD 1 and SBD 3.3, must be submitted together with the technical proposal.

4.2.3 Format of submission of proposals:

- Envelopes must be clearly marked with Company name, DOT Nr, clearly indicating the West Coast and whether it is the technical or financial response;
- Proposals must be submitted as one (1) original and four protected soft copies. Soft copies must be exact copies of the original document, and should be labelled properly.

4.2.4 In order to evaluate and adjudicate bids effectively, it is imperative that bidders submit responsive bids. To ensure a bid will be regarded as responsive it is essential to comply with all conditions pertaining to mandatory requirements.

4.2.5 Each bidder must attach all applicable documents in support of its bid in accordance with the requirements set out in this bid as well as any other relevant materials, photographs and/or attachments.

- 4.2.6 Each bid, once submitted, constitutes a binding and irrevocable offer to provide the Services on the terms set out in the bid, which offer cannot be amended after its date of submission.
- 4.2.7 Department of Transport (DOT) reserves the right to accept or consider any bid in full or in part or any responses or submissions in relation thereto.
- 4.2.8 DOT reserves the right to appoint more than one bidder whose bid most successfully conforms to the Criteria and the Requirements in accordance with the terms and conditions described in the TOR.
- 4.2.9 DOT reserves the right to request any additional information that it may require or deem necessary. All such requests shall be in writing.
- 4.2.10 After careful consideration and thorough examination of the proposals, DOT shall select the successful Bidder whose proposal most closely satisfies the criteria and the requirements. The lowest price (management fee where applicable) offered will not necessarily be a decisive factor in choosing between Proposals.
- 4.2.11 The Department published the results of the outcome of a tender process, including the details of the successful bidder in the same media that was used to advertise the bid.

### **4.3 SUB-CONTRACTING, PARTNERSHIP/CONSORTIUM/Joint VENTURE AND COMPANY REQUIREMENTS**

- 4.3.1 A proposal submitted by a company, close corporation or other legal person must be accompanied by a resolution or agreement of the directors or members and be signed by a duly authorized person.
- 4.3.2 A proposal submitted by a partnership must be accompanied by a written partnership agreement
- 4.3.3 A proposal submitted by a consortium or joint venture of two or more parties must be accompanied by a signed memorandum of understanding between the parties to such consortium indicating:
  - a. the conditions under which the consortium will function;
  - b. its period of duration;
  - c. the persons authorized to represent it;
  - d. the participation of the several parties forming the consortium;
  - e. the benefits that will accrue to each party;
  - f. any other information necessary to permit a full appraisal of its functioning.

### **5 CONFIDENTIALITY OF INFORMATION & INTELLECTUAL PROPERTY RIGHTS**

## **5.1 CONFIDENTIAL INFORMATION**

5.1.1 **Confidentiality obligation.** Each Party ("the receiving Party") must treat and hold as confidential all information which they may receive from the other Party ("the disclosing Party ") or which becomes known to them concerning the disclosing Party during the duration of this Contract.

5.1.2 **Nature of the confidential information.** The confidential information of the disclosing Party shall, without limitation, include:

- a. all software and associated material and Documentation, including information contained therein;
- b. all information relating to :
  - i. the disclosing Party's past, present and future research and development;
  - ii. the disclosing Party's business activities, products, services, customers and clients, as well as its technical knowledge and trade secrets;
  - iii. the terms and conditions of this Contract; and
  - iv. the Department's data.

5.1.3 The Parties shall, except as permitted by the Contract, not disclose or publish any confidential information in any manner, for any reason or purpose whatsoever without the prior written consent of the disclosing Party and in the event of the confidential information relating to a third party, it shall also be incumbent on the receiving Party to obtain the consent of such third party.

