

## PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/PUBLIC ENTITY)					
BID NUMBER:	PRDP 11/2022/23	CLOSING DATE:	10 MAY 2024	CLOSING TIME:	11H00
DESCRIPTION	DISASTER RECOVERY SYSTEM AS A SERVICE (DRaaS) LIMPOPO PROVINCIAL DEPARTMENTS FOR A PERIOD OF THIRTY-SIX MONTHS				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
40 HANS VAN RENSBURG					
POLOKWANE					
0700					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO		
CONTACT PERSON	NEMUHUYUNI E		CONTACT PERSON		
TELEPHONE NUMBER	015 287 6000		TELEPHONE NUMBER		
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	<a href="mailto:tenders@premier.limpopo.gov.za">tenders@premier.limpopo.gov.za</a>		E-MAIL ADDRESS		
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					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

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

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

SIGNATURE OF BIDDER: .....

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

DATE: .....

**PRICING SCHEDULE – FIRM PRICES  
(PURCHASES)**

**NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED**

**IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT**

Name of bidder.....	Bid number.....
Closing Time 11:00	Closing date: 10 MAY 2024

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

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY ** (ALL APPLICABLE TAXES INCLUDED)
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- 
- Required by: .....
  - At: .....
  - Brand and model .....
  - Country of origin .....
  - Does the offer comply with the specification(s)? \*YES/NO
  - If not to specification, indicate deviation(s) .....
  - Period required for delivery .....
  - \*Delivery: Firm/not firm
  - Delivery basis .....

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

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

\*Delete if not applicable

## BIDDER'S DISCLOSURE

### 1. PURPOSE OF THE FORM

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

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

### 2. Bidder's declaration

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

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

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship

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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.

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.

<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.

- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 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

<p>This document must be signed and submitted together with your bid</p>
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## THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

### INTRODUCTION

The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

### 1 PILLARS OF THE PROGRAMME

- 1.1 The NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million will have a NIP obligation. This threshold of US\$ 10 million can be reached as follows:
- (a) Any single contract with imported content exceeding US\$10 million.
  - or
  - (b) Multiple contracts for the same goods, works or services each with imported content exceeding US\$3 million awarded to one seller over a 2 year period which in total exceeds US\$10 million.
  - or
  - (c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content will exceed US\$10 million.
  - or
  - (d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$10 million.
- 1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30 % of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIP obligation on a *pro-rata* basis.
- 1.3 To satisfy the NIP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.

- 1.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

## **2 REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY**

- 2.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract that is in excess of **R10 million** (ten million Rands), submit details of such a contract to the DTI for reporting purposes.

- 2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million Rands) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1. (d) above.

## **3 BID SUBMISSION AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)**

- 3.1 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with the bid on the closing date and time.

- 3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1 (d) above and to enable the DTI in determining the NIP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million Rands), to contact and furnish the DTI with the following information:

- Bid / contract number.
- Description of the goods, works or services.
- Date on which the contract was accepted.
- Name, address and contact details of the government institution.
- Value of the contract.
- Imported content of the contract, if possible.

- 3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr Elias Malapane within five (5) working days after award of the contract. Mr Elias Malapane may be contacted on telephone (012) 394 1401, facsimile (012) 394 2401 or e-mail at [Elias@thedti.gov.za](mailto:Elias@thedti.gov.za) for further details about the programme.

## **4 PROCESS TO SATISFY THE NIP OBLIGATION**

- 4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:

- a. the contractor and the DTI will determine the NIP obligation;
- b. the contractor and the DTI will sign the NIP obligation agreement;

- c. the contractor will submit a performance guarantee to the DTI;
- d. the contractor will submit a business concept for consideration and approval by the DTI;
- e. upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
- f. the contractor will implement the business plans; and
- g. the contractor will submit bi-annual progress reports on approved plans to the DTI.

4.2 The NIP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid number .....	Closing date:.....
Name of bidder.....	
Postal address .....	
.....	
Signature.....	Name (in print).....
Date.....	

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

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

**NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

**1. GENERAL CONDITIONS**

1.1 The following preference point systems are applicable to invitations to tender:

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

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

a) The applicable preference point system for this tender is the **80/20** preference point system.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

**1.4 To be completed by the organ of state:**

The maximum points for this tender are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	<b>80</b>
<b>SPECIFIC GOALS</b>	<b>20</b>
<b>Total points for Price and SPECIFIC GOALS</b>	<b>100</b>

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

1.6 The organ of state reserves the right to require of a tenderer, either before a tender is

adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

## 2. DEFINITIONS

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

## 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

#### 3.1.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

**80/20**

$$Ps = 80 \left( 1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

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

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

#### 3.2.1. POINTS AWARDED FOR PRICE

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

80/20

$$P_s = 80 \left( 1 + \frac{P_t - P_{max}}{P_{max}} \right)$$

Where

- $P_s$  = Points scored for price of tender under consideration  
 $P_t$  = Price of tender under consideration  
 $P_{max}$  = Price of highest acceptable tender

#### 4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
  - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,
- then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

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

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

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

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
51%>Women ownership	6	
51%>Youth ownership	5	
51%>Person living with disability ownership	3	
Enterprise located in rural area	2	
Black owned business with 51% shareholding	4	
<b>Total Points</b>	<b>20</b>	

**NB: when claiming points, the number of corresponding points must be written, no ticks or crosses will be accepted.eg when claiming 51%>Women ownership write 4 and so on and write the total points claimed at the bottom.**

#### DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number: .....

4.5. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One-person business/sole propriety
- Close corporation
- Public Company
- Personal Liability Company
- (Pty) Limited
- Non-Profit Company
- State Owned Company

[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;

- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
  - (a) disqualify the person from the tendering process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution, if deemed necessary.

.....  
**SIGNATURE(S) OF TENDERER(S)**

**SURNAME AND NAME:** .....

**DATE:** .....

**ADDRESS:** .....

.....

.....

.....

.....



**TERMS OF REFERENCE**  
**FOR PRDP 11/2022/23 – DISASTER RECOVERY SYSTEM AS A SERVICE (DRaaS)**  
**LIMPOPO PROVINCIAL DEPARTMENTS FOR A PERIOD OF**  
**THIRTY-SIX (36) MONTHS**

**1. INTRODUCTION**

- 1.1 The Limpopo Provincial Government (LPG) aims to provide ICT services to the various Limpopo Provincial Government (LPG) Departments and their State-owned Entities (SoE). As part of the package of services, a shared disaster recovery as a service, is needed for a timeous recovery of information for business continuity.

To address the disaster recovery capacity infrastructure constraints, Infrastructure as a Service (IaaS) is a means to meet this need. Therefore, the implementation of disaster recovery services is hosted through a specialized disaster recovery solution provider.

Services of disaster recovery and business continuity represent critical business tools and therefore business continues to demand that such services be available and accessible around the clock, 24 hours / 7 days a week and securely when LPG Departments perform maintenance or experiences unplanned outages. Furthermore, this service must be available through secure means to maintain government policies such as data classification, sovereignty, confidentiality, data security and similar requirements.

In addition, a flexible governance structure with the necessary and appropriate “checks and balances” is required and it is of utmost importance that the LPG needs to be a high-performance organization that is equally flexible while being efficient in making

decisions in the delivery of services.

