



**transport**

Department:  
Transport  
REPUBLIC OF SOUTH AFRICA

<b>BID NUMBER:</b>	<b>DOT/04/2025/RT CLUSTER A</b>
<b>DESCRIPTION:</b>	<b>APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE DRAFTING SERVICES ON THE ENVISAGED TRANSITIONAL REGULATIONS IN TERMS OF THE RAILWAY SAFETY ACT,2024 (ACT NO.30 OF 2024) FOR A PERIOD OF TWELVE (12) PERIOD</b>
<b>CLOSING TIME:</b>	<b>11:00 AM</b>
<b>CLOSING DATE:</b>	<b>25 JULY 2025</b>
<b>BRIEFING SESSION:</b>	<b>Compulsory Briefing</b>  <b>Date: 15 July 2025</b> <b>Time: 09:30AM – 10:30AM</b> <b>Venue: Department of Transport Indaba Boardroom</b>
<b>VALIDITY PERIOD:</b>	<b>120 DAYS</b>

## INFORMATION TO BIDDERS

### 1. CONTENTS OF THE BIDDER PACK

Tender Pack Doc	Title	Type	Purpose
1	Information to Bidders	PDF	For Information
2	Bidder Checklist	MS Word	<ul style="list-style-type: none"> <li>To be printed, filled in full and signed.</li> <li>Technical Envelope.</li> </ul>
3	Terms of Reference	PDF	<ul style="list-style-type: none"> <li>Functionality Requirements</li> </ul>
4	SBD 1 – Invitation to bid	PDF	<ul style="list-style-type: none"> <li>To be printed, filled in full and signed.</li> <li>Technical Envelope.</li> </ul>
5	<ul style="list-style-type: none"> <li>SBD 2 – Tax clearance certificate requirements.</li> <li>CSD report/ SARS pin number/MAAA registration number.</li> <li>ID copies</li> </ul>	PDF	<ul style="list-style-type: none"> <li>Tax Clearance Certificate to be submitted for screening purposes.</li> <li>Provide CSD number /SARS pin/</li> <li>ID copies of shareholder/s or Directors of the company to be submitted for screening purposes</li> <li>Technical Envelope.</li> </ul>
6	SBD 4 – Bidder's Disclosure	PDF	<ul style="list-style-type: none"> <li>To be printed, filled in full and signed.</li> <li>Technical Envelope</li> </ul>
7	General Conditions of Contract	PDF	<ul style="list-style-type: none"> <li>To be printed, filled in full and signed.</li> <li>Technical Envelope</li> </ul>
8	SBD 3.3 pricing schedules must be submitted before or on the closing date of the bid in sealed envelopes and clearly marked as pricing schedule/Financial proposal.	PDF	<ul style="list-style-type: none"> <li>Information requirement for compliance</li> <li>To be printed, filled in full and signed.</li> <li>Financial Envelope.</li> </ul>
9	SBD 6.1 Preferential Claim Form in terms of Preferential Procurement Regulation (PPR) 2022, if applicable	PDF	<ul style="list-style-type: none"> <li>To be printed, filled in full and signed.</li> <li>Financial Envelope.</li> </ul>
10	CV templates for positions indicated in the TOR as <b>Annexure A</b>	MS Word	<ul style="list-style-type: none"> <li>For completion in the MS Word Form as provided.</li> <li>Technical Envelope.</li> </ul>
11	Pricing template as indicated in the TOR as <b>Annexure B</b>	MS Word/Excel	<ul style="list-style-type: none"> <li>For completion in the MS Word/Excel Form as provided.</li> <li>Financial Envelope.</li> </ul>

### 2. INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF BID PROPOSALS

This bid and all contracts emanating there from shall be subject to the General Conditions of Contract issued in accordance with of the Treasury Regulations 16A published in terms of the Public Finance Management Act, 1999 (Act 1 of 1999).

#### 2.1 COMPLETION AND FORMAT OF BID PROPOSALS

- Bidders are advised that, in order to facilitate for an efficient evaluation process, the bid should be as prescribed, concise and written in plain English.
- Bids should be clearly indexed with supporting documents clearly marked. It is recommended that bidders follow the TOR, specifically evaluation criteria and deliverables as a guide for compilation/sequence of the proposal information.

## 2.2 CLARIFICATIONS

- a. Requests for clarification must be made in writing by e-mail to MashiniJ@dot.gov.za.
- b. Requests for clarification shall be accepted by the DOT up until 21 July 2025
- c. The submission bid number [DOT/04/2025/RT CLUSTER A] should be included in the subject line of the email.
- d. No telephonic requests for clarification shall be entertained.
- e. The clarifications shall be made available to all bidders by a notification on the etender website, and in cases of a compulsory briefing sessions, to all attendees.

## 3. EVALUATION PROCESS

The evaluation process comprises of the following stages:

### 3.1 STAGE 1: Mandatory and Administrative compliance process

- a. Bidders must submit all Standard Bidding Documents (SBD), as outlined in the TOR. The SBD forms must be completed in full and duly signed where required including Central Supplier Database (CSD) number/report for verification of tax compliance status.
- b. For bids that include mandatory requirements as listed in the Terms of Reference, non-compliance will lead to disqualification.

### 3.2 STAGE 2: Functionality evaluation - Desktop

- a. Bids shall be evaluated strictly according to the bid evaluation criteria stipulated in this section of the Terms of Reference (TOR).
- b. Bidders must, as part of their bid documents, submit supportive documentation for all functionality requirements as indicated hereunder. The committee will verify all documents submitted on time by the bidders.
- c. Bidders need not rate themselves but to ensure that all information is submitted as required.

### 3.3 STAGE 3: Preferential Procurement Regulation (PPR), 2022

The applicable formula (80/20) will be utilised to award the bid, of which eighty (80) points are allocated for price as allocated in the enclosed form SBD 6.1. that must be completed, and the remaining twenty (20) points are allocated for the specific goals as indicated in the TOR.

## 4. SCORING METHODOLOGY

- 4.1 Each BEC member shall score each individual criterion on the score sheet/system using the values: 0-5 as detailed in the TOR scoring criteria.
- 4.2 Individual value scores of BEC members shall be consolidated to obtain the marks scored for all elements. These scores shall be added and averaged according to the number of BEC members. Only bidders that have met or exceeded the minimum threshold as specified above will be considered for further evaluation (PPR 2022).

## 5. MANDATORY REQUIREMENTS

NB: Failure to comply with this bid requirements as stated in the attached Terms of Reference (TOR) will be disqualified.

**6. TAX CLEARANCE CERTIFICATE**

- 6.1 Bidder's tax matters must be compliant at the time of award.
- 6.2 In case where a bidder's tax matters are non-compliant a bidder will be given seven (7) days to remedy the tax matters. Failure to remedy this may invalidate the bid.

**7. VALUE ADDED TAX**

All bid prices must be inclusive of 15% Value-Added Tax and quoted in Rands.

**8. CLIENT BASE**

The DOT reserves the right to contact references during the evaluation and adjudication process to obtain information.

**9. LEGAL IMPLICATIONS**

Successful bidder/s must be prepared to enter into a contract with the DOT.

**10. COMMUNICATION**

Supply Chain Management (SCM) within the DOT shall communicate with bidders for, among others, where bid clarity is sought, to obtain information or to extend the validity period.

**11. COUNTER CONDITIONS**

Bidders' attention is drawn to the fact that amendments to any of the Information to bid by bidders shall result in invalidation of such bids.

## **12. PROHIBITION OF RESTRICTIVE PRACTICES**

- 12.1 In terms of section 4(1) 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:
- a. directly or indirectly fixing a purchase or selling price or any other trading condition;
  - b. dividing markets by allocating customers, suppliers, territories or specific types of goods or services; or
  - c. collusive bidding.
- 12.2 If a bidder(s) or contractor(s), in the judgment of the purchaser, has/have engaged in any of the restrictive practices referred to above, the purchaser may, without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered or terminate the contract in whole or in part and 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.

## **13. FRONTING**

- 13.1 The DOT 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 DOT condemns any form of fronting.
- 13.2 The DOT, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in 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, be established during such enquiry/investigation, the onus will be on the bidder / contractor to prove that fronting does not exist. Failure to do so 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 public sector for a period not exceeding ten years, in addition to any other remedies the National Treasury may have against the bidder/contractor concerned.

## **14. TIMEFRAMES AND FORMAL CONTRACT**

Successful bidder(s) will be required to enter formal contract with the DOT.

## **15. PACKAGING OF THE SUBMISSION**

The bidder shall place both the sealed Technical/ Functionality Proposal and Price Schedule (3.3)/ Financial Proposal envelopes into an outer sealed envelope or package, and must be clearly marked as indicated below:

**ENVELOPE NO.1: FUNCTIONALITY PROPOSAL**

<b>BID DESCRIPTION:</b>	
<b>BID No:</b>	
<b>Submission closing date:</b>	
<b>Submission closing time:</b>	
<b>Name of bidder:</b>	
<b>Contact number of bidder:</b>	
<b>Address of bidder:</b>	

**ENVELOPE NO.2: PRICE SCHEDULE / FINANCIAL PROPOSAL (SBD 3.3)**

<b>BID DESCRIPTION:</b>	
<b>BID No:</b>	
<b>Submission closing date:</b>	
<b>Submission closing time:</b>	
<b>Name of bidder:</b>	
<b>Contact number of bidder:</b>	
<b>Address of bidder:</b>	

**NB:** In this envelope, the bidder shall provide the SBD 3.3/ financial proposal completed and signed.

**16. CONTACT DETAILS**

Physical address: Forum building, 159 Struben Street, Pretoria

National Department of Transport

Private Bag X193, Pretoria, 0001

For any enquiries, email: MashiniJ@dot.gov.za

ANNEXTURE A

TECHNICAL  
PROPOSAL

## PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	DOT/04/2025/RT CLUSTER A	CLOSING DATE:	25 /07/2025	CLOSING TIME:	11:00
DESCRIPTION	APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE DRAFTING SERVICES ON THE ENVISAGED TRANSITIONAL REGULATIONS IN TERMS OF THE RAILWAY SAFETY ACT,2024 (ACT NO.30 OF 2024) FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF TWELVE (12) MONTHS				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
NATIONAL DEPARTMENT OF TRANSPORT 159 FORUM BUILDING CORNER BOSMAN AND STRUBEN STREET					
PRIVATE BAG X 193					
PRETORIA 0001					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	MR J MASHININI / MS N NYAWO		CONTACT PERSON	MS MOLOKO MACHAKA	
TELEPHONE NUMBER	012 309-3045/3291		TELEPHONE NUMBER	012 309 3676	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	Mashinij@dot.gov.za/NyawoN@dot.gov.za		E-MAIL ADDRESS	MachakaM@dot.gov.za	
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:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX]  <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		TICK APPLICABLE BOX]  <input type="checkbox"/> Yes <input type="checkbox"/> No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]
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	



PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.

## PART B TERMS AND CONDITIONS FOR BIDDING

### 1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

### 2. TAX COMPLIANCE REQUIREMENTS

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

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

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

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

DATE:

.....

## TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

- 1 In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
- 2 SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
- 3 The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
- 4 In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
- 5 Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website [www.sars.gov.za](http://www.sars.gov.za).
- 6 Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website [www.sars.gov.za](http://www.sars.gov.za).

## DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state<sup>1</sup>, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

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

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

2.2 Identity Number: .....

2.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>): .....

2.4 Company Registration Number: .....

2.5 Tax Reference Number: .....

2.6 VAT Registration Number: .....

- 2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

<sup>1</sup>"State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

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

2.7 Are you or any person connected with the bidder presently employed by the state? YES / NO

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:

.....

Name of state institution at which you or the person connected to the bidder is employed :

.....

Position occupied in the state institution:

.....

Any other particulars:

.....

.....

.....

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? YES / NO

2.7.2.1 If yes, did you attached proof of such authority to the bid document? YES / NO

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

.....

.....

.....

2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? YES / NO

2.8.1 If so, furnish particulars:

.....

.....

.....

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? YES / NO

2.9.1 If so, furnish particulars.

.....

2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?

2.10.1 If so, furnish particulars.

2.11 Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract?

YES/NO

2.11.1 If so, furnish particulars:

**3 Full details of directors / trustees / members / shareholders.**

[illegible]

**4 DECLARATION**

I, THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.  
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF  
PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION  
PROVE TO BE FALSE.

.....

Signature

.....

Date

.....

Position

.....

Name of bidder

May 2011

## 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

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

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

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

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

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

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

The maximum points for this tender are allocated as follows:

	POINTS
<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 OR 90/10 PREFERENCE POINT SYSTEMS

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

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

Where

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



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

#### 3.2.1. POINTS AWARDED FOR PRICE

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

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

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 (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
HDIs (Who had no franchise on national elections before the 1983 and 1993 constitution)		8		
Women		4		
Youth		4		
People with disabilities		2		
Implementation of RDP goals (The promotion of SMMEs)		2		

#### **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:** .....

.....

.....

