



## **TERMS OF REFERENCE**

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**BIDDERS ARE HEREBY INVITED TO SUBMIT BIDS IN RESPECT  
OF THE FOLLOWING SERVICES:**

**CUSTOMER SATISFACTION SURVEY FOR THE NATIONAL  
CONSUMER COMMISSION**

**Reference: NCC/01/2022/2023**

**Date issued: 21 February 2023**

**Compulsory briefing session: 2 March 2023 @ 11h00**

**Closing date and time: 14 March 2023 @ 11h00**

**Bid validity period: 90 calendar days after closing date**

**ADDRESS:**

**National Consumer Commission  
SABS Campus, Building C,  
1 Dr. Lategan Road  
Groenkloof, Pretoria  
Pretoria**

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## **1. PURPOSE**

To appoint a suitable, reputable and well-established service provider to undertake a customer satisfaction survey (CSS) for the National Consumer Commission (NCC).

## **2. OBJECTIVE**

To invite bidders who are in good standing to submit proposals to be considered for appointment to render a baseline CSS to the NCC located at 1 Dr. Lategan Road, Groenkloof, South African Bureau of Standards (SABS) Campus, Block C.

## **3. BACKGROUND & LEGISLATIVE MANDATE**

3.1 The National Consumer Commission is a juristic person established as an organ of state within the public administration in terms of section 85 of the Consumer Protection Act; No 68 of 2008 ("Act"). The NCC is listed as a schedule 3A entity in terms of the Public Finance Management Act, 1999 (PFMA).

3.2 The Core Functions of the NCC are, inter alia, to:

- 3.2.1. Facilitate an environment that enables resolution of disputes between consumers and suppliers that is expedient, cost effective, fair and transparent.
- 3.2.2. Analyse and refer complaints to alternative dispute resolution agents or issue non-referrals on complaints received.
- 3.2.3. Conduct inspections and investigations so as to enforce the provisions of the Consumer Protection Act (CPA), thereby ensuring compliance.
- 3.2.4. Make applications to the National Consumer Tribunal (NCT) for declaration of various conduct as prohibited conduct.
- 3.2.5. Facilitate, conduct and monitor product recalls.
- 3.2.6. Conduct targeted consumer- and business-focused education initiatives aimed at facilitating a better understanding of the rights, roles and obligations of consumers and suppliers (within the entire value chain) of good and services.
- 3.2.7. Conduct research and propose policy changes to the Minister in relation to any matter affecting the supply of goods and services that would improve the realization and full enjoyment of consumer rights.
- 3.2.8. Advise Minister on matters relating to consumer protection and on the determination of national norms and standards regarding consumer protection in terms of the CPA that should apply generally throughout the Republic.

- 3.2.9. Identify legislation that affects the welfare of consumers, which is inconsistent with the purposes of the CPA. Develop proposals and recommendations to the Minister for reform of practices that are inconsistent with the CPA.

## **4 SCOPE OF WORK**

The scope of work of the study should cover the following:

- 4.1 Undertake a literature review of best practices in service delivery to the customers within the consumer protection environment both nationally and internationally. The literature review should also encompass best practices of service delivery to customers in the public sector.
- 4.2 Focus groups with customers in four provinces which receive the most complaints (Gauteng, Kwa-Zulu Natal, Western and Eastern Cape).
- 4.3 In depth interviews with key informants (NCC, provincial consumer courts, media and other regulators etc) amongst relevant stakeholders in the consumer protection ecosystem.
- 4.4 A nationally representative customer satisfaction survey disaggregated according to sector province, district, and demographics (race, gender, educational level). The urban-rural dimension needs to be factored in for the demographics. Develop a composite customer satisfaction measure/index to determine the current overall satisfaction levels using a Likert scale (either 4 or 5 point).
- 4.5 The service provider can recommend areas of satisfaction but the following minimum areas should be included:
  - 4.5.1 Awareness of the agencies/institutions in the consumer protection landscape
  - 4.5.2 Awareness of the products and services offered by institutions in the consumer protection landscape
  - 4.5.3 Determining the quality-of-service delivery provided by the NCC as perceived by the customers;
  - 4.5.4 Identify and evaluate the channels used by customers to interface with the NCC
  - 4.5.5 Propose new channels of customer interface
  - 4.5.6 Compare the results from the previous survey
  - 4.5.7 Propose measures to improve service delivery

## **5 METHODOLOGY**

- 5.1 The service provider should propose a methodology (Secondary research approach, primary research approach, sampling, data collection and analysis) in line with meeting the scope of work.
- 5.2 The service provider should employ a suitable representative sampling strategy that enables generalization at sector, province, district and relevant demographic variables.