5.1.4 **Receiving Party's obligations with regard to confidential information.** The receiving Party agrees that in order to protect the proprietary interests of the disclosing Party in its confidential information:

- a. it will only make the confidential information available to those of its Personnel who are actively involved in the execution of this Contract;
- b. it will initiate internal security procedures reasonably acceptable to the disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, the confidential nature thereof;
- c. subject to the right to make the confidential information available to their Personnel under clause 15.4.1 above, they will not at any time, whether during this Contract or thereafter, either use any confidential information of the disclosing Party or directly or indirectly disclose any confidential information of the disclosing Party to third parties;
- d. all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the disclosing Party which have or will come into the possession of the receiving Party and its Personnel, will be, and will at all times remain, the sole and absolute property of such Party and shall be promptly handed over to such Party when no longer required for the purposes of this Contract.

5.1.5 **Obligations in respect of confidential information upon termination.** Upon termination or expiry of this Contract, the receiving Party will deliver to the disclosing Party or at the disclosing Party's option, destroy all originals and copies of the disclosing Party's confidential information in its possession.

5.1.6 The aforementioned obligations shall not apply to any information which:

- a. is lawfully in the public domain at the time of disclosure;
- b. subsequently and lawfully becomes part of the public domain by publication or otherwise;
- c. subsequently becomes available to the receiving Party from a source other than the disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or
- d. is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

5.1.7 **Disclosure to professional advisors.** Nothing in this clause shall preclude the Parties from disclosing the confidential information to their professional advisors in the *bona fide* course of seeking business and professional advice.

5.1.8 **Severability.** The provisions of this clause 15 are severable from the rest of the provisions of this Contract and shall survive its termination and continue to be of full force and effect for a period of ten (10) years after the date of termination.

## **5.2 INTELLECTUAL PROPERTY RIGHTS**

5.2.1 **Ownership in Services vests in Department.** All rights of ownership and copyright in the Services to be provided by the Contractor to the Department shall vest solely with the Department, and the Contractor will not make such information available to any other party without the written consent of the Department on such terms and conditions as may be stipulated by the Department at that time.

5.2.2 **No aspect of the Services to infringe 3<sup>rd</sup> Party intellectual property rights.** The Contractor warrants that no aspect of the Services provided in terms hereof will infringe any patent, design, copyright, trade secret or other proprietary right of any third party ("third party proprietary rights"), and the Contractor shall, at its own cost, defend the Department against any claim that the Services infringe any such third party proprietary rights, provided that the Department gives prompt notice to the Contractor of such claim and the Contractor controls the defence thereof.

5.2.3 The Contractor further indemnifies the Department against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the Department in any action which is attributable to such claim and will reimburse the Department with all costs reasonably incurred by the Department in connection with any such action.

5.2.4 **Process in the event of a claim.** Should any person make any claim against the Department in terms of clause 16.2, the Department shall give the Contractor notice thereof within ten (10) days of becoming aware of such claim to enable the Contractor to take steps to contest it.

5.2.5 **Infringement of 3<sup>rd</sup> Party rights.** Should any third party succeed in its claim for the infringement of any third party proprietary rights, the Contractor shall, at its discretion and within thirty (30) days of the Services having been found to infringe:

- a. obtain for the Department the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or
- b. replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement; or
- c. alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or
- d. withdraw the subject of infringement.

5.2.6 **Ownership.** Ownership of all Departmental data, whether under its control or not, shall continue to vest in the Department and the Contractor shall not obtain any proprietary rights of such data.

5.2.7 **Data may only be used in performance of the Services.** The Department's data in the possession of the Contractor, or to which the Contractor may have access during the currency of this Contract, may not be used by the Contractor for any purposes whatsoever other than as may be specifically required to enable the Contractor to comply with its obligations in terms of this Contract.

5.2.8 **Preservation of integrity of data.** Both Parties shall take reasonable precautions (having regard to the nature of their obligations in terms of this Contract), to preserve the integrity of the Department's data and to prevent any unauthorised access, corruption, or loss of such data.

