



forestry, fisheries & the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

INVITATION TO BID

BID NUMBER: DFFE-T039(22-23)

APPOINTMENT OF THE INDEPENDENT SPECIALIST SERVICE PROVIDER TO ADVISE THE DEPARTMENT ON TRANSACTIONS RELATED TO THE EXISTING INDUSTRY-WIDE BENEFIT SHARING AGREEMENT REGARDING COMMERCIAL UTILISATION OF ASPALATHUS LINEARIS (ROOIBOS) PLANT MATERIALS AND ASSOCIATED TRADITIONAL KNOWLEDGE FOR BIOTRADE AND BIOPROSPECTING PROJECTS, FOR A PERIOD OF TWELVE (12) MONTHS.

Contact persons:

Name : Ms. Natalie Feltman
Office Telephone No. : (012) 399 8917
E-Mail : Nfeltman@environment.gov.za

Name : Mr. Ntambudzeni Nepfumembe
Office Telephone No. : (012) 399 9612
E-Mail : Nnepfumembe@environment.gov.za

NATIONAL TREASURY CENTRAL SUPPLIER DATABASE (CSD) REGISTRATION INFORMATION

Company name	Supplier registration number	Unique reference number	
			Main contractor
			Sub-contracted/ joint venture comp 1
			Sub-contracted/ joint venture comp 2

CLOSING DATE OF THE BID: 31 AUGUST 2022 AT 11H00

NON-COMPULSORY BRIEFING SESSION WILL BE HELD AS FOLLOWS:

DATE: 19 AUGUST 2022

TIME: 09H00 – 11H00

PLEASE NOTE THAT THE VIRTUAL BRIEFING LINK WILL BE PUBLISHED ON DFFE WEBSITE.

PART A INVITATION TO BID /

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	DFFE-T039 (22-23)	CLOSING DATE:	31 AUGUST 2022	CLOSING TIME:	11:00
DESCRIPTION	APPOINTMENT OF THE INDEPENDENT SPECIALIST SERVICE PROVIDER TO ADVISE THE DEPARTMENT ON TRANSACTIONS RELATED TO EXISTING INDUSTRY-WIDE BENEFIT SHARING AGREEMENT REGARDING COMMERCIAL UTILISATION OF ASPALATHUS LINEARIS (ROOIBOS) PLANT MATERIALS AND ASSOCIATED TRADITIONAL KNOWLEDGE FOR BIOTRADE AND BIOPROSPECTING PROJECTS, FOR A PERIOD OF TWELVE (12) MONTHS.				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Department of Forestry Fisheries and the Environment; The Environment House, 473 Steve Biko Road; Cnr Soutpansberg and Steve Biko Road, Arcadia Pretoria /Tshwane					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Ms Vonani Rikhotso; Mpho Lehutso; Tlotlo Thupe		CONTACT PERSON	Ms. Natalie Feltman Mr. Ntambudzeni Nepfumembe	
TELEPHONE NUMBER	012 399 9670/9671/9055		TELEPHONE NUMBER	(012) 399 8917 (012) 399 9612	
FACSIMILE NUMBER	N/A		FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS	vrikhotso@dffe.gov.za mlehutso@dffe.gov.za mthupe@dffe.gov.za		E-MAIL ADDRESS	Nfeltman@environment.gov.za Nnepfumembe@environment.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:	MAAA
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	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

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

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

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

DATE:

.....

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER:	BID NO: DFFE-T039 (22-23)
CLOSING TIME 11h00	CLOSING DATE: 31 AUGUST 2022

OFFER TO BE VALID FOR120.....DAYS FROM THE CLOSING DATE OF BID.

DESCRIPTION: APPOINTMENT OF THE INDEPENDENT SPECIALIST SERVICE PROVIDER TO ADVISE THE DEPARTMENT ON TRANSACTIONS RELATED TO EXISTING INDUSTRY-WIDE BENEFIT SHARING AGREEMENT REGARDING COMMERCIAL UTILISATION OF ASPALATHUS LINEARIS (ROOIBOS) PLANT MATERIALS AND ASSOCIATED TRADITIONAL KNOWLEDGE FOR BIOTRADE AND BIOPROSPECTING PROJECTS, FOR A PERIOD OF TWELVE (12) MONTHS.

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

R.....

4. PERSON AND POSITION

HOURLY RATE

DAILY RATE

R-----
R-----
R-----
R-----
R-----

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

R----- days
R----- days
R----- days
R----- days

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

DESCRIPTION OF EXPENSE TO BE INCURRED

RATE

QUANTITY

AMOUNT

..... R.....
..... R.....
..... R.....
..... R.....

TOTAL: R.....