## **6 DELIVERABLES**

The timeframe of all deliverables should be included in the project plan submitted as part of the proposal bearing mind that the assignment needs to be completed by within a period of eight (8) months from contract finalisation.

- 6.1 An inception report covering how the service provider intends to implement the study. The inception report should detail the service providers approach to answering the objectives of the study. In addition, the inception report should provide a detailed project plan with deliverables and timeframes. The inception report will be presented at the first project meeting as determined by the NCC,
- 6.2 Literature review as unpacked in the scope of work,
- 6.3 Fieldwork report detailing all the different primary research (Focus groups, Key informant interviews and customer satisfaction survey),
- 6.4 Draft report with recommendations on how the NCC can improve its service delivery should be presented to the NCC Research Advisory Committee (RAC) and Executive Committee (EXCO). Inputs received from these committees will need to be incorporated into the final report, and
- 6.5 Final report integrating comments from the RAC and EXCO and key stakeholders. The final report inclusive of findings, conclusions and recommendations should be submitted in hard and soft copies on 3 USBs containing the following:
  - 6.5.1 Final report including references and appendices,
  - 6.5.2 All transcripts and recordings from focus group discussions and key informant interviews,
  - 6.5.3 Database of raw data from customer satisfaction interviews (Excel); and
  - 6.5.4 Final presentation to Executive Committee

## **7 REPORTING REQUIREMENTS**

### **7.1 The NCC's Obligations**

- a) The NCC will appoint a project manager who will liaise on all matters related to the study with the service provider;
- b) The NCC Project Manager will review, evaluate and approve the services provided by the Service Provider against the Service Level Agreement on an ongoing basis and prior to payment is made;
- c) The NCC will supply all reasonable, relevant, available data and information required and requested by the Service Provider for the proper execution of the services under the contract; and
- d) The NCC will convene regular progress meetings with the service provider to provide guidance, support and determine progress and challenges that might arise during the course of the study.

### **7.2 Service Provider's Obligations**

- a) To act as an independent contractor in respect of the work;
- b) To report progress on work assigned by the NCC;
- c) To attend meetings with the NCC and stakeholders whenever required to do so for the purposes of obtaining information or advice with regard to the work and assignments or any matters arising therefrom or in connection therewith;
- d) To exercise all reasonable skill, care and diligence in the execution of their work and to carry out their obligations in accordance with professional standards;
- e) In all professional matters, to act as an independent advisor to the NCC, respecting the laws and customs of the country, provinces and municipalities in which any business relating to the project is conducted;
- f) To sign a confidentiality declaration requiring them to regard as confidential all information acquired in the course of their work and not to disseminate any such information, or publicise or release media statements in relation to their work;
- g) Any information gathered during the conduct of their work is the property of the NCC and shall not be distributed without prior written approval of the NCC.

## 8 LEGISLATIVE FRAMEWORK OF THE BID

### 8.1 Procurement Legislation

The Commission has a detailed evaluation methodology premised on Treasury Regulation 16A3 promulgated under Section 76 of the Public Finance Management Act, 1999 (Act, No. 1 of 1999), the Preferential Procurement Policy Framework Act 2000 (Act, No.5 of 2000) and the Broad-Based Black Economic Empowerment Act, 2003 (Act, No. 53 of 2003).

### 8.2 Technical Legislation and/or Standards

Bidder(s) should be cognisant of the legislation and/or standards specifically applicable to the services required.