- 1.2 The Office of the Premier reserves the right to accept all or part of a bid for the required solution, or not to award the bid at all.
- 1.3 Each statement of requirement, prompt for information, query, or condition in these terms of reference must be responded to by noting the information given and acknowledging that it is understood and agreed to; providing the requested information; answering the query in brief, succinctly and to the point; indicating acceptance or otherwise of the terms; and by providing any supplementary comments as may be necessary.
- 1.4 The bid response layout should be such that each bid clause is reproduced in full and is followed by a reply. The clauses and replies must be distinguishable from each other in style and appearance using a font, colour, borders, and bolding or italics, for example.
- 1.5 Bid documents should be deposited in the tender box situated at the premises of the Office of the Premier, Limpopo at 40 Hans van Rensburg Street, Polokwane, before or on the closing date and time as specified in the Limpopo Tender Bulletin and eTender Portal. All bids, when they are submitted, must be sealed and must bear the official bid number as well as the title of this request for bids on the outside.
- 1.6 This request for bids document contains confidential information regarding the Limpopo Provincial Administration. This information has been provided to furnish potential bidders with the data necessary to provide a holistic response. Non-public information received by any party in connection with the engagement described in this document must be treated as confidential. No part of the contents may be used, copied, disclosed, or conveyed in whole or in part to any party, in any manner whatsoever without the prior written permission of the Office of the Premier. Any reproduction or transmission of information contained in this document except for the sole purpose of responding to this bid is strictly prohibited. References to the Limpopo Provincial Administration must not be made in any literature, promotional material, brochures or sales presentations without the express written consent of the Office of the Premier.

1.7 The tender is advertised for qualifying bidders who are on the SITA Transversal Contract RFB-1183 and accredited for Limpopo Province.

## 2. DEFINITION OF TERMS

Unless the context indicates otherwise, the following terms used in this bid shall have the following meaning:

### 2.1 “Departments” Eleven (11) Limpopo Provincial Administration Departments

- 2.1.1 Office of the Premier - OTP;
- 2.1.2 Limpopo Provincial Treasury - LPT;
- 2.1.3 Department of Social Development - DSD;
- 2.1.4 Department of Agriculture and Rural Development - DARD;
- 2.1.5 Department of Transport and Community Safety - DTCS;
- 2.1.6 Department of Sport, Arts, and Culture - DSAC;
- 2.1.7 Department of Public Works, Roads and Infrastructure - DPWRI;
- 2.1.8 Department of Cooperative Governance, Human Settlements and Traditional Affairs - CoGHSTA;
- 2.1.9 Limpopo Economic Development, Environment and Tourism - LEDET;
- 2.1.10 Department of Health - DoH; and
- 2.1.11 Department of Education - DoE;

2.2 “Office” means the Office of the Premier, Limpopo;

2.3 “Preferential Procurement Regulations, 2022” means the Preferential Procurement Regulations, 2022 issued in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

2.4 “Project Manager” means the person appointed by the Service Provider or the Office as such, responsible for the successful planning, execution, monitoring, control, and closure of the contract;

2.5 “Services” means the provision of disaster recovery as a service (DRaaS);

2.6 **“Business Continuity Institute”** is an institute that provides Business Continuity Planning and Management training. It is a registration body for professionals and organisations providing business continuity and

2.7 **“State Owned Entity - SoE”** means any entity that reports directly to the department.

### 3. ACRONYMS

3.1	BCP	Business Continuity Plan
3.2	CSD	Central Supplier Database
3.3	DGITO	Departmental Government Information Technology Officer
3.4	DRaaS	Disaster Recovery as a Service
3.5	GCC	General Condition of Contract
3.6	ICT	Information Communication Technology
3.7	ISO 9001	The international standard that specifies requirements for a quality management system (QMS).
3.8	ISO 22301	The international standard for implementing and maintaining effective business continuity plans, systems and processes.
3.9	ISO 27001	The international standard to manage information security.
3.10	LPA	Limpopo Provincial Administration
3.11	LPG	Limpopo Provincial Government
3.12	PGITO	Provincial Government Information Technology Officer
3.13	PPPFA	Preferential Procurement Policy Framework Act, 2000 (Act No.5 of 2000)
3.14	SANS	South African National Standards
3.15	SITA	State Information Technology Agency
3.16	URL	Uniform Resource Locator
3.17	VAT	Value Added Tax

#### **4. DURATION OF CONTRACT**

The Duration of the project is **thirty-six (36) months** for implementation, support, and maintenance contract from the date of appointment.

### **SECTION A: BUSINESS CASE**

#### **5. OBJECTIVE & SOLUTION SOUGHT**

5.1 The LPG is embarking on a drive to expand Disaster Recovery as a Service with the aim of achieving process effectiveness and operational efficiencies to improve staff productivity. PGITO will manage Disaster Recovery as a Service for the LPG. It will be the responsibility of DGITOs to manage the appointed service provider for Disaster Recovery as a Service daily to ensure a stable back-end environment is maintained.

5.2 Based on the complexity and the amount of time taken to successfully transition with minimal impact and no disruption to the services delivered to the LPG, the appointed service provider would be required at a maximum of three (03) months from the date of signing the Service Level Agreement (SLA) to set up the disaster recovery solution. The proposed Disaster Recovery as a Service will ensure that the LPG has the capability to meet business capacity requirements.

### **SECTION B: BIDDER PROFILE/S**

#### **6. COMPANY PROFILE**

Bidders should furnish the following details about themselves:

6.1 State the name of your entity and give entity particulars such as business address, company and VAT registration numbers, and contact details, if this has not already been noted on the official bid forms, as well as Entity Structure, Management Structure, operating structure, geographical spread, or presence, etc. Only the prime contractor details, in the case of a consortium, need to be entered on the official bid

forms.

- 6.2 If you are a member of a consortium for this bid, what is your precise role/s in this consortium? The overall management structure and business model of the consortium must be indicated. The Agreement providing for such a consortium or joint venture must be legally compliant with the laws applicable to such consortium or joint venture and must be signed by both parties.
- 6.3 How long have you been in business? State the date of establishment of the entity and provide proof of registration with the Registrar of Companies if your entity is a company.
- 6.4 What is your entity's core business, and how long has this been your core business?
- 6.5 Do you have any standing partnerships or business associations with other entities? If so, provide details and illustrate the relationship/s schematically. Details of your major suppliers of technology products and services proposed in your bid must be provided.
- 6.6 What is the total complement of your staff?
- 6.7 What is the complement of your management and technical staff?
- 6.8 Provide details of your clients in South Africa who make use of products and services similar to the ones you offer in this bid, including names, contact persons and the nature of the installations or services. The LPA reserves the right to visit one or more of these clients.
- 6.9 Provide a bank guarantee from a recognised financial institution, not older than four (04) months from the closing date of bid.
- 6.10 If you are a value-added reseller or a franchisee, provide proof of accreditation from your principal/s.

- 6.11 If you are a value-added reseller or a franchisee, is your principal/s prepared to deal directly with the Limpopo Provincial Administration in the event of a service default by yourselves? If so, provide a written backing from your principal/s.
- 6.12 Describe the skill sets and competencies of your staff and resources related to this bid. List all personnel to be assigned to this service, by employer/subcontractor, identifying their qualifications to perform tasks/functions to be assigned.
- 6.13 A consortium must submit with their bid, their consortium member partnership agreement/s that indicates their expectations of one another and their responsibilities towards one another in respect of their duties to fulfil the obligations of the consortium in this bid. Any omission in this regard may invalidate the bid.
- 6.14 Where consortia / Joint Ventures / Sub-contract are involved; each party must be registered on the CSD, all be accredited on SITA Transversal Contract RFB-1183 and their Tax Compliance status will be verified through the CSD.
- 6.15 Where there is a consortia / Joint Ventures, a consolidated Specific goal must be submitted.

## **SECTION C: TERMS AND CONDITIONS**

### **7. GENERAL TERMS AND CONDITIONS SPECIFIC TO THIS BID**

#### **7.1 OFFICIAL SUPPLY CHAIN MANAGEMENT DOCUMENTS AND FORMS**

7.1.1 The terms and conditions specified in this bid terms of reference must be read in conjunction with the General Conditions of Contract (GCC), which form an integral part of this bid. Prospective bidders will be well-advised to familiarize themselves with the Preferential Procurement Regulations, 2022.

7.1.2 A bidder must complete all relevant official bid forms/documents issued by the Office

of the Premier, Supply Chain Management Unit and submit them as part of the bid.