Name of Bidder:

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

- 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 Forestry Fisheries and the Environment

Contact Person: Tlotlo Thupe; Vonani Rikhotso and Mpho Lehutso

Tel: (012) 399 9670/9671/9055

E-mail: mtlupe@dfpe.gov.za ; vrkhotso@dfpe.gov.za or mlehutso@dfpe.gov.za

Or for technical information –

Name : Ms. Natalie Feltman
Office Telephone No. : (012) 399 8917
E-Mail : Nfeltman@environment.gov.za

Name : Mr. Ntambudzeni Nepfumembe
Office Telephone No. : (012) 399 9612
E-Mail : Nnepfumembe@environment.gov.za

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

- 2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

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

Full Name	Identity Number	Name of State institution

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

- 2.2.1 If so, furnish particulars:

¹ the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

-

 2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?

YES/NO

- 2.3.1 If so, furnish particulars:

.....

3 DECLARATION

I, the undersigned, (name)in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
 3.6 I am aware that, in addition and without prejudice to any other remedy provided to

² Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

SBD4

combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

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

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

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

1. GENERAL CONDITIONS

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

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

1.2

- a) The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable; or

1.3 Points for this bid shall be awarded for:

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

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

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

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

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

2. DEFINITIONS

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

3. POINTS AWARDED FOR PRICE

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

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

80/20

or

90/10

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

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

P_{min} = Price of lowest acceptable bid

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

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

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

5. BID DECLARATION

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

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

- 6.1 B-BBEE Status Level of Contributor: . = maximum 20 points
(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.)

7. SUB-CONTRACTING

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

(***Tick applicable box***)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

- 7.1.1 If yes, indicate:

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

(***Tick applicable box***)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

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

Designated Group: An EME or QSE which is at least 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		

Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

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

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in

paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;

iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

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

WITNESSES

- 1.
- 2.

.....
SIGNATURE(S) OF BIDDERS(S)

DATE:

ADDRESS

.....

.....



forestry, fisheries
& the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

THE DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT (DFFE) AS AN ORGAN OF STATE SUBSCRIBES TO AND PROPAGATES BOTH THE NOTION OF BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT (Act No. 23 of 2003) (BBBEE), THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 (Act No. 5 of 2000) AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

TERMS OF REFERENCE

FOR THE APPOINTMENT OF THE INDEPENDENT SPECIALIST SERVICE PROVIDER TO ADVISE THE DEPARTMENT ON TRANSACTIONS RELATED TO EXISTING INDUSTRY-WIDE BENEFIT SHARING AGREEMENT REGARDING COMMERCIAL UTILISATION OF *ASPALATHUS LINEARIS* (ROOIBOS) PLANT MATERIALS AND ASSOCIATED TRADITIONAL KNOWLEDGE FOR BIOTRADE AND BIOPROSPECTING PROJECTS, FOR A PERIOD OF TWELVE (12) MONTHS

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1. PURPOSE

- 1.1. To appoint an independent specialist service provider (Transaction Advisor) to advise the Department of Forestry, Fisheries and the Environment (DFFE) regarding transactions related to the existing Industry-Wide Benefit Sharing Agreement concluded for the sharing of benefits derived from the commercial utilisation of plant material of *Aspalathus linearis* (Rooibos) and associated traditional knowledge for Biotrade and Bioprospecting projects, for a period of twelve (12) months.

2. INTRODUCTION AND BACKGROUND

- 2.1. South Africa is rich with natural resources and is the third (3rd) most biologically diverse country in the world following Indonesia and Brazil. It covers about 2% of the world's land area but is home to nearly 10% of the world's plant; 7% of reptiles, birds & mammals; 15% of known coastal marine species. In addition, South Africa is endowed with a high incidence of endemic species. Therefore, biodiversity is considered to be one of South Africa's greatest assets
- 2.2. South Africa is also rich in indigenous cultural diversity comprising various cultural groups. These cultural groups have discovered different traditional uses of plants and animals for agriculture, medicinal and healthcare, and food preparation purposes. This is called Traditional Knowledge and it is passed down from generation to generation, usually by word of mouth and through cultural rituals in specific communities.
- 2.3. The Bioprospecting, Access and Benefit Sharing Amendment Regulations of 2015 (BABS Regulations) read together the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEMBA), provides that the Minister of Forestry, Fisheries and the Environment is the issuing authority for export permit for discovery phase of bioprospecting; Biotrade permit; bioprospecting permit and / or integrated Biotrade and bioprospecting permit involving commercial or industrial utilization of indigenous biological resources and/ or associated traditional knowledge. The Minister is also responsible to approve material transfer agreements and benefit sharing agreements submitted together with the permit application forms. Before approving the benefit sharing agreement, the Minister:
 - 2.3.1. Must be satisfied that the agreement is fair and equitable to both parties;
 - 2.3.2. May consult any person competent to provide technical advice on the agreement; and
 - 2.3.3. May invite public comment on the agreement provided that no confidential information will be made public.
- 2.4. The BABS Regulations provides that if it has not been possible to conclude a benefit sharing agreement, the applicant must submit a request for intervention by the Minister for the purposes of facilitating the negotiations for the benefit sharing agreement.
- 2.5. *Aspalathus linearis* or Rooibos is an endemic species to the Cape Floristic Region covering Western and Northern Cape provinces of South Africa. The San and Khoi people hold traditional knowledge that pertains to the utilisation of rooibos