## **6 TERMS AND CONDITIONS**

### **6.1 GENERAL**

6.1.1 The Department reserves the right to amend, modify or withdraw this Terms of Reference (TOR) document or amend, modify or terminate any of the procedures or requirements set out herein at any time and from time to time, without prior notice except where required by law, and without liability to compensate or reimburse any Service Provider.

6.1.2 Neither the Department, nor any of its respective, officers, or employees may make any representation or warranty, expressed or implied in this TOR document, and nothing contained herein is, or shall be relied upon as, a promise or representation, whether as to the past or the future.

6.1.3 The costs of preparing proposals and of negotiating the Contract will not be reimbursed.

6.1.4 The Department also reserves the right to call interviews with short-listed Service Providers before final selection, and to negotiate price with the Preferred Service Providers.

- 6.1.5 Firms may not contact the Department on any matter pertaining to their bid from the time when bids are submitted to the time the Contract is awarded. Any effort by a Service Provider to influence bid evaluation, bid comparisons or award decisions in any manner, may result in rejection of the bid concerned.
- 6.1.6 Bid submission requirements must be completed in sections and appendices provided in the bid document.
- 6.1.7 **ALL BIDDERS MUST BE REGISTERED ON THE CENTRAL SUPPLIER DATABASE AT NATIONAL TREASURY.** More information in this regards is available on [www.ocpo.treasury.gov.za](http://www.ocpo.treasury.gov.za). Proof of registration must be submitted together with the technical proposal.
- 6.1.8 Bidders may provide any additional information deemed important for the DOT to consider.
- 6.1.9 Prospective Bidders must at all times comply with the Department's Supply Chain rules and processes with regard to all projects and payments.

## **6.2 ORDER OF PRECEDENCE.**

- 6.2.1 In the event of any conflict between any provisions of the SCC, GCC, Proposal and any other document accompanying the Bid, the following order of precedence shall prevail–
  - a. Standard Bidding Documents;
  - b. SCC;
  - c. GCC;
  - d. TOR;
  - e. SLA; and
  - f. Proposal.

## **6.3 DURATION**

- 6.3.1 The project is expected to be for a period of 5 years.
- 6.3.2 The Contract shall commence on the Effective Date and, subject to the rights of termination stipulated herein, terminate on the Completion Date as specified in the Contract.

## **6.4 CONTRACT AMENDMENTS**

- 6.4.1 No addition to, or variation, consensual cancellation, or novation of the Contract, and no waiver of any rights arising from the Contract, including this clause, shall be of any force or effect unless reduced to writing and signed by the duly authorised representatives of each of the Parties.

## **6.5 SUBCONTRACTS**

6.5.1 The Contractor shall notify the Department in writing of all sub-contracts awarded under the Contract, before the commencement of the Contract, as well as at any time during the Contract.

6.5.2 **The right to sub-contract.** The Contractor may, with the prior written consent of the Department, sub-contract any of its obligations in terms of this Contract, or any part thereof, to a third party, provided that:

- a. such sub-contracting shall not absolve the Contractor from any responsibility for complying with its obligations in terms of this Contract and the Contractor hereby indemnifies and holds the Department harmless against any loss, harm or damage which the Department may suffer as a result of such sub-contracting;
- b. the Contractor shall at all times remain the sole point of contact for the Department in respect of the Services by the Contractor.

6.5.3 **Department may withdraw consent.** The Department shall have the right at any time, and upon such good cause shown to withdraw such consent for a sub-contractor on thirty (30) days notice to the Contractor and in that event no claim against the Department by the Contractor or any other person on the grounds of the granting of such consent or the withdrawal thereof shall be entertained, and the Contractor indemnifies the Department against any such claims and costs so incurred."

## **6.6 CONTRACTOR'S PERSONNEL**

6.6.1 **Project Team.** The Contractor shall make available the skills and expertise of the Project Team referred to in the Bid who shall be involved in the Contract or the Services, unless otherwise agreed to by the Department, which agreement shall not be unreasonably withheld.