7.1.3 The bidder must be on the **SITA Transversal Contract RFB-1183** and accredited for Limpopo Province.

## 7.2 BID FORMAT

7.2.1 A bid must conform to or exceed the minimum requirements set out in these terms of reference. Deviations, if there are any, must be clearly stated and be substantiated with full motivations.

7.2.2 Replies to this bid must be inclusive of all requirements as stipulated at 7.4 (functional technical terms of reference of the required solution).

7.2.3 Each bid must contain a precise description of the solution being offered, including technical specifications of the solution being proposed. A full fact sheet, data sheet or brochure of the solution offered must be provided. No reference to a website in lieu of this information will be accepted.

7.2.4 Services being offered to make the solution complete must be expressly stated individually, and each service must be indicated whether it is one-time or is recurrent. All relevant costs must be disclosed in the cost or price schedules.

7.2.5 Each bid proposal must be submitted in duplicate [one (01) hard copy and one (01) soft copy (memory stick with separate folders for Technical File and Price and Specific Goals File)] as indicated below:

<b>PACKAGE 1 (TECHNICAL FILE)</b>	<b>PACKAGE 2 (PRICE &amp; SPECIFIC GOALS)</b>
<b>Exhibit 1:</b> Pre-qualification documents (Refer to Clause 9.1: Pre-qualification Criteria (Table 1))	<b>Exhibit 1:</b> Price Schedule

<p><b>Exhibit 2:</b></p> <ul style="list-style-type: none"> <li>• Technical Responses</li> <li>• Supporting documents for technical responses</li> </ul>	<p><b>Exhibit 2:</b></p> <ul style="list-style-type: none"> <li>• Table: 7.4.1.2 – A</li> <li>• Table: 7.4.1.2 – B</li> <li>• Table: 7.4.1.2 – C</li> </ul>
<p><b>Exhibit 3:</b></p> <ul style="list-style-type: none"> <li>• General Conditions of Contract (GCC)</li> </ul>	<p><b>Exhibit 3:</b></p> <ul style="list-style-type: none"> <li>• SBD 6.1 Preference Points Claim Form in terms of the Preferential Procurement Regulations, 2022</li> </ul>
<p><b>Exhibit 4;</b></p> <ul style="list-style-type: none"> <li>• Company Profile</li> <li>• Any other supplementary information</li> </ul>	

7.2.6 Bidders are requested to initial each page of the tender document. A bid that is not accompanied by the appropriate official bid document, duly filled in and signed by the bidder, where this is necessary, may be disqualified.

7.2.7 All documents, including binders, submitted in response to this bid will become the property of the Office unless a bidder expressly indicates otherwise. Intellectual property rights contained in the information in the bid, which has been indicated as such, shall remain vested in the bidder. Any confidential information which must be respected by the LPA must be indicated expressly as such for non-disclosure purposes.

**7.3 VALIDITY PERIOD OF BIDS**

7.3.1 Bids shall be valid for a period of 120 days calculated from the closing date of this bid.

7.3.2 In addition, all prices quoted in a bid pertaining to support and training must remain valid and firm for the period of the contract.

## 7.4 FUNCTIONAL TECHNICAL TERMS OF REFERENCE OF THE REQUIRED SOLUTION

### 7.4.1 Disaster Recovery as a Service (DRaaS)

7.4.1.1 The bidder must demonstrate in detail through the proposal how they will implement the following requirements as part of the terms of reference:

- a. Multi-Tenancy Architecture: The system supports a multi-tenant architecture, enabling each department to maintain its isolated environment while utilizing shared resources efficiently.
- b. The DRaaS solution that will run on a virtualization platform, either VMWare or Hyper-V and physical servers. This platform will enable virtual machines (VMs) and physical servers to be created and managed effectively.
- c. High Availability, Scalability modular approach, allowing the addition of more storage shelves as data grow, and Infrastructure Resilience. The solution should be able to scale up or down dynamically to accommodate changing organisation requirements, ensuring optimum resource allocation at a nominal time of not more than 5 working days.
- d. The solution provides failover and failback capabilities, allowing the departments to continue their operations after disruption. In the event of a disaster, the solution should connect to the primary site to ensure business continuity.
- e. The solution ensures redundancy and fault tolerance by implementing redundancy and fault-tolerant configurations to minimize the risk of a single point of failure within three (03) days.
- f. Recovery Point Objective (RPO) and Recovery Time Objective (RTO): The solution provides an RPO of less than 15 minutes and an RTO of less than one hour. This means that in the event of a disaster, data loss will be minimal, and businesses can recover quickly.
- g. All data is always kept within South African boundaries;
- h. The solution provides details of set up, migrations, hosting, replication, maintenance and support of information from all provincial departments and SoEs;
- i. The service provider to backup and restore individual departments' servers; the proposal should demonstrate how this is going to be achieved in detail.

- j. The hosting platform is on the latest version of the offered disaster recovery solution and includes the latest regular updates;
- k. The solution provides disaster recovery as a service that supports different environments (Microsoft, Linux, etc.);
- l. The solution provides a secure disaster recovery environment as per industry best practice, and legislative framework for such service, including but not limited to POPIA to ascertain data privacy. The best practices are to be explained in the proposal.
- m. The solution complies with best practice business continuity governance, ICT Security Policy, Risk Management Policy and any Information Security policies; The best practices are to be explained in the proposal.
- n. Migration of all current data from the current disaster recovery solutions (i.e. Microfocus PlateSpin Forge and Veeam) without losing any data; the solution should explain how this process is going to be done and the duration to complete the migration.
- o. The solution provides for scanning of data with antivirus software before restoring and during disaster recovery testing; the service provider should provide details on how to handle vulnerable and corrupt data.
- p. The online central and departmental real time monitoring interface for infrastructure performance and SLA reports is included (including but not limited to migration of data and workload, usage, infrastructure performance, and availability reports);
- q. Show a detailed security process proposal to ensure complete security. The infrastructure should incorporate robust security measures to protect sensitive data belonging to each department.
- r. Provide a detailed training plan for 22 technical staff on how to do DR tests, do a recovery and monitor the system.
- s. The solution has a Business Continuity Management and assists the Departments in creating disaster recovery plans.
- t. The solution provides for online and offline testing of the disaster recovery in line with the disaster recovery plans of the department.
- u. Security for data is inclusive of encryption, protection from viruses, malware, ransomware protection and any other cyber-attacks;

- v. The service provider should provide Content Control and Risk Management procedures and plans;
- w. The solution maintains an audit trail to track the operations of the users and the changes that they have made;
- x. The service provider should provide details on how the solution offered assist in utilizing bandwidth efficiently;
- y. Processors capability with high core counts of at least 12 cores, 3.0 Ghz clock speeds, strong multithreading capabilities and support for advanced server features. E.g., Intel Xeon Scalable Processors, AMD EPYC Processors, ARM-based Processors and IBM Power Processors.
- z. The service provider should provide support during a disaster for failover, transfer of data to the department site and restoration of services.
- aa. Bidder is Certified and accredited by the Business Continuity Institute.
- bb. Bidder is Certified ISO 9001, ISO 27001 and ISO 22301.

