

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF MUNICIPALITY/ MUNICIPAL ENTITY)					
BID NUMBER:	TEDA BID: 03-11-2023	CLOSING DATE	14 DECEMBER 2023	CLOSING TIME:	11:00 am
DESCRIPTION	APPOINTMENT OF A PANEL OF LAW FIRMS FOR THE PROVISION OF LEGAL SERVICES TO THE TSHWANE ECONOMIC DEVELOPMENT AGENCY FOR A PERIOD OF THREE YEARS				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX					
SITUATED AT (STREET ADDRESS			VALID FOR (90) DAYS FROM THE CLOSING DATE OF BID		
TSHWANE ECONOMIC DEVELOPMENT AGENCY (TEDA)					
3RD FLOOR					
LAKE VIEW BUILDING					
1277 MIKE CRAWFORD ROAD					
CENTURION MALL					
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
TAX COMPLIANCE STATUS	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		<input type="checkbox"/> Yes <input type="checkbox"/> No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]	
TOTAL NUMBER OF ITEMS OFFERED			TOTAL BID PRICE	N/A	
SIGNATURE OF BIDDER		DATE		
CAPACITY UNDER WHICH THIS BID IS SIGNED					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:			TECHNICAL INFORMATION MAY BE DIRECTED TO:		
DEPARTMENT	TEDA		CONTACT PERSON	Mokgadi Mapokane	
CONTACT PERSON	Sipho Matamela		TELEPHONE NUMBER	012 358 6539	
TELEPHONE NUMBER	012-358 6515		FACSIMILE NUMBER	N/A	
FACSIMILE NUMBER	N/A		E-MAIL ADDRESS	mokgadima@tshwane.gov.za	
E-MAIL ADDRESS	SiphoMata@Tshwane.gov.za				

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 ONLINE
1.3.		THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
2.	TAX COMPLIANCE REQUIREMENTS	
2.1		BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2		BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3		APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
2.4		FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.
2.5		BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.6		IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.7		WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
3.	QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS	
3.1.	IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.2.	DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.3.	DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.4.	DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.5.	IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>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 ABOVE.</p>		

**NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.
NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE.**

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

DATE:

TEDA BID: 03-11-2023: REQUEST FOR PROPOSAL FOR THE APPOINTMENT OF A PANEL OF LAW FIRMS FOR THE PROVISION OF LEGAL SERVICES TO THE TSHWANE ECONOMIC DEVELOPMENT AGENCY FOR A PERIOD OF THREE YEARS

1. Purpose

- 1.1 The purpose of this request for proposal (RFP) is to solicit proposals from potential bidders for the appointment of a panel of law firms for the provision of legal services to the Tshwane Economic Development Agency (TEDA) for a period of three years.
- 1.2 This RFP document details and incorporates, as far as possible, the tasks and responsibilities of the potential bidders required by TEDA for the provision of legal services.
- 1.3 This RFP does not constitute an offer to do business with TEDA, but merely serves as an invitation to bidders to facilitate a requirements-based decision process.

2. Background

- 2.1 TEDA is a recently established entity wholly owned by the City of Tshwane, with its primary mandate being to facilitate development across Tshwane.

3. Special conditions

- 3.1 Recommended bidders are encouraged comply with the hourly fee rates as prescribed by the Department of Public Service and Administration (DPSA) at www.dpsa.gov.za/dpsa/documents.asp or (SAICA) The South African Institute of Chartered Accountants rates for consultants.

- 3.2 The following special conditions of contract will supplement the general conditions of contract (GCC). Whenever there is a conflict, the provisions herein will prevail over those in the GCC.

This bid and all emanating contracts will be subject to the GCC. The special conditions are supplementary to that of the GCC. Where, the special conditions of contract are in conflict with the GCC, the special conditions of the contract will prevail.

- 3.3 **Bidders who are in the employ of the state will automatically be disqualified.**

- 3.4 Bidders who have disputed municipal rates and taxes and/or service accounts or overdue payments to a municipality or any other service supplier for more than 30 days will automatically be disqualified. Municipal accounts submitted may be verified with the relevant municipality. Only municipal accounts of less than 3 months will be accepted.