6.6.2 **Exceptions.** Notwithstanding the provisions of clause 6.6.1, where, due to circumstances beyond the control of the Contractor, a member of the Project Team cannot act in accordance with the provisions of this clause due to their dismissal, resignation or incapacity, the Contractor shall, to the extent possible, implement an appropriate succession plan to minimise the effect of the unavailability of such member.

6.6.3 **Suitably qualified Personnel.** The Contractor shall employ suitably qualified, experienced and trained Personnel to provide the Services, provided that the Contractor shall be entitled in its discretion, to allocate Personnel resources in accordance with the technical or other skills and knowledge required, which discretion shall not have a negative impact on the provision of the Services.

6.6.4 The Contractor's Personnel providing the Services may be absent for short periods of time for reasons including annual leave and training. The Contractor undertakes to avoid any disruption of the Services due to such circumstances.

6.6.5 **Contractor to adhere to security procedures of the Department.** The Contractor's Personnel including the Project Team shall at all times when on the Department's premises, adhere to the standard health, safety and security procedures and guidelines applicable to the Department's Personnel, as varied and conveyed by the Department to the Contractor from time to time.

6.6.6 Should the Department at any time have reason to believe that any of the Contractor's Personnel is failing to comply with such standard health, safety and security procedures and guidelines, the Department may deny such person access to any or all of the Department's premises or systems and require the Contractor to replace such person without delay.

## **6.7 PAYMENT**

### **6.7.1 Invoice.**

The Contractor's Project Manager shall at the end of each deliverable submit a consolidated invoice, certified as correct by the Contractor's Project Manager, showing the actual work performed, hours worked, and manpower inputs for the task and associated costs accompanied by all supporting documents.

### **6.7.2 Detailed Pricing.**

Service Providers must complete the required SBD Pricing documents and ensure that Prices are:

- a. Firm and inclusive of all costs, including disbursements. Firm prices mandate that any escalations/estimated escalations be included in the final ceiling amount.
- b. Inclusive of VAT, if applicable;
- c. Correctly calculated and identical to the financial proposal.
- d. A detailed pricing schedule should be attached to the SBD documents providing a proper cost breakdown, in line with deliverables, and indicating the proposed time frames.
- e. The Department uses a two envelope system. **NO PRICES MUST REFLECT IN THE TECHNICAL PROPOSAL.**

### **6.7.3 Fees**

Domestic hotel accommodation may not exceed R1440, inclusive of VAT per night per person. (incl dinner, breakfast and parking), air travel must be restricted to economy class,

and travel claims per kilometer may not exceed the rates approved by the Automobile Association of South Africa.

#### **6.7.4 Rates**

According to the 23 October 2013 Cabinet Resolution as defined in the National Treasury Instruction 01 of 2013/14: Cost Containment Measures sub-paragraph 4.2; the Consultants (or Service Provider) will only be remunerated on the following rates regime:

- a. The "Guidelines for fees" issued by the South African Institute of Chartered Accountants (SAICA);
- b. The "Guide on Hourly Fee Rates for Consultants", by the Department of Public Service and Administration (DPSA); or
- c. Based on the body regulating the profession of the Consultant

#### **6.7.5 Payment information**

- a. An invoice only becomes due and payable:
  - i. When the Project Manager signs-off on the specific deliverable and submits the invoice for payment;
  - ii. When the invoice is correct with regards to calculations, information contained, banking details and supporting documents.
- b. It is important to ensure that invoices are correctly submitted and reference the project name, DOT number and Order Number.
- c. Non-compliance will delay the payment process.

#### **6.7.6 Total Contract Price.**

The Contract Price payable to the Contractor for the Services **shall not** exceed the ceiling price as set out in the Contract.

#### **6.7.7 Price all-inclusive.**

All prices are inclusive of any Value Added Tax, import, and all other duties.