.....



transport

Department:  
Transport  
REPUBLIC OF SOUTH AFRICA



# TERMS OF REFERENCE FOR THE APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE DRAFTING SERVICES ON THE ENVISAGED TRANSITIONAL REGULATIONS IN TERMS OF THE RAILWAY SAFETY ACT, 2024 (ACT NO.30 OF 2024) FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF 12 MONTHS

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## 1 BACKGROUND

- 1.1 The Department of Transport (Department) conducted a Railway Safety Regulatory gap analysis study in 2014/15 financial year which highlighted legislative gaps such as lack of clarity on the role of the various players within the rail safety environment, duplication between the powers of the Chief Executive Officer and the Railway Safety Regulator (RSR) Board, RSR funding challenges, absence of a framework regulating licensing of Safety Critical Grade (SCG) employees, lack of proper appeal mechanism and independence in occurrence investigations.
- 1.2 The Railway Safety Bill [B7B-2021] (the Bill) was then developed to improve the regulatory framework regulating railway safety in the Republic of South Africa in order to improve the safety of passengers and freight. The President has since signed the Bill into law. The Railway Safety Act, 2024 (Act No. 30 of 2024) (the 2024 Act) was signed on the 02<sup>nd</sup> of December 2024. The Act was published for general information on the 10<sup>th</sup> of December 2024.
- 1.3 The 2024 Act seeks to repeal the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002) (NRSR Act, 2002). The NRSR Act, 2002 established the RSR to oversee and promote safe railway operations through appropriate support, monitoring and enforcement guided by an enabling regulatory framework.
- 1.4 The NRSR Act, 2002 was last amended in 2009. Since then, there have been major developments in the country. The National Rail Policy (Policy) was approved by Cabinet in March 2022. The National Framework Logistics Strategy was approved by Cabinet in December 2023 and further expands on the National Rail Policy. The National Framework Logistics Strategy mandates the separation of Transnet as an Infrastructure Manager and Operator. These changes in institutional arrangements impact on the current functions of the RSR.
- 1.5 The 2024 Act retains a number of elements of the NRSR Act, 2002, endeavouring to provide greater clarity on several issues, and introduces new concepts designed to enhance railway safety. In this regard, the 2024 Act seeks to place the emphasis and focus on railway safety, and to recognise operators' role in managing and implementing safety measures, with the RSR promoting safety and ensuring compliance with such measures.
- 1.6 The 2024 Act furthermore seeks to provide guidance on the governance of the RSR, and to address concerns raised over time by operators in respect of the system of railway safety in South Africa. The 2024 Act seeks to remove perceived conflicts of interest, and to provide a flexible framework for managing railway safety. In addition, it proposes that the RSR must oversee a framework of safety critical grades.
- 1.7 There are 7 existing Regulations that were promulgated in terms of the NRSR Act, 2002. These Regulations need to be reviewed and aligned with the 2024 Act.
- 1.8 The appointment of a service provider will assist in conducting research, efficiently reviewing and aligning all existing regulations as required in terms of section 69(2) of the Railway Safety Act. Section 69 deals with transitional arrangements to give effect to the Act.

## **2 SCOPE OF WORK**

### **2.1 GOAL**

The Department of Transport seeks to appoint a service provider to provide drafting services on the railway safety regulations (transitional regulations) in terms of section 69 (Transitional provisions and savings) to align with 2024 Act.

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

2.2.1 Section 69(2) of the 2024 Act provides that:

“(2) The Minister must within one year of commencement of this Act, review all regulations or notices contemplated in subsection (3) and unless the Minister within that one-year period confirms, by notice in the Gazette, that those regulations or notices remain in force, such regulations or notices must cease to be of force or effect at the end of that one-year period.”

2.2.2 The Department has identified the need to appoint a service provider to review, align and draft amongst others the following regulations:

#### **2.2.2.1 Railway Safety Standards Development Regulations, 2022**

These Regulations provide for the procedure to be followed for the development, adoption or acceptance of standards or existing standards as regulator standards, national standards, industry standards or local standards.

#### **2.2.2.2 Regulations on Notifiable Railway Occurrences, 2022**

The purpose of these Regulations is to ensure that notifiable railway occurrences are adequately managed within the operator's Safety Management System.

#### **2.2.2.3 Railway Safety and Security Regulations, 2022**

The purpose of these Regulations is to prescribe the minimum persons safety and security requirements to be complied with by the operators.

#### **2.2.2.4 Regulations regarding infrastructure or activity affecting safe railway operations, 2020**

These Regulations provide for the management of railway reserves in order to ensure for safe railway operations and safety and security to people, property and the environment.

#### **2.2.2.5 National Railway Safety Permit Regulations, 2015**

These Regulations seek to regulate the manner in which applications for safety permits should be made, the types of safety permits to be applied for and by whom such applications must be made.

#### **2.2.2.6 Penalty Fee Regulations, 2011**

The purpose of these Regulations is to promote, improve and achieve sustained compliance with the Act so that incidents where penalties are imposed will be reduced over a period of time and promote safe railway operations.

#### **2.2.2.7 Railway Safety Management Regulations, 2004**

These Regulations provide for the railway operator to implement and maintain an adequately resourced and documented safety management system.

#### **2.2.2.8 Any other regulations that the service provider may identify.**

### **2.3 DELIVERABLES**

The appointed service provider will be required to deliver the following services:

#### **2.3.1 Inception Report within 2 weeks from appointment**

- a. An Inception Report needs to be produced at the outset to clarify project implementation issues and develop a mutual understanding of the project between the Service Provider, Department and key stakeholders.
- b. These issues relate to the clarification of the interpretation of the Terms of Reference, detailed tasks, time frames and execution of the project.
- c. The Inception Report must contain a work plan which indicates the tasks, the timeframe, resources and key deliverables outlined below. A work process flow chart must be included to communicate and keep track of the progress of the project. Also include the skills transfer plan, to transfer knowledge to staff involved in the development of regulations to sustain and apply such knowledge in future.

#### **2.3.2 Research report on outline of regulations to be drafted**

In producing the research report the service provider must have conducted a status quo assessment, international bench marking and Gap analysis. The service provider will engage the Department on the areas to be included in the draft regulations.

#### **2.3.3 First draft**

Produce the first draft within a period of 06 months.

#### **2.3.4 Stakeholder Engagements Report**

Conduct stakeholder engagements with key stakeholders such as Transnet, PRASA, RSR, Gautrain, private rail operators, TETA and QCTO.

### 2.3.5 Produce revised draft regulations for public consultation

- a. Analyse and incorporate inputs from stakeholders from public consultation.
- b. Produce draft for public consultation incorporating key stakeholders' inputs.

### 2.3.6 Final regulations

Produce the final regulations on month 11 for submission to Minister for approval.

### 2.3.7 Closeout Report

Produce the Closeout Report on month 12.

### 2.3.8 Skills transfer plan

- a. The skills transfer plan should be developed to transfer knowledge to staff involved with the drafting of regulations to enable such staff to sustain and apply such knowledge in rail safety regulation in future.
- b. The plan should amongst others identify the areas to be included in the skills transfer, the competencies/skills to be gained, the implementation rollout, timeframes and evaluation of the skills transfer.

### 2.3.9 Linked to the scope of work above, the deliverables of the project and time frames are as follows:

Item No	Deliverables	Timeframes (from signing of contract)
1.	Inception Report	2 weeks from date of appointment
2.	Research report on the outline of regulations to be drafted.	3 months from date of appointment
3.	Produce the first draft of transitional regulations	6 months from date of appointment
4.	Stakeholder Engagements Report	Month 8 from date of appointment
5.	Revised draft regulations for public consultation	Month 8 from date of appointment
6.	Produce the final regulations for submission to Minister	Month 11 from date of appointment
7.	Produce the Closeout Report	Month 12 from date of appointment



### 3 EVALUATION

#### 3.1 STAGE 1: MANDATORY REQUIREMENTS: GENERAL

- 3.1.1 Bidders must comply with the requirements and submit all required document(s) indicated hereunder with the bid documents at the closing date and time of bid. This phase is not scored and bidders who fail to comply with all the mandatory criteria will be disqualified.
- 3.1.2 Bidders are required to be registered on the Central Supplier Database and the Department of Transport shall verify the bidder's tax compliance status through the Central Supplier Database.
- 3.1.3 Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.
- 3.1.4 It is therefore a condition of this bid that the tax matters of the bidder be in order at any point in time from the closing date of the bid. This bid will only be awarded to a bidder(s) whose tax status on Central Supplier Database is compliant.
- 3.1.5 Bidders are required to attend a compulsory briefing session.

#### 3.2 MANDATORY REQUIREMENTS AND DISQUALIFICATION

OUTRIGHT DISQUALIFICATION
<p><b><u>Non-compliance with 2 envelopes.</u></b></p> <p>The Department follows a two-envelope system in which the technical proposal is separate from the pricing proposal. Unsealed/Accessible pricing info at onset of process, is deemed non-compliant.</p>
Envelopes not clearly marked as Technical and Financial
Financials/Costing disclosed in technical proposal
<p><b><u>All SBD's not submitted</u></b></p> <p>The Department cannot continue to evaluate a proposal without the submission of the required forms. Omission of all forms is deemed non-compliant. Omission of some may be deemed administrative.</p>
<p><b><u>Non-responsive proposal</u></b></p> <p>When no proposal is submitted to evaluate (eg only SBD documents and/or price submitted for bid evaluated on functionality)</p>

### OUTRIGHT DISQUALIFICATION

#### Late bid

A bid submitted after the closing date and time.

### ADMINISTRATIVE DISQUALIFICATION

#### Registration with Professional Bodies

At least one team member must be registered with engineering professional bodies such as ECSA.

#### Multiple bids

The Department is in the process of developing other regulations in terms of the Act. Should a company opt to Bid/tender for the development of those regulations, such a bidder will be obliged to assemble separate project teams to be permanently placed in those teams as will be outlined in the Team Composition (Annexure D) to demonstrate that each team has the required capacity and resources to carry out the work tendered for.

### 3.3 STAGE 2: FUNCTIONAL EVALUATION CRITERIA

- 3.3.1 Only bidders who have complied with mandatory requirements will be evaluated for functionality. Bidders must, as part of their bid documents, submit supportive documentation for all functional requirements as indicated hereunder. The Bid Evaluation Committee (BEC) responsible for scoring the respective bids will evaluate and score all bids based on their submissions and the information provided.
- 3.3.2 The value scored for each criterion will be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for each criterion. These marks will be added and expressed as a fraction of the best possible score for all criteria.
- 3.3.3 Functionality will be evaluated based on the supporting documentation supplied by the bidders in accordance with the below functionality criteria and values.
- 3.3.4 The evaluation of the functionality will be evaluated individually by Members of Bid Evaluation Committee in accordance with the below functionality criteria and values.
- 3.3.5 The Bids that fail to achieve a minimum of **65** points out of **100** points for functionality will be disqualified. This means that such bids will not be evaluated on the Preference Points System stage.

3.4 STAGE 2 FUNCTIONAL EVALUATION

SCORING CRITERION	WEIGHT	SCORING
<p><b>Company experience:</b></p> <p>Provide signed reference letters on an official letter head for similar projects conducted, with contactable references. The letters must include a description of the project, the duration and the successful completion of the project/s.</p>	5	<p>0= No reference letter.</p> <p>1= 1 reference letters with a similar project conducted and completed</p> <p>2= 2 reference letters with similar projects conducted and completed.</p> <p>3= 3 reference letters with similar projects conducted and completed.</p> <p>4= 4 reference letters with similar projects conducted and completed.</p> <p>5= 5 reference letters with similar projects conducted and completed.</p>
<p><b>Company experience:</b></p> <p>The company's number of years' experience in similar projects equivalent to the deliverables as per TOR with proven experience in reviewing, developing and drafting of legislation. Experience in conducting international bench marking and research reports and experience in stakeholder engagement.</p> <p><b>See attached template for completion (Annexure D).</b></p>	10	<p>0=less than 2 year of relevant experience.</p> <p>2= More than 2 but less than 4 of relevant experience.</p> <p>5= More than 4 but less than 6 of relevant experience</p> <p>8= More than 6 but less than 8 years of relevant experience.</p> <p>10= More than 8 years of relevant experience.</p>



INITIAL: PROJECT MANAGER/CHAIRPERSON: BSC

INITIAL: SERVICE PROVIDER

SCORING CRITERION	WEIGHT	SCORING
<p><b>Project Leader:</b> Overall Technical Competency of the <b>Project Leader</b>, who should have the following qualification and experience:</p> <p><b>Qualification:</b> Must have a minimum degree in Civil/Mechanical Engineering or LLB (or recognised law degree of same NQF level) or equivalent qualification.</p> <p>If there is no relevant qualification, the service provider will be rated a zero.</p> <p><b>Experience:</b> Project management experience. Coupled with experience in legislation development and drafting</p> <p><b>NB:</b></p> <ul style="list-style-type: none"> <li>Bidders must provide CVs with certified copies of qualifications.</li> <li>Expertise in in the transport sector and railway industry specifically rail safety regulation will be an added advantage.</li> <li>In the case of an international qualification, the bidder must attach proof from SAQA.</li> <li>Certified copies must not be older than six (6) months on date of bid closing.</li> <li><b>See attached template for completion (Annexure D).</b></li> </ul>	20	<p>0= No relevant experience and qualification.</p> <p>2= Less than 3 years relevant experience and qualification.</p> <p>5= More than 3 but less than 6 years relevant experience and qualification. Plus expertise in rail safety regulation.</p> <p>10=More than 6 but less than 8 years relevant experience and qualification. Plus expertise in rail safety regulation.</p> <p>15= More than 8 years relevant experience and qualification. Plus expertise in rail safety regulation.</p> <p>20= More than 8 years relevant experience and qualification. Plus expertise in rail safety regulation. Plus diploma or degree in project management.</p>