### 8.3 Protection of Personal Information

Bidders need to comply with the provisions of section 19 to 21 of the Protection of Personal Information Act (POPIA). The Bidder (s) shall be required to provide sufficient and acceptable evidence of measures to ensure compliance with Section 19 of POPIA. The successful service provider shall indemnify the NCC of liability from and arising from failure to comply with POPIA.

## 9 TIMELINE OF THE BID PROCESS

The period of validity of Bids and the withdrawal of offers, after the closing date and time shall be **90** days. The project timeframes of this bid are set out below:

Activity	Due Date
Advertisement of bid on e-Tender Portal and NCC Website	21 February 2023
Compulsory briefing and clarification session	2 March 2023 @ 11h00
Bid closing date	14 March 2023 @ 11h00



Notice to bidder(s)	The Commission will endeavour to inform bidders of the progress until conclusion of the tender.
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All dates and times in this bid are South African standard time.

Any time or date in this bid is subject to change at the Commission's discretion. The establishment of a time or date in this bid does not create an obligation on the part of the Commission to take any action, or create any right in any way for any bidder to demand that any action be taken on the date established.

The bidder accepts that, if the NCC extends the deadline for bid submission (the closing date) for any reason, the requirements of this bid otherwise apply equally to the extended deadline.

## 10 COMMUNICATION DETAILS

- 10.1 A nominated official of the bidder(s) can make enquiries in writing, to the specified person, **Mr Shaheen Buckus** via email **s.buckus@thenncc.org.za** and/or **012 428 7834**.

Bidder(s) must reduce all telephonic enquiries to writing and send to the abovementioned email address.

- 10.2 The delegated office of the Commission may communicate with Bidder(s) where clarity is sought on the bid proposal.
- 10.3 Any communication to an official or a person acting in an advisory capacity for the NCC in respect of the bid between the closing date and the award of the bid by the Bidder(s) is discouraged, unless it is for purposes of providing clarity in respect of the legitimate questions pertaining to the bid. The NCC reserves the right not to answer questions which it considers to be inappropriate.
- 10.4 All communication between the Bidder(s) and the NCC must be done in writing.
- 10.5 Whilst all due care has been taken in connection with the preparation of this bid, the NCC makes no representations or warranties that the content of the bid or any information communicated to or provided to Bidder(s) during the bidding process is, or will be, accurate, current or complete. The NCC, and its employees and advisors will not be held liable for any information communicated which may not be accurate, current or complete.

- 10.6 If bidder(s) finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in this bid or any other information provided by the NCC (other than minor administrative matters), the bidder(s) must promptly notify the NCC in writing of such discrepancy, ambiguity, error or inconsistency in order to afford the NCC an opportunity to consider what corrective action to take if necessary.
- 10.7 Any actual discrepancy, ambiguity, error or inconsistency in the bid or any other information provided by the NCC shall, if possible, be corrected and be provided to all bidder(s) without attributing such discrepancy, ambiguity, error or inconsistency to the bidder(s) who provided the written notice of such matters.
- 10.8 All persons (including bidder(s)) obtaining or receiving the bid and any other information in connection with the Bid or the Tendering process, must keep the contents of the Bid and other such information confidential, and not disclose or use the information except as required for the purpose of developing a proposal in response to this Bid.

## **11 LATE BIDS**

Bids received after the closing date and time, at the address indicated in the bid documents, shall not be accepted for consideration and where practicable, shall be returned unopened to the bidder(s).

## **12 COUNTER CONDITIONS**

Bidders' attention is drawn to the fact that amendments to any of the Bid Conditions or setting of counter conditions by bidders or qualifying any Bid conditions shall render such bids invalid.

## **13 FRONTING**

- 13.1 Attention is brought to the bidders that Fronting is a criminal offence, punishable by law.
- 13.2 The Government supports the spirit of broad based black economic empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent and legally compliant manner. Against this background, the Government condemns any form of fronting.
- 13.3 The Government, in ensuring that bidders conduct themselves in an honest manner

shall, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representations made in the bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry and Competition, as well as the provisions of the B-BBEE Act as amended, be established during such enquiry / investigation, the onus shall be on the bidder / contractor to prove that fronting does not exist.