7.4.1.2 The following tables should be used for pricing and included in **Envelope 2**.

7.4.1.2.1 - A Once-Off Pricing

Once Off Payment					
Service	Description	Item	Quantity	Unit Price	Total Price
Disaster Recovery	Data Migration	1TB	1300TB		
	Initial Infrastructure as a Service Build	1 Server	11 Departments		
Professional Services	Development Disaster Recovery Plan	1 Plan	11 Departments		
	Technical Training	1 Staff	22 Staff Members.		
				<b>Subtotal</b>	
				<b>Tax</b>	
				<b>Total</b>	

#### 7.4.1.2.2 - B Recurring Costs Pricing

Service	Description	Item	Unit	Measure per Annum	Unit Price	Total Price Y1	Total Price Y2	Total Price Y3
Disaster Recovery	Disaster Recover Testing	Servers	4 tests per annum per 1 Department	11 Departments				
	Data Replication Services	Data Backup	1 TB/Month	1300 TB				
	Infrastructure as a Service Maintenance	Environment	1 Server	11 Departments				
Professional Service	Maintenance and Support	Consulting	1 Day	528 Days				
<b>Subtotal</b>								
<b>Tax</b>								
<b>Total</b>								

#### 7.4.1.2.3 – C Overage Charges Pricing

Service	Description	Item	Unit	Unit Price Y1	Unit Price Y2	Unit Price Y3
Disaster Recovery	Disaster Recover Testing	Servers	1 test per Annum			
	Failback Support	Servers	Per Day			
	Data Migration	Data	1TB			
	Infrastructure as a Service Build	Environment	Server			
	Data Replication Services	Servers	1 TB/Month			
Professional Service	Maintenance and Support	Consulting	1 Day			
	Disaster Recovery Plan	Consulting	1 Plan			
	Technical Training	Training	1 Staff			

#### 7.4.1.2.4 - Departmental Data

Name of Department	Number of Work Stations	Number of Servers (VMWare)	Total Load in TB	Number of Servers (Hyperv)	Total Load in TB	Number of Servers (Physical)	Total Load in TB	Total Data as on DR Appliance in TB	Office 365? Yes/ No
LDTCS	1000	8	40,00	0	0	9	18	10	Yes
DPWRI	1320	23	45,71	6	6	2	65	0	Yes
Education	2700	20	30,00	0	0	18	360	25	Yes
LEDET	928	0	0,00	40	10	14	60	5	Yes
OTP	500	32	19,00	0	0	4	22	22	Yes
CoGHSTA	862	0	0,00	19	68	0	0	42	Yes
DSAC	500	8	5,00	0	0	0	0	5	Yes
DoH	4000	3	17,00	3	64	208	59	12	Yes
LDARD	1600	2	3,00	8	7	42	11	14	Yes
DSD	800	16	35,00	3	5	10	41	10	Yes
LPT	527			16	18	11	30	21	Yes
<b>TOTAL</b>	<b>14737</b>	<b>112</b>	<b>194,71</b>	<b>95</b>	<b>178</b>	<b>318</b>	<b>666</b>	<b>166</b>	

#### 7.4.1.2 Exclusions

The solution must not include the Microsoft Exchange (online and on-premises) data backup and recovery.

### 7.5 PRIME CONTRACTOR RESPONSIBILITIES

7.5.1 In the event of a consortium bid, a prime contractor is required to take charge of the entire project and to provide a single interface between the bidder and the LPA. Therefore, in the event of a consortium bid, one of the bidders should be designated as the prime contractor. The prime contractor shall assume total responsibility for the implementation and support of the contact centre service solution proposal, regardless of any sub-contracting agreements entered into by and amongst the consortium parties and regardless of any agreements entered by any of the consortium parties with a third party outside the consortium.

7.5.2 The Office shall have the right to have insight at any time into any agreement or contract entered by the successful bidder. It should be indicated expressly whether such access will be granted or not.

### 7.6 CONTRACTUAL IMPLICATIONS

#### 7.6.1 Bid Acceptance

The preferred bid will be accepted subject to the condition that the preferred bidder signs a contract and service level agreement prepared by the Office within seven (7) days of the conditional award. This bid, together with its terms, conditions and terms of reference, the bid response (excluding the bidder's own terms and conditions), and the GCC will form part of the contract between the Office and the successful bidder.

7.6.2 The contract or agreement or any part thereof shall not be subcontracted or sublet by the bidder to any other party without the prior written consent of the Accounting Officer of the Office after the bid has been awarded. In the event of any sub-contracting, the bidder shall bear full responsibility for the quality of work carried out by a sub-contractor, for the quality of products used by the sub-contractor, and for on LPA premises activities of the sub-contractor.

7.6.3 The bidder shall not, after the bid has been awarded, assign nor cede the contract or agreement or any part thereof or any interest therein to any other party without the prior written consent of the Accounting Officer of the Office.

7.6.4 The Office reserves the right to amend any standard contracts or agreements of the bidder. A sample of every such contract or agreement must be included in the bid.

7.6.5 Variations and amendments to the contract shall be valid only if they are done in writing and by mutual consent.

7.6.6 Any contract or agreement between the Office and the successful bidder shall be governed by the laws of the Republic of South Africa.

## **7.7 SKILLS TRANSFER AND CLIENT STAFF SKILLS UPLIFTMENT**

7.7.1 It is a condition of this terms of reference that a bidder must transfer technical skills and know-how to the LPA Department's staff in all the eleven (11) Limpopo Provincial Departments currently involved in disaster recovery management in the Limpopo Provincial Departments to enable them to render effective and efficient technical support.

7.7.2 Describe your strategy for achieving this goal and the time frame in which this will be done. A training plan must be developed and must be implemented throughout the duration of the contract. The cost of the implementation of the training plan should be indicated as part of the contract price. The bidder may not approach the Office for any additional payments in respect thereof, after the commencement of the contract.

## **7.8 INTELLECTUAL PROPERTY RIGHTS**

7.8.1 Copyright to all inventions and innovations developed using the products and methodologies offered by the bidder shall be vested in the Limpopo Provincial Administration and in the State in general. Copyright, patent rights and all similar rights in any works or products created because of the execution of this bid and its assignments shall vest in and are hereby transferred to the Office, unless the contrary is agreed to in the form of individual written agreements signed by the bidder and the Accounting Officer of the Office or his/her delegate. For this purpose, all works created in terms of this bid and its assignments shall be deemed to have been created under the direction and control of the Office.

7.8.2 All data, data structures, system architecture, naming standards, forms and report formats designed or generated in the provision of the Disaster Recovery as a Service solution shall become the sole and exclusive property of the Limpopo Provincial Administration immediately upon acceptance of the service or service component. It is the responsibility of the service provider to hand back all data, data structures, forms and report formats to the Limpopo Provincial Administration in a readable and usable format at the end of the contract period.

## **7.9 PRICING AND PRICE SCHEDULES**

7.9.1 The bidder must submit a cost breakdown/s which must indicate in detail, per product or service, and per item on tables under 7.4 to ensure that the total cost is provided for over a period of thirty-six (36) months.

- 7.9.2 The bidder must prepare a cost breakdown/s which must be signed by the authorized signatory, indicating costs per month, including contingency costs and total price for the duration of the contract.
- 7.9.3 All prices must be in South African currency and must include Value Added Tax (VAT).
- 7.9.4 All prices should remain firm for the contract duration. It is the responsibility of the Bidder to consider all costs and all possible escalations when compiling bid prices. Once the bid is awarded, no request for price escalation will be entertained, regardless of the reasons for such request.
- 7.9.5 A bidder must specify details of any discounts of list prices that have been considered in the calculation of prices.
- 7.9.6 The price schedule must make provision for the costs for workshops, travelling, client meetings and refresher training sessions as set out in the training plan. The Service Provider cannot approach the Office for any additional payments in respect thereof.
- 7.9.7 The price schedule must be submitted in a separate and sealed envelope but be included in the bid package.

## **7.10 DEMONSTRATIONS AND PRESENTATIONS**

- 7.10.1 After the bid closing date, the Office may call for presentations and demonstrations of the DRaaS proposals. A bidder must be prepared to do so at a venue that is convenient to the Office, depicting a live environment. All costs involved in the presentation or demonstration shall be borne by the bidder.

## **7.11 SERVICES**

- 7.11.1 The Office will be responsible for purchasing infrastructure services, DR testing days and the development of DR plans on behalf of LPG Departments. Departments will be responsible for paying recurring fees (i.e. Data replication Services and Maintenance and Support Days) within the contract.
- 7.11.2 Each department will send their needed services of the DRaaS as per their requirements detailed under 7.4 to the Office for verification of required services as per the contract.
- 7.11.3 The DRaaS infrastructure must be configured, maintained, supported and upgraded

with no extra costs to LPG Departments.