### **6.8 DELIVERY AND DOCUMENTS**

- 6.8.1 **Reports.** The Contractor shall provide the Department with detailed Documentation and Reports as set out in the Contract and Project Plan or when required in writing by the Department in both electronic format and hard copy.
- 6.8.2 Reports shall contain accurate information as to enable the Department to monitor and manage the Contractor's performance in terms of this Contract.
- 6.8.3 All Documentation and Reports shall be in English.

## **6.9 PENALTY REGIME**

6.9.1 Poor performance will result in penalties that include withholding of a minimum 30% of the total invoice of each affected phase / milestone until it is fixed before the final product is submitted. In the case where the performance has not been improved to the satisfaction of the Department and the final product is handed over, the original amount held back will not be paid over to the Service Provider under any circumstances. On the other hand an improved quality and/or performance, at the satisfaction of the Department, will require the outstanding part of the held back invoice to be paid to the Service Provider in full but with no additional interest.

6.9.2 The project milestones / phases are expected to be adhered to. Any deviation must be approved by the Department prior to any commencement of the changes. Failure to do so will result in a 5% non-payment of that particular and/or affected phase(s).

6.9.3 Notwithstanding item 6.9.2 above, failure to meet the deadline as stipulated in item 8 will result in 30% of the total outstanding payments for the project as whole not being paid over to the Service Provider if the poor performance is attributed to the Service Provider unless there is undisputed evidence that the fault lies with the Department.”

## **6.10 TERMINATION**

6.10.1 Should either Party fail to comply with any provision of this Contract the aggrieved Party may send a letter of demand to the defaulting Party, demanding compliance with such provision and should the defaulting Party, after a period of fourteen (14) days (or such longer periods as may under the circumstances be reasonably necessary) of the date of receipt of such written notice, remain in default, the aggrieved Party shall be entitled, without prejudice to any other rights it may have :

- a. to claim specific performance from the defaulting Party and to claim such damages as it may have suffered; or
- b. to discharge and execute the defaulting Party's obligations on its behalf and to recover the costs and disbursements incurred in respect thereof from that Party; or
- c. to terminate this Contract and claim such damages as the aggrieved Party may have suffered from the defaulting Party.”

The Department may, without prejudice to any other rights it may have, terminate this Contract by written notice to the Contractor, upon the occurrence of the following events, namely if :

- a. the Contractor fails to adhere to set timeframes, service levels or service standards as determined in the TOR, SLA and/or Project Plan;
- b. the Contractor, in the opinion of the Department, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract;

- c. judicial execution is levied on the Contractor's goods and which remains unpaid for 14 days after attachment;
- d. there has been a material defect, error or failure by the Contractor to comply with applicable laws or rules in the Bid or in the awarding of this Contract which is incapable of rectification and that requires this Contract to be terminated;
- e. the Contractor, when advised that its Proposal has been accepted, has given notice of inability to sign or execute the Contract;
- f. the Contractor has abandoned its obligations in terms of this Contract;
- g. the Contractor has deliberately furnished inaccurate information in its Bid with regard to its previous experience relating to the Services, or with regard to any other material information; or
- h. the Contractor ceases to carry on business as the Contractor of the Service.

- 6.10.2 In the event that negotiations between the Department and the Preferred Service Provider/s fail with regard to the conclusion of a Contract, the Department reserves its right not to appoint the Preferred Service Provider/s without incurring any liability to compensate or reimburse the Preferred Service Provider/s.
- 6.10.3 In the event that the Contractor does not complete Services in terms of this Contract by the Completion Date, the Department may view this as a material breach of this Contract and claim specific performance, and/or damages.
- 6.10.4 The Preferred Service Provider may be required to enter into a Service Level Agreement (SLA) prior to appointment.
- 6.10.5 The individuals proposed for professional work on the project shall remain on the project unless the Department grants prior permission to change the team composition. Such permission will not be withheld unreasonably.
- 6.10.6 The Department reserves the right to terminate the Agreement in the event that no consensus can be reached on the terms and conditions of a subsequent Service Level Agreement."