  
INITIAL: PROJECT MANAGER/CHAIRPERSON: BSC

INITIAL: SERVICE PROVIDER

SCORING CRITERION		WEIGHT	SCORING					
The Project Team should have the following qualifications and experience:		40						
<b>Qualification:</b> Must have a minimum degree in Civil/Mechanical Engineering or any other relevant railway related field or LLB (or recognised law degree of same NQF level).								
If there is no relevant qualification, the service provider will be rated a zero.								
<b>Experience:</b>								
(a) Experience in legislation development and drafting. <b>Weight = 10</b>								
(b) Experience in Transport sector and railway industry. <b>Weight = 10</b>								
(c) Expertise in rail safety regulations. <b>Weight = 10</b>								
(d) Expertise in rail operations. <b>Weight = 10</b>								
<b>NB:</b>								
<ul style="list-style-type: none"><li>Bidders must provide CVs with certified copies of qualifications.</li><li>The weights will be calculated on the weighted average, if multiple team members are allocated in a specific competency.</li><li>Minimum size of team must be three (3) members, including the Project Leader.</li><li>In the case of an international qualification, the bidder must attach proof from SAQA.</li><li>Certified copies must not be older than six (6) months on date of bid closing.</li></ul>								
			40	No relevant experience and qualification	Less than 4 years of relevant experience and qualification	More than 4 less than 6 years of relevant experience and qualification	More than 6 less than 8 years of relevant experience and qualification	Over 8 years of relevant experience and qualification
(a)			10	0	4	6	8	10
(b)			10	0	4	6	8	10
(c)			10	0	4	6	8	10
(d)			10	0	4	6	8	10



INITIAL: PROJECT MANAGER/CHAIRPERSON: BSC

INITIAL: SERVICE PROVIDER

SCORING CRITERION		WEIGHT	SCORING
• See attached template for completion (Annexure D).			
Methodology: A Detailed proposed methodology of how the project will be executed that covers the proposed scope of work, proposed work schedule, proposed systems to be used, proposed resources and proposed time frames.		15	0= No plan or irrelevant plan.
			5= Proposal only responding partially to the scope of work.
			10= Proposal covering the scope, indicating time frames and resources.
			15= Comprehensive proposal with clear project execution, covering the entire scope of work, and clear deliverables, including timeframes, key tasks, sub-tasks, indicating resources with project duration and clear completion date.
Training, Skills Development Plan and Transfer of Skills Skills transfer plan for technical staff that will be supporting the project must be submitted.		10	0= No plan at all
			3= Training and skills development proposal covering two areas of training relating to project team competencies (refer to experience breakdown under project team)
			6= Training and skills development proposal covering three areas of training relating to project team competencies (refer to experience breakdown under project team)
			10= Training and skills development proposal covering four and more areas of training relating to project team competencies (refer to experience breakdown under project team)
TOTAL		100	
THRESHOLD		65	



INITIAL: PROJECT MANAGER/CHAIRPERSON: BSC

INITIAL: SERVICE PROVIDER



### 3.5 STAGE 3: EVALUATION IN TERMS OF 80/20 PREFERENCE POINTS SYSTEM

3.5.1 Only bids that achieve the minimum qualifying score for functionality will be evaluated further in accordance with the 80/20 preference points system.

#### 3.5.2 Calculating preference points

### PREFERENCE POINTS SCORECARD IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS.

The following table will be utilised in evaluating preference:

Goals	Points out of 20 (80/20)	Required proof
<b>Black Owned (BO)</b>	<b>Max 10</b>	B-BBEEE Status level certificate. Issued by an authorized body or persons; or A sworn affidavit as prescribed by the B-BBEE Codes of Good practice
100% BO	10	
>50%	5	
<b>Women Owed (WO)</b>	<b>MAX 6</b>	B-BBEEE Status level certificate. Issued by an authorised body or persons; or A sworn affidavit as prescribed by the B-BBEE Codes of Good practice
100% WO	6	
>50%	3	
<b>Black Designated Group (BDG)</b>	<b>MAX 4</b>	B-BBEEE Status level certificate. Issued by an authorised body or persons; or A sworn affidavit as prescribed by the B-BBEE Codes of Good practice
100% BDG	4	
>50%	2	

#### 3.5.4 The following also applies:

- Bidders are required to complete the preference claim form (SBD 6.1) and submit their original and valid B-BBEE status level verification certificate or a certified copy thereof or an affidavit at the closing date and time of the bid in order to claim the B-BBEE status level point. The points scored by a bidder in respect of the level of B-BBEE contribution will be added to the points scored for price.
- Bidders are required to complete the preference claim form (SBD 6.1), and submit the required supporting documents at the closing date and time of the bid to claim the points indicated in 4.4. The points scored by a bidder in respect of preference will be added to the points scored for price.
- Only bidders who have completed and signed the declaration part of the preference claim form and who have submitted the required supporting documents together with the bid will be considered for preference points.
- Failure on the part of the bidder to comply with paragraphs 3.4.3 above will be deemed that preference points are not claimed and will therefore be allocated a zero (0).

- e. The Department of Transport may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made regarding preference.
- f. The points scored will be rounded off to the nearest 2 decimals.

3.5.5 In the event that two or more bids have scored equal total points, the award will be done in terms of the Preferential Procurement Regulations 2022, **Section 8: Criteria for breaking deadlock in scoring.**

3.5.6 A contract may, on reasonable and justifiable grounds, be awarded to a bid that did not score the highest number of points.

**3.5.7 Consortium / Joint Venture**

- a. In the event that preference points are claimed for goals by consortia / joint ventures, the following information must be furnished in order to be entitled to the points claimed in respect of those goals:

Name of Consortium/JV Partner	Percentage (%) of the contract value managed or executed by the Partner

**4 ANNEXURES**

**4.1 ANNEXURE A – RULES OF BIDDING**

**4.2 ANNEXURE B – PRICING SCHEDULE FORMAT**

**4.3 ANNEXURE C –SLA**

**4.4 ANNEXURE D – SUMMARY OF COMPANY AND TEAM EXPERIENCE TEMPLATE**

↔  
END OF DOCUMENT



# **THE NATIONAL TREASURY**

**Republic of South Africa**



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## **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT**

**July 2010**

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

**NOTES**

The purpose of this document is to:

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

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

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

## TABLE OF CLAUSES

1. Definitions
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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 security**

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

**8. Inspections, tests and analyses**

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

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

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

## **9. Packing**

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

## **10. Delivery and documents**

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

## **11. Insurance**

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

## **12. Transportation**

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

## **13. Incidental services**

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



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

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

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

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

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

#### **15. Warranty**

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

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

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

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

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

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

- |   |   |
|---|---|
| <b>16. Payment</b>                              | <p>16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.</p> <p>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.</p> <p>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.</p> <p>16.4 Payment will be made in Rand unless otherwise stipulated in SCC.</p>   |
| <b>17. Prices</b>                               | <p>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.</p>  |
| <b>18. Contract amendments</b>                  | <p>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.</p>   |
| <b>19. Assignment</b>                           | <p>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.</p>   |
| <b>20. Subcontracts</b>                         | <p>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.</p>   |
| <b>21. Delays in the supplier's performance</b> | <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p> |

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

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

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

## **22. Penalties**

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

## **23. Termination for default**

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

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

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

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

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

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

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

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

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

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

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

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

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

may be due to him

**25. Force  
Majeure**

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

**26. Termination  
for insolvency**

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

**27. Settlement of  
Disputes**

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

**28. Limitation of  
liability**

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

		(b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
<b>29. Governing language</b>	29.1	The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
<b>30. Applicable law</b>	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
<b>31. Notices</b>	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.
<b>32. Taxes and duties</b>	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.
<b>33. National Industrial Participation Programme (NIP)</b>	33.1	The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
<b>34 Prohibition of Restrictive practices</b>	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.

ANNEXTURE B

FINANCIAL  
PROPOSAL



**PRICING SCHEDULE**  
(Professional Services)

NAME OF BIDDER: ..... BID NO.: .....

CLOSING TIME 11:00

CLOSING DATE: 25 JULY 2025

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

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

1. The accompanying information must be used for the formulation of proposals.

2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.

R.....

3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)

4. PERSON AND POSITION

HOURLY RATE

DAILY RATE

.....

R.....

.....

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R.....

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R.....

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R.....

.....

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R.....

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

.....

R.....

..... days

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R.....

..... days

.....

R.....

..... days

.....

R.....

..... days

5.1 Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED

RATE

QUANTITY

AMOUNT

.....

.....

.....

R.....

.....

.....

.....

R.....

.....

.....

.....

R.....

.....

.....

.....

R.....

TOTAL: R.....

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

Name of Bidder: .....

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

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

TOTAL: R. ....

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

\*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –

DEPARTMENT OF TRANSPORT  
 Ms Nelisiwe Nyawo / Mr John Mashinini  
 Supply Chain Management  
 Tel: 012 309 3291/3045

Or for technical information

DEPARTMENT OF TRANSPORT  
 Ms Moloko Machaka  
 Rail Branch (RT)  
 Tel :012 309 3676

# ANNEXTURE B



transport

Department:  
Transport  
REPUBLIC OF SOUTH AFRICA

**ANNEXURE B  
Pricing Schedule**

Bid ref. number:	DOT/04/2025/RT CLUSTER A	Expected project start date:	
		Expected duration (Months)	12

Description of bid:	APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE DRAFTING SERVICES ON THE ENVISAGED TRANSITIONAL REGULATIONS IN TERMS OF THE RAILWAY SAFETY ACT, 2024 (ACT NO. 30 OF 2024) FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF TWELVE (12) MONTHS
---------------------	---

Name of bidder:	
-----------------	--

	Max	Score
PPPFA points allocation	20	0
% Black Ownership	10	
% Black Ownership: Women	6	
% Black Ownership: BDG	4	
BDG Details:		

Indicative project time frames		
Start	End	Duration
	Months	

TOTAL BID PRICE incl. VAT	
1. Total price required to produce/deliver all goods/services included in the Tor. 2. Please ensure that this price matches the price indicated on SBD 1. 3. This price will be used for PPPFA comparison purposes.	R -

PART 1: COSTING OF SERVICES		
1	Fully inclusive resource cost for all deliverables (B3)	-
2	Travel and subsistence cost	
3	Printing / stationery cost	
4	Communication cost	
5	Other	
6	Other	
TOTAL (EXCL VAT)		-
VAT		-
TOTAL (INCL VAT)		-

Bidders may only complete yellow cells. Any changes to formulas in this spread sheet will invalidate the bid

Confirmation by bidder
Signature
Name:
Designation:
Date:

Bidders must print and sign all worksheets (Summary and Annexures B1 to B2)

Orange coloured cells to be completed by DOT

Yellow coloured cells to be completed by bidder

a							Days allocated per team member															
#	Deliverable / Activities description	Person Days	Start	End	Duration (Days)	Cost (EXCL VAT)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	0
1		0			0	-																
2		0			0	-																
3		0			0	-																
4		0			0	-																
5		0			0	-																
6		0			0	-																
7		0			0	-																
8		0			0	-																
9		0			0	-																
10		0			0	-																
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15		0			0	-																
16		0			0	-																
17		0			0	-																
18		0			0	-																
19		0			0	-																
20		0			0	-	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Bidder signature

Signature

Start

End

Duration

The start date for bid purposes is the expected date of award as indicated in proposal. The start date for contract management purposes will be the actual date of award of the bid.



**transport**Department:  
Transport  
REPUBLIC OF SOUTH AFRICA

## STANDARD RULES OF BIDDING FOR TERMS OF REFERENCE (TOR) OR REQUEST FOR PROPOSAL (RFP)

# DOT/04/2025/RT CLUSTER A

## 1 RULES OF BIDDING

### 1.1 COMPULSORY INFORMATION SESSION

- 1.1.1 A compulsory Briefing and Site Inspection session will be held at the Department as detailed in the Advert. The compulsory Briefing and Site Inspection session provides bidders with an opportunity to clarify aspects of the process as set out in this document and to address any substantive issues that bidders may wish to raise. Any Briefing Notes which may be issued by the Department to the Service Providers should be considered as part of this project.
- 1.1.2 Firms may ask for clarification on this TOR or any of its Annexures up to close of business forty-eight (48) hours before the deadline for the submission of bids. Any request for clarification must be submitted by email to the Bid Office. Copies of questions and answers will be emailed to all firms that register at the briefing session.

### 1.2 FORMAT AND SUBMISSION OF BIDS

- 1.2.1 Bidders must submit their bids on the stipulated closing date and time. Late bids will not be considered. All late bids must be collected within seven (7) days failing which the DOT will discard of such late proposals.
- 1.2.2 **Bids must be submitted in two (2) envelopes, one (1) with the technical proposal and the other pricing. Supporting documents required for compliance including all the SDB documents except for SBD 3.3, must be submitted together with the technical proposal.**
- 1.2.3 Format of submission of proposals:
  - a. Envelopes must be clearly marked with Company name, DOT Nr and whether it is the technical or financial response.

**STANDARD RULES OF BIDDING FOR TERMS OF REFERENCE (TOR) OR REQUEST FOR PROPOSAL (RFP)**

- b. Proposals must be submitted as one (1) original and four protected soft copies. Soft copies must be exact copies of the original technical document, including all supporting documents, and should be labelled properly.
- c. Soft copies are not required for financial proposals. If a bidder does submit the financial proposal in soft copies, those copies must be sealed in the envelope marked financial.
- d. Including the financial proposal on the technical soft copy will lead to automatic disqualification.