Should the bidder be renting in a leased property, both the lessor's and the lessee's agreement must be furnished together with the landlord's municipal account or statement. **Failure to comply with the above requirement will lead to disqualification.**

NB: Compliance with municipal requirements applies to sub-contracted companies and joint ventures.

- 3.5 Shortlisted bidders may be invited for a presentation.

- 3.6 During evaluation, all bidders who score less than **80 points on functionality** will not be registered as members of the panel of consultants.
- 3.7 Bidders are requested to indicate **not less than five references of clients** for whom they have rendered a similar successful service in the past.
- 3.8 Inclusion in the panel does not guarantee the potential service provider any service.
- 3.9 Appointments made will be on a project-to-project basis.
- 3.10 The service provider must advise TEDA whenever the officials listed on the proposal will not be available to render the service.
- 3.11 TEDA reserves the right to deregister any bidder who has performed unsatisfactorily.
- 3.12 No service may be rendered without an official order.
- 3.13 Bidders are required to be registered on the Central Supplier Database for National Treasury's verification of the bidder's tax compliance status.
- 3.14 Where consortiums, joint ventures or subcontractors are involved, each party must be registered on the Central Supplier Database for tax compliance verification by National Treasury.
- 3.15 ***Bidders must submit certified proof of registration with the Law Society. Failure to submit this will lead to disqualification.***
- 3.16 ***Bidders must provide proof of the Fidelity Fund Insurance Cover. Failure to submit this will lead to disqualification.***
- 3.17 ***The company's latest audited annual financial statement will be requested in order to ascertain financial stability. Failure to comply will invalidate the bid.***
- 3.18 Bidders must submit a sworn affidavit for their BEE certificate.
- 3.19 Should TEDA no longer need the above service(s) or no longer have the funds available to pay for the execution of the responsibilities of this contract, TEDA may terminate the agreement at its own discretion by notice to the successful bidder, who will immediately make arrangements to terminate the services.

4. SCOPE OF WORK

- 4.1 Bidders will be requested to submit proposals on a rotational basis. Selection will be based on the end-user's recommendation on functionality or the proposal that has been submitted.

4.2 Litigation strategy and methodology

Prospective bidders must submit detailed costing evidence that demonstrates how they prepare a litigation strategy or what methodology they use should TEDA request this, so as to assist TEDA in dealing with legal issues and handling court cases in a cost-effective, pragmatic and efficient manner.

4.3 Proactive measures or analysis of shortcomings and inadequacies

Prospective bidders must demonstrate an understanding of the nature of the business of TEDA, possible litigation risks and experience in legal services. TEDA would like to see a profound improvement in terms of the success rate of litigations and related matters. When dealing with litigations, the bidders will be expected to not only identify problem areas but will be expected to proactively advise TEDA improve in dealing with litigations and/or potentially litigious issues.

Bidders would be expected to provide professional advice to TEDA about latest developments in law that may have an impact on the mandate of TEDA whenever TEDA requires them to do so.

4.4 Submission of proposals

Prospective bidders must demonstrate their ability to provide a detailed costed investigation plan or report whenever TEDA requests them to do so. This will assist TEDA to establish whether the bidder understands the brief or requirements as set out in the Terms of Reference.

4.5 Personal profiles of staff members who will render the legal service

In order to have a sense of the calibre, areas of expertise and relevant experience of the individual members of the legal team, the bidders are expected to provide TEDA with a detailed personal profile for each member of the legal team who will be deployed to render the legal services to TEDA and/or handle litigation matters.

Emphasis must be placed on the experience, skills base, prominent cases handled by the member of the legal team, other relevant experience as well as the academic qualifications.

Bidders are allowed to subcontract certain expert skills. However, a document capturing the detailed profile, academic qualifications and experience of each expert must be submitted to TEDA before the expert may be subcontracted. In this case, a subcontractor's agreement that illustrates his or her immediate availability, as and when required, must be submitted with this bid.