- 2.6. Over the past nine years, the Department facilitated negotiations involving the two indigenous communities represented by the South African San Council and the National Khoisan Council and the Rooibos industry represented by the South African Rooibos Council which resulted in the conclusion of an Industry-Wide Benefit Sharing Agreement as a pilot phase for one year. This agreement is based on recognition and acknowledgement of Traditional Knowledge associated with the use of *Aspalathus linearis*.
- 2.7. The current rooibos users in South Africa include the following:
- 2.7.1. Approximately eleven (11) processors in South Africa that collect and process rooibos into tea and extracts for trade in local and international markets.
 - 2.7.2. About six (6) local packers and branders that grade rooibos products according to length, colour, flavour and aroma. In addition, rooibos is packed and exported in bulk to approximately sixty (60) countries
 - 2.7.3. Rooibos is cultivated by approximately three hundred (300) large commercial farmers and two hundred and ten (210) small holder commercial farmers.
- 2.8. Given that users are in commercial activities, there is need to appoint an independent and objective specialist service provider to assist the Department in determining whether the current benefit sharing model in the concluded industry-wide benefit sharing agreement is fair and equitable for the indigenous peoples and local communities, taking into consideration the market value-chain analysis of the utilisation of rooibos from source to the end product in both local and international markets. The analysis and recommendations from the service provider will form the basis for the review of the industry-wide Benefit Sharing Agreement towards a long-term benefit sharing agreement.

3. OBJECTIVES

- 3.1. The primary objectives of an independent specialist service provider are to assist.
- 3.2. The Department is providing hands-on and accessible financial, business and market intelligence knowledge and expertise in the areas of bioprospecting and Biotrade across the entire value chain as it relates to the commercial and industrial utilisation of the plant material of *Aspalathus linearis* (Rooibos) both local and international looking into:
- 3.2.1. The role players in the Rooibos value-chain
 - 3.2.2. Opportunities for transformation in the Rooibos Industry. Currently, the Rooibos industry lacks representation from the previously disadvantaged individuals (PDIs) and communities at the Processor (Sterilize Rooibos, bulk trade and/or make extract) level of the Rooibos. Majority of the PDIs and communities are actively involved in the primary processing (commercial farmers, communal small farmers) stage of the value-chain. This project should identify opportunities for PDIs and communities to participate in the secondary processing stages. Also explore shareholding opportunities in the existing industry).

- 3.2.3. Demography of the farmers involved in the cultivation of Rooibos.
- 3.2.4. Market and trade information- both at local and international levels.
- 3.2.5. Equity and fairness of the concluded Industry-Wide Benefit Sharing Agreement;
- 3.2.6. Management of financial benefits received by the Khoi-Khoi and San communities, which will include amongst others management of the Trusts in terms of Trust Property Control Act;
- 3.2.7. Distribution of finance benefits received by the Khoi-Khoi and San communities; and
- 3.2.8. Benefits for the conservation and sustainable use of Rooibos species.
- 3.3. The Department in Identifying appropriate collection methods and model of monetary benefits from various permit holders throughout the Rooibos value chain.
- 3.4. The Department in terms of drafting a community beneficiation model, which would channel the monetary benefits received to wider beneficiary communities to achieve greater equity.

4. SCOPE AND EXTENT OF WORK

- 4.1. The role of the independent specialist service provider is to assist the Minister in providing transactional advisory services to ensure fair and equitable sharing of benefits arising from bioprospecting and Biotrade projects with communities through the concluded Rooibos Industry-Wide Benefit Sharing Agreement and also on the community beneficiation model established to channel the monetary benefits shared to the wider beneficiary communities. The appointed service provider will undertake the following task:
- 4.2. Transaction Advisory Services: Communities
 - 4.2.1. Conduct analysis of the demography of the farmers involved in the cultivation of Rooibos.
 - 4.2.2. Advise and assist the identified beneficiary community (i.e. Suppliers of Rooibos Materials and Holders of Traditional knowledge associated with Rooibos) with undertaking livelihoods needs analyses of the communities as an input to a viable commercial partnership.
 - 4.2.3. Propose commercially viable investment options and develop viable business case/ plan and employment creation opportunities for the beneficiary communities.
 - 4.2.4. Advise the beneficiary community institution, and provide clarity on the partnership proposal in terms of:
 - 4.2.4.1. Respective partner roles and valued add
 - 4.2.4.2. Risk allocation and possible contingent liabilities
 - 4.2.4.3. Value of the beneficiary community institution assets