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

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

1.2.6 Each bid, once submitted, constitutes a binding and irrevocable offer to provide the Services on the terms set out in the bid, which offer cannot be amended after its date of submission.

1.2.7 Department of Transport (DOT) reserves the right to accept or consider any bid in full or in part or any responses or submissions in relation thereto.

1.2.8 DOT reserves the right to appoint more than one bidder whose bid most successfully conforms to the Criteria and the Requirements in accordance with the terms and conditions described in the TOR.

1.2.9 DOT reserves the right to request any additional information that it may require or deem necessary. All such requests shall be in writing.

1.2.10 After careful consideration and thorough examination of the proposals, DOT shall select the successful Bidder whose proposal most closely satisfies the criteria and the requirements, including costing of all deliverables and submission of a financial proposal that is responsive to the bid. The lowest price (management fee where applicable) offered will not necessarily be a decisive factor in choosing between Proposals.

1.2.11 The Department published the results of the outcome of a tender process, including the details of the successful bidder in the same media that was used to advertise the bid.

### **1.3 SUB-CONTRACTING, PARTNERSHIP/CONSORTIUM/JOINT VENTURE AND COMPANY REQUIREMENTS**

1.3.1 A proposal submitted by a company, close corporation or other legal person must be accompanied by a resolution or agreement of the directors or members and be signed by a duly authorized person.

1.3.2 A proposal submitted by a partnership must be accompanied by a written partnership agreement.

1.3.3 A proposal submitted by a consortium or joint venture of two or more parties must be accompanied by a signed memorandum of understanding between the parties to such consortium indicating:

- a. the conditions under which the consortium will function;

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- b. its period of duration;
- c. the persons authorized to represent it;
- d. the participation of the several parties forming the consortium;
- e. the benefits that will accrue to each party;
- f. any other information necessary to permit a full appraisal of its functioning.

#### **1.4 MATTERS RELATING TO TAX COMPLIANCE AND CLAIMING OF POINTS FOR GOALS IN TERMS OF PREFERENCE POINTS FOR VARIOUS COMPANY MODELS**

##### **1.4.1 Tax compliance – General**

- a. No tender shall be awarded to a bidder who is not tax compliant. The DOT 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, or whose verification against the Central Supplier Database (CSD) proves non-compliant. The DOT 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.
- b. It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.
- c. Compliance must be throughout the bidding process, award and contracting.
- d. Service providers will be afforded the opportunity to correct tax compliance status and provide written proof of status or arrangements within a maximum of seven (7) working days.

##### **1.4.2 Tax compliance – Consortia / Joint Ventures**

- a. Consortia: Each party must submit a separate Tax Clearance Certificate.
- b. Joint-Venture: Unincorporated entity - each party must submit a separate Tax Clearance Certificate. Incorporated entity-tax clearance certificate for the JV and CSD registration of Joint Venture.

##### **1.4.3 Claiming of Preference Points – General**

- a. Please refer to the TOR/RFP document for detailed terms and conditions for preference points claims as well as the allocated goals.

##### **1.4.4 Claiming of Preference Points – Consortia / Joint Ventures**

- a. A trust, consortium or joint venture, will qualify for points on prescribed goals, provided that the entity submits the required breakdown of goals claimed, with supporting documents.
- b. Consortium: Each partner is evaluated separately, and allocated points in accordance with the percentage of their stake holding as indicated per the proposal.
- c. Joint-Venture: Unincorporated entity/no BEE Certificate or Affidavit as a JV as yet - Each partner is evaluated separately, and allocated points in accordance with the percentage of their stake holding as indicated per the proposal. Incorporated entity – evaluated based on the JV's collective score as claimed.

##### **1.4.5 Claiming of Preference Points during Sub-Contracting**

- a. A bidder will not be awarded points preference if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise

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that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

- b. A bidder awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher total score on preference goals points claimed, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

## 1.5 TENDER DEFAULTERS AND RESTRICTED SUPPLIERS

- 1.5.1 No tender shall be awarded to a bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. The DOT 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.

## 2 CONFIDENTIALITY OF INFORMATION & INTELLECTUAL PROPERTY RIGHTS

### 2.1 CONFIDENTIAL INFORMATION

- 2.1.1 **Confidentiality obligation.** Each Party ("the receiving Party") must treat and hold as confidential all information which they may receive from the other Party ("the disclosing Party ") or which becomes known to them concerning the disclosing Party during the duration of this Contract.
- 2.1.2 **Nature of the confidential information.** The confidential information of the disclosing Party shall, without limitation, include:
  - a. all software and associated material and Documentation, including information contained therein;
  - b. all information relating to :
    - i. the disclosing Party's past, present and future research and development;
    - ii. the disclosing Party's business activities, products, services, customers and clients, as well as its technical knowledge and trade secrets;
    - iii. the terms and conditions of this Contract; and
    - iv. the Department's data.
- 2.1.3 The Parties shall, except as permitted by the Contract, not disclose or publish any confidential information in any manner, for any reason or purpose whatsoever without the prior written consent of the disclosing Party and in the event of the confidential information relating to a third party, it shall also be incumbent on the receiving Party to obtain the consent of such third party.
- 2.1.4 **Receiving Party's obligations with regard to confidential information.** The receiving Party agrees that in order to protect the proprietary interests of the disclosing Party in its confidential information:

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

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

**2.1.6** The aforementioned obligations shall not apply to any information which:

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

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

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

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## 2.2 INTELLECTUAL PROPERTY RIGHTS

- 2.2.1 **Ownership in Services vests in Department.** All rights of ownership and copyright in the Services to be provided by the Contractor to the Department shall vest solely with the Department, and the Contractor will not make such information available to any other party without the written consent of the Department on such terms and conditions as may be stipulated by the Department at that time.
- 2.2.2 **No aspect of the Services to infringe 3<sup>rd</sup> Party intellectual property rights.** The Contractor warrants that no aspect of the Services provided in terms hereof will infringe any patent, design, copyright, trade secret or other proprietary right of any third party ("third party proprietary rights"), and the Contractor shall, at its own cost, defend the Department against any claim that the Services infringe any such third party proprietary rights, provided that the Department gives prompt notice to the Contractor of such claim and the Contractor controls the defence thereof.
- 2.2.3 The Contractor further indemnifies the Department against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the Department in any action which is attributable to such claim and will reimburse the Department with all costs reasonably incurred by the Department in connection with any such action.
- 2.2.4 **Process in the event of a claim.** Should any person make any claim against the Department in terms of clause 16.2, the Department shall give the Contractor notice thereof within ten (10) days of becoming aware of such claim to enable the Contractor to take steps to contest it.
- 2.2.5 **Infringement of 3<sup>rd</sup> Party rights.** Should any third party succeed in its claim for the infringement of any third party proprietary rights, the Contractor shall, at its discretion and within thirty (30) days of the Services having been found to infringe:
- e. obtain for the Department the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or
  - f. replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement; or
  - g. alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or
  - h. withdraw the subject of infringement.
- 2.2.6 **Ownership.** Ownership of all Departmental data, whether under its control or not, shall continue to vest in the Department and the Contractor shall not obtain any proprietary rights of such data.
- 2.2.7 **Data may only be used in performance of the Services.** The Department's data in the possession of the Contractor, or to which the Contractor may have access during the currency of this Contract, may not be used by the Contractor for any purposes whatsoever other than as may be specifically required to enable the Contractor to comply with its obligations in terms of this Contract.
- 2.2.8 **Preservation of integrity of data.** Both Parties shall take reasonable precautions (having regard to the nature of their obligations in terms of this Contract), to preserve the integrity of the Department's data and to prevent any unauthorised access, corruption, or loss of such data.

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### 3 TERMS AND CONDITIONS

#### 3.1 GENERAL

- 3.1.1 The Department reserves the right to amend, modify or withdraw this Terms of Reference (TOR) document or amend, modify or terminate any of the procedures or requirements set out herein at any time and from time to time, without prior notice except where required by law, and without liability to compensate or reimburse any Service Provider.
- 3.1.2 Neither the Department, nor any of its respective, officers, or employees may make any representation or warranty, expressed or implied in this TOR document, and nothing contained herein is, or shall be relied upon as, a promise or representation, whether as to the past or the future.
- 3.1.3 The costs of preparing proposals and of negotiating the Contract will not be reimbursed.
- 3.1.4
- 3.1.5 The Department also reserves the right to call interviews, site visits and/or call for demo's of the product or solution, with short-listed Service Providers before final selection, and to negotiate price with the Preferred Service Providers.
- 3.1.6 Firms may not contact the Department on any matter pertaining to their bid from the time when bids are submitted to the time the Contract is awarded. Any effort by a Service Provider to influence bid evaluation, bid comparisons or award decisions in any manner, may result in rejection of the bid concerned.
- 3.1.7 Bid submission requirements must be completed in sections and appendices provided in the bid document.
- 3.1.8 **ALL BIDDERS MUST BE REGISTERED ON THE CENTRAL SUPPLIER DATABASE AT NATIONAL TREASURY.** More information in this regards is available on [www.ocpo.treasury.gov.za](http://www.ocpo.treasury.gov.za). Proof of registration must be submitted together with the technical proposal.
- 3.1.9 Bidders may provide any additional information deemed important for the DOT to consider.
- 3.1.10 Prospective Bidders must at all times comply with the Department's Supply Chain rules and processes with regard to all projects and payments.

#### 3.2 ORDER OF PRECEDENCE.

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

### 3.3 DURATION

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

### 3.4 CONTRACT AMENDMENTS

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

### 3.5 SUBCONTRACTS

- 3.5.1 The Contractor shall notify the Department in writing of all sub-contracts awarded under the Contract, before the commencement of the Contract, as well as at any time during the Contract.
- 3.5.2 **The right to sub-contract.** The Contractor may, with the prior written consent of the Department, sub-contract any of its obligations in terms of this Contract, or any part thereof, to a third party, provided that:
- a. such sub-contracting shall not absolve the Contractor from any responsibility for complying with its obligations in terms of this Contract and the Contractor hereby indemnifies and holds the Department harmless against any loss, harm or damage which the Department may suffer as a result of such sub-contracting;
  - b. the Contractor shall at all times remain the sole point of contact for the Department in respect of the Services by the Contractor.
- 3.5.3 **Department may withdraw consent.** The Department shall have the right at any time, and upon such good cause shown to withdraw such consent for a sub-contractor on thirty (30) days notice to the Contractor and in that event no claim against the Department by the Contractor or any other person on the grounds of the granting of such consent or the withdrawal thereof shall be entertained, and the Contractor indemnifies the Department against any such claims and costs so incurred."

### 3.6 CONTRACTOR'S PERSONNEL

- 3.6.1 **Project Team.** The Contractor shall make available the skills and expertise of the Project Team referred to in the Bid who shall be involved in the Contract or the Services, unless otherwise agreed to by the Department, which agreement shall not be unreasonably withheld.
- 3.6.2 **Exceptions.** Notwithstanding the provisions of clause 6.6.1, where, due to circumstances beyond the control of the Contractor, a member of the Project Team cannot act in accordance with the provisions of this clause due to their dismissal, resignation or incapacity, the Contractor shall, to the extent possible, implement an appropriate succession plan to minimise the effect of the unavailability of such member.

- 3.6.3 **Suitably qualified Personnel.** The Contractor shall employ suitably qualified, experienced and trained Personnel to provide the Services, provided that the Contractor shall be entitled in its discretion, to allocate Personnel resources in accordance with the technical or other skills and knowledge required, which discretion shall not have a negative impact on the provision of the Services.
- 3.6.4 The Contractor's Personnel providing the Services may be absent for short periods of time for reasons including annual leave and training. The Contractor undertakes to avoid any disruption of the Services due to such circumstances.
- 3.6.5 **Contractor to adhere to security procedures of the Department.** The Contractor's Personnel including the Project Team shall at all times when on the Department's premises, adhere to the standard health, safety and security procedures and guidelines applicable to the Department's Personnel, as varied and conveyed by the Department to the Contractor from time to time.
- 3.6.6 Should the Department at any time have reason to believe that any of the Contractor's Personnel is failing to comply with such standard health, safety and security procedures and guidelines, the Department may deny such person access to any or all of the Department's premises or systems and require the Contractor to replace such person without delay.

### 3.7 PAYMENT

#### 3.7.1 Invoice.

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

#### 3.7.2 Detailed Pricing.

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

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

**3.7.3 Fees**

Domestic hotel accommodation may not exceed the prescribed National Treasury rates in terms of the Travel Framework, inclusive of VAT per night per person. (incl dinner, breakfast and parking), air travel must be restricted to economy class, and travel claims per kilometer may not exceed the rates approved by the Automobile Association of South Africa.

**3.7.4 Rates**

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

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

**3.7.5 Payment information**

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

**3.7.6 Total Contract Price.**

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

**3.7.7 Price all-inclusive.**

All prices are inclusive of any Value Added Tax, import, and all other duties. Any risk associated with an omission or miscalculation in pricing proposals, are carried by the bidder.

**3.8 DELIVERY AND DOCUMENTS**

**3.8.1 Reports.** The Contractor shall provide the Department with detailed Documentation and Reports as set out in the Contract and Project Plan or when required in writing by the Department in both electronic format and hard copy.

**3.8.2** Reports shall contain accurate information as to enable the Department to monitor and manage the Contractor's performance in terms of this Contract.