- 13.4 Failure by the bidder(s) to provide evidence to the Commission that no fronting conduct was committed within a period of 14 days from date of notification may invalidate the bid / contract and may also result in the restriction of the bidder /contractor to conduct business with the Government for a period not exceeding ten years, in addition to any other remedies the NCC may have against the bidder / contractor concerned. Furthermore, the NCC shall report any suspected acts of fronting to the South African Police Services for investigation.

#### **14 SUPPLIER DUE DILIGENCE**

The NCC reserves the right to conduct supplier due diligence prior to final award or at any time during the contract period. This may include site visits and requests for additional information.

#### **15 SUBMISSION OF PROPOSALS**

- 15.1 All tenders must be clearly marked: “For attention: **The Manager: Supply Chain Management**, with the **Tender Reference** number included and delivered at the reception, in the NCC’s **Tender Box**, at the following address  
**The National Consumer Commission**  
**SABS Campus, Building C, 1 Dr. Lategan**  
**Road, Groenkloof, Pretoria**
- 15.2 Bid documents shall only be considered when received by the Commission before the closing date and time.
- 15.3 The bidder(s) are required to submit three (3) copies, being one (1) original and two (2) duplicate and submit by the closing date **14 March 2023**. Each submission must be marked correctly and sealed separately for ease of reference during the evaluation process. Bidders are requested to ***initial each page*** of the tender document on the right-hand side at the bottom of each page.

## **16 DURATION OF THE CONTRACT**

The successful bidder shall be appointed from the date of award for a period of eight (8) months to finalise the assignment.

## **17 NCC REQUIREMENTS FOR BIDDERS**

Bidders are required to submit a detailed business proposal consisting of technical and financial information.

### **17.1 The Technical Information should contain the following:**

- (a) Curriculum Vitae of the project manager and all team members reflecting a track record of undertaking similar assignments. Secondly all required qualifications of the project manager and personnel to be assigned to the study needs to be indicated;
- (b) Track record of the firm in relation to conducting similar assignments.
- (c) Unpack in detail the methodological approach to be used for the study;
- (d) Provide certified copies of professional qualifications and professional body registration/membership;
- (e) Provide company registration documents, board of directors and management and copies of identity documents and CSD Registration Information;
- (f) Provide original or the original certified copy of BBBEE Certificate or original sworn affidavit;
- (g) Provide reference letters from previous clients where similar services were or are being rendered; and
- (h) Full completion of the attached SBD Forms.

## **18 EVALUATION**

The NCC has set minimum standards, referred to as phases that a bidder needs to meet in order to be evaluated and selected as a successful bidder. The minimum standards consist of the following:

Prequalification Criteria (Phase 1)	Technical Evaluation Criteria (Phase 2)	Technical Evaluation Criteria (Phase 3)	Price and B-BBEE Evaluation (Phase 4)
Bidders must submit all documents as outlined in paragraph 19.1 (Table 1) below.  Only bidders that comply with ALL these criteria will proceed to Phase 2.	Bidder(s) are required to achieve a minimum of <b>60</b> points out of <b>80</b> points to proceed to Phase 3 (Price and B-BBEE).	Bidders score a minimum of 60 will be required to do a presentation which will be evaluated out of <b>20</b> . Those that attain a minimum of <b>10</b> will proceed to Phase 4.	Bidders will be evaluated as per the PPPFA, where 80 points will be for price and 20 points for B-BBEE.

## 19 SELECTION CRITERIA

### 19.1 Phase 1: Pre-qualification Criteria

Without limiting the generality of the Commission's other critical requirements for this Bid, bidders must submit the documents listed in **Phase 1** below. All documents must be completed and signed by the duly authorised representative of the prospective bidders. During this phase, bidders' responses will be evaluated based on compliance with the listed administration and mandatory bid requirements. The bidders' proposals may be disqualified for non-submission of any of the documents.