## **7.12 PROTECTION OF GOVERNMENT INFORMATION**

7.12.1 The bidder hereby agrees and undertakes to abide by and adhere to government legislation, regulations and directives dealing with the protection of government information as if such legislation, regulations and directives apply to the bidder, and that all reasonable steps shall be taken to ensure that persons under the management of the bidder who will be engaged in the fulfilment of the bidder's contractual obligations are aware of these statutory requirements, and that these statutory stipulations will continue to apply to them even after termination of the contract or agreement or termination of their services with the bidder.

7.12.2 The entity will be vetted as well as its staff, contractors, agents and their associates, and the cooperation and facilitation of the bidder in this regard is a condition of this bid.

## **7.13 DOCUMENTATION REQUIRED**

7.13.1 User manuals must be provided in soft copy to be availed during training and for reference by the users. The user manuals must be updated continuously in line with system changes and/or changes in business operations.

## **7.14 CONFLICT OF INTEREST, CORRUPTION AND FRAUD**

7.14.1 The bidder shall always during the continuance of this contract use their best endeavours to ensure that no action is taken by themselves, their personnel, agents, and sub-contractors which could or might result in or give rise to the existence of conditions which are prejudicial to or are in conflict with the best interests of the Limpopo Provincial Administration.

7.14.2 The Office reserves its rights to disqualify any bidder who either itself or any of whose members (save for such members who hold a minority interest in the bidder through

shares listed on any recognised stock exchange), indirect members (being any person or entity who indirectly hold at least a 15% interest in the bidder other than in the context of shares listed on a recognised stock exchange), directors or members of senior management, whether in respect of the Office or any other government organ or entity and whether from the Republic of South Africa or otherwise ("Government Entity"):

- a. engage in any collusive tendering, anti-competitive conduct, or any other similar conduct, including but not limited to any collusion with any other bidder in respect of the subject matter of these terms of reference;
- b. seeks assistance, other than assistance officially provided by a Government Entity, from any employee, advisor or other representative of a Government Entity in order to obtain any unlawful advantage in relation to procurement of services provided or to be provided to a Government Entity;
- c. makes or offer any gift, gratuity, anything of value or other inducement, to any of Office's officers, directors, employees, advisors or other representatives;
- d. makes or offers any gift, gratuity, anything of any value or other inducement, to any Government Entity's officers, directors, employees, advisors, or other representatives in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity;
- e. accept anything of value or an inducement that would or may provide financial gain, advantage or benefit in relation to the procurement of services provided or to be provided to a Government Entity;
- f. pays or agrees to pay to any person any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or results from, the award of any tender, contract, right or entitlement which is in any way related to procurement or the rendering of any services to a Government Entity;
- g. has in the past engaged in any matter referred to above; or
- h. has been found guilty in a court of law on charges of fraud and /or forgery, regardless of whether or not a prison term was imposed and despite such bidder, member or director's name not specifically appearing on the list of Tender Defaulters kept at National Treasury.

## **7.15 SPECIAL CONDITIONS OF THIS BID**

### **7.15.1 Bidder's own terms and conditions or qualification of bid**

This document contains the terms and conditions of this terms of reference, and bidders must not qualify the terms of reference or generate their own terms and conditions. If a Bidder does this, that bid may be disqualified.

### **7.15.2 The successful Bidder must–**

- a. comply with all the terms of reference and standards outlined in this bid;
- b. comply with all legislation, SANS and best industry practices applicable to the successful bidders and the rendering of the services;
- c. use and adopt reasonable professional techniques and standards in providing the service;
- d. monitor project implementation against set targets, costs and time frames;
- e. provide the services with all due care, skill and diligence;
- f. ensure continuity of services to the Limpopo Provincial Administration;
- g. execute the contract under the supervision of the project sponsor and comply with any directive of the project sponsor;
- h. ensure that key personnel, its employees or engagement partners observe confidentiality and do not use any information obtained pursuant to this contract for any reason other than for the proper discharge of the bidder's obligations under this contract. The bidders must have systems in place to monitor compliance in this regard;
- i. obtain the signature of the project sponsor on all documents or reports submitted by the successful bidders to the Office;
- j. appoint a project manager, who must, in addition to managing the project, serve as a single point of contact between the Office and the successful bidder;
- k. ensure that its employees involved in the execution of the contract are suitably qualified, properly skilled, experienced, trained, and competent to render the services. The Office may interview any person appointed by the successful bidder to execute the contract to test their understanding of the key deliverables

- in terms of the contract;
- l. ensure that it has all the resources necessary to fulfil its obligations in terms of the contract and will not be entitled to any resources from the Office to assist it in fulfilling its obligations;
  - m. ensure that it does not, in the process of fulfilling its obligations in terms of the contract, use any labour or intellectual capacity of any employee of the state, including employees of the Office, for remunerative purposes, unless such employee has the necessary written authorisation;
  - n. upon notice by the Office, revise or amend any report that the Office is not satisfied with, within a time period specified by the Office in that notice; and
  - o. immediately upon receipt of a notice from the Office, promptly re-execute any portion of the services that are found to be in non-conformity with the contract. The successful Bidder is liable to the Office for any other cost, damages or losses incurred or suffered by the Office as a result of such non-conformity.

### **7.15.3 RESERVATION OF RIGHTS:**

The Office reserves the right to—

- a. invite bidders to make presentations regarding any aspect (s) of the bid;
- b. request further information or document(s) from any bidder after closing date;
- c. verify information and documentation of any Bidder;
- d. carry out site inspections, product evaluations or explanatory meetings in order to verify the nature and quality of the services offered by the bidder(s), whether before or after adjudication of the Bid;
- e. award the bid to a bidder who did not score the highest points, in terms of the PPPFA;
- f. accept part of a tender rather than the whole tender;
- g. not make an award;
- h. enter into price negotiations with the preferred bidder;
- i. cancel and/ or terminate the tender process at any stage, including after the closing date and/or after presentations have been made, and/or after
- j. tenders have been evaluated and /or after the preferred bidder(s) have been notified of their status as such; and

- k. appoint a third party to evaluate the bidders compliance with any aspect of this contract.

#### **7.15.4 PAYMENT CONDITIONS**

- a. The Service Provider must submit an invoice for any payment to be made, subject to paragraphs (d) and (f) of clause 7.15.4, all invoices shall only become payable 30 days after receipt by the Office.
- b. No interest shall be payable in the event of a dispute nor accrue on any payments due during a period of dispute.
- c. Subject to paragraphs (d) and (f) of clause 7.15.4, the Office will pay the Service Provider, within thirty days of the Service Provider submitting an invoice for payment as follows:  
Monthly costs in respect of the services rendered over a period of thirty-six (36) months. These monthly costs are inclusive of the costs as per services acquired under 7.4. The Service Provider may not approach the Office for any additional payments in respect thereof.
- d. Payment is—
  - (i) subject to the satisfactory discharge of all obligations of Service Provider and delivery of the services to the Office in terms of the contract. The Office will not make payment to the Service Provider in the event the Service Provider fails to satisfactorily perform any of its obligations in terms of the contract; and
  - (ii) fixed for the duration of the contract, and the Service Provider may under no circumstances approach or request the Office for an increase in the contract price.
- e. Payments will be made by an electronic transfer, into the Service Provider's bank account as appearing on the verified CSD report and invoice of that Service Provider;
- f. The Office may withhold, deduct or set off from any monies due and owing to the Service Provider either in terms of this contract or any other contract that the Service Provider may have with the Limpopo Provincial Administration an amount equal to the amount of any outstanding claims that the Office may have

against the Service Provider for damages, costs or any other indebtedness arising out of this contract: Provided that the Office will provide the Service Provider with written notice of its intention to offset, supported by reasonable detail of the actual damages, costs or indebtedness incurred by the Office. A certificate of indebtedness signed by the Chief Financial Officer of the Office, reflecting the amount due and payable shall be sufficient and conclusive proof of the contents and correctness thereof for the purposes of with-holding, deduction or set off by the Office or payment by the Service Provider or for provisional sentence, summary judgement or any other proceedings against the Service Provider in a court of law and shall be valid as a liquid document for such purposes.