5. Guidelines for submission of proposals

- 5.1 The proposals for the envisaged project should be placed in the tender box before the closing date.
- 5.2 The succinct proposal must include a résumé of the team members who will be allocated to the selected services or the project. The CVs must indicate the expertise and experience that each member brings to the project.

6. Duration of contract

- 6.1 The project runs for three years and will commence as soon as the contract has been signed.

7. Time frame

- 7.1 The time frame for deliverables will be as per the Terms of Reference that will be issued as and when there is a need.

8. Adding value

- 8.1 Potential service providers should critique the brief so as to add value, where possible, to the proposal to be submitted, particularly with reference to their special competencies with regard to the project.

9. Cost of submission of proposal

- 9.1 TEDA is not responsible for any costs incurred by the service providers in the process of developing the proposals. The submitted budget for this project must incorporate all expenses to be incurred by the service provider.

10. Ownership of intellectual property

- 10.1 The ownership of all intellectual property associated with this work will be vested in TEDA, for its exclusive use, or for use by the City of Tshwane.

11 Criteria for the selection of service providers

PRE-QUALIFICATION CRITERIA	FUNCTIONALITY EVALUATION	PRICE AND EQUITY OWNERSHIP
Gate 0	Gate 1	
<p>Gate 0: Compliance with minimum requirements of the tender.</p> <p>Only bidders that comply with all criteria will proceed to Gate 1.</p>	<p>Gate 1: Bidders are required to achieve a minimum of 80 points out of 100 points to proceed to Gate 2.</p>	<p>Price and Equity ownership evaluation will only be applicable on the recommended and appointed Law Firm(s)</p>

12 Functionality points will be evaluated as follows (bidders must address all the components below for proper evaluation):

Components of tender to be evaluated	Evidence	Weighting
Knowledge and experience of the subject matter (methodology)	The bidder must be able to demonstrate an understanding of the nature of the business of TEDA, possible litigation risks and experience in legal services, prepare a detailed litigation strategy and demonstrate how such approach will assist TEDA in achieving its business objectives.	35
Experience and skills	<p>CVs of the project team(s), including pertinent credentials that will be deployed to execute these services:</p> <ul style="list-style-type: none"> Indicate if subcontractors may be utilised as experts in certain instances, and add the credentials and profiles of such experts; and Include examples of any matter(s) raising public interest that the bidder participated in or advised on, and provide a reference for such matter (confidential information not required). 	35
Deliverables, communication plan and reports	<p>The bidder must:</p> <ul style="list-style-type: none"> Provide a communication plan and reporting strategy with the relevant stakeholders of the case; and Indicate how new relevant developments in law will be communicated to TEDA. 	20
References	For each testimonial received from the relevant department or entity for a similar service that has been rendered successfully in the past, 2 points will be awarded.	10
TOTAL		100

- 12.1 Special condition: **Bidders who score less than 80 points on functionality will not be evaluated further on BEE and price.**

13. Compliance

- 13.1 The proposal must either conform to the minimum requirements as set out in this document, or it must be stated clearly how it deviates from these requirements and why. Proposals strictly sticking to the specifications are preferred. Offers exceeding the minimum requirements of the specifications are acceptable. Minor deviations may be considered.

- 13.2 This document will be a binding contract between the successful service provider and TEDA once the proposal has been accepted by the entity.

- 13.3 Service providers are at liberty to discuss any aspect of this request for proposal with the entity. Enquiries must be referred to:

Bid and Technical Enquiries

Ms M Mapokane

Tel: 012 358 6539

Email: mokgadima@tshwane.gov.za

- 13.4 Whenever a request for quotation is issued, it must reflect the hourly rate including VAT, travel and the estimated hours to complete the project. TEDA reserves the right to reduce the estimated hours. An investigation plan where possible will always be appreciated.

14. Payment

- 14.1 Payment will be made on rendering a satisfactory professional service and submitting the required report.