## Phase 1: Administrative (Mandatory) Compliance

Document that must be submitted	Guideline		Consequence of Non-
Invitation to Bid – SBD 1	Yes	Complete and sign the supplied pro forma document	Disqualification from process
Tax status – Compliant	No	<ul style="list-style-type: none"> <li>i. Written confirmation that SARS may on an ongoing basis during the tenure of the contract disclose the bidder's tax compliance status.</li> <li>ii. Proof of Registration on the Central Supplier Database</li> </ul>	Supplier to be Tax-Compliant at the point of award and throughout contract period
Bidder's Disclosure– SBD 4	Yes	Complete and sign the supplied pro forma document	Disqualification from process
Preference Point Claim Form – SBD 6.1	Yes	Complete and sign the supplied pro forma document	Disqualification from process
Registration on Central Supplier Database (CSD)	No	The Service Provider must be registered as a service provider on the Central Supplier Database (CSD). If not registered, to complete the registration of company prior to submitting the proposal. Visit <a href="https://secure.csd.gov.za/">https://secure.csd.gov.za/</a> to obtain your vendor number starting with MAAA. Submit proof of registration.	Be registered by the time of award
Pricing Schedule – SBD 3 and Annexure A	Yes	Submit full details of the pricing proposal in a separate envelope	Disqualification from process
Compulsory briefing session	Yes	Attendance Register will be taken from MS Teams	Disqualification from process
Company registration with professional bodies	Yes	Be registered and in good standing with the South African Marketing Research Association (SAMRA)	Disqualification from process

## 19.2 Phase 2 and 3: Technical Evaluation Criteria = 100 points

Only bidders that have met the Pre-Qualification Criteria in **Phase 1** will be evaluated in Phase 2 and 3 for Functionality and will be evaluated as follows:

- a. Functional Evaluation – Bidders will be evaluated out of **100** points and are required to achieve a minimum threshold of **60** points. This includes being evaluated by the Bid Evaluation Committee (BEC). Bidders that receive a minimum of **60** points will be required to present to the BEC in phase 3. Upon receiving a minimum of **10** points in phase 3 bidders will proceed to phase 4.
- b. Only bidders that obtained points equal or above **70** points will proceed to Phase 4 for Price and BBBEE evaluation.

As part of due diligence, the Commission may conduct a site visit at a client of the bidder (reference) for validation of the services rendered. The choice of site will be at the Commission's sole discretion.

Rating	Definition	Score
<b>Excellent</b>	<b>Exceeds</b> the requirement. Exceptional demonstration by the supplier of the relevant ability, understanding, experience, skills, resources and quality measures required to provide the goods / services. Response identifies factors that will offer potential added value, with supporting evidence.	<b>5</b>
<b>Good</b>	<b>Satisfies</b> the requirement with <b>minor additional benefits</b> . Above average demonstration by the supplier of the relevant ability, understanding, experience, skills, resource and quality measures required to provide the goods / services. Response identifies factors that will offer potential added value, with supporting evidence.	<b>4</b>
<b>Acceptable</b>	<b>Satisfies</b> the requirement. Demonstration by the supplier of the relevant ability, understanding, experience, skills, resource, and quality measures required to provide the goods / services, with supporting evidence.	<b>3</b>
<b>Minor Reservations</b>	Satisfies the requirement with <b>minor reservations</b> . Some minor reservations of the supplier's relevant ability, understanding, experience, skills, resources and quality measures required to provide the goods / services, with little or no supporting evidence.	<b>2</b>
<b>Serious Reservations</b>	Satisfies the requirement with <b>major reservations</b> . Considerable reservations of the supplier's relevant ability, understanding, experience, skills, resources and quality measures required to provide the goods / services, with little or no supporting evidence.	<b>1</b>
<b>Not Acceptable</b>	Non-submission of information as per the evaluation requirements.	<b>0</b>

The bidder's information will be scored according to the following points system:

#	TECHNICAL EVALUATION CRITERION	WEIGHT
<b>DESKTOP EVALUATION</b>		<b>80</b>
<b>1</b>	<b>Methodology and Project Plan</b>	<b>35</b>
1.1	Methodology (Secondary research approach, Primary research approach, sampling, data collection and analysis) proposed in line with meeting the scope of work. A project plan outlining activities, outputs, milestones and ability to complete the project must be included as well.	
	No proposal on how the work will be managed	<b>0</b>
	Only project plan included in the proposal	<b>1</b>
	Includes two components of the research methodology, i.e. sampling and data collection and the project plan outlining activities, outputs, milestones and ability to complete the project	<b>2</b>
	Includes three components of the research methodology and the project plan outlining activities, outputs, milestones and ability to complete the project	<b>3</b>
	Includes four components of the research methodology and the project plan outlining activities, outputs, milestones and ability to complete the project	<b>4</b>
	Includes all five components of the research methodology and the project plan outlining activities, outputs, milestones and ability to complete the project	<b>5</b>



<b>2</b>	<b>Experience of proposed organisation/ service provider</b>	<b>20</b>
2.1	Reference letters detailing experience of proposed organisation/ service provider in accordance with the scope of work.	
	No references letters attached	<b>0</b>
	1 reference letter attached	<b>1</b>
	2 reference letters attached	<b>2</b>
	3 reference letters attached	<b>3</b>
	4 references letters attached	<b>4</b>
	More than 4 reference letters attached	<b>5</b>
<b>3</b>	<b>Experience and expertise of the Project Manager and team members</b>	<b>25</b>
3.1	The Project Manager should have a Post graduate degree in (Market Research, Research, Commerce (marketing) or Business Administration) coupled with a minimum of six (6) years' experience project managing customer satisfaction surveys/market research studies. The CV needs to clearly indicate the relevant experience.	<b>15</b>
	Less than 6 years of experience	<b>0</b>
	6-7 years of experience	<b>1</b>

	8-9 years of experience	2	
	10-11 years of experience	3	
	12-13 years of experience	4	
	More than 13 years of experience	5	
3.2	All key staff/task team must have a Bachelors degree in ( Market Research, Research, Commerce (marketing) or Business Administration) coupled with a minimum of 3 years' experience in and expertise in the field of customer satisfaction surveys/market research studies.	10	
	less than 3 years of experience	0	
	3-4 years of experience	1	
	4-5 years of experience	2	
	6-7 years of experience	3	
	8-9 years of experience	4	
	More than 9 years of experience	5	

## 20. EVALUATION CRITERIA

In terms of regulation 6 of the Preferential Procurement Regulations pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), responsive bids will be adjudicated on the 80/20-preference point system in terms of which points are awarded to bidders on the basis of:

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

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

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

### Stage 2 – Specific Goals Evaluation (20 Points)

#### Specific Goals Points allocation

A maximum of 20 points may be allocated to a bidder for attaining the specific goals in accordance with the table below:

Specific Goals	Number of Points
100% Black owned	6
51-99% Black owned	4
100% women owned	6
51% to 99% women owned	4
5% Youth Ownership	2
2% Owned by persons with disabilities	1
Exempt Micro Enterprise ( EME)	5
Qualifying Small Enterprise ( QSE)	3
Large Enterprise	0

Specific Goal points may be allocated to bidders on submission of the following documentation or evidence:

- A duly completed Preference Point Claim Form: Standard Bidding Document (SBD 6.1)
- B-BBEE Certificate
- CSD Report

## **21. PRICING PROPOSAL**

The Pricing Proposal must be submitted in separate sealed documents (Document 2). The document must be clearly marked "Pricing Proposals".

### **20.1 Pricing Proposal:**

20.1.1 Bidders are required to indicate the price inclusive of all applicable taxes.

### **NOTES REGARDING PRICING**

- The rates **must** be all inclusive. This means, all direct and indirect related cost must be included. Note that failure to propose the rates will render the entire bid as non-responsive.*

## **22. GENERAL CONDITIONS OF CONTRACT**

- Any award made to a bidder(s) under this bid is conditional upon
- The bidder(s) accepting the terms and conditions contained in the General Conditions of Contract as the minimum terms and conditions upon which National Consumer Commission is prepared to enter into a contract with the successful Bidder(s).