- g. In the event that the Office institutes legal action against the Service Provider for any matter in connection with the contract, the Service Provider will be liable to pay the Office's legal fees on an Attorney and own client scale.

#### **7.15.5 AVAILABILITY OF FUNDS**

Should funds no longer be available to pay for the execution of the services, the Office may terminate this Agreement in its own discretion or temporarily suspend all or part of services by notice to the bidders, which shall immediately make arrangements to stop the performance of the services and minimize further expenditure: provided that the bidder shall thereupon be entitled to payment in full for the service delivered, up to the date of cancellation.

#### **7.15.6 CONFLICT OF INTERESTS**

Bidders must not have or undertake duties or interests that create or might reasonably be anticipated to create an actual or perceived conflict with its duties and interests in executing the contract. Bidders must identify any potential conflicts and bring them to the attention of the Office.

#### **7.15.7 COSTS INCURRED BY BIDDER**

The Office will not be responsible for or pay any expenses or losses which may be incurred by the bidders in the preparation, submission or presentation of its bid.

### **7.15.8 BID BINDING UPON SERVICE PROVIDER**

All written information, warranties and representations made by or on behalf of the bidder before the conclusion of the contract are binding upon the bidders and are deemed to have induced the Office to award the contract to the Service Provider. The Office's rights in terms of this clause are in addition and without prejudice to any other rights, it may have in terms of this contract.

### **7.15.9 LIABILITY**

The Service Provider is responsible and liable for-

- a. the conduct, acts and omissions of its employees and the Service Provider's agents or representatives. The Service Provider indemnifies the Office against any claims whatsoever arising from its conduct and or the conduct of its employees, representatives or agents; and
- b. injury to any person, loss or damage suffered by the Office, which is occasioned by any unauthorized act, omission, negligence, breach of this contract or breach of any legislation or statutory duty by the Service Provider or the Service Provider's employees, agents or representatives. Under such circumstances, the service provider must, at its own expense, make good the loss or damage on demand and on the terms of the Office.

### **7.15.10 WARRANTIES AND REPRESENTATIONS**

7.15.10.1 Software developed, installed, configured, tested, and commissioned by the successful bidder, their personnel, agents or sub-contractors shall be free of technical defects or bugs and shall be so guaranteed for the period of the contract, calculated from the date of acceptance of the service by the Office. Any defects or bugs which are attributable to poor workmanship or negligence on the part of the bidder, which come to the notice of the Office, and to which the Office draws the attention of the bidder, shall be rectified by the bidder at the bidder's own cost and time. Any rectification shall be guaranteed for a further period of 12 months. After the expiry of the warranty period all charges relating to correction of technical defects or bugs shall be expressly and distinctly denoted as such on any billing documentation.

#### 7.15.10.2 The Service Providers warrants that-

- a. the Service Provider has the capacity and resources to render the services as specified;
- b. on delivery of the services, the services will be suitable for the purpose stipulated in this contract;
- c. the services will comply with these terms of reference. Any unilateral departure by the Service Provider from such term of reference or standards is breach of this contract;
- d. no fact or circumstances exist that may materially affect its capacity to perform its obligations under this contract;
- e. the Service Provider will not use any labour or intellectual capacity of any employee of the State, (including the Office) for remunerative purposes, except where the employee of the State has the necessary permissions in terms of applicable laws, in which event proof of such permissions must be hand-delivered to the Office at the address for service, on date of signature by the Service Provider of this contract, and an acknowledgement of receipt be obtained by the Service Provider.
- f. it is the owner of, or has a good title to all services delivered in terms of this contract; and
- g. it shall at all times have and comply with all legal requirements and with the terms and conditions of all necessary licences, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the delivery of services.

#### **7.15.11 TERMINATION OF CONTRACT**

7.15.11.1 Bidders must acquaint themselves with the provisions of section 30 of the Public Service Act, 1994 (Proclamation 103 of 1994), and ensure that where applicable, natural persons who constitute the bidders comply with the Act. The Office reserves the right to disregard a bid or cancel the contract with the bidder or service provider-

- a. has failed to comply with any legal or policy requirement in order to enter into

- a valid contract with the Office, including but not limited to any public servant constituting or in the employ of the bidder or service provider not having the necessary permissions or authorisation in terms of the Public Service Act, or not having made the necessary financial disclosures to the employer or not having declared any or all interests in the bid documents;
- b. has acted in a fraudulent manner or in bad faith or in any other unsatisfactory manner in obtaining any other contract with any state institution, government department, provincial administration or public entity;
  - c. after notification that the bid has been conditionally accepted, either fails, refuses or neglects or causes undue delays in the signing of the contract and service level agreement prepared by the Office;
  - d. has entered into any arrangement or agreement with any other natural or corporate person, whether legally binding or not, to-
    - i. refrain from bidding for this contract; or
    - ii. bid at an agreed price.
  - e. breaches any applicable SANS, legislation or policy.

7.15.11.2 The Office may immediately terminate the contract without any notice to the Service Provider if any of the following circumstances occur or exist:

If the Service Provider –

- a. commits an act of professional misconduct or professional or technical incompetence, which is substantial and serious;
- b. commits or participates in any unlawful, dishonest or unethical act in the performance of its obligations under this contract; or
- c. breaches this contract twice during the contract period.

## **7.16 PRECEDENCE**

7.16.1 This document will prevail over any information provided during any briefing session whether oral or written, unless such written information provided, expressly amends this document by reference.

## **7.17 TAX COMPLIANCE**

- 7.17.1 Bidder(s) must be tax compliant when submitting a bid to the Office and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and the Valued Added Tax Act, 1991 (Act No. 89 of 1991).
- 7.17.2 It is a condition of this bid that the tax matters of the successful bidder(s) be in order, or that satisfactory arrangements have been made with the South African Revenue Service (SARS) to meet the bidder's tax obligations.
- 7.17.3 The tax compliance status requirements are also applicable to foreign bidders/ individuals who submit bids.
- 7.17.4 Bidders are required to be registered on the CSD and the Office shall verify the bidder's tax compliance status through the CSD.
- 7.17.5 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

## **7.18 DATA MIGRATION**

- 7.18.1 It is the responsibility of the successful bidder to work with the ICT Divisions of all the Departments when rolling out the DRaaS to Provincial Departments as per requirements.
- 7.18.2 The original data will reside in each of the 11 Departments' environments after replication or migration.
- 7.18.3 Upon the termination of the contract, the service provider must hand over all the data to each department in a readable format within three (03) months.
- 7.18.4 Upon the termination of the contract, the service provider, and OTP must jointly completely erase the information on the server of the service provider after submitting all information to OTP.