- 4.2.4.4. Value of the Rooibos Industry's investment
- 4.2.4.5. Value of the benefit accruing to the beneficiary community institution
- 4.2.4.6. Quality of the benefit sharing arrangements
- 4.2.4.7. Appropriate structures of the Community Investment Vehicles
- 4.2.4.8. Use cases from industry that highlight good practices of community beneficiation and communal structures for governance
- 4.2.5. Rooibos Industry: Conduct analysis of the Rooibos Industry Business Model and its value chain as well as the Financial Model applied by the business to implement Access and Benefit Sharing.
- 4.2.6. Conduct an analysis of the Permit Holders' Business Model and assessment of their financial information.
- 4.2.7. Conduct Market Research and Business Intelligence:
- 4.2.8. Conduct qualitative and quantitative market research in the areas under investigation that will provide relevant data and information related to key drivers, actors, trade activities, and standard operating practices in the Rooibos industry.
- 4.2.9. Develop benchmarks and key performance indicators related to the Rooibos industry that will enable the Department to make informed observations and decisions related to the benefit sharing commitments contained in the Industry-Wide Benefit Sharing Agreement
- 4.2.10. Advise the identified Rooibos Industries, and provide clarity on the partnerships proposal in terms of;
 - 4.2.10.1. Respective partner roles and valued add
 - 4.2.10.2. Risk allocation and possible contingent liabilities
 - 4.2.10.3. Value of the beneficiary community institution assets
 - 4.2.10.4. Value of the Rooibos Industry's investment
 - 4.2.10.5. Value of the benefit accruing to the beneficiary community institution
 - 4.2.10.6. Quality of the benefit sharing arrangements
- 4.2.11. Competencies
 - 4.2.11.1. Knowledge of business development
 - 4.2.11.2. Knowledge of access and benefit sharing principles
 - 4.2.11.3. Ability to assist communities to undertake livelihoods need assessment
 - 4.2.11.4. Ability to develop commercially viable investment options and business case/ plan for the beneficiary communities.
 - 4.2.11.5. Business contract development

4.3. Community Facilitation Services:

- 4.3.1. Assist the community (i.e. Suppliers of Rooibos Materials and Holders of Traditional knowledge associated with Rooibos) to assess the Rooibos Industry benefit sharing option to determine its suitability and in particular, the extent that it particularly addresses their needs and livelihoods.
- 4.3.2. Conduct a beneficiary community visioning exercise and stakeholder mapping (dynamics, influence and other aspects).
- 4.3.3. Develop and propose clear shareholding models between Rooibos Industry and the South African San Council and the National Khoisan Council.
- 4.3.4. Empower the beneficiary community institutions with enough information and understanding for informed decision-making.
- 4.3.5. Competencies;
 - 4.3.5.1. Conflict resolution skills
 - 4.3.5.2. In depth understanding of community facilitation
 - 4.3.5.3. Good understanding of transformation program and initiatives within the DFFE and government in general
 - 4.3.5.4. Can appropriately relate sector specific work to current political, policy, cultural and governance environments.
 - 4.3.5.5. Ability to design shareholding models
 - 4.3.5.6. Ability to organise communities into formal governance structure.
- 4.4. Legal Advice Services:
 - 4.4.1. Ensure that the beneficiary community institution is established according to legal requirements.
 - 4.4.2. Assist the transaction advisor to assess the benefit sharing arrangements to see whether it is suitable to address the needs of the beneficiary community institution:
 - 4.4.2.1. Ensure that the allocation of responsibilities of the different parties in the Industry-Wide Benefit Sharing Agreement is clearly articulated.
 - 4.4.3. Provide inputs on areas identified in the Industry-Wide Benefit Sharing Agreement that requires additional negotiations with the Rooibos Industry.
 - 4.4.4. Establish if the Industry- Wide Benefit Sharing Agreement is sound and whether it will be legally enforceable.
 - 4.4.5. Assist the transaction advisor to assess if the contractual arrangements in the Industry- Wide Benefit Sharing Agreement are unfairly biased towards the benefit of one of the parties.
 - 4.4.6. Review, critique and make recommendations regarding the current structure of the Rooibos Industry-Wide Benefit Sharing Agreement and where necessary propose amendments for its improvement.

4.4.7. Ensure that the assessment of the Rooibos Industry- Wide Benefit Sharing Agreement by the transaction advisor is within the parameters of NEMBA, the BABS Regulations and the Nagoya Protocol on ABS.

4.4.8. Competencies:

4.4.8.1. Ability to draft contractual documents/agreements linked to the commercial partnership.

4.4.8.2. Ability to ensure that the commercial partnership is concluded within the parameters of the applicable legislation.

4.5. The transactional advisor will be expected to work closely with DFFE officials, Rooibos Industry, South African San Council, National Khoisan Council, Commercial Farmers, and National Bioprospecting Advisory Committee, relevant provincial and local spheres of government.

5. EXPECTED DELIVERABLES / OUTCOMES

5.1. Market Intelligence Report on the Rooibos Industry

5.2. Development of Sector benchmarks and key performance indicators for the Rooibos Industry

5.3. Community structures under the Councils as beneficiaries for the Industry-Wide Benefit Sharing Agreement on Rooibos Traditional Knowledge including management and distribution of financial benefits received by the Khoi-Khoi and San communities.

5.4. Trade data from Bioprospecting, Access and Benefit Sharing projects (exports and commercialised items).

5.5. Analysis of Levy Administrator report provided by DFFE including recommendation on fairness and equity of the Industry- Wide Benefit Sharing Agreement and possible benefit options for conservation and sustainable use of Rooibos species.