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- 3.8.3 All Documentation and Reports shall be in English.

### 3.9 PENALTY REGIME

- 3.9.1 Poor performance will result in penalties that include withholding of a minimum 30% of the total invoice of each affected phase / milestone until it is fixed before the final product is submitted. In the case where the performance has not been improved to the satisfaction of the Department and the final product is handed over, the original amount held back will not be paid over to the Service Provider under any circumstances. On the other hand an improved quality and/or performance, at the satisfaction of the Department, will require the outstanding part of the held back invoice to be paid to the Service Provider in full but with no additional interest.
- 3.9.2 The project milestones / phases are expected to be adhered to. Any deviation must be approved by the Department prior to any commencement of the changes. Failure to do so will result in a 5% non-payment of that particular and/or affected phase(s).
- 3.9.3 Notwithstanding item 6.9.2 above, failure to meet the deadline as stipulated in item 8 will result in 30% of the total outstanding payments for the project as whole not being paid over to the Service Provider if the poor performance is attributed to the Service Provider unless there is undisputed evidence that the fault lies with the Department."

### 3.10 TERMINATION

- 3.10.1 Should either Party fail to comply with any provision of this Contract the aggrieved Party may send a letter of demand to the defaulting Party, demanding compliance with such provision and should the defaulting Party, after a period of fourteen (14) days (or such longer periods as may under the circumstances be reasonably necessary) of the date of receipt of such written notice, remain in default, the aggrieved Party shall be entitled, without prejudice to any other rights it may have :
- to claim specific performance from the defaulting Party and to claim such damages as it may have suffered; or
  - to discharge and execute the defaulting Party's obligations on its behalf and to recover the costs and disbursements incurred in respect thereof from that Party; or
  - to terminate this Contract and claim such damages as the aggrieved Party may have suffered from the defaulting Party."
- 3.10.2 The Department may, without prejudice to any other rights it may have, terminate this Contract by written notice to the Contractor, upon the occurrence of the following events, namely if :

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- a. the Contractor fails to adhere to set timeframes, service levels or service standards as determined in the TOR, SLA and/or Project Plan;
- b. the Contractor, in the opinion of the Department, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract;
- c. judicial execution is levied on the Contractor's goods and which remains unpaid for 14 days after attachment;
- d. there has been a material defect, error or failure by the Contractor to comply with applicable laws or rules in the Bid or in the awarding of this Contract which is incapable of rectification and that requires this Contract to be terminated;
- e. the Contractor, when advised that its Proposal has been accepted, has given notice of inability to sign or execute the Contract;
- f. the Contractor has abandoned its obligations in terms of this Contract;
- g. the Contractor has deliberately furnished inaccurate information in its Bid with regard to its previous experience relating to the Services, or with regard to any other material information; or
- h. the Contractor ceases to carry on business as the Contractor of the Service.

3.10.3 In the event that negotiations between the Department and the Preferred Service Provider/s fail with regard to the conclusion of a Contract, the Department reserves its right not to appoint the Preferred Service Provider/s without incurring any liability to compensate or reimburse the Preferred Service Provider/s.

3.10.4 In the event that the Contractor does not complete Services in terms of this Contract by the Completion Date, the Department may view this as a material breach of this Contract and claim specific performance, and/or damages.

3.10.5 The Preferred Service Provider may be required to enter into a Service Level Agreement (SLA) prior to appointment.

3.10.6 The individuals proposed for professional work on the project shall remain on the project unless the Department grants prior permission to change the team composition. Such permission will not be withheld unreasonably.

3.10.7 The Department reserves the right to terminate the Agreement in the event that no consensus can be reached on the terms and conditions of a subsequent Service Level Agreement."

  
END OF DOCUMENT

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## ANNEXTURE C

# **SERVICE LEVEL AGREEMENT**

**FOR XXXXXXXX**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**

in its

**DEPARTMENT OF TRANSPORT**

(hereinafter referred to as "The Department")



**AND**

**SERVICE PROVIDER**

(hereinafter referred to as "The Contractor")

## PREAMBLE

**WHEREAS**, the Department requested proposals for XXXXXXXXX.

**WHEREAS**, the Department accepted the Contractor's Proposal, based on the representations made in the Proposal.

**AND WHEREAS**, the Department and the Contractor wish to record the terms of their Agreement in a written agreement.

**NOW, THEREFORE**, in consideration of the mutual conditions, representations, warranties and agreements contained herein, the Parties hereto agree as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement the following expressions and words have the meaning assigned to them below and the expression and words will have a corresponding meaning, unless inconsistent with or otherwise indicated by the context:

- 1.1.1. "Accepted, approved, authorized, directed, ordered and rejected", means accepted, approved, authorized, directed, ordered or rejected by the Department or the Department's Project Manager, as the case may be, and must be in writing;
- 1.1.2. "Agreement", means the contents of this Agreement together with the Schedules and Annexes hereto;
- 1.1.3. "applicable laws" means all applicable laws, ordinances, regulations, judgments and orders of any competent court, central bank or governmental agency, authority in any relevant jurisdiction within the Republic of South Africa, requirements of the PFMA, National Treasury regulations, and such other laws as may be applicable;
- 1.1.4. "Business Day", means any day in the Republic which is not a Saturday, Sunday or official public holiday in terms of the meaning in the Public Holidays Act of 1994. All references in this Agreement to days shall be deemed to be to calendar days, unless specifically stipulated as being Business Days;
- 1.1.5. "Change Control Procedure", means the procedure via which the Parties shall manage changes to the Services, as set out in Schedule 1 to this Agreement;
- 1.1.6. "confidential information" means any information:
- 1.1.7. determined by the Department to be privileged or confidential;
- 1.1.8. discussed in closed session by the Department;
- 1.1.9. which if disclosed would violate a person's right to privacy; or
- 1.1.10. declared to be privileged, confidential or secret in terms of any law including, but not limited to, information contemplated in sections 34(1); 36(1); 37(1)(a); 38(a); 39(1)(a); 40 or 43(1) of the Promotion of Access to Information Act, 2000;
- 1.1.11. "Contractor", means Service Provider represented herein by Paul Maclons, Managing Director being duly authorised thereto;

- 1.1.12. "Contract Price", means the fixed annual amount, including VAT, tendered by the Contractor in the Proposal and accepted by the Department as set out in **Schedule 3** in respect of the first year of operation commencing with effect from the Effective Date which, for subsequent years is subject to annual escalation in accordance with the escalation formula set out in **Schedule 3** ;
- 1.1.13. "deliverables" means those deliverables as set out in the Agreement;
- 1.1.14. "Department", means the Department of Transport, herein represented by Director General, or his delegated authority, being duly authorised thereto;
- 1.1.15. "Effective Date", means 1 September 2016 the date on which this Agreement comes into full force and effect;
- 1.1.16. "good industry practice" means using standards, practices, methods and procedures conforming to applicable law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected of a skilled, and experienced person engaged in a similar type of undertaking under similar circumstances;
- 1.1.17. "Month", means a calendar month commencing on the first and ending on the last day of the month;
- 1.1.18. "Party" and "Parties", means the Department and/or the Contractor as the context indicates;
- 1.1.19. "Person", means an individual, a cooperation, a partnership, an association, a trust or any other entity or organization;
- 1.1.20. "Prime Interest Rate", means the annual prime overdraft rate issued daily by First National Bank of South Africa, expressed as a percentage;
- 1.1.21. "project" means **xxxxxxxxxx** for the Department of Transport for a period of **xxxxxx** year(s);
- 1.1.22. "Project Manager", means the representative of the Parties appointed by the Parties in terms of clause 12 to fulfil the functions set out therein and administer the Services on behalf of the Parties and includes any party delegated or designated by such Project Manager to fulfil all or some of his functions;
- 1.1.23. "Project Leader", means the representative of the Parties appointed by them in terms of clause 12 to fulfil the functions set out therein to be the person responsible for the administration of this Agreement and the Services and includes any party delegated or designated by such Project Leader to fulfil all or some of his functions;
- 1.1.24. "Proposal", means the Contractor's Proposal submitted in response to the Department's Request for Proposals, the Specifications and documents accompanying the Proposal as well as any presentations made by the Contractor to the Department during the evaluation process and accepted by the Department;
- 1.1.25. "Request for Proposals", means the Department's Request for Proposals and/or Terms of Reference , Tender No. DOT **xxxxx**, issued by the Department in respect of the provision **xxxxxxxxxx, issued on xxxxxxxxx**;



- 1.1.26. "Services", means the Services to be provided by the Contractor to the Department as set out **Schedule 2**;
- 1.1.27. "signature date" means the date of signature of this agreement by the last signing party;
- 1.1.28. "Steering Committee" means an inter-governmental steering committee established to oversee the development and maintenance of the NRMP;
- 1.1.29. "termination date" means any date of termination of the agreement in accordance with clause 13 of the agreement;
- 1.1.30. "variation" means any variation to the scope of services in terms of the agreement;

## 1.2 Interpretation.

In this Agreement –

- 1.2.1 unless the context indicates a contrary intention an expression which denotes:
- 1.2.2 any reference to the singular includes the plural and *vice versa*;
- 1.2.3 any reference to the natural person includes legal persons and *vice versa*;
- 1.2.4 any reference to a gender includes the other genders;
- 1.2.5 the Clause headings are for convenience and are not to be used in its interpretation;
- 1.2.6 if any provision in any definition constitutes a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of this Agreement, notwithstanding that it is only contained in the interpretation clause;
- 1.2.7 references to clauses, schedules, parts and sections are, unless otherwise provided, references to clauses, schedules, parts and sections of this Agreement;
- 1.2.8 cross references to clauses in a specific schedule, part or section shall be a cross reference to clauses in such schedule, part or section unless specifically stated otherwise;
- 1.2.9 when any number of days is prescribed same shall, unless otherwise specifically stated, be reckoned exclusively of the first and inclusively of the last day;
- 1.2.10 where words have been defined in the body of this Agreement, such words shall, unless otherwise required by the context, have the meanings so assigned to them throughout this Agreement;
- 1.2.11 terms other than those defined in this Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in the information technology industry will be interpreted in accordance with their generally known meanings;
- 1.2.12 where any provision contemplates a notice to be given or agreement to be reached between the Parties, such notice or agreement shall, unless expressly provided otherwise, be made in writing.

## 1.3 Contract Documents

- 1.3.1 All the documents constituting this Agreement are to be regarded as mutually explanatory and to be read in conjunction with one another.
- 1.3.2 This Agreement is intended to amplify, amend, add to or depart from the Request for Proposals or Proposal, as the case may be, to the extent specified and shall take precedence over the Request for Proposals or the Proposal in the case of conflicting provisions. Should there be a conflict between any provisions of the various documents, i.e. this Agreement, the Request for Proposals and the Proposal, the following precedence ranking shall apply:
- a. this Agreement;
  - b. Request for Proposals;
  - c. the Contractor's Proposal;
  - d. The SBD forms contained in the Request for Proposals and returned by the Contractor in the Contractor's Proposal including Form SBD 7.2.
- 1.1.31. Any change or amendment agreed between the Parties pursuant to the Change Control Procedure shall enjoy precedence over any provision in this Agreement (including the Schedules) and later changes in terms of the Change Control Procedure will have precedence over earlier ones.

## **2. APPOINTMENT**

With effect from the commencement date, the Department hereby appoints the Contractor to provide the services and the Contractor agrees to provide the services to the Department based on the terms and conditions recorded in the agreement, the Department's Request for Proposals and the Contractor's Proposal.

## **3. DURATION**

This Agreement shall commence on the Effective Date and shall, subject to clause 24 of this Agreement, continue for a period of **xxxx** year(s).

## **4. RELATIONSHIP BETWEEN THE PARTIES**

- 4.1. Neither Party shall be liable for acts or defaults of the other Party or the Party's employees and/or representatives.
- 4.2. No statement in this Agreement shall constitute, or be deemed to constitute that the Contractor is an agent of the Department for any purpose whatsoever, and neither Party shall have any authority or power to bind or incur any liability on behalf of the other or to pledge the credit of the other Party.
- 4.3. The Parties shall at all times show a duty of good faith in their dealings with one another.

## **5. SERVICES**



- 5.1. For the Duration of this Agreement, the Contractor shall provide the Services as set out in **Schedule 2**, to the Department in accordance with:
  - 5.1.1. The Service Levels as set out in **Schedule 2**; and
  - 5.1.2. The terms of this Agreement.
- 5.2. The Contractor undertakes to perform the Services at all times during this Agreement in accordance with the terms of this Agreement.
- 5.3. Should either Party wish to propose any change to the scope or nature of the Services, it shall adhere to the Change Control Procedure.
- 5.4. Changes to this Agreement shall only be effective and enforceable once it is signed off by both Parties.
- 5.5. If the Contractor fails to perform the Services, within the period or periods specified in, and on the terms and conditions of, this Agreement, and the Department is entitled to terminate this Agreement in accordance with the provisions of Clause 24.1 below, then the Department may, without prejudice to its other remedies set out in this Agreement, deduct from the Contract Price, as a penalty, a sum calculated by applying the Prime Interest Rate, prevailing on the date of such failure in performance, to the Contract Price converted to a day rate and calculated for each day the Services have not been performed until the Contractor is again ready in all respect to deliver the Services.