## **SESSION**

**Compulsory briefing session for bidders on 23/ 04 /2024**

## **8.2 SUBMISSION OF BIDS**

The bid will be administered in terms of a two-envelope system. Bidders must simultaneously submit a technical proposal and financial proposal in two (02) separate sealed envelopes marked clearly as follows:

### **8.2.1 Envelope 1 – Technical proposal (documents needed in this envelope are listed on clause 7.2.5: Package 1)**

Name of bidder:

Bid No: **PRDP 11/2022/23**

Title: **DISASTER RECOVERY AS A SERVICE FOR LIMPOPO PROVINCIAL DEPARTMENTS**

Closing date:

Closing time: **11h00**

**ALL SUPPORTING DOCUMENTS MUST BE INCLUDED IN THIS ENVELOPE.  
NO PRICING WHATSOEVER MUST BE INDICATED IN THIS ENVELOPE.**

**BIDDERS WHO INCLUDE THE PRICE IN THIS ENVELOPE WILL BE DISQUALIFIED.**

### **8.2.2 Envelope 2 – Financial Proposal (documents needed in this envelope are listed in clause 7.2.5: Package 2)**

Name of Bidder:

Bid No: **PRDP 11/2022/23**

Title: **DISASTER RECOVERY AS A SERVICE FOR LIMPOPO PROVINCIAL DEPARTMENTS**

Closing date:

Closing time: **11h00**

Only bidders who score **75** out of **100** possible points for functionality will be evaluated on the financial proposal and Preference Points. **Envelope 2** will only be opened if a bidder has obtained **75** or more points on the technical proposal contained in Envelope 1.

## 9. EVALUATION AND SELECTION CRITERIA

The Office has set minimum standards (Gates) that a bidder needs to meet in order to be evaluated and selected as a successful bidder. The minimum standards consist of the following:

Pre-qualification Criteria (Gate 0)	Technical Evaluation Criteria (Gate1)	Price and Specific Goals (Gate 2)
Bidders must submit all documents as outlined in paragraph 9.1 (Table 1) below. Only bidders that comply with ALL these criteria will proceed to Gate 1.	Bidder(s) are required to achieve a minimum of 75 points out of 100 points to proceed to Gate 2 (Price and Specific goals)	Bidder(s) will be evaluated on price and Specific goals claimed points

### 9.1 Gate 0: Pre-qualification Criteria

Without limiting the generality of the Office's other critical requirements for this Bid, bidder(s) must submit the documents listed in **Table 1** below. All documents must be completed and signed by the duly authorized representative of the Prospective bidder(s). During this phase, Bidders' responses will be evaluated based on compliance with the listed administration and mandatory bid requirements. The bidder(s) proposal may be disqualified for non-submission of any of the documents:

**Table 1: Documents that must be submitted for Pre-qualification.**

Documents that must be submitted	Non-submission may result in disqualification.	
Original Bid Document	YES	Duly completed and signed.
Invitation of Bid – SBD 1	YES	Complete and sign the supplied pro forma document.
Declaration of Interest – SBD 4	YES	Complete and sign the supplied pro forma document

The National Industrial Participation Programme-SBD 5	YES	Complete and sign the supplied pro forma document
Preference Point Claim Form – SBD 6.1	NO	Non-submission will lead to a zero (0) score on Specific goals.
Proof of registration on Central Supplier Database (attach detailed CSD report)	NO	Bidder(s) must be registered as a service provider on the Central Supplier Database (CSD). If you are not registered proceed to complete the registration of your company prior to submitting your proposal. Visit <a href="https://secure.csd.gov.za/">https://secure.csd.gov.za/</a> to obtain your vendor number. Submit proof of registration.
Company Registration Certificate (CIPC document)	NO	Valid copy of CIPC Company Registration Certificate of a bidder (Originally Certified)
Bid Proposal's Soft copy	NO	Bid Proposal on a soft copy (memory stick – two separate branded folders)
Bidder is on the SITA RFB-1183 Transversal Contract	YES	Bidder(s) must be registered as a service provider on the SITA RFB-1183 Transversal Contract for services in Limpopo Province
Bidders' consortium or joint venture agreement	YES	The consortium or joint venture agreement must be legally compliant with the laws applicable to such consortium or joint venture agreement and must be signed by both parties.
Bidder is Certified ISO 9001, ISO 27001 and ISO 22301	YES	Bidder must attach a valid certified copy of the certification for ISO 9001, ISO 27001 and ISO 22301

## 9.2 Gate 1: Technical Evaluation Criteria = 100 points

**All bidders are required to respond to the technical evaluation criteria.**

Only Bidders that have met the **Pre-Qualification Criteria** will be evaluated in **Gate 1** for functionality. Functionality will be evaluated—:

- i. In accordance with the Evaluation Criteria for technical functionality listed in Annexure A
- ii. out of 100 points Bidders are required to achieve a minimum threshold of **75** points to proceed to **Gate 2 for Price and Specific goals evaluations**.

As part of due diligence, the Office may conduct a site visit at **the bidder's place of business (as per the physical address provided by the bidder on SBD1)** and/ or at a client of Bidder (reference) for validation of the services rendered. **The bidder must include the details of the client (reference) to facilitate such validation.** The choice of the site will be at the Office's sole discretion. The items for site inspection will among others include the following:

- Racking and Stacking
- Backup and Disaster Recovery Equipment
- Restore Simulation or Live Restore or Recovery Test.

### **9.3 Gate 2: Price and Specific Goals Evaluation (80+20) = 100 points**

Only Bidders that have met the 75 points thresholds in **Gate 1** will be evaluated in **Gate 2 for Price and Specific goals** as follows:

In terms of regulation 6 of the Preferential Procurement Regulations, 2022, responsive bids will be adjudicated on the 80/20 Preference point system in terms of which points are awarded to bidders based on:

- The bid price (maximum 80 points)
- Specific goals (maximum 20 points)

### 9.3.1 Stage 1- Price Evaluation (80 Points)

Criteria	Points
Price Evaluation $P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$	80

The following formula will be used to calculate the points for price:

Where

$P_s$  = Points scored for comparative price of bid under consideration

$P_t$  = Comparative price of bid under consideration

$P_{\min}$  = Comparative price of lowest acceptable bid

### 9.3.2 Stage 2 – Specific Goals Evaluation (20 points)

#### a. Specific goals Points allocation

A maximum of 20 points may be allocated to a bidder for attaining their Specific goals per the table below:

Historically Disadvantaged Individuals	Number of Points (20 System)	Bidder's Claimed Points	Means of Verification
51% ≥ Women ownership	6		To be verified through CSD.
51% ≥ Youth ownership	5		To be verified through CSD.
51% ≥ People living with disability ownership	3		The bidder must attach a medical certificate from a qualified doctor.
Enterprises located in rural area/township	2		The bidder must attach a letter from the municipality or tribal authority.

Black-owned business with 51% ≥ shareholding	4		To be verified through CSD.
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**Specific goals points may be allocated to bidders on the submission of the following documentation or evidence:**

- A duly completed Preference Points Claim Form: Standard Bidding Document (SBD 6.1).

**b. Joint Ventures, Consortium and Trusts**

A trust, consortium or joint venture, will qualify for points for their Specific goals as a legal entity, provided that the entity claims the points and submits proof where necessary.

A trust, consortium, or joint venture will qualify for points for its Specific goals as an unincorporated entity, provided that the entity submits its consolidated Specific goals scorecard as if it were a group structure and such a consolidated Specific goals scorecard is prepared for every separate bid.

Bidders must submit concrete proof of the existence of joint ventures and/or consortium arrangements. The consortium or joint venture agreement must be legally compliant with the laws applicable to such consortium or joint venture agreement. The Office will accept signed agreements as acceptable proof of the existence of a joint venture and/or consortium arrangement.

The joint venture and/or consortium agreements must clearly set out the roles and responsibilities of the Lead Partner (Prime Contractor) and the joint venture and/or consortium party.

The agreement must also clearly identify the Lead Partner (Prime Contractor), who shall be given the power of attorney to bind the other party/ parties in respect of matters pertaining to the joint venture and/or consortium arrangement.

**9.3.3 Stage 3 (80 + 20 = 100 points)**

The Price and Specific goals points will be consolidated.

## **10 REQUESTS FOR ADDITIONAL INFORMATION**

- 10.1 **For purposes of audit of the bid process, any request by a bidder for additional information or clarification before the closing date of the bid must be done in writing. Queries may be directed to the following e-mail address:**  
[tenders@premier.limpopo.gov.za](mailto:tenders@premier.limpopo.gov.za)
- 10.2 No telephonic or physical contacts (saved for collection of soft copies of the bid specifications) with the officials shall be entertained.
- 10.3 During the bid evaluation process additional information or clarifications may be sought by the Office. For this purpose, a bidder must provide contact details. Written responses to requests for such information or clarification must be provided within 2 days. Failure to supply the information or clarification or to do so within the required timeframe may invalidate the bid.