5.6. Transfer of skills of five (5) DFFE officials through learning by observing.

5.7. 4x Community (2x Commercial Farmers and 2x Khoi-Khoi and San Communities) / 2x Rooibos Industry workshops/ engagements reports in the Western Cape Province. This report should include opportunities for transformation in the Rooibos Industry and demography of the farmers involved in the cultivation of Rooibos.

5.8. Business case/plan

5.9. Project Inception meeting including a report

5.10. Consolidated Rooibos Transaction Report

6. PERIOD / DURATION OF PROJECT / ASSIGNMENT

- 6.1. The appointed service provider will be appointed for a twelve (12) months period after signing of contract (service level agreement) and an official purchase order will be issued to the service provider

7. COSTING / COMPREHENSIVE BUDGET

- 7.1. A Comprehensive fixed costing must be provided on (SBD 3.3) and Price Schedule Annexure A inclusive of all disbursement costs, such as delivery costs, travelling and accommodation costs and other expenses inclusive of VAT.
- 7.2. DFFE reserves the right to negotiate price with a recommended service provider identified in the evaluation process without offering the same opportunity to any other bidder (s) who have not been recommended.
- 7.3. Price must be valid for 120 days.

8 EVALUATION CRITERIA

- 8.1. The evaluation for this bid will be carried out in the following three (3) phases:

- Phase 1: Pre-compliance
- Phase 2: Functional Evaluation Criteria
- Phase 3: Price and BBEE

8.2 PHASE 1: Pre-compliance or Initial Screening

- 8.2.1 During this phase bid proposal will be evaluated/ reviewed to determine the compliance with SCM returnable documents (standard bidding documents) and Central Supplier Database (CSD) report on the table 8.2.2 below. All documents should be submitted with the bid documents at the closing date and time of the bid. Non-completed and unsigned SBD's may result on bid being disqualified and will not be evaluated further

- 8.2.2 The bid proposal will be screened for compliance with administrative requirements as indicated below:

ITEM NO.	ADMINISTRATIVE REQUIREMENTS	CHECK/COMPLIANCE
1	Master Bid Document	Provided and bound
2	Electronic Copy (USB)	Same as the Master Bid Document
Included in the Bid Document		
3	SCM - SBD 1 - Invitation to Bid	Completed and signed

ITEM NO.	ADMINISTRATIVE REQUIREMENTS	CHECK/COMPLIANCE
4	SBD 3.3 and Annexure A Pricing Schedule	Fully Completed
5	SCM - SBD 4 – Bidders Disclosure	Completed and signed
6	CSD registration number/ SARS Tax Status Pin and CSD summary report	Attached CSD registration number/ Proof of CSD registration and/or SARS Tax Pin
7	SCM - SBD 6.1 - Preference Points Claim Form in terms of the Preferential Procurement Regulations 2017	Completed and signed
8	In case of bids where Consortia / Joint Ventures, Consortia/Joint Venture agreement signed by both parties must be submitted with bid proposal	JV agreement completed and signed, if applicable

8.3 PHASE 2: Functionality Criteria

8.3.1. Bid proposals will be further evaluated on functionality criteria

8.3.2. The bidder must score a minimum of **75%**, during phase 2 (functionality/technical) of the evaluation to qualify for Phase 3 of the evaluation where the price and BBEE will be considered.

8.3.3. The following values/indicators will be applicable when evaluating functionality:

0 = Non-compliance, 1 = Poor; 2 = Fair; 3 = Average; 4 = Good; 5 = Excellent.

GUIDELINES FOR CATEGORY CRITERIA	FUNCTIONALITY: (GUIDELINES FOR CRITERIA APPLICATION)		WEIGHT
A proposed project plan, Methodology and Management of the project strategy in transactional advisory services.	Bidders are required to provide a detailed project plan with intermediate, final outputs, identified timeframes/ milestones of proposed methodology and management of project in line of this ToR to develop proposal for the assignment including transactional advisory services.		
	Project plan, methodology and project management in the field of transactional advisory services.	Indicator	20
	Project plan and methodology action well broken down; with detailed objectives and milestones.	5	
	Project plan and methodology, action identification basic; clear objectives and clear milestones.	4	
	Action plan provided with no deliverables and timeframes.	3	