## **23. SPECIAL CONDITIONS OF THIS BID**

### **a. The Commission reserves the right:**

- To award this Bid to a bidder that did not score the highest total number of points, only in accordance with section 2(1) (f) of the PPPFA (Act 5 of 2000) ("The Act").
- In addition to clause 20.1(i), in the event that the score of the one bidder (highest scorer) and that of the second highest scorer differs by a very small margin not exceeding a

maximum differential of two percent (2%), the Commission may apply objective criteria in terms of section 2(1) (f) of the Act in making such an award. Such objective criteria, shall include, but not be limited to the following:

- i. The said bidder having previously provided similar services to the Commission.
  - ii. The Commission's satisfaction with the services rendered by the bidder previously.
- b. To accept part of a bid rather than the whole tender.
- c. To carry out site inspections 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.
- d. To correct any mistakes at any stage of the tender that may have been in the Bid documents or occurred at any stage of the tender process.
- e. To cancel and/or terminate the Bid process at any stage, including after the closing date  
  
and/or after presentations have been made, and/or after bidders have been evaluated and/or after the preferred bidder(s) have been notified of their status as such.
- f. Award to multiple bidders based either on size or geographic considerations alternatively specific expertise.

## **24. THE COMMISSION REQUIRES BIDDER(S) TO DECLARE**

In the Bidder's Technical response, bidder(s) are required to declare the following:

- a. Confirm that the bidder(s) is to: –
  - i. Act honestly, fairly, and with due skill, care and diligence, in the interests of the Commission;
  - ii. Have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of the services;
  - iii. Act with circumspection and treat the Commission fairly in a situation of conflicting interests;
  - iv. Comply with all applicable statutory or common law requirements applicable to the conduct of business;
  - v. Make adequate disclosures of relevant material information including disclosures

- of actual or potential own interests, in relation to dealings with the Commission;
- vi. Avoid to act fraudulently and avoid to provide misleading information in respect of advertising, canvassing and marketing;
- vii. Conduct their business activities with transparency and consistently uphold the interests and needs of the Commission as a client before other considerations.

- b. To ensure that any information acquired by the bidder(s) from the Commission will not be used or disclosed unless the written consent of the client has been obtained to do so.

## **25. CONFLICT OF INTEREST, CORRUPTION AND FRAUD**

The Commission reserves its right to disqualify any bidder which either itself or any of whose members (*save for such members who hold a minority interest in the bidder through shares listed on any recognized stock exchange*), indirect members (*being any person or entity which indirectly holds at least a 15% interest in the bidder other than in the context of shares listed on a recognized stock exchange*), directors or members of senior management, whether in respect of the Commission or any other government organ or entity and whether from the Republic of South Africa or otherwise ("Government Entity") :-

- i. engages 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 this bid;
- ii. seeks any 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 or services provided or to be provided to a Government Entity;
- iii. makes or offers any gift, gratuity, anything of value or other inducement, whether lawful or unlawful, to any of the Commission's officers, directors, employees, advisors or other representatives;
- iv. 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;
- v. Accept anything of value or an inducement that would or may provide financial gain,

- vi. advantage or benefit in relation to procurement or services provided or to be provided to a Government Entity;
- vii. 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;
- viii. has in the past engaged in any matter referred to above; or
- ix. 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.

## **26. MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT**

- a. The bidder should note that the terms of its bid will be incorporated in the proposed contract by reference and that the Commission relies upon the bidder's bid as a material representation in making an award to a successful bidder, and in concluding an agreement with the bidder.
- b. It follows therefore that misrepresentations in a bid may give rise to service termination and a claim being instituted by the Commission against the bidder notwithstanding the conclusion of the Service Level Agreement between the Commission and the bidder for the provision of the Service in question. In the event of a conflict between the bidder's proposal and the Service Level Agreement concluded between the parties, the Service Level Agreement will prevail.

## **27. PREPARATION COSTS**

The Bidder will bear all its costs in preparing, submitting and presenting any response to this bid and all other costs incurred by it throughout the bid process. Furthermore, no statement in this bid will be construed as placing the Commission, its employees or agents under any obligation whatsoever, including in respect of costs, expenses or losses incurred by the bidder(s) in the preparation of their response to this bid.