- 14.2 Payment will be made into the service provider's bank account after the receipt of an acceptable invoice. (Banking details MUST be submitted to effect the payment.)

- 14.3 Based on the project deliverables, TEDA reserves the right to effect payment according to phases completed satisfactorily.

Non-compliance with delivery terms

- 15.1 As soon as the incumbent knows that it will not be able to render services within the expected period and/or against the quoted price and/or as specified, TEDA must be given immediate written notice to this effect. If the services provider fails to comply with certain sections of the contract, TEDA reserves the right to terminate the agreement.

16. Confidentiality

- 16.1 This proposal and all information in connection with it will be held in strict confidence by bidders, and usage of such information will be limited to the preparation of the bid. Bidders are prohibited from creating unauthorised copies of this document. All bids are bound by the confidentiality agreement to prevent the unauthorised disclosure of any information regarding TEDA or its activities to any other organisation or individual. The bidders may not disclose any information, documents or products to other clients without written approval of TEDA.

17 Copyright

- 17.1 The copyrights of all documents (reports, etc) in relation to this bid belong to TEDA. The successful bidder may not disclose any information, documents or products to other clients without written approval of TEDA.

18 Award of a contract

- 18.1 A contract may, on reasonable and justifiable grounds, be awarded to a bidder who did not score the highest number of points.
- 18.2 Only a bidder who has completed and signed the declaration part of the preference points claim form will be considered for preference points.
- 18.3 Rather: A bidder may at any time be required to substantiate claims it has made with regard to preference points claimed.
- 18.4 Points scored will be rounded off to the nearest 2 decimals. If two or more bids have scored equal total points, the contract will be awarded to the bidder scoring the highest number of points for the specified goals.

19 Non-commitment

- 19.1 TEDA is not bound to accept any of the bids submitted. It reserves the right to withdraw or amend these terms of reference by notice in writing to all parties who have received the terms of reference prior to the closing date. The cost of preparing bids will not be reimbursed.

20 Fraud and corruption

- 20.1 All prospective service providers are to take note of the implications of contravening the Prevention and Combating of Corrupt Activities Act (Act 12 of 2004) and any other act applicable.

21 Review process

Compliance with requirements:

- (i) In order to evaluate and adjudicate bids effectively, bidders must submit responsive bids. To ensure that a bid is regarded as responsive, it must comply with all conditions and specify deviations whenever they occur.
- (ii) Documents submitted on time by bidders will not be returned and will remain the property of TEDA.

22 Reasons for rejection

- 22.1 TEDA reserves the right to return late bid submissions unopened. It also reserves the right to disqualify bids that are not according to the specification or terms of reference. Bidders must clearly indicate compliance or non-compliance with the specification or terms of reference.
- 22.2 Bidders may not contact TEDA on any matter pertaining to their bid from the time the bids are closed to the time a bid has been awarded. Any effort by a bidder to influence the bid evaluation, bid comparisons or bid award decisions in any matter may result in rejection of the bid concerned. TEDA will reject a submission if the bidder has committed a proven corrupt or fraudulent act in competing for a particular contract.
- 22.3 TEDA may disregard any submission or cancel an existing contract if that bidder or any of its directors have:
- (i) Abused the supply chain management (SCM) system of any organ of state;
 - (ii) Committed proven fraud or any other improper conduct in relation to such system;
 - (iii) Failed to perform on any previous contract and proof thereof exists; and
 - (iv) Been restricted from doing business with the public sector if such a supplier obtained preferences fraudulently or if such supplier failed to perform on a contract based on the specific goals.

23 Presentations

- 23.1 TEDA may request presentations from shortlisted bidders as part of the bid process.

24 Pricing

- 24.1 All prices must be in South African rand value and must include VAT. Fees will be payable in South African rand on satisfactory completion of the assignment. The hourly rate and estimated number of hours must be indicated. TEDA reserves the right to negotiate the number of hours reflected where deemed necessary.