GUIDELINES FOR CATEGORY CRITERIA	FUNCTIONALITY: (GUIDELINES FOR CRITERIA APPLICATION)		WEIGHT
	Limited information provided on the action plan	2	
	Task not well understood.	1	
	No information provided	0	
Certified qualifications of the Project Leader to be assigned to the project.	Bidder (s) are required to submit/ attach certified copy of relevant qualification for the Project Leader obtained from the University or University of Technology in the areas of Resource / Business Economics, Social Science, relevant law degree.		
	Certified qualifications of project/ team leader	Indicator	20
	A Masters qualification and above	5	
	An honours or equivalent qualification (s)	4	
	A degree qualification (s)	3	
	A three-year diploma qualification (s)	2	
	Two years diploma qualification (s)	1	
	No qualification (s) attached/ submitted	0	
Technical Capability/ expertise and track record of the project leader to be assigned to the project in three key areas namely; transactional advisory services and supported by community facilitation and legal advice.	Bidder (s) are required to demonstrate that they have the necessary resources and technical expertise to undertake and successfully complete the project. Bidder (s) should submit curriculum vitae for the project leader proposed to be employed on the project. Curriculum vitae are to include specific details of the project leader		
	Experience of project leader in the area of transactional advisory services including community facilitation and legal advise	Indicator	30
	5 or more years' experience	5	
	4 and less than 5 years' experience	4	
	3 and less than 4 years' experience	3	
	2 and less than 3 years' experience	2	
	1 and less than 2 years' experience	1	
	Less than 1 years or no experience	0	
The company's experience, track record and knowledge and number of projects in the fields of transactional advisory services	Bidder (s) are required to demonstrate relevant past experience and competency of the company. Bidder (s) should submit full details of five reliable contactable signed references for, projects of a similar scope which were currently being managed and successfully completed in the previous years.		
	Company experience in provision of transactional advisory services or similar	Indicator	

GUIDELINES FOR CATEGORY CRITERIA	FUNCTIONALITY: (GUIDELINES FOR CRITERIA APPLICATION)		WEIGHT
	such as contracting and commercial finance advisory		
	5 currently being managed and/or successfully completed projects with 5 duly signed positive reference letters or more	5	30
	4 currently being managed and/or successfully completed projects with 4 duly signed positive reference letters	4	
	3 currently being managed and/or successfully completed projects with 3 duly signed positive reference letters	3	
	2 currently being managed and/or successfully completed projects with 2 duly signed positive reference letters	2	
	1 currently being managed and/or successfully completed project with 1 duly signed positive reference letter	1	
	No successfully completed project	0	
TOTAL POINTS ON FUNCTIONALITY			100

8.4 PHASE 3: Price and BBBEE

8.4.1. Bid will be awarded to a bidder with the highest points on price and BBBEE on condition that they have met all phases of the evaluation criteria and complied with the tender requirements set out in the tender document.

8.4.2. The Department reserves the right not to award the tender to the bidder with the lowest amount and/or highest points.

8.4.3. Preferential point system applicable to this bid

80:20	YES
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8.4.4. Subject to sub-regulation 6(2), points will be awarded to a tenderer for attaining B-BBEE status contributor in accordance with the table below:

B-BBEE Status Level of Contributor	Number of Points (80/20 system)
1	20
2	18
3	14

B-BBEE Status Level of Contributor	Number of Points (80/20 system)
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- 8.4.5. The points scored by a tenderer in respect of the level of BBBEE contribution contemplated in sub-regulation must be added to the points scored for price as calculated in accordance with sub-regulation 6(1) respectively
- 8.4.6. Subject to regulation 11(1), the contract must be awarded to the tenderer who scores the highest total number of points.
- 8.4.7. A contract may be awarded to a tenderer that did not score the highest total number of points, only in accordance with section 2(1) (f) of the Act.

9 BID SUBMISSION REQUIREMENTS

- 9.1. Bidders should ensure that the following submission requirements, which will be needed for evaluation purposes are included in their bid proposal and are as follows:
- 9.1.1. The service provider must draft a table of content which will indicate where each document location in the proposal.
- 9.1.2. The proposal shall consist of one master original document and must clearly indicate the prices on SBD 3.3 and price schedule Annexure A.
- 9.1.3. The profile of the company should include a full description of similar work undertaken,
- 9.1.4. The information in the CV of the proposed Project Leader should include relevant experience in the chosen area of expertise.
- 9.1.5. Project reference specifying the role played by the service provider in the listed projects or assignments.
- 9.1.6. A detailed Project Plan with clear indication of who will be responsible for the management of the assignment as well as its execution such as Project Leader. The allocation of team members on the assignments should be based on the experience in delivering the scope of work as listed.
- 9.1.7. Standard bidding documents (SBD 1, 3.3, 4 & 6.1).
- 9.1.8. Copy of Central Supplier Database (CSD) report and SARS Tax Pin Certificate.

10. LEGISLATIVE FRAMEWORK OF THE BID

10.1. Tax Legislation

- 10.1.1. Bidder must at all time attempt to be compliant when submitting proposal to DFFE and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).
- 10.1.2. Bidders who make taxable supplies in excess of R1 million in any 12-month conservative period are liable for compulsory VAT registration, but a person may also choose to register voluntarily provided that the minimum threshold of R50 000 has been exceeded in the past 12-month period.
- 10.1.3. Bidders who meet the above requirement must register as VAT vendors, if successful, within one month of award of the bid.
- 10.1.4. SARS Tax Status Pin requirements / or Central Supplier Database (CSD) number or report must be provided.