## 6. SERVICE LEVELS

- 6.1. The Contractor undertakes that in providing the Services to the Department, it shall achieve the Service Levels as set out in **Schedule 2**.
- 6.2. Should the Contractor at any time fail to meet the Service Levels due to its own negligence or wilful default, the Contractor shall use its best endeavours to:
  - 6.2.1. provide all such additional resources as may be necessary to perform the Services in accordance with the Services Levels as soon as possible thereafter; and
  - 6.2.2. At the request of the Department, promptly remedy any default due to the Contractor's negligence or wilful default, at no additional charge to the Department.

## 7. CHARGES AND PAYMENT OF SERVICES

- 7.1. The Department shall pay the Contractor, as consideration for the provision of the Services, pursuant to this Agreement, the agreed remuneration as set out in **Schedule 3**.
- 7.2. If the Department disputes any invoice submitted by the Contractor or any part thereof, the Department shall give the Contractor prompt written notice thereof together with the grounds for and the detail of the dispute.
- 7.3. The Parties shall endeavour to resolve any invoice dispute within seven (7) Business Days of the dispute arising. If they fail to resolve it, either Party may refer the matter for resolution in terms of the dispute resolution procedure set out in **Clause 23**.
- 7.4. Should the Contractor, for whatever reason, owe any amount to the Department in respect of this Agreement, which amount the Contractor acknowledges is due to the Department, the

Department shall have the right to set off any such monies that may be owing to the Contractor from monies owed by the Department to the Contractor after giving the Contractor notice thereof, supported with reasons for such set off.

- 7.5. The Department shall make payment for the Services to the Contractor by way of electronic transfer to the Contractors Bank Account set out in Schedule 3.

## **8. PROJECT MANAGEMENT COMMITTEE**

- 7.1. The parties shall, immediately after the signature date, form a Project Management Committee, which will be responsible for the management of the agreement so as to ensure the smooth and satisfactory delivery of the services by the Contractor to the Department.
- 7.2. The Project Management Committee shall be composed of the following:
- 7.2.1. the Project Manager appointed by the Department, who shall act as manager on behalf of the Department;
  - 7.2.2. such other additional members as appointed by the Department;
  - 7.2.3. the Project Leader appointed by the Contractor, who shall have authority to bind the Contractor; and
  - 7.2.4. such other members of the Contractor.
- 7.3. The functions of the Project Management Committee shall be to:
- 7.3.1. facilitate communication between the parties;
  - 7.3.2. review the progress on the implementation of the agreement;
  - 7.3.3. manage and resolve potential disputes;
  - 7.3.4. monitor and maintain alignment with Department policy and strategy;
  - 7.3.5. achieve agreement objectives within agreed scope, time, cost and quality;
  - 7.3.6. provide advice and consent on scope variation;
  - 7.3.7. facilitate all necessary institutional and/or approvals; and
  - 7.3.8. provide feedback to relevant stakeholders.
- 7.4. The Project Management Committee shall determine an appropriate set of meetings to be held and the frequency thereof.

## **8. GENERAL OBLIGATION OF CONTRACTOR**

- 8.1. The Obligations of the Contractor referred to in this Agreement shall include, but not be limited to:
- 8.1.1. The fulfilment of all the Contractor's obligations to the Department under this Agreement within the time periods stipulated herein;
  - 8.1.2. Submitting all the information and reports necessary to enable the Department to manage, evaluate and control this Agreement effectively;

- 8.1.3. Providing the Services to the Department and fulfilling in full of all its obligations to the Department under this Agreement within the time periods stipulated in this Agreement; and
  - 8.1.4. manage and coordinate the provision of services and the activities in accordance with good industry practice
  - 8.1.5. devote the necessary time and attention to providing the deliverables, as set out in the Project Lifecycle, which is annexed hereto and marked as Schedule 4, and not engage in any business or activity that will prevent it from providing the services;
  - 8.1.6. maintain, at all times, the highest degree of good faith towards the Department and to ensure that no conflict of interest materialises, and in the event of a conflict of interest arising, to immediately advise the Department of same, upon which advice the Department shall, in its sole and absolute discretion, decide whether to proceed with the agreement or to terminate it forthwith. Failure to advise the Department of any conflict of interest shall amount to a material breach of the agreement and shall entitle the Department to terminate the agreement forthwith;
  - 8.1.7. render the services in accordance with the deliverables, timeframes and specifications, as set out in the Project Lifecycle, which is annexed hereto and marked as Schedule 4, as amended by written agreement of the parties;
  - 8.1.8. strictly adhere to all the actions and commitments agreed upon or pursuant to the Project Management Committee meetings or agreed to with the project officer;
  - 8.1.9. maintain independence from other individuals, organisations or government bodies;
  - 8.1.10. take out, at its own cost, appropriate insurance coverage against loss arising out of negligence, malpractice or unprofessional conduct;
  - 8.1.11. observe neutrality and objectivity in its views and opinions;
  - 8.1.12. respect and observe all applicable laws;
  - 8.1.13. provide the Department with any information and reports reasonably requested by the Department in connection with the services, and which information warrants to be accurate and complete; and
  - 8.1.14. maintain the professional personnel as committed to by in its proposal and as recorded in the Project Lifecycle, which is annexed hereto and marked as Schedule 4, and that in the event of any dedicated member becoming incapacitated and unable to carry out his or her duties or whose performance the Department reasonably considers to be unsatisfactory in its discretion, to replace, at the Contractor cost, such member, subject to the written approval of the Department.
- 8.2. The Department may, at its sole discretion, appoint additional internal resources or external advisors to review and provide input into the work of the Contractor. The Contractor shall work and liaise with any such advisors in a professional and cooperative manner for the furtherance of the project.
- 8.3. The Contractor shall, exercise all reasonable diligence and care and act in a professional manner in the execution of this Agreement and in providing the Services. The Contractor shall immediately inform the Department in terms of the Change Control Procedure, if it appears in the light of new information that the Services require revision for whatsoever reason.

- 8.4. The Contractor shall attend meetings aimed at the monitoring of progress on this Agreement as reasonably required by the Department.
- 8.5. The Contractor warrants that it is fully conversant with all the relevant statutory requirements that have a direct or indirect bearing on this Agreement and it shall comply with all laws and regulations of the a Republic of South Africa during the duration of this Agreement.
- 8.6. If, through its own negligence, the Contractor fails to provide any of the Services, specified in Schedule 2, in accordance with the Service Levels specified in Schedule 2, the Department shall, after having provided written notice to the Contractor instructing that the Service be performed forthwith in accordance with the Service Levels specified in Schedule 2, then, in the absence of any other specific remedy or process set out elsewhere in this Agreement and in the event of the Contractor failing, within a reasonable time, to so perform the Services in accordance with the Service Levels set out in Schedule 2, the Contractor shall have the obligation to employ and pay any other Person to carry out the Services, and the Contractor shall, subject to the provisions of Clause 22 and 23, thereafter be liable for all such costs consequent thereto, which shall be for the account of the Contractor.

## 9. THE DEPARTMENT'S RIGHTS AND OBLIGATIONS

- 9.1. The Department shall comply with all its obligations as set out in this Agreement and the Schedules hereto.
- 9.2. The Department undertakes to:
- 9.2.1 verify the milestones reached by the Contractor for its services as set out in the payments schedule, which is annexed hereto and marked as Schedule 2;
  - 9.2.2 provide support to the Contractor so as to enable it to render the services effectively;
  - 9.2.3 use its best endeavours to ensure that the Contractor has timely and adequate access to all information, personnel and documentation available to the Department that will be required by the Contractor to render the services; and
  - 9.2.4 co-operate with the Contractor at all times for purposes of facilitating a timeous and efficient delivery of the services.

## 10. CHANGE CONTROL PROCEDURE

Should either Party wish to amend any aspect of a Schedule hereto, such amendments shall be done in terms of the Change Control Procedure, Schedule 1.

## 11. CONTRACT MANAGEMENT

- 11.1. The Contractor and the Department shall each appoint a Project Leader to be responsible for the overall management of this Agreement and the delivery of the Services by the Contractor to the Department. Either Party shall be entitled at any time to terminate the appointment of its Project Leader by notice in writing to the other Party or to appoint any other Person as Project Leader and such termination shall take effect in terms of such notice.

- 11.2. Each Party's Project Leader shall be authorized to manage this Agreement on behalf of the Party making the appointment and the Parties shall ensure that their Project Leader has the necessary authority, skill, expertise and experience to carry out such responsibilities.
- 11.3. All communication concerning the overall management of this Agreement shall, unless otherwise agreed to between the Parties, take place between the Parties' Project Leaders.
- 11.4. The Parties shall each appoint a Project Manager to manage the Services and the day to day operational decisions of this Agreement.
- 11.5. The Contractor shall notify the Department in writing of the identity of their Project Manager at or immediately prior to the execution of this Agreement and the Contractor may at any time terminate the appointment of their Project Manager and appoint any other person as Project Manager but such termination shall only take effect one month after notice to the other Party's Project Manager.
- 11.6. The functions of the Project Managers shall be:
  - 11.6.1. To manage the Services and the operational decisions of this Agreement;
  - 11.6.2. To provide a means for the joint review of issues relating to all day-to-day aspects of the performance of the Services pursuant to this Agreement;
  - 11.6.3. To provide a forum for joint strategic discussion, and possible variations of the Services and Services Levels to reflect more efficient performance of this Agreement;
  - 11.6.4. To provide a means of agreeing to the Change Control Procedure; and
  - 11.6.5. In certain circumstances, pursuant to the Dispute Resolution Procedure, provide a means of resolving disputes or disagreements between the Parties.
- 11.7. In the event of conflicting decisions or instructions being given by the Department's Project Leader and the Project Manager, the Contractor shall be entitled to rely on decisions or instruction taken or given by the Department's Project Leader.

## 12. **PRICE AND PAYMENT TERMS**

- 12.1 During the term of the agreement and in consideration for the services provided by Contractor to the Department, the Department will pay the Contractor the fee as specified in the Payments Schedule, which is annexed hereto and marked as **Schedule 3**.
- 12.2 The Project Manager will verify milestones achieved by the Contractor prior to the Contractor submitting invoices to the Department for payment, as specified in the payments schedule, which is annexed hereto and marked as **Schedule 3**.

## 13. **INTELLECTUAL PROPERTY RIGHTS**

- 13.1. Copyright in all documentation, electronic data, manuals and documentation produced or prepared for the Department by or on behalf of the Contractor, or emanating from the Contract, shall vest in the Department which shall have the right to adopt them for other projects, but excluding any base systems, programme source codes, technical manuals or adaptations developed by the Contractor or its suppliers. The Contractor shall not, without the written consent



of the Department, use, copy or communicate to any person such documents or information, except as strictly necessary for the purpose of this Agreement.

- 13.2. In addition, and without limiting the foregoing, the Contractor shall deliver such documentation to the Department immediately upon the expiry or termination of this Agreement.

#### 14. **CONTRACTOR'S WARRANTIES**

The Contractor warrants that it possesses the requisite equipment, knowledge, skill and experience to provide the Services in terms of this Agreement.

#### 15. **CONFIDENTIAL INFORMATION**

- 15.1. Each Party must treat and hold as confidential all information which they may receive ("the Receiving Party") from the other Party ("The Disclosing Party"), or which becomes known to them concerning the Disclosing Party during the provision of the Services pursuant to this Agreement.

- 15.2. The confidential information of the Disclosing Party shall, without limitation, include:

15.2.1. All software and associated material and documentation, including information contained therein;

15.2.2. All information relating to:

- a. The Disclosing Party's business activities, products, services, customers and clients, as well as its technical knowledge and trade secrets;
- b. The terms and conditions of this Agreement; and
- c. All information that relates to the business affairs, developments, trade secrets, know-how and the personnel of the Parties, or information which may reasonably be regarded as confidential information by the Parties.

- 15.3. The Receiving Party agrees that in order to protect the proprietary interest of the Disclosing Party:

15.3.1. It shall only make the confidential information available to those of its personnel who are actively involved in the execution of this Agreement;

15.3.2. It shall initiate internal security procedures reasonably acceptable to the Disclosing Party as to prevent unauthorized disclosure and shall take all practical steps to prevent unauthorised disclosure and shall take all practical steps to impress upon those personnel who need to be given access to confidential information, the confidential nature thereof;

15.3.3. Subject to the right to make the confidential information available to their Personnel under Clause 18.3.1 above, they shall not at any time, whether during this Agreement or thereafter, use any confidential information of the Disclosing Party, or directly or indirectly, disclose any confidential information of the Disclosing Party to third parties;

15.3.4. All written instructions, drawings, notes, memorandums and records of whatever nature relating to the confidential information of the Disclosing Party which has, or shall come into the possession of the Receiving Party and its personnel, shall be, and shall at all

times remain, the sole and absolute property of such Party and shall be promptly handed over to such Party when it is no longer required for the purpose of this Agreement.