25 Parties not affected by a waiver or breaches

- 15.1 The waiver (whether express or implied) by any party or any breach of the terms or conditions of this contract by the other party will not prejudice any remedy of the waiving party in respect of any continuing or other breach of the terms and conditions hereof. No favour, delay, relaxation or indulgence on the part of any party in exercising any power or right conferred on such party in terms of this contract will operate as a waiver of such power or right, nor will any single or partial exercise of any such power or right under this agreement.

26 Termination for default

26.1 TEDA, without prejudice to any other remedy for breach of contract, by written notice of default sent to the bidder, may terminate this contract in whole or in part:

- (a) If the bidder fails to deliver any or all of the services within the period(s) specified in the contract, or within any extension thereof granted by TEDA pursuant to GCC Clause 21.2;
- (b) If the bidder fails to perform any other obligation(s) under the contract; and
- (c) If the bidder, in the judgement of TEDA, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

26.2 If TEDA terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services similar to those undelivered, and the bidder will be liable to TEDA for any excess costs for such similar services. However, the bidder will continue performance of the contract to the extent not terminated.

Retention

27.1 On termination of this agreement, the bidder will, on demand, hand over all documents submitted as part of the project and all deliverables, etc, without the right of retention, to TEDA.

27.2 No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof will be valid and of any force and effect 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 will be in writing, will also be in writing.

28 Screening and vetting

28.1 Acceptance of this bid may be subject to the condition that both the contracting bidder and its personnel providing the service must be cleared by the appropriate authorities to the level of **confidential/secret/top secret**.

28.2 All bidders will be vetted through National Treasury and any defaulters will be disqualified.

29 Client base

29.1 Bidders must have specific experience in the delivery of the required service and must submit at least five recent references of its client base reflecting the entity where a similar service was rendered, and the duration, value and date of the project, and whether the project was successful or not. TEDA reserves the right to contact referents during the evaluation and adjudication process to obtain confirmation.

30 Company profile, financial information and BEE shareholding

30.1 The company's profile together with the BEE certification must be submitted.

31 Registration

- 31.1 Proof of company registration must be submitted as copies of the relevant registration documents, eg CC/CK, Pty (Ltd). It is the responsibility of the bidder to ensure that their Cipro annual returns are in order and the registration remains valid throughout the contract tenure.

32 Tax compliance

- 32.1 Bidders are required to submit a Central Supplier Database (CSD) with a valid and compliant tax status. It is the responsibility of the bidder to ensure that their SARS annual returns are in order and the registration remains valid throughout the contract.

33 Evaluation basis and process

Bids will be evaluated on four categories:

1. Compliance with minimum requirements of the bid;
2. Technical content (functionality), (80 points minimum);

- 33.1 Bids will be evaluated in accordance with the prescripts of the Preferential Procurement Policy Framework Act, which stipulate a **80/20** point split for requirements not exceeding R50 million.

34 Project leader

The project leader will be the end-user for the unit that has requested the service.

35 Late bids

- 35.1 Bids received late will not be considered. The tender box will be locked at exactly 11:00 on the closing date. Bids received late will be returned unopened. Bidders are therefore strongly advised to ensure that bids are despatched allowing enough time for any unforeseen events that may delay the delivery of the bid.

FOCUS AREAS: Potential bidders must provide a clear indication of their preferred focus area(s) from the specialised areas listed below. (Please mark relevant expertise with an X.)

Education Law		Intellectual Property Law	
Labour law		General Practice Law	
Commercial law		Tax Law	
Legislative drafting		Criminal Law	
Administrative law		Estate Planning Law	
Competition law		Companies Law	
Corporate governance		Public Law	
Litigation		Occupational Health and Safety law	
Constitutional law		Environmental law	
Contract law and drafting		Real Estate, Conveyance and property law	
Legal interpretation		Civil law	
Structured/project finance		Mediation and negotiation	
Developmental law		Forensic Services	
Define any other service that you offer for provision of legal service on the space above (TEDA reserves the right to register additional services)			

MBD 4

(All claims shall be considered as valid until such time that revised claim is submitted to TEDA)

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.