**ANNEXURE A**  
**BID EVALUATION CRITERIA**  
**BID EVALUATION CRITERIA-FUNCTIONALITY**

**Table A: The Service Provider to fill the below table for offered and reference page columns.**

Item No	Description	Offered? Yes or No	Reference Page & Item No	Maximum Score	Awarded Score
1	Multi-Tenancy Architecture: The system supports a multi-tenant architecture, enabling each department to maintain its isolated environment while utilizing shared resources efficiently.			4	
2	The DRaaS solution that will run on a virtualization platform, either VMWare or Hyper-V and physical servers. This platform will enable virtual machines (VMs) and physical servers to be created and managed effectively.			2	
3	High Availability, Scalability modular approach, allowing the addition of more storage shelves as data grow, and Infrastructure Resilience. The solution should be able to scale up or down dynamically to accommodate changing organisation requirements, ensuring optimum			2	

Item No	Description	Offered?		Reference Page & Item No	Maximum Score	Awarded Score
		Yes	or No			
	resource allocation at a nominal time of not more than 5 working days.					
4	The solution provides failover and fallback capabilities, allowing the departments to continue their operations after disruption. In the event of a disaster, the solution should connect to the primary site to ensure business continuity.				2	
5	The solution ensures redundancy and fault tolerance by implementing redundancy and fault-tolerant configurations to minimize the risk of a single point of failure within three (3) days.				2	
6	Recovery Point Objective (RPO) and Recovery Time Objective (RTO): The solution provides an RPO of less than 15 minutes and an RTO of less than one hour. This means that in the event of a disaster, data loss will be minimal, and businesses can recover quickly.				3	
7	All data is always kept within South African boundaries;				2	
8	The solution provides details of set up, migrations, hosting,				2	

Item No	Description	Offered? Yes or No	Reference Page & Item No	Maximum Score	Awarded Score
	replication, maintenance and support of information from all provincial departments and SoEs;				
9	The service provider to backup and restore data on individual departments' servers; the proposal should demonstrate how this is going to be achieved in detail.			3	
10	Bidder is Certified and accredited by the Business Continuity Institute			4	
11	The hosting platform is on the latest version of the offered disaster recovery solution and includes the latest regular updates;			1	
12	The solution provides disaster recovery as a service that supports different environments (Microsoft, Linux, etc.);			3	
13	The solution provides a secure disaster recovery environment as per industry best practice, and legislative framework for such service, including but not limited to POPIA to ascertain data privacy. The best practices are to be explained in the proposal.			1	

Item No	Description	Offered? Yes or No	Reference Page & Item No	Maximum Score	Awarded Score
14	The solution complies with best practice business continuity governance, ICT Security Policy, Risk Management Policy and any Information Security policies; The best practices are to be explained in the proposal.			1	
15	Migration of all current data from the current disaster recovery solutions (i.e., Microfocus PlateSpin Forge and Veeam) without losing any data; the solution should explain how this process is going to be done and the duration to complete the migration.			3	
16	The solution provides for scanning of data with antivirus software before restoring and during disaster recovery testing; the service provider should provide details on how to handle vulnerable and corrupt data.			3	
17	The online central and departmental real time monitoring interface for infrastructure performance and SLA reports is included (including but not limited to migration of data and workload,			2	

Item No	Description	Offered?		Reference Page & Item No	Maximum Score	Awarded Score
		Yes	or No			
	usage, infrastructure performance, and availability reports);					
18	Show a detailed security process proposal to ensure complete security. The infrastructure should incorporate robust security measures to protect sensitive data belonging to each department.				2	
19	Provide a detailed training plan for 22 technical staff on how to do DR tests, do a recovery and monitor the system.				1	
20	The solution has a Business Continuity Management and assists the Departments in creating disaster recovery plans.				1	
21	The solution provides for online and offline testing of the disaster recovery in line with the disaster recovery plans of the department.				4	
22	Security for data is inclusive of encryption, protection from viruses, malware, ransomware protection and any other cyber-attacks;				3	
23	The service provider should provide Content Control and Risk				1	

Item No	Description	Offered? Yes or No	Reference Page & Item No	Maximum Score	Awarded Score
	Management procedures and plans;				
24	The solution maintains an audit trail to track the operations of the users and the changes that they have made;			2	
25	The service provider should provide details on how the solution offered assist in utilizing bandwidth efficiently;			1	
27	Processors capability with high core counts of at least 12 cores, 3.0 Ghz clock speeds, strong multithreading capabilities and support for advanced server features. E.g., Intel Xeon Scalable Processors, AMD EPYC Processors, ARM-based Processors and IBM Power Processors.			1	
28	The service provider should provide support during a disaster for failover, transfer of data to the department site and restoration of services.			4	
<b>TOTAL</b>				<b>60</b>	

**Table B**

Folio No.	Criteria	Means of Verification (Evidence)	Maximum Score	Awarded Score
	<b>FUNCTIONALITY</b>		<b>40</b>	
<b>1.</b>	<b>Bidder has Accreditation by Disaster Recovery Software OEM (Original Equipment Manufacturer)</b>		<b>10</b>	
i)	<i>No certificate</i>	Bidders are to attach a Certificate of accreditation.  NB: (Evidence will be verified)	0	
ii)	<i>Bidder accredited for Disaster Recovery Software OEM</i>		10	
<b>2.</b>	<b>Bidders' experience with the number of disaster recovery projects implemented</b>		<b>15</b>	
i)	<i>No Disaster Recovery projects implemented</i>		0	
ii)	<i>Number of projects implemented One (1) to Four (4) Disaster Recovery projects)</i>		5	
iii)	<i>Five (5) to Nine (9) Disaster Recovery projects implemented</i>	Bidders are to attach a list of contactable references with appointment/confirmation letters.	10	

Folio No.	Criteria	Means of Verification (Evidence)	Maximum Score	Awarded Score
iv)	<i>Ten (10) or more Disaster Recovery projects implemented.</i>	NB: (Evidence will be verified)	15	
<b>3.</b>	<b>Number of qualified Disaster Recovery Solution Certified personnel</b>		<b>10</b>	
i)	<i>No certified or irrelevant personnel</i>		0	
ii)	<i>One (1) to Three (3) Disaster Recovery Certified Personnel</i>	Certificates of personnel from Solution Provided are attached.	5	
iii)	<i>Four (4) or more Disaster Recovery Certified Personnel</i>	NB: (Evidence will be verified)	10	
<b>4.</b>	<b>Implementation – full project implementation plan attached</b>		<b>5</b>	
i)	<i>No project or irrelevant plan attached</i>		0	
ii)	<i>Detailed project implementation plan</i>	Attachment of detailed project implementation plan with timelines and services as included but not limited to item 7.4.1.  NB: (Evidence will be verified)	5	

Folio No.	Criteria	Means of Verification (Evidence)	Maximum Score	Awarded Score
<b>Total Table B</b>			<b>40</b>	

Tables	Maximum Score	Awarded Score
Table A Score	60	
Table B Score	40	
<b>Total</b>	<b>100</b>	

**\* Bidders are required to achieve a minimum threshold of 75 points in order to proceed to Price and Specific goals points evaluations.**

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

**NOTES**

The purpose of this document is to:

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

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

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

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## General Conditions of Contract

### 1. Definitions

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

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

- 1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.
- 2. Application**
- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.
- 3. General**
- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information; inspection.**
- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance**
- 7.1 Within thirty (30) days of receipt of the notification of contract award,

**security**

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.

Js General Conditions of Contract (revised July 2010)