- 15.4. Upon termination or expiry of this Agreement, the Receiving Party shall deliver to the Disclosing Party all originals and copies of the Disclosing Party's confidential information in its possession.
- 15.5. The foregoing obligations shall not apply to any information which:
  - 15.5.1. Is lawfully in the public domain at the time of disclosure;
  - 15.5.2. Subsequently and lawfully becomes part of the public domain by publication or otherwise;
  - 15.5.3. Subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure of such confidential information;
  - 15.5.4. Is disclosed pursuant to a requirement or request by operation of law, regulation or court order; or
  - 15.5.5. Is required by law to be delivered, in which case, the Receiving Party must give the Disclosing Party prior written notice of the proposed disclosure, and shall limit any disclosure to only such information or documentation as is expressly required by law, and in respect of which no lawful reason for non-disclosure exists.
- 15.6. Nothing in this clause shall preclude the Parties from disclosing the confidential information to their professional advisors in the *bona fide* course of seeking business and/or professional advice. The Parties however acknowledge that the protection of the confidential information is critical to both Parties' business interest and may consult with one another in the event that any such confidential information is disclosed to any professional advisors other than the Parties' auditors and/or lawyers.
- 15.7. The Receiving Party hereby indemnifies the Disclosing Party against any loss or damage, which the Disclosing Party may suffer as a result of this.
- 15.8. The provisions of this clause is severable from the rest of the provisions of this Agreement and shall survive its termination and continue to be of full force and effect for a period of 10 (ten) years after the date of termination.
- 15.9. The Contractor shall not use the name of the Department in publicity releases (except in joint public releases), advertising or for other commercial purposes, without securing the prior written approval of the Department.

## 16. OWNERSHIP OF MATERIAL AND INTELLECTUAL PROPERTY

- 16.1. Any information provided by the Department to the Contractor and any studies, reports and documentation produced by the Contractor in performance of the services (hereinafter referred to as 'materials') shall belong to and remain the property of the government of the Republic of South Africa as represented by the Department, and will not be used by the Contractor for any purpose other than in accordance with the agreement, or by written permission of the Department.
- 16.2. Upon termination of the agreement for any reason whatsoever, the Contractor must return to the Department all materials in its possession, which belong to the Department, regardless of

whether or not such materials were originally supplied by the Department to the Implementation Agent.

## **17. INDEMNITIES**

- 17.1. The Contractor hereby indemnifies and holds the Department harmless against any liability it may incur to any third party which causally arises out of the Contractor's execution of the Services and was caused by the negligence or wilful misconduct of the Contractor (which term shall, for the purposes of this clause, be deemed to include the Contractor's personnel).
- 17.2. Furthermore, the Contractor indemnifies the Department against any loss or damage it may suffer as a result of any breach of any representation, warranty or covenant contained in this Agreement.

## **18. LIABILITY LIMITATION**

The Contractor accepts liability to pay damages for losses suffered by the Department arising as a direct result of breach of contract or negligence on its part in respect of the services. The maximum liability of the Contractor for all claims arising out of the services provided in connection with this agreement shall be limited to an amount equal to the fees charged for the services.

## **19. CESSIONS, DELEGATION AND SUB-CONTRACTING**

- 19.1. The Contractor shall not cede any of its rights, assign or delegate its obligations, or transfer the benefit or burden under this Agreement, or any part thereof, without the prior written consent of the Department, which consent shall not be unreasonably withheld.
- 19.2. The Contractor may, with the prior written consent of the Department, sub-contract any of its obligations in terms of this Agreement, or any part thereof, to a third party, provided that:
- 19.2.1. Such sub-contracting shall not absolve the Contractor from any responsibility for complying with its obligations in terms of this Agreement, and the Contractor hereby indemnifies and holds the Department harmless against any loss, harm or damage which the Department may suffer as a result of such sub-contracting;
- 19.2.2. The Contractor shall at all times remain the sole point of contact for the Department in respect of the Services to be rendered by the Contractor;
- 19.3. No claim against the Department by the Contractor, or any other person on the grounds of the granting of such consent or the withdrawal thereof, shall be entertained, and the Contractor indemnifies the Department against any such claims and costs so incurred.

## **20. FORCE MAJEURE**

- 20.1. A Force majeure event shall mean any event beyond the control of either Party whose occurrence could not have been reasonably foreseen at the date of execution of this Agreement and which, despite the exercise of diligent efforts, such Party was unable to prevent, limit or minimise, including but not limited to fire, explosion, war, revolution, riot,



insurrection, protest and/ or boycott action, floods, storms and other natural disturbances, perils of the sea, breakdown of machinery and equipment ( not avoidable by proper maintenance and planning), and/or any act of God, and which caused material and unavoidable damage to property, or resulted in extreme delays or interruptions.

- 20.2. The Party prevented from fulfilling its obligations in terms of this Agreement shall, on becoming aware of such force majeure event, promptly notify the other Party of such event and when the event had ceased.
- 20.3. Neither Party shall be considered to be in default or in breach of its obligations under this Agreement if such obligation is prevented by any event of force majeure.
- 20.4. Upon the occurrence of any force majeure event, the Parties shall endeavour to continue to perform their obligations in terms of this Agreement as far as reasonably possible.
- 20.5. If the force majeure event continues for a period of thirty (30) days or longer, the Parties shall promptly consult with the view of reaching a mutually satisfactory resolution. The Parties agree to refer any disagreement in this regard for resolution in terms of this Clause 23 below.
- 20.6. If a Party fails to inform the other of the force majeure event as set out in this Clause 22, then such Party shall not be entitled to refer to or rely on such event as a reason for non-fulfilment of any obligation in terms of this Agreement, provided that this obligation to perform shall not apply if the force majeure event is known or could reasonably be deemed to be known by both Parties.
- 20.7. The foregoing provisions of this Clause shall not excuse or release the Party claiming force majeure from its obligation to perform, or the compliance required under this Agreement prior to the force majeure event, or any other failures, delays in performance or obligations not effected by the force majeure event, except to the extent that the same cannot be performed because of force majeure.

## **21. DISPUTE RESOLUTION.**

- 21.1. Should any dispute or difference arise between the Parties relating to or arising out of this Agreement, including the implementation, execution, interpretation, rectification, validity, enforceability, termination or cancellation of this Agreement , the dispute shall first be referred to the Project Leaders of the Parties, or alternates appointed by them, who shall use their best endeavours to resolve the dispute within fourteen (14) days of the dispute having been referred to them.
- 21.2. If after fourteen (14) days the dispute has not been resolved by the Project Leaders, the dispute shall, if demanded by either Party on written notice to the other, be settled by arbitration in accordance with the following provisions:
  - 21.2.1. The arbitration shall be held informally in Pretoria but in accordance with the provisions of the Arbitration Act 42 of 1965 and the Parties shall use their best endeavours to ensure that the arbitration is held and completed within sixty (60) Business Days after it is demanded, having particular regard to any urgency regarding the matter in issue;
  - 21.2.2. The Parties shall appoint a single arbitrator agreed upon between themselves, provided the arbitrator so appointed shall be a practising senior advocate or attorney of not less than fifteen (15) years standing.

- 21.2.3. If the dispute concerns the performance of the Services, the arbitrator has the right to appoint an expert who shall be independent and have extensive knowledge of the required services. The arbitrator shall have discretion to appoint any other independent expert should the dispute concern any other matter which, in the arbitrator discretion, requires expert knowledge.
- 21.2.4. The Parties herewith commit themselves to ensuring that the arbitration process shall be conducted expeditiously and hereby undertake to appear, cause witnesses to appear and to deliver documentation in accordance with the procedural dictates of the arbitrator.
- 21.2.5. The arbitrator shall determine the Party liable for his costs and the costs of the arbitration venue. The fees of any experts referred to in clause 23.2.3 above used by the arbitrator in the arbitration shall be borne by the Parties in equal shares unless the arbitrator determines that the conduct of either Party was such that it should bear a greater portion of such fees. All other costs of the arbitration shall be borne by the Party incurring that cost.
- 21.2.6. The Parties hereby irrevocably agree that the decision in any proceedings hereunder shall be final and binding on all of them, shall be forthwith carried into effect and may be made an order of any court of competent jurisdiction.
- 21.2.7. The provisions of this clause 23 shall continue to be binding on the Parties notwithstanding any termination or cancellation of this Agreement.
- 21.2.8. Any information, documentation and material disclosed or made available during the arbitration, shall remain confidential and shall not be disclosed by the arbitrator, any expert appointed or the Parties themselves to any other party without the prior written consent of the Party that made available such information, documentation or material.

## **22. TERMINATION AND BREACH**

- 22.1. The Department shall have the right, without prejudice to any other rights it may have, to terminate this Agreement by providing 14 days written notice thereof to the Contractor, upon the occurrence of the following events:
  - 22.1.1. The passing of a resolution for the commencement of any action for the dissolution and/or liquidation of the Contractor or to place the Contractor under judicial management, or the Contractor commits any other act of insolvency, except for the purpose of an amalgamation or restructuring, which has been approved in advance and in writing by the Department;
  - 22.1.2. The Contractor enters into a compromise with a general body of its creditors;
  - 22.1.3. Judicial execution is levied on the Contractor's goods and which remains unpaid for fourteen (14) days after attachment;
  - 22.1.4. There has been a material defect, error or failure by the Contractor to comply with applicable laws or rules in the Request for Proposals or in the awarding of this Agreement which is incapable of rectification and that requires this Agreement to be terminated;

- 22.1.5. The Contractor or any of its Personnel is convicted of having offered, promised or given a bribe or other gift or remuneration to any officer or employee in the service of the Department in connection with the obtaining or execution of this Agreement;
  - 22.1.6. The Contractor has acted in a fraudulent manner in obtaining or executing a contract with any other government department, provincial administration, municipality, public body, company or person;
  - 22.1.7. The Contractor has approached any official or agent of the Department before or after tenders had been called for, with the aim of influencing the award of this Agreement in its favour;
  - 22.1.8. The Contractor, when advised that its Proposal has been accepted, gives notice of its inability to sign or execute this Agreement;
  - 22.1.9. The Contractor has entered into any agreement or arrangement, whether legally binding or not, with any other person, firm or company to refrain from tendering for this Agreement, or as to the amount of the Proposal to be submitted by either Party;
  - 22.1.10. The Contractor has disclosed to any other person, firm or company the exact or approximate amount of its Proposal before the closing date for tenders, except where disclosure, in confidence, was necessary in order to obtain insurance premium quotations required for the preparation of the Proposal;
  - 22.1.11. The Contractor has abandoned its obligations in terms of this Agreement;
  - 22.1.12. The Contractor has deliberately furnished inaccurate information in its proposal for the Services, or with regard to any other material information;
  - 22.1.13. The Contractor consistently fails to observe the Specifications in the Proposal with regard to the Services and the Service Levels resulting in the quality of the Services and Service Levels being unacceptable to the Department;
  - 22.1.14. The Contractor ceases to carry on business as the Contractor of the Services
  - 22.1.15. and the Contractor shall not be entitled to claim any damages whatsoever in respect of such terminations.
- 22.2. Should either Party breach or fail to comply with any terms or conditions of this Agreement, the aggrieved Party shall give the defaulting Party at least fourteen (14) days written notice to rectify the matter, and if the defaulting Party has not remedied the breach within the said fourteen (14) days, the aggrieved Party may:
- 22.2.1. Terminate this Agreement and, if appropriate, claim damages; or
  - 22.2.2. Claim specific performance; and/or
  - 22.2.3. Claim any other lawful remedy the aggrieved Party may have.
- 22.3. If any Party is entitled to, and elects to terminate this Agreement due to force majeure (see Clause 22), neither Party may claim against the other for any loss, damage nor compensation arising from such termination.
- 22.4. The Contractor shall after the termination of this Agreement, or at any time prior to such termination, at the request of the Department, promptly return all documents and other information, which were utilised in the administration of this Agreement, to the Department, or

otherwise dispose thereof as the Department may instruct without the right of retention. All such information shall be released to the Department in an acceptable electronic format as to enable the Department to proceed with the provision of the Services.

- 22.5. On termination of this Agreement the Department may immediately appoint officers of the Department or a firm of independent auditors at the Department's cost to check and verify all relevant records and other data of the Contractor, and the Contractor shall give its full cooperation in this regard.
- 22.6. In the event of this Agreement being terminated in terms of clause 24.1, the Department shall remunerate the Contractor for work with regard to the Services completed up to the date of the expiry date of any notice referred to in this Clause.

### **23. Termination on institutional default**

- 23.1. On the occurrence of an institutional default, or within a reasonable time after the Contractor becomes aware of the same, the Contractor may serve notice on the Department of the occurrence (and specifying details) of such institutional default. If the relevant default has not been remedied or rectified within 21 (twenty one) business days of such notice, the Contractor may serve a further notice on the Department, terminating the agreement with immediate effect.

#### **23.2. Termination on Contractor's default**

23.2.1. Contractor default means any of the following events or circumstances:

23.2.2. The Contractor ceasing to carry on business;

23.2.3. A resolution being passed or an order of court being made for the administration, the judicial management, business rescue, winding-up, liquidation or dissolution of the ;

23.2.4. Contractor failing to maintain any required insurance in terms of clause 8.2.8;

23.2.5. The Contractor committing a breach of any of its material obligations under the agreement;

23.2.6. The Contractor ceasing to provide all or a substantial part of the services in accordance with the agreement; and

23.2.7. The Contractor providing services that are not in line with good industry practice.

#### **23.3. Institutional options**

23.3.1. On the occurrence of a Contractor default, or within a reasonable time after the Department becomes aware of the same, and while the same is subsisting, the Department may:

23.3.2. In the case of the Contractor default referred to in clauses 14.2.1.1 to 14.2.1.3, terminate the agreement in its entirety by notice in writing with immediate effect;

23.3.3. In the case of the Contractor default referred to in clauses 14.2.1.4 to 14.2.1.6, serve notice of default on the Implementation Agent, requiring the Implementation Agent to remedy the default within 21 (twenty one ) business days.

23.3.4. Failure by the Contractor to remedy the default within the specified time, as stipulated in clause 14.2.2.1.2, shall entitle the Department to terminate the agreement forthwith.