3 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

3.1 Full Name of bidder or his or her representative:.....

3.2 Identity Number:

3.3 Position occupied in the Company (director, trustee, shareholder²):.....

3.4 Company Registration Number:

3.5 Tax Reference Number:.....

3.6 VAT Registration Number:

3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

3.8 Are you presently in the service of the state? **YES / NO**

3.8.1 If yes, furnish particulars.

.....

¹MSCM Regulations: "in the service of the state" means to be –

(a) a member of –

- (i) any municipal council;
- (ii) any provincial legislature; or
- (iii) the national Assembly or the national Council of provinces;

(b) a member of the board of directors of any municipal entity;

(c) an official of any municipality or municipal entity;

(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);

(e) a member of the accounting authority of any national or provincial public entity; or

(f) an employee of Parliament or a provincial legislature.

² Shareholder" means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 Have you been in the service of the state for the past twelve months? **YES / NO**

3.9.1 If yes, furnish particulars.....
.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.10.1 If yes, furnish particulars.
.....
.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.11.1 If yes, furnish particulars
.....
.....

3.12 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.12.1 If yes, furnish particulars.
.....
.....

3.13 Are any spouse, child or parent of the company's directors trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars.
.....
.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. **YES / NO**

3.14.1 If yes, furnish particulars:
.....
.....

4. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	State Employee Number

.....
Signature

.....
Date

.....
Capacity

.....
Name of Bidder

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

(EQUITY OWNERSHIP CLAIMED BY THE SUPPLIER/ SERVICE PROVIDER SHALL REMAIN VALID AND BINDING UNTIL THE REVISED EQUITY OWNERSHIP CLAIM IS SUBMITTED TO THE TEDA)

PURCHASES

This preference form must form part of all bids invited. It contains general information and serves as a claim form for Historically Disadvantaged Individual (HDI) preference points as well as a summary for preference points claimed for attainment of other specified goals

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF EQUITY OWNERSHIP BY HISTORICALLY DISADVANTAGED INDIVIDUALS (HDIs), AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022.

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; and
- the 90/10 system for requirements with a Rand value above R50 000 000.

1.2 The value of this bid is estimated to not exceed R50 000 000 and therefore the 80/20 system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) Specific contract participation goals, as specified in the attached forms.

1.3.1 The points for this bid are allocated as follows:

1.3.1.1 PRICE	POINTS

1.3.1.2 SPECIFIC CONTRACT PARTICIPATION GOALS

(a) Historically Disadvantaged Individuals:

- | | |
|---|-----------|
| (i) who had no franchise in national elections before the 1983 and 1993 Constitutions | ...10.... |
| (ii) who is a female | ...5..... |
| (iii) who has a disability | ...5..... |

(b) Other specific goals (goals of the RDP- plus local manufacture)

- | | |
|-------|-------|
| (i) | |
| (ii) | |
| (iii) | |
| (iv) | |

Total points for Price, HDIs and other RDP-goals must not exceed

100

Separate Preference Points Claim Forms will be used for the promotion of the specific goals for which points have been allocated in paragraph 1.3.1.2 (b) above.

- 1.4 Failure on the part of a bidder to fill in and/or to sign this form may be interpreted to mean that preference points are not claimed.
- 1.5 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. GENERAL DEFINITIONS