## **28. INDEMNITY**

If a bidder breaches the conditions of this bid and, and as a result of that breach, the Commission incurs costs or damages (*including, without limitation, the cost of any investigations, procedural impairment, repetition of all or part of the bid process and/or enforcement of intellectual property rights or confidentiality obligations*), then the bidder indemnifies and holds the Commission harmless from any and all such costs which the Commission may incur and for any damages or losses the Commission may suffer.

## **29. PRECEDENCE**

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.

## **30. LIMITATION OF LIABILITY**

A bidder participates in this bid process entirely at its own risk and cost. The Commission shall not be liable to compensate a bidder on any grounds whatsoever for any costs incurred or any damages suffered as a result of the Bidder's participation in this Bid process.

## **31. TAX COMPLIANCE**

No tender shall be awarded to a bidder which is not tax compliant. The Commission reserves the right to withdraw an award made, or cancel a contract concluded with a successful bidder in the event that it is established that such bidder was in fact not tax compliant at the time of the award, or has submitted a fraudulent Tax Clearance Certificate to the Commission, or whose verification against the Central Supplier Database (CSD) proves non-compliant.

The Commission further reserves the right to cancel a contract with a successful bidder in the event that such bidder does not remain tax compliant for the full term of the contract.



### **32. TENDER DEFAULTERS AND RESTRICTED SUPPLIERS**

No tender shall be awarded to a bidder whose name (or any of its members, directors, partners or trustees) appears on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. The Commission reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been blacklisted with National Treasury by another government institution.

### **33. GOVERNING LAW**

South African law governs this bid and the bid response process. The bidder agrees to submit to the exclusive jurisdiction of the South African courts in any dispute of any kind that may arise out of or in connection with the subject matter of this bid, the bid itself and all processes associated with the bid.

### **34. RESPONSIBILITY FOR SUB-CONTRACTORS AND BIDDER'S PERSONNEL**

A bidder is responsible for ensuring that its personnel (including agents, officers, directors, employees, advisors and other representatives), its sub-contractors (if any) and personnel of its sub-contractors comply with all terms and conditions of this bid.

In the event that the Commission allows a bidder to make use of sub-contractors, such sub-contractors will at all times remain the responsibility of the bidder and the Commission will not under any circumstances be liable for any losses or damages incurred by or caused by such sub-contractors.

### **35. CONFIDENTIALITY**

- i. Except as may be required by operation of law, by a court or by a regulatory authority having appropriate jurisdiction, no information contained in or relating to this bid or a bidder's tender(s) will be disclosed by any bidder or other person not officially involved with the Commission's examination and evaluation of a Bid.
- ii. No part of the bid may be distributed, reproduced, stored or transmitted, in any form or by any means, electronic, photocopying, recording or otherwise, in whole or in part except for the purpose of preparing a Bid. This bid and any other documents provided by the Commission

remain proprietary to the Commission and must be promptly returned to the Commission upon request together with all copies, electronic versions, excerpts or summaries thereof or work derived therefrom.

- iii. Throughout this bid process and thereafter, bidder(s) must secure the Commission's written approval prior to the release of any information that pertains to
- iv. The potential work or activities to which this bid relates; or
- v. The process which follows this bid. Failure to adhere to this requirement may result in disqualification from the bid process and civil action.

### **36. THE COMMISSION PROPRIETARY INFORMATION**

A Bidder shall on its bid cover letter make a declaration that it did not have access to any the Commission proprietary information or any other matter that may have unfairly placed that bidder in an advantageous position in relation to any of the other bidder(s)

### **37. AVAILABILITY OF FUNDS**

Should funds no longer be available to pay for the execution of the responsibilities of this bid, the Commission may terminate the Agreement at its own discretion or temporarily suspend all or part of the services by notice to the successful bidder who shall immediately make arrangements to stop the performance of the services and minimize further expenditure, provided that the successful bidder shall thereupon be entitled to payment in full for the services delivered, up to the date of cancellation or suspension