10.2. Procurement Legislation

- 10.2.1. Bidders should be cognisant of the legislation and/or standards specifically applicable to the services.
- 10.2.2. Bidders are requested to submit a valid B-BBEE Status Level Verification Certificate issued by SANAS, or Accredited Verification Agency; or B-BBEE Certificate issued by CIPC, or Sworn Affidavit commissioned by Commissioner of Oaths together with their bids.
- 10.2.3. In the event that the application is made by a Joint Venture or Partnership, the accreditation credentials in name of joined entity should be submitted. Both members in the joint venture must meet the requirement of the proposal.

10.3. Privacy & Protection of Personal Information Act 4 of 2013

- 10.3.1. Protecting personal information is important to the Department of Forestry, Fisheries, and the Environment. To do so, DFFE follows general principles in accordance with applicable privacy laws and the Protection of Personal Information Act 4 of 2013 (POPIA).
- 10.3.2. DFFE's role as the responsible party, is amongst others to process personal information for the intended purpose for which it was obtained and in line with legal agreements with its respective/prospective services providers and third parties.
- 10.3.3. DFFE will process personal information only with the knowledge and authorisation of the bidder/respondent and will treat personal information which comes to its

knowledge as confidential and will not disclose it, unless so required by law or subject to the exception contained in the POPIA.

10.3.4. DFFE reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this bid and the bidder/respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning DFFE.

10.3.5. In responding to this bid, DFFE acknowledges that it will obtain and have access to personal information of the bidder/respondent. DFFE agrees that it shall only process the information disclosed by the bidder/respondent in their response to this bid for the purpose of evaluation and subsequent award of the tender and in accordance with any applicable law.

11. SPECIAL CONDITIONS OF CONTRACT

- 11.1 Bidders must attend compulsory briefing session to be held at date and time specified in the advert. Failure to attend compulsory briefing information meeting will result in the Bidder's bid being rejected
- 11.2 On appointment, the performance measures for the delivery of the agreed services will be closely monitored by Project Manager.
- 11.3 The Service Provider must guarantee the presence of the Project Leader in charge of programme throughout the duration of the contract
- 11.4 Prior to the appointment of a replacement, the Programme Manager must approve such appointment. If the senior must leave the project, a period of at least a month is required in which the senior must work parallel with the next person (senior consultant with similar expertise and equal years of experience) appointed to be able to transfer skills and knowledge.
- 11.5 The Programme Manager shall do the ongoing management of the Service agreement.
- 11.6 The Service Provider will submit quarterly progress reports as per the agreed to workplan, to the Project manager, within 4 days after the set date.
- 11.7 Appointed service provider will be subjected to security vetting and screening
- 11.8 All the conditions specified in the **General Conditions of Contract (GCC)** will apply and where the conditions in the special conditions of contract contradicts the conditions in the general conditions of contract the special conditions of contract will prevail.
- 11.9 The supplier shall notify the Department in writing of all subcontracts awarded under this contract 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.
- 11.10 In a case a tenderer is intending to sub-contract portion of work, such tenderer awarded a contract may only enter sub-contracting arrangements with the approval of the Department.

- 11.11 Letter of Authority to sign documents on behalf of the company.
- 11.12 The proposals should be submitted with all required information containing technical information.
- 11.13 Bidders failing to meet pre-compliance may be automatically disqualified.
- 11.14 Bidders failing to meet the pre-qualification and/ or mandatory requirements, and/or functionality will automatically be disqualified
- 11.15 Service providers are requested to submit any of the following documents as proof of B-BBEE Status level of contributor:
- a. B-BBEE status level Certificate issued by a Verification Agency accredited by SANAS.
 - b. A Sworn Affidavit as prescribed by the B-BBEE Codes of Good Practice; and
 - c. B-BBEE certificate issued by the Companies and Intellectual Property Commission.
 - d. SBD 6.1 must also be duly completed, signed, and submitted alongside the bid to claim preference points. Failure to do so will result in B-BBEE preference points being forfeited.
 - e. A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
 - f. A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate proposal.
 - g. In the event that the application is made by a Joint Venture or Partnership, the accreditation credentials in name of joined entity should be submitted. Both members in the joint venture must meet the requirement of the proposal.
- 11.16 Poor or non-performance by the bidder will result in cancellation of works orders.
- 11.17 Please take note that DFFE is not bound to select any of the firms' submitting proposals. DFFE reserves the right not to award any of the bids and not to award the contract to the lowest bidding price.
- 11.18 DFFE will not be held responsible for any costs incurred by the service providers in the preparation, presentation, and submission of the proposal.

12. SUB-CONTRACTING CONDITIONS/ REQUIREMENTS

- 12.1. In a case a tenderer is intending to sub- contract portion of work, such tenderer awarded a contract may only enter into sub-contracting arrangements with the approval of the Department.