- 2.1 **"Acceptable bid"** means any bid which, in all respects, complies with the specifications and conditions of bid as set out in the bid document.
- 2.2 **"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, works or services.
- 2.3 **"Comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration.
- 2.4 **"Consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract.
- 2.5 **"Contract"** means the agreement that results from the acceptance of a bid by an organ of state.
- 2.6 **"Specific contract participation goals"** means the goals as stipulated in the Preferential Procurement Regulations 2001.
- 2.6.1 In addition to above-mentioned goals, the Regulations [12.(1)] also make provision for organs of state to give particular consideration to procuring locally manufactured products.
- 2.7 **"Control"** means the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial authority and power in determining the policies and directing the operations of the business.
- 2.8 **"Disability"** means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.
- 2.9 **"Equity Ownership"** means the percentage ownership and control, exercised by individuals within an enterprise.
- 2.10 **"Historically Disadvantaged Individual (HDI)"** means a South African citizen
- (1) who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993, (Act No 200 of 1993) ("the interim Constitution); and/or
 - (2) who is a female; and/or
 - (3) who has a disability:
- provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be a HDI;
- 2.11 **"Management"** means an activity inclusive of control and performed on a daily basis, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether or not that person is a director.
- 2.12 **"Owned"** means having all the customary elements of ownership, including the right of decision-making and sharing all the risks and profits commensurate with the degree of ownership interests as demonstrated by an examination of the substance, rather than the form of ownership arrangements.

- 2.13 **“Person”** includes reference to a juristic person.
- 2.14 **“Rand value”** means the total estimated value of a contract in Rand denomination that is calculated at the time of bid invitations and includes all applicable taxes and excise duties.
- 2.15 **“Small, Medium and Micro Enterprises (SMMEs)”** bears the same meaning assigned to this expression in the National Small Business Act, 1996 (No 102 of 1996).
- 2.16 **“Sub-contracting”** means the primary contractor's assigning or leasing or making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.
- 2.17 **“Trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person.
- 2.18 **“Trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ESTABLISHMENT OF HDI EQUITY OWNERSHIP IN AN ENTERPRISE

- 3.1 Equity ownership shall be equated to the percentage of an enterprise which is owned by individuals classified as HDIs, or in the case of a company, the percentage shares that are owned by individuals classified as HDIs, who are actively involved in the management and daily business operations of the enterprise and exercise control over the enterprise, commensurate with their degree of ownership.
- 3.2 Where individuals are not actively involved in the management and daily business operations and do not exercise control over the enterprise commensurate with their degree of ownership, equity ownership may not be claimed.

4. ADJUDICATION USING A POINT SYSTEM

- 4.1 The bidder obtaining the highest number of points will be awarded the contract.
- 4.2 Preference points shall be calculated after prices have been brought to a comparative basis.
- 4.3 Points scored will be rounded off to 2 decimal places.
- 4.4 In the event of equal points scored, the bid will be awarded to the bidder scoring the highest number of points for specified goals.

5. POINTS AWARDED FOR PRICE

5.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 \\
 P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) & \mathbf{or} & P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)
 \end{array}$$

Where

Ps = Points scored for price of bid under consideration

Pt = Rand value of bid under consideration

Pmin = Rand value of lowest acceptable bid

6. Points awarded for historically disadvantaged individuals

- 6.1 In terms of Regulation 13 (2) preference points for HDI's are calculated on their percentage shareholding in a business, provided that they are actively involved in and exercise control over the enterprise. The following formula is prescribed in Regulation 13 (5) (c):

$$NEP = NOP \times \frac{EP}{100}$$

Where

NEP = Points awarded for equity ownership by an HDI

NOP = The maximum number of points awarded for equity ownership by an HDI in that specific category

EP = The percentage of equity ownership by an HDI within the enterprise or business, determined in accordance with the definition of HDI's.

- 6.2 Equity claims for a trust will only be allowed in respect of those persons who are both trustees and beneficiaries and who are actively involved in the management of the trust.
- 6.3 Documentation to substantiate the validity of the credentials of the trustees contemplated above must be submitted.
- 6.4 Listed companies and tertiary institutions do not qualify for HDI preference points.
- 6.5 A consortium or joint venture may, based on the percentage of the contract value managed or executed by their HDI-members, be entitled to preference points in respect of an HDI.
- 6.6 A person awarded a contract as a result of preference for contracting with, or providing equity ownership to an HDI, may not subcontract more than 25% of the value of the contract to a person who is not an HDI or does not qualify for the same number or more preference for equity ownership.

7. BID DECLARATION

- 7.1 Bidders who claim points in respect of equity ownership must complete the Bid Declaration at the end of this form.