## 23.4. Costs

23.4.1. Each party shall reimburse the other party with all costs incurred by that party in exercising any of its rights (including, without limitation, any relevant administrative expenses), on an own attorney and client basis incurred by that party in enforcing its rights under the agreement arising out of any breach, together with all supporting documents of such amount, which amount shall not exceed twice the amount of fees payable in terms of this agreement.

## 24. NOTICES AND DOMICILIUM

The parties choose as their respective domicilium citandi et executandi for all purposes of the giving of notices and the serving of any process, and for any other purpose arising from the agreement, as follows:

In the case of the Department:

Address: Forum Building

159 Struben & Bosman Streets,

Pretoria

0001

Email: xxxxxxxxxxxx@dot.gov.za

In the case of the .....:

Address: .....

.....

.....

.....

Email: .....

A notice shall be deemed to have been duly given:

On date of delivery, if delivered to any party's physical address in terms of this clause 16.1;

On date of dispatch, if sent to any party's applicable email address, which is mentioned in clause 16.1, as confirmed by email confirmatory report.

Either party may change its address to any physical address and email address (in the Republic of South Africa) for this purpose, by notice in writing to the other party.

## 25. WHOLE AGREEMENT

This Agreement, together with the Request for Proposals, General Conditions of Contract (GCC), the applicable SBD forms, and the Contractors Proposal constitute the entire agreement between the Parties in respect of the subject matter hereof and neither Party shall be bound by any undertakings,

representations, warranties or promises not recorded in this Agreement, unless agreed to in writing by both Parties.

## **26. NO VARIATION**

No variation or consensual cancellation of this Agreement, and no addition to this Agreement, including this Clause, shall be of any force or effect unless reduced to writing and signed by both Parties or their duly authorized representatives whether in terms of the Change Control Procedure or otherwise.

## **27. WAIVER**

No latitude, extension of time, or waiver of any of the terms and conditions of this Agreement shall be binding unless expressed in writing and signed by the Party hereto giving the same, and any such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

## **28. SEVERABILITY**

28.1. If any one or more of the Clauses, agreements, provisions or terms of this Agreement shall be held wholly or partly invalid, illegal or unenforceable for any reason whatsoever, then those Clauses, agreements, provisions or terms shall be deemed severable from the remaining Clauses, agreements, provisions or terms of this Agreement and shall in no way affect the validity, legality or enforceability of this Agreement.

28.2. The Parties shall meet as soon as possible and negotiate, in good faith, upon a replacement provision that is legally valid and achieves the objective of this Agreement and produces an equivalent effect.

## **29. GOVERNING LAW**

29.1. The construction, interpretation and performance of this Agreement, as well as all disputes, actions and other matters relating thereto and/or arising hereunder, shall be governed by and construed in accordance with the laws of the Republic of South Africa.

29.2. Subject to clause 23, the Parties hereto consent and submit to the jurisdiction of the High Court of South Africa (Cape of Good Hope Division) in any dispute arising from or in connection with this Agreement.

## **30. SURVIVAL**

Notwithstanding termination of this Agreement, any Clause, which, from the context, contemplates ongoing rights and obligations of the Parties, shall survive such termination and continue to be of full force and effect.

## **31. SIGNING AUTHORITY**

The Parties warrant and represent that the person or party signing on their behalf is a duly authorized representative of that Party and is duly empowered and authorised to sign this Agreement.

### 32. COSTS AND EXPENSES

Except as otherwise specifically provided herein, each Party shall bear all costs and expenses incurred in the performance by it of its obligations hereunder.

### 33. SUBCONTRACTING

- 1.1. The Contractor shall not, without the prior written consent of the Department (which shall not be unreasonably withheld), subcontract or delegate any of the services to any parties other than to those listed as members of the Contractor as contained in the proposal and recorded in the Scope of Work, which is attached hereto and marked as Schedule 2.
- 1.2. The Contractor shall not be relieved of any obligation, responsibility or liability under the agreement by the appointment of any subcontractor or to carry out any part of the services as between the Contractor and the Department.
- 1.3. The Contractor shall be responsible for the payment, performance, act, defaults, omissions, breaches and negligence of all its subcontractors.
- 1.4. All references in the agreement to any performance payment, act, default, omission, breach or negligence of the Contractor shall be deemed to include any or the same by a subcontractor.

### 34. RELATIONSHIP OF THE PARTIES

- 1.5. The relationship of the Parties shall be governed by the terms of this Agreement and nothing contained herein shall be deemed to constitute a partnership between them and neither Party shall by reason of the actions of the other Party incur any personal liability as co-partner to any third Party and no Party shall be entitled or empowered to represent or hold out to any third Party that the relationship between them is that of partnership.
- 1.6. Except where expressly stated, nothing in this Agreement shall constitute or be construed so as to constitute any Party as the agent or representative of the other Party for any purpose.

### 35. GENERAL UNDERTAKING

- 35.1. The Parties undertake to perform all acts and required steps as may be necessary, incidental or conducive, to give effect to the terms, conditions and importance of this Agreement.
- 35.2. All statements and representations made to and by the Parties are, to the best of its knowledge, true and accurate and that it shall advise the other Party of any facts, matters or circumstances, of which it may become aware that could cause any such statement or representation to be false or misleading.

Signed		Date:-		
--------	--	--------	--	--

at:-			
Signed for and on behalf of the Department of Transport			
Full Name			
Designation			
	Who warrants that he/she is duly authorized thereto.		
As Witnesses	1.	2.	

Signed at:-		Date:-	
Signed for and on behalf of the Contractor			
Full Name			
Designation			
	Who warrants that he/she is duly authorized thereto.		
As Witnesses	1.	2.	



## SCHEDULE 1-CHANGE CONTROL PROCEDURE

1. The primary objective of the Change Control Procedure is to ensure that all requirements for changes to the Services are adequately authorized and controlled.
2. If either Party requires any amendment, alteration or addition to the provisions of the Schedule, that Party shall inform the other Party of such request by written notice ("Change Request"). The notice shall set out full particulars of such proposed amendment, alteration or addition.
3. The Party issuing the Change Request shall, submit a written request to the other Party ("Change Note"), which notice shall set out the following:
  - 3.1. The title of the change;
  - 3.2. The originator and date of the Change Request;
  - 3.3. The proposer's reason for the change;
  - 3.4. Full details of the proposed change, including any specifications;
  - 3.5. The impact on the price structure, if any;
  - 3.6. A timetable for the implementation of the change together with any proposals for acceptance of the change;
  - 3.7. A schedule of payments, if appropriate;
  - 3.8. Details of the likely impact, if any of the change on other aspects of the Services, including without being limited to:
    - 3.8.1. The human resources to be made available;
    - 3.8.2. The amount payable if any by the Department in respect of such change;
    - 3.8.3. The impact of the change on the Agreement and the likelihood of the proposed Change extending this Agreement beyond the initial period contemplated in Clause 3;
    - 3.8.4. The payment profile;
    - 3.8.5. Documentation and training to be provided by the Contractor as a result of such change;
    - 3.8.6. Service levels and working arrangements;
    - 3.8.7. Any other contractual issues;
    - 3.8.8. The date of expiry of validity of the Change Note;
4. The Party receiving the Change Note shall, within a period of fourteen (14) days from the date of receipt by it of the Change Note, evaluate the Change Note and by written notice to the other Party:
  - 4.1.1. Request such further information as may be required and/or request additional time within which to evaluate the Change Note;
  - 4.1.2. Approve the Change Note with or without modification (provided that any modification is approved by the other Party);

#### 4.1.3. Reject the Change Note.

5. Once both Parties have approved the Change Note, a duly authorized representative of each of the Parties shall sign two copies of the Change Note, and any other contract documents directed by the Department.
6. A Change Note signed by both Parties shall constitute an amendment to this Agreement.
7. Each of the Parties shall be required to maintain a file in chronological order of all amendments after the signature date of the Agreement.
8. Neither the Department nor the Contractor shall unreasonably withhold its consent to any Change Note, provided the neither Party shall be obliged to consent to any Change Note increasing the price or requiring the Party to incur any expenditure not provided for in this Agreement.
9. Until both Parties have agreed to, and signed a Change Note, the obligations of the Contractor to the Department in terms of this Agreement, shall not be affected and the Contractor shall continue to provide the Services and fulfil all of its obligations to the Department in terms of this Agreement in full, unless otherwise agreed to by the Parties, in writing.
10. Any discussion between the Parties in connection with a request by the Department or a recommendation by the Contractor shall be without prejudice to the rights of each Party under this Agreement.
11. Any costs or expenditure incurred by the Contractor or its personnel that have not been authorized in advance by the Department for a change in the Services pursuant to this Schedule, shall be for the sole account of the Contractor.

## CHANGE NOTE

<b>Reference Number</b>			
<b>Title of Change:</b>			
<b>Date:</b>			
<b>Details of Change:</b>			
<b>Reason for Change:</b>			
<b>Impact of Change:</b>			
<b>Timetable:</b>			
<b>Cost &amp; fee Impact:</b>			
<b>Contractor:</b>			
<b>Signed:</b>			
<b>Signed:</b>			
	<b>Name</b>		<b>Office</b>
<b>Department's Response:</b>			
<b>Accept/Reject</b>			
<b>Signed:</b>			
	<b>Name</b>		<b>Office</b>

**SCHEDULE 2- SCOPE OF WORK****SCOPE OF WORK****TABLE OF CONTENTS****EXECUTIVE SUMMARY****36. CONTENTS**

- 1. PROJECT BACKGROUND AND OVERVIEW**
- 2. MAIN OBJECTIVES OF THE PROJECT**
- 3. GOVERNANCE STRUCTURE**
- 4. PROJECT PHASES, TASKS AND DELIVERABLES**
- 5. ADDITIONAL REQUIREMENTS**

**LIST OF MAPS****LIST OF DIAGRAMS**

### SCHEDULE 3- PAYMENTS SCHEDULE

1. The Project Management Fees is are based on the budgeted time per professional staff to be spent on the Project.
2. Project Management Fees will paid by the Department of Transport.

**Table 1.1: Price Summary**

Description	Proposed Remuneration Amount (R)
<b>Total</b>	

3. A remuneration schedule in the timing of payments as a percentage of the fixed fee for Project is as follows:

**Table 1.2: Fee Breakdown Structure Based on the Scope of Work**

<b>Deliverable</b>	<b>Proposed Remuneration</b>	<b>Proposed Remuneration %</b>
Task 1:		10
Task 2:		10
Task 3:		10
Task 4:		10
Task 5:		10
Task 6:		20
Task 7:		20
Task 8:		10
<b>Total</b>		<b>100</b>

**SCHEDULE 4 – PROJECT LIFECYCLE**

**Spec to be attached**

DRAFT

ANNEXTURE D





ANNEXURE D: INSTRUCTIONS	
DOT/04/2025/RT	APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE DRAFTING SERVICES ON THE ENVISAGED TRANSITIONAL REGULATIONS IN TERMS OF THE RAILWAY SAFETY ACT, 2024 (ACT NO.30 OF 2024) FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD ON TWELVE (12) MONTHS
<b>1. STRUCTURE OF THE TENDER</b>	
This spreadsheet contains the company, project leader and project team experience submission templates for the bid.	
<b>2. GENERAL INSTRUCTIONS FOR COMPLETING THE PRICING SCHEDULE TEMPLATES</b>	
<b>2.1 Tender submission format</b>	
In the event of a discrepancy, the paper copy will prevail.	
2.1.2 Bidders must complete all schedules	
2.1.3 Bidders must sign all paper copies of their Annexure D.	
<b>2.2 Input spreadsheets</b>	
2.2.1 Annexure D templates are contained within the one (1) Excel Workbook	
2.2.2 Bidders may make changes as agreed, to the spreadsheets.	

APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE DRAFTING SERVICES ON THE ENVISAGED TRANSITIONAL REGULATIONS IN TERMS OF THE RAILWAY SAFETY ACT, 2024 (ACT NO.30 OF 2024) FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD ON TWELVE (12) MONTHS

Annexure D1: Company Experience					
NUMBER OF PROJECTS COMPLETED	PROJECT 1	PROJECT 2	PROJECT 3	PROJECT 4	PROJECT 5
PROJECT DETAILS					
PROJECT NAME					
DURATION					
SUCCESSFUL COMPLETION (Y/N)					
SUMMARY/DESCRIPTION OF PROJECT					
SCOPE OF PROJECT					
PROOF TO SUPPORT (Y/N)					

Bidder signature
Signature

APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE DRAFTING SERVICES ON THE ENVISAGED TRANSITIONAL REGULATIONS IN TERMS OF THE RAILWAY SAFETY ACT, 2024 (ACT NO.30 OF 2024) FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD ON TWELVE (12) MONTHS

Annexure D2: Proposed Team				
#	Name of team member	Role (As specified in Tor)	Qualifications (list)	Years Exp
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				

Bidder signature

Signature

Enter the details of the team members allocated to executing the required deliverables.  
Attach certified copies of qualifications to bid.

APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE DRAFTING SERVICES ON THE ENVISAGED TRANSITIONAL REGULATIONS IN TERMS OF THE RAILWAY SAFETY ACT, 2024 (ACT NO.30 OF 2024) FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD ON TWELVE (12) MONTHS

[illegible]

<b>Bidder signature</b>	
	Signature

Attach verifiable / contactable references to bid