- 12.2. In relation to a designated sector, a contractor will not be allowed to subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 12.3. A tenderer will not be awarded the points claimed for B-BBEE status level of contribution or contract if it is indicated in the bid documents that such a bidder intends subcontracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

13. PAYMENT TERMS

- 13.1. DFFE undertakes to pay out in full or as per deliverables within 30 (thirty) days all valid claims for work done to its satisfaction upon presentation of a substantiated claim and the required reports stipulated in special conditions. No payment will be made where there is outstanding information/work not submitted by the Service Provider/s until that outstanding information is submitted.

14. TECHNICAL ENQUIRIES

- 14.1 Should you require any further information in this regard, please do not hesitate to contact:

Name:	Ms Natalie Feltman
Office Telephone No.	(012) 399 8917
E-Mail:	Nfeltman@environment.gov.za

Or

Name:	Mr Ntambudzeni Nepfumembe
Office Telephone No.	(012) 399 9612
Email:	Nnepfumembe@environment.gov.za



forestry, fisheries
& the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

15. Price Schedule Annexure A

#	ACTIVITIES	HOURS	RATE PER HOUR (EXCLUDING VAT)	TOTAL COST PER ACTIVITY (EXCLUDING VAT)
1	Project Inception Report with Final Project Plan.	Hrs	R.....	R.....
2	Market Intelligence Report on the Rooibos Industry	Hrs	R.....	R.....
3	Development of Sector benchmarks and key performance indicators for the Rooibos Industry	Hrs	R.....	R.....
4	Community structures under the Councils as beneficiaries for the Industry-Wide Benefit Sharing Agreement on Rooibos Traditional Knowledge including management and distribution of financial benefits received by the Khoi-Khoi and San communities.	Hrs	R.....	R.....
5	Trade data from Bioprospecting, Access and Benefit Sharing projects (exports and commercialised items).	Hrs	R.....	R.....
6	Analysis of Levy Administrator report provided by DFFE including recommendation on fairness and equity of the Industry- Wide Benefit Sharing Agreement and possible benefit options for conservation and sustainable use of Rooibos species.	Hrs	R.....	R.....
7	Transfer of skills of five (5) DFFE officials through learning by observing.	Hrs	R.....	R.....

#	ACTIVITIES	HOURS	RATE PER HOUR (EXCLUDING VAT)	TOTAL COST PER ACTIVITY (EXCLUDING VAT)
8	4x Community (2x Commercial Farmers and 2x Khoi-khoi and San Communities) / 2x Rooibos Industry workshops/ engagements reports in the Western Cape Province. This report should include opportunities for transformation in the Rooibos Industry and demography of the farmers involved in the cultivation of Rooibos	Hrs	R.....	R.....
9	Business case/plan	Hrs	R.....	R.....
10	Project closure report including consolidated Rooibos Transaction report	Hrs	R.....	R.....
SUB TOTAL				R.....
VAT @ 15%				R.....
TOTAL PROJECT COST				R.....



forestry, fisheries & the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA



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REPUBLIC OF SOUTH AFRICA

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
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General Conditions of Contract

1. Definitions

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

RSA.

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

obligations of the supplier covered under the contract.

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

2. Application

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

3. General

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

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

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

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

9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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

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

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

14. Spare parts

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

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

15. Warranty

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

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

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

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

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

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

16. Payment

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

17. Prices

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

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

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

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

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

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

22. Penalties

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

23. Termination for default

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

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

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

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

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

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

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

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

may be due to him

25. Force Majeure

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

26. Termination for insolvency

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

27. Settlement of Disputes

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

28. Limitation of liability

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

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

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

Js General Conditions of Contract (revised July 2010)



DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

BAS ENTITY MAINTENANCE FORM

Head Office Only

Date Received _____
Safetynet Capture _____
Safetynet Verified: _____
BAS/LOGIS Capt _____
BAS/LOGIS Auth _____
Supplier No. _____

The Director General

I/We hereby request and authorise you to pay any amounts, which may accrue to me/us to the credit of my/our account with the mentioned bank.

I/we understand that the credit transfers hereby authorised will be processed by computer through a system known as "ACB - Electronic Fund Transfer Service", and I/we understand that no additional advice of payment will be provided by my/our bank, but that the details of each payment will be printed on my/our bank statement or any accompanying voucher. (This does not apply where it is not customary for banks to furnish bank statements).

I/we understand that the Department will supply a payment advice in the normal way, and that it will indicate the date on which the funds will be made available on my/our account.

This authority may be cancelled by me/us by giving thirty days notice by prepaid registered post.

Please ensure information is validate as per required bank screens .

I/We understand that bank details provided should be exactly as per record held by the banks.

I/We understand that the Department will not held liable for any delayed payments as a result of incorrect information supplied.

Company / Personal Details

Registered Name

Trading Name

Tax Number

VAT Number

Title:

Initials:

Full Names

Surname

Persal Number

Address Detail

Address

(Compulsory if Supplier)

Physical

Postal

Postal Code

New Detail

☐ New Supplier information ☐ Update Supplier information

Supplier Type:

☐ Individual
☐ Company
☐ CC

☐ Department
☐ Trust
☐ Other (Specify)

☐ Partnership

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Department Number

☐ ☐