8. EQUITY OWNERSHIP CLAIMED IN TERMS OF PARAGRAPH 2.10 ABOVE. POINTS TO BE CALCULATED FROM INFORMATION FURNISHED IN PARAGRAPH 9.8.

	Ownership	Percentage owned	Points claimed
8.1	Equity ownership by persons who had no franchise in the national elections	10% (Submit BEE Certificate)
8.2	Equity ownership by women	5% (Submit ID document)
8.3	Equity ownership by disabled persons*	5% (Submit Disability Certificate)

*If points are claimed for disabled persons, indicate nature of impairment (see paragraph 2.8 above)

.....

9. SUB-CONTRACTING

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

(Tick applicable box)

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

a) If yes, indicate:

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

(Tick applicable box)

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

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

10. DECLARATION WITH REGARD TO EQUITY

10.1 Name of firm :

10.2 VAT registration number :

10.3 Company registration number :

10.4 TYPE OF FIRM

- ☐ Partnership
- ☐ One person business/sole trader
- ☐ Close corporation
- ☐ Company
- ☐ (Pty) Limited

[TICK APPLICABLE BOX]

10.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

10.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
☐ Supplier
☐ Professional service provider
☐ Other service providers, e.g. transporter, etc.
 [TICK APPLICABLE BOX]

10.7 TOTAL NUMBER OF YEARS THE FIRM HAS BEEN IN BUSINESS?

10.8 List all Shareholders by Name, Position, Identity Number, Citizenship, HDI status and ownership, as relevant. Information to be used to calculate the points claimed in paragraph 8.

[illegible]

*Indicate YES or NO

10.9 Consortium / Joint Venture

10.9.1 In the event that preference points are claimed for HDI members by consortia / joint ventures, the following information must be furnished in order to be entitled to the points claimed in respect of the HDI member:

[illegible]

10.10 I/we, the undersigned, who warrants that he/she is duly authorised to do so on behalf of the firm certify that points claimed, based on the equity ownership, indicated in paragraph 8 of the foregoing certificate, qualifies the firm for the preference(s) shown and I / we acknowledge that:

- (i) The information furnished is true and correct.
- (ii) The Equity ownership claimed is 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 paragraph 8, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct.
- (iv) If the claims are found to be incorrect, the purchaser may, in addition to any other remedy it may have -
 - (a) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (b) 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;
 - (c) impose a financial penalty more severe than the theoretical financial preference associated with the claim which was made in the bid; and

WITNESSES:

1.

.....
SIGNATURE(S) OF BIDDER(S)

2.

DATE:.....

ADDRESS:.....

.....

.....

.....

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

(All claims shall be considered as valid until such time that revised claim is submitted to TEDA)

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be rejected if that bidder, or any of its directors have:
 - a. abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
 - b. been convicted for fraud or corruption during the past five years;
 - c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

4.3.1	If so, furnish particulars:		
Item	Question	Yes	No
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME)
CERTIFY THAT THE INFORMATION FURNISHED ON THIS
DECLARATION FORM TRUE AND CORRECT.

I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT,
ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION
PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

(All claims shall be considered as valid until such time that revised claim is submitted to TEDA)

- 1 This Municipal Bidding Document (MBD) must form part of all bids¹ invited.

- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.

- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - a. take all reasonable steps to prevent such abuse;
 - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.

- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.

- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Municipality / Municipal Entity)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

6. 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 consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

³ 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.

10. 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.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

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General Conditions of Contract

1. Definitions

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

RSA.

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

obligations of the supplier covered under the contract.

- 1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

2. Application

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

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

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

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

9. Packing

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

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental services

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of 'on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

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

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

14. Spare parts

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

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

15. Warranty

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

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

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

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

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

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

16. Payment

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

17. Prices

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

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

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

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

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

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

22. Penalties

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

23. Termination for default

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

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

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

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

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

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

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

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

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

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

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

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

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

may be due to him

25. Force Majeure

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

26. Termination for insolvency

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

27. Settlement of Disputes

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

28. Limitation of liability

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

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

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