**THE NATIONAL TREASURY**

**Republic of South Africa**



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**GOVERNMENT PROCUREMENT:  
GENERAL CONDITIONS OF CONTRACT**

**July 2010**

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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 goods 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 goods 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 "Supplier" means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.

1.26 "Tort" means in breach of contract.

1.27 "Turnkey" means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.

1.28 "Written" or "in writing" means hand-written 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 (excluding professional services related to the building and construction industry), 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 goods, 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 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.

## 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.
- 6.2 When a supplier developed documentation / projects for the municipality / municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the municipality / municipal entity.

## 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.

<b>8. Inspections, tests and analyses</b>	<ul style="list-style-type: none"> <li>8.1 All pre-bidding testing will be for the account of the bidder.</li> <li>8.2 If it is a bid condition that goods to be produced or services to be rendered should at any stage be subject to inspections, tests and analyses, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or organization acting on behalf of the purchaser.</li> <li>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.</li> <li>8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.</li> <li>8.5 Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.</li> <li>8.6 Goods 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.</li> <li>8.7 Any contract goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods 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 goods, which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.</li> <li>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 22 of GCC.</li> </ul>
<b>9. Packing</b>	<ul style="list-style-type: none"> <li>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</li> </ul>

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, and in any subsequent instructions ordered by the purchaser.

**10. Delivery and documents** 10.1 Delivery of the goods and arrangements for shipping and clearance obligations, shall be made by the supplier in accordance with the terms specified in the contract.

**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.

**12. Transportation** 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified.

**13. Incidental Services** 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any:

- (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, 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.
- 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 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, 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.
- 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.

**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 or in the purchaser's request for bid validity extension, as the case may be.

**18. Variation orders**

18.1 In cases where the estimated value of the envisaged changes in purchase does not vary more than 15% of the total value of the original contract, the contractor may be instructed to deliver the goods or render the services as such. In cases of measurable quantities, the contractor may be approached to reduce the unit price, and such offers may be accepted provided that there is no escalation in price.

**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 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 goods are required, or the supplier's services are not readily available.

21.4 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 22.2 without the application of penalties.

21.5 Upon any delay beyond the delivery period in the case of a goods contract, the purchaser shall, without cancelling the contract, be entitled to purchase goods 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 judgement 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.

**THE NATIONAL TREASURY: Republic of South Africa**

- 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 supplier as having no objection and proceed with the restriction.
- 23.5 . Any restriction imposed on any person by the purchaser will, at the discretion of the purchaser, 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 purchaser 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 supplier to the purchaser or the purchaser may deduct such amounts from moneys (if any) which may otherwise be due to the supplier in regard to goods 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 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 for goods delivered and / or services rendered according to the prescripts of the contract.

**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.

**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 SARS must have certified that the tax matters of the preferred bidder are in order.
- 32.4 No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.
- 33.1 The contractor shall not abandon, transfer, cede assign or sublet a contract or part thereof without the written permission of the purchaser
- 34.1 No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.
- 35.1 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.
- 35.2 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 section 59 of the Competition Act No 89 Of 1998.
- 35.3 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.

**ANNEXURE B**

**FINANCIAL  
PROPOSALS**

**PRICING SCHEDULE**  
(Professional Services)

NAME OF BIDDER: ..... BID NO.: DOT/02/2022/MT/WEST COAST

CLOSING TIME 11:00

CLOSING DATE...30 JUNE 2022.....

OFFER TO BE VALID FOR ..... 120 DAYS FROM THE CLOSING DATE OF BID.

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
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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

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HOURLY RATE

R.....

R.....

R.....

R.....

R.....

DAILY RATE

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5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT

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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 –

**MR. JOHN MASHININI/MR LUCKY MASHILE/. MR TYRON MKHARI & MS NELISIWE NYAWO**

**Tel: 012 309-3445/3429 3011/3291**

**Or for technical information –**

**MR METSE RALEPHENYA**

**Tel: 012 309- 